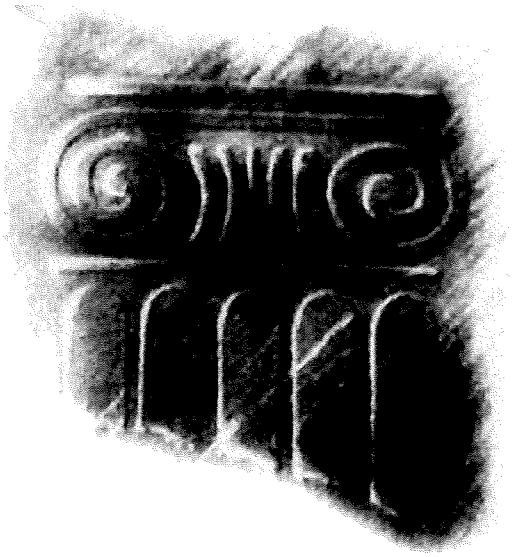
TAS / CAS

Tribunal Arbitral du Sport
Court of Arbitration for Sport
Tribunal Arbitral del Deporte



ARBITRAL AWARD

María Guadalupe González Romero, Mexico

v.

World Athletics, Monaco

CAS 2021/A/8311 - Lausanne, December 2023

CAS 2021/A/8311 María Guadalupe González Romero v. IAAF

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Mr David Cairns, Attorney-at-Law in Madrid, Spain

Arbitrators: Mr Mario René Archila Cruz, Attorney-at-Law in Ciudad de Guatemala, Guatemala

Rt. Hon. Lord John A. Dyson, Judge in London, United Kingdom

between

Ms María Guadalupe González Romero, Mexico

Represented by Mr David Ulises Guzmán Palma, Ms Adriana Moreno Díaz and Ms Xiadani Fernanda Mata León, Attorneys-at-Law, Mexico City, Mexico

- Appellant -

and

International Association of Athletics Federations, Monaco

Represented by Mr Tony Jackson, Deputy Head of Case Management, Athletics Integrity Unit, Monaco, and Mr Nicolas Zbinden and Mr Adam Taylor, Attorneys-at-Law, Lausanne, Switzerland

- Respondent -

I. PARTIES

1. Ms María Guadalupe González Romero is an international-level race-walker of Mexican nationality (the "Appellant" or the "Athlete"). She started her career as a professional race walker in 2013. She won a silver medal at the 2016 Olympic Games in Rio de Janeiro in the 20 km Race Walk competition.

2. World Athletics ("World Athletics" or the "Respondent", formerly known as the International Association of Athletics Federations or "IAAF") is the international governing body of athletics at the world level, headquartered in the Principality of Monaco. World Athletics is a signatory to the World-Anti Doping Code ("WADC") and has established the Athletics Integrity Unit ("AIU") to carry responsibility for anti-doping results management. The Secretariat to its Disciplinary Tribunal is managed by Sport Resolutions UK, an independent dispute resolution service based in London, United Kingdom.

II. FACTUAL BACKGROUND

3. Below is a summary of the main relevant facts and allegations based on the Parties' submissions and allegations. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. Although the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, this Award refers only to the submissions and evidence it considers necessary to explain its reasoning.

A. Background of the dispute: the Presence/Use of a Prohibited Substance

4. On 17 October 2018, the Appellant underwent an out-of-competition anti-doping control test and provided a urine sample in Mexico City, Mexico. Such sample was then sent for analysis to a WADA-accredited laboratory in Montreal, Canada.

5. On 16 November 2018, the AIU notified the Appellant that the laboratory had identified an adverse analytical finding ("AAF"), with the presence of a Prohibited Substance, Epitrenbolone (a metabolite of Trenbolone) at an estimated concentration of 1 ng/ml, in her A-sample. It pointed out that Trenbolone is a non-specified anabolic androgenic steroid prohibited at all times under S1.1 of the 2018 WADA Prohibited List. It imposed a provisional suspension on the Athlete with immediate effect, requested her to provide explanations and informed her of her right to request the analysis of the B-sample.

6. In a letter of 23 November 2018, the Appellant stated that the only explanation for the AAF was her consumption of contaminated meat in the days prior to the doping test. She underlined that she had consumed approximately 200 grams of *"meat cut"* (steak) at the Picanha Grill Restaurant on 14 October 2018 and *"five tacos al pastor"* (marinated pork in chili sauce, with tortillas) on 16 October 2018, as well as *"fruits and eggs"* for her breakfasts. She also requested the analysis of the B-sample.

7. On 3 December 2018, the AIU informed the Appellant that the analysis of the B-sample had confirmed the presence of the metabolite of Trenbolone.

8. On 10 December 2018, the AIU sent the Appellant a Notice of Charge ("The First Charge") for violations of Articles 2.1 and 2.2. of the 2018 IAAF Anti-Doping Rules ("ADR")[1]. The matter was administered by Sports Resolutions with case reference SR/Adhocsport/287/2018.

9. On 17 December 2018, the Appellant confirmed that she did not admit this charge, stating that she had eaten contaminated meat, including liver, picaña and "*tacos al pastor*". Moreover, she requested that the matter be resolved by a hearing before the IAAF Disciplinary Tribunal (the "IAAF Disciplinary Tribunal").

10. On 21 February 2019, the AIU filed its Brief and exhibits before the IAAF Disciplinary Tribunal.

11. On 28 March 2019, the Athlete filed her Answer Brief and Accompanying exhibits before the IAAF Disciplinary Tribunal. She claimed that, after being diagnosed with anaemia on 4 September 2018, she consumed beef liver for breakfast on 14, 15 and 17 October 2018 at Las Gueras Restaurant, five tacos al pastor (marinated pork in chili sauce) on 16 October 2018 and 200 grams of beef rump cap for lunch at the Picanha Grill with her friend, Ms Brenda Villegas, on 14 October 2018. In support, she submitted a hospital report stating that she allegedly suffered from anaemia and the receipts of the Picanha Grill and Las Gueras restaurants.

12. On 17 April 2019, a hearing was held in London, United Kingdom, at which the Appellant was legally represented, and witnesses for the IAAF and the Athlete were examined and cross-examined. On this occasion, the Athlete confirmed her written submissions, while also referring to a trip to a food truck in the Coyoacan district of Mexico City on 14 October 2018. Ms Villegas testified in support of the Athlete's position that she ate with her at "*Picanha Grill*".

13. On 9 May 2019, the IAAF Disciplinary Tribunal rendered its first decision. It found the Appellant to have committed an anti-doping rule violation ("ADRV") and declared her ineligible for a period of four years starting from the date of notification of the decision. The period of provisional suspension that had already been served by the Appellant, i.e. the period since 16 November 2018, was credited against the total period of ineligibility to be served. In addition, the results achieved by the Appellant from (and including) 17 October 2018 were disqualified with all related consequences, including forfeiture of medals, points and prize money.

14. The essence of the IAAF Disciplinary Tribunal's decision was as follows (at paragraphs 75 to 101):

> "[...] *there was no dispute that the analysis by the accredited laboratory in Montreal of the Mexico sample collected from the Athlete on 17 October 2018, showed the presence of the banned substance.* [...] *Pursuant to Article 2.2.1 ADR, it is each athlete's personal duty to ensure that no Prohibited Substance enters his or her body*

[1] The ADR have been modified since the original charge in 2019 and 2021. To facilitate understanding, this Award will identify the version of the ADR applicable at each stage of the proceedings.

and that no Prohibited Substance is "used". [...] *Upon consideration of all the evidence* [...], *an ADR [violation] by reason of "Presence" is established to the Disciplinary Tribunal's satisfaction.* [...] *The Athlete's explanation of how the substance entered her system related to the ingestion of meat. However, this explanation together with the evidence produced by the Athlete is not convincing. The Athlete provided contradicting versions of events during the proceedings, which are themselves contradicted by the evidence provided, some of which was fabricated.* [...] *The declaration of Professor Ayotte* [...] *illustrated that, considering the amount of meat the Athlete had eaten, it was not possible that the trenbolone found in her body came from contaminated meat, due to the fact that its concentration in her Sample was too high.* [T]*he Athlete has not established on a balance of probabilities that the ADR was not intentional. Without providing reliable evidence as to how the substance got into her system the only inference that can be drawn by the Panel is that she more than likely knew, or reasonably should have known, of the risks and that she knew, or reasonably should have known, that her conduct might constitute or result in an ADR* [violation]. *The evidence* [...] *does not warrant a reduction of the mandatory period of Ineligibility pursuant to Article 10.2.1ADR* [...]*".*

15. On 7 June 2019, the Athlete filed a Statement of Appeal against this decision with the Court of Arbitration for Sport ("CAS") and at the same time appointed new counsel. The case was registered as *CAS 2019/A/6319 María Guadalupe González Romero v. IAAF*. In her Appeal Brief in that case, she claimed that she only ingested two tacos on 15 October 2018 and five tacos on 16 October 2018. She also submitted, among other evidence, an Expert Polygraph Assessment from Mr Rodolfo Prado Pelayo dated 13 June 2019, to determine the veracity of certain disputed events, including whether she had taken Trenbolone or not, how the sample was taken and the strategies for her defense in the proceedings of first instance.

16. On 11 November 2019, a hearing before CAS was held in Lausanne, Switzerland. At the hearing, the Parties were given the opportunity to present their arguments and cross-examine the three witnesses that were summoned to appear, as well as the Appellant. In this context, the Appellant stated that she consumed tacos from Las Gueras restaurant on 15 October 2018 and from a street side taco stall close to the Mexican Olympic Committee on 16 October 2018. In her final statement, she admitted lying in her evidence before the IAAF Disciplinary Tribunal and apologised for her conduct, alleging that she had done so at the direction of her former counsel.

17. On 2 July 2020, the CAS issued the award *CAS 2019/A/6319 María Guadalupe González Romero v. IAAF* (the "CAS Presence/Use Award"). It dismissed the Athlete's appeal, and acknowledged the Athlete's admissions in the following terms (at paragraphs 45 and 81 respectively):

"45. The Athlete stated that she genuinely and expressly accepts that she lied and presented and relied upon fabricated documents before the IAAF Disciplinary Tribunal. She explained that her former legal counsel explained to her that this was the only way to defend herself and that there were no other options for her.

[...]

81. The Athlete admitted freely before the Panel, and in her Appeal Brief, that she had not told the truth at the hearing in first instance before the IAAF Disciplinary Tribunal, that her evidence had been falsified, and that the documents and evidence were fabricated. The Athlete apologised for her conduct and for what she had said and done before the IAAF Disciplinary Tribunal, but said that she was following advice of her then-legal team".

B. Tampering Proceedings before the IAAF Disciplinary Tribunal

18. On 13 July 2020, the AIU issued the Athlete with a Notice of Charge for a violation of Article 2.5 of the 2019 IAAF ADR (Tampering or Attempted Tampering) (the "Second Charge"), based on her having admitted during the course of *CAS 2019/A/6319* to having *inter alia* lied and fabricated evidence.

19. On 6 August 2020, the Appellant denied the Second Charge and requested that the matter be determined by a hearing before the World Athletics' Disciplinary Tribunal. The matter was administered by Sports Resolutions with case reference SR/165/2020.

20. On 14 October 2020, the AIU filed its Brief on behalf of World Athletics. It maintained that in the Presence/Use proceedings (jointly the proceeding before the IAAF Disciplinary Tribunal and CAS 2019/A/6319), the Athlete had provided contradictory explanations with regard to the source of her AAF to the IAAF Disciplinary Tribunal and CAS, forged or manipulated the hospital report and receipts from the Picanha Grill and Las Gueras restaurants that she filed with the IAAF Disciplinary Tribunal, and requested her friend Ms Villegas to give false testimony during the first instance proceedings to support her story. It argued that this was evidenced by the AIU investigation, the Athlete's own admissions at the CAS hearing in *CAS 2019/A/6319* and her polygraph test. It concluded that the Athlete had committed a second ADRV, this time under Article 2.5 of the 2019 ADR, and should be punished with an eight year-period of ineligibility under Articles 10.7.1. and 10.7.4. of the 2019 ADR.

21. On 11 November 2020, the Athlete submitted her Answer Brief. She placed responsibility on her first lawyers, who allegedly did not inform her about the content of their submissions, or of the falsification/manipulation of documents, and even forged her signature. Specifically, she admitted contacting the owner of the Picanha Grill with a view to getting a receipt, but pointed out that the Appeal Brief filed before the IAAF Disciplinary Tribunal on 28 March 2019, as well as the exhibits submitted, including the hospital report and receipts from Picanha Grill and Las Gueras, were documents unknown to her at that time. She contested the probative value of the private investigation mandated by the AIU, which she labelled as *"an attack on Mexican sovereignty"*. She maintained that a Tampering violation under Article 2.5 of the 2019 ADR could, in any case, not occur after the doping control, and that a second sanction would breach the principles of *res judicata* and *ne bis in idem*, under which a person cannot be punished twice for the same facts.

22. On 9 July 2021, a hearing was held before the World Athletics Disciplinary Tribunal by videoconference. At the hearing, the Parties confirmed and elaborated upon their written arguments. The Athlete admitted that she had asked Ms Villegas to provide false

testimony and that she knew that some of the information provided to the IAAF Disciplinary Tribunal was misleading. Similarly, the AIU acknowledged that a new and more favourable rule to the Athlete had been adopted in the 2021 version of the ADR by World Athletics. It considered that, in accordance with the principle of *lex mitior*, the new period of ineligibility to be imposed on the Athlete should be four years, pursuant to Article 10.9.3 of the 2021 ADR.

23. On 30 July 2021, the Sole Arbitrator of the World Athletics Disciplinary Tribunal issued a decision ("the Appealed Decision"), whose operative part reads as follows:

"In light of the above, the Sole Arbitrator:

- *Rules that the* [World Athletics] *Disciplinary Tribunal has jurisdiction on the subject matter of the dispute.*
- *Finds that the Athlete has committed an Anti-Doping Rule Violation pursuant to Article 2.5 of the ADR.*
- *Imposes a period of Ineligibility of four (4) years upon the Athlete, which shall run consecutively to the period of Ineligibility already imposed on the Athlete until 15 November 2022 for the violation of Articles 2.1 and 2.2 of the ADR. The period of Ineligibility of four (4) years for the violation of Article 2.5 ADR shall commence on 16 November 2022 and expire on 15 November 2026.*
- *Dismisses all other prayers for relief".*

24. In the Appealed Decision, the Sole Arbitrator made, *inter alia*, the following observations:

- The conclusions reached by both the IAAF Disciplinary Tribunal and CAS in *CAS 2019/A/6319* are sufficient and of the utmost relevance for the Tampering Violation to be upheld against the Athlete, *"since they are convincing and persuasive enough to conclude that the Athlete indeed lied and presented fabricated evidence during the First Proceedings"* (para 59).
- *"Of significant relevance is Article 3.2.5 of the ADR that foresees that "facts established by a decision of a court or professional disciplinary tribunal of competent jurisdiction that is not the subject of a pending appeal shall be irrebuttable evidence against the Athlete (...) unless that Athlete or other Person establishes that the decision violates the principles of natural justice"* (para 62).
- *"In light of the aforesaid provisions of the ADR, it shall be concluded that the aforementioned facts established in the First Decision and the CAS Decision shall be treated as irrebuttable evidence that the Athlete indeed misled and provided fraudulent information and documentation during the First Proceedings before the Disciplinary Tribunal, as provided for in the definition of Tampering contained in the ADR"* (para 63).
- Article 5.10.9 of the ADR further supports this conclusion, since it expressly states

that *"if an Athlete (...) obstructs or delays an investigation (e.g., by providing false, misleading or incomplete information or documentation and/or by tampering or destroying any documentation or other information that may be relevant to the investigation), proceedings may be brought against them for violation of Article 2.5 (Tampering or Attempted Tampering)"* (para 64).

- *"[D]uring the polygraph assessment of Rodolfo Prado Pelayo dated 13 June 2019, the Athlete admitted that she asked her friend Ms. Villegas to provide false testimony before the Disciplinary Tribunal in the First Proceedings, as well as the fact that she had not told the truth at the hearing of the First Proceedings"* (para 65).

- *"If still there was any doubt, also during the hearing of the present proceedings, the Athlete candidly admitted again that (i) she asked her friend Ms. Villegas to provide false testimony before the Disciplinary Tribunal in the First Proceedings; and (ii) that she was aware that some of the information that was provided to the Disciplinary Tribunal in the First Proceedings was untruthful"* (para 67).

- *"The Athlete made it very clear that she was only following the advice and strategy designed by her lawyers that told her that this was the best way to defend her case, which is an implicit recognition of her knowledge and active participation in the deceptive defense of her case"* (para 68).

- "*the Athlete was poorly advised by her previous lawyers but, in the same way,* [...] *the Athlete was aware and accepted that untruthful information was presented before the Disciplinary Tribunal in the First Proceedings"* (para 70).

- "*An athlete cannot simply delegate her obligations to a third party and then not monitor or supervise such delegation without bearing any responsibility; such a finding would render meaningless the obligation of an athlete to present truthful information and reliable evidence by simply discharging all responsibility to such third parties* [...]*"* (para 71).

- *"The Athlete's conduct shall be qualified as Tampering pursuant to the definition established in the ADR"* (para 75).

- *"Doping Control is defined as "[a]ll steps and processes from test distribution planning through to the ultimate disposition of any appeal including all steps and processes in between such as provision of whereabouts information, Sample collection and handling, laboratory analysis, TUEs, results management and hearings"* (para 78).

- In other words, *"tampering can also cover the Athlete's conduct in the course of a first instance or appeal hearing (see CAS 2015/O/4128 IAAF v. Rita Jeptoo), such as the First Proceedings before the Disciplinary Tribunal"* (para 79).

- *"Therefore,* [...] *the violation of Tampering took place during the Doping Control process, as defined by the ADR"* (para 80).

25. The Sole Arbitrator also found that the Tampering proceedings concerned a different subject (i.e., a violation of Article 2.5 of the 2019 ADR rather than Articles 2.1/ 2.2 of the 2019 ADR) and a different object (i.e., the Athlete's conduct during the Presence/Use proceedings rather than proving the source of the metabolite of Trenbolone to obtain an elimination/reduction in the period of Ineligibility). Therefore, the Athlete had failed to satisfy the 'triple identity test' to sustain the argument that the Tampering proceedings were *res judicata* (paras 85-87).

26. Furthermore, the Sole Arbitrator rejected the Athlete's argument that to sanction her for a Tampering violation would violate the principle of *ne bis in idem* because the sanction already imposed for the Presence/Use violations was based on entirely different conduct to that considered in respect of the Tampering violation (para 89).

27. By way of conclusion, the Sole Arbitrator found that the Athlete was guilty of Tampering under Article 2.5 of the 2019 ADR in addition to her prior ADRV and imposed an additional four-year period of ineligibility on her by reference to the principle of *lex mitior*.

28. Still on 30 July 2021, Sports Resolutions UK sent an email to the Parties' counsel, which stated as follows:

"Dear Mr Camargo and Mr Jackson,

Please find enclosed the decision of the Sole Arbitrator in the matter of World Athletics v Maria Guadalupe González-Romero.

The decision has been issued to the AIU and the Athlete via her lawyer only, for the limited purpose of inviting the parties to submit any requests for redactions. The decision is ***not*** *to be disclosed to any other individuals (i.e. third parties) at this stage.*

Any requests for redactions will be considered by the Sole Arbitrator and must be received on ***Wednesday 4 August 2021 by 5pm (BST)/ 6pm (CET)/ 11am (Mexico City time)****. If no requests are received, we will inform the parties and it is our understanding that the AIU will distribute the decision to those other parties with a right of appeal and publish shortly thereafter.*

If you have any questions, please do not hesitate to contact me". (emphasis in original)

29. On 5 August 2021, Sports Resolutions UK confirmed to the Parties that no requests for redactions had been received. The Athlete's counsel then sought an extension of the deadline to submit redaction requests.

30. On 9 August 2021, the AIU sent an email to the Parties' counsel. It noted that the Athlete had not made any requests for redactions in the extended deadline she had been granted.

31. On the same date, the AIU sent a second email to the Parties' counsel, including the Athlete herself, enclosing the decision and reading as follows.

"Dear Ms Gonzalez-Romero,

Please see the attached correspondence and the Disciplinary Tribunal decision issued further to the Notice of Charge of 13 July 2020 concerning a violation of Tampering pursuant to Rule 2.5 of the World Athletics Anti Doping Rules.

The Decision confirms the Tampering violation against you and that a further period of Ineligibility of four (4) years has been imposed upon you, in accordance with Rule 10.9.3(c) of the 2021 World Athletics Anti-Doping Rules, to be served consecutively to the period of Ineligibility already imposed upon you for your underlying anti-doping rule violation i.e., from 16 November 2022 to 15 November 2026.

This correspondence is copied to CONADE and to WADA as parties with a right of appeal against the decision and to the Mexican Athletics Federation and to Sport Resolutions for information.

The attached decision shall be publicly disclosed by the AIU in accordance with Rule 14.3 of the World Athletics Anti-Doping Rules by (at a minimum) being placed on the AIU website".

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

32. On 8 September 2021, the Appellant filed a Statement of Appeal with CAS against the Respondent with respect to the Appealed Decision in accordance with Article R47 of the Code of Sports-related Arbitration (2021 edition) (the "CAS Code"). In her Statement of Appeal, the Appellant chose to proceed in English. She requested that the present proceedings be submitted to a panel of three arbitrators, and nominated Mr Mario René Archila Cruz, Attorney-at-law in Ciudad de Guatemala, Guatemala, as arbitrator.

33. On 18 September 2021, the Appellant filed her Appeal Brief pursuant to Article R51 of the CAS Code. In her Appeal Brief, she requested copies of the case files of Sports Resolutions UK and World Athletics in the case SR/165/2020.

34. On 27 September 2021, the CAS Court Office noted, *inter alia*, that English was the language of these proceedings as per the Appellant's choice and the Respondent's absence of objection. It underlined that any document not submitted in English should be accompanied by a translation, further to Article R29 of the CAS Code.

35. On 4 October 2021, World Athletics argued that the Appealed Decision had been notified to Athlete via the email sent by Sports Resolutions on 30 July 2021. It requested that the present procedure be terminated on the grounds that the appeal filed on 8 September 2021 was late and thus inadmissible pursuant to Article R49 of the CAS Code.

36. On 5 October 2021, the CAS Court office invited the Appellant to comment on the Respondent's objection to the inadmissibility of the appeal. It specified that the Respondent's time limit to file its Answer and to nominate an arbitrator were suspended, pending consideration of its request for termination.

37. On 15 October 2021, the Athlete alleged that she had only been notified of the Appealed Decision in the email and attached correspondence to the Parties with a right of appeal dated 9 August 2021. She highlighted that the email received on 30 July 2021 was not a formal notification, but merely an invitation to make redactions.

38. On 20 October 2021, the CAS Court Office informed the Parties that the Deputy President of the CAS Appeals Arbitration Division had decided that the Respondent's request to terminate the proceedings for reasons concerning the admissibility of the appeal shall be referred to the Panel or Sole Arbitrator, once appointed. It granted a deadline until 25 October 2021 to the Respondent to appoint an arbitrator, and stated that the Respondent's deadline to file an Answer remained suspended.

39. On 25 October 2021, the Respondent appointed, within an extended deadline, the Rt. Hon. Lord John A. Dyson, Judge in London, United Kingdom, as arbitrator.

40. On 1 November 2021, in accordance with Article 54 of the CAS Code and on behalf of the Deputy President of the CAS Appeals Arbitration Division, the CAS Court Office informed the Parties that the Panel appointed to decide on the present proceedings was constituted as follows:

President:	Mr David Cairns, Attorney-at-Law in Madrid, Spain
Arbitrators:	Mr Mario René Archila Cruz, Attorney-at-Law in Ciudad de Guatemala, Guatemala
	Rt. Hon. Lord John A. Dyson, Judge in London, United Kingdom

41. On 2 November 2021 and 16 November 2021, the Parties developed their respective arguments regarding the admissibility of the appeal.

42. On 1 December 2021, the CAS Court Office informed the Parties, on behalf of the Panel, that World Athletics' request to terminate the proceedings was dismissed, and that the reasoning of this decision would be set in the Final Award. It thus lifted the Respondent's time limit to file its Answer, and invited it to proceed within twelve days.

43. On 2 December 2021, the CAS Court Office indicated that Ms Alexandra Veuthey, Attorney-at-law in Lausanne, Switzerland, had been appointed as Clerk to assist the Panel, further to Article R54 of the CAS Code.

44. On 10 December 2021, the Respondent requested an extension of ten days to file its Answer pursuant to Article R32 of the CAS Code.

45. On 13 December 2021, the Appellant objected to such extension.

46. On 15 December 2021, the CAS Court Office informed the Parties on behalf of President of the Panel that the Respondent was granted an extension of until 20 December 2021 to file its Answer. On the same date, the Athlete protested that this decision to grant an extension was not impartial.

47. On 17 December 2021, the Respondent filed its Answer within the extended time limit

in accordance with Article R55 of the CAS Code.

48. On 20 December 2021, the CAS Court Office invited the Parties to indicate whether they preferred a hearing to be held in this matter or for the Panel to issue an award based solely on the Parties' written submissions.

49. On 27 December 2021, the Appellant indicated that she preferred an in-person hearing in this matter, and sought permission to file a Reply to World Athletics' Answer based on Article R44 of the CAS Code.

50. On the same date, the Respondent stated that it preferred that the Panel render an Award based on the Parties' written submissions.

51. On 30 December 2021, World Athletics objected to the Appellant's request for a Reply, due to the absence of exceptional circumstances under Article R56 of the CAS Code.

52. On 3 January 2022, the Athlete filed new comments concerning her request to file a Reply. She asked the CAS Court Office to continue to notify Mr Ross Wenzel, counsel for the Respondent, who had left the law firm representing the Respondent, Kellerhals Carrard. She also clarified that she would not object to hold a hearing via video-conference, in light of the COVID-19 pandemic.

53. On 4 January 2022, World Athletics reiterated its objection to a second round of submissions and characterised the Respondent's requirement regarding the notification of former counsel as *"frivolous"*.

54. On 5 January 2022, the Athlete filed an unsolicited submission entitled *"new supervening means of proof"*, by which she pointed out to several alleged flaws in the doping control testing process (absence of chaperone and proper supervision at the doping control due to the marital relationship of the two people who made the test, alleged forgery of signature, etc.).

55. On 12 January 2022, World Athletics argued that this new submission was inadmissible in the absence of exceptional circumstances under Article R56 of the CAS Code. It also underlined that the arguments thereto had already been rejected in first instance proceedings and were, in any case, not relevant to the current issue of Tampering.

56. On 14 January 2022, the CAS Court Office, on behalf of the Panel, invited the Appellant to clarify whether she still requested to be given leave to file a Reply or, in the alternative, whether her 5 January 2022 submission, if deemed admissible, could be used for that purpose. It also sought clarification on the existence of exceptional circumstances that might justify a second round of submissions and/or the admissibility of the 5 January 2021 submission.

57. On 22 January 2022, the Athlete confirmed her request to file additional written submissions and clarified that her unsolicited submission of 5 January 2022 needed to be processed separately from her request to file a Reply. She underlined that the Panel should *"have access to all means of evidence that allows it to have the widest possibility*

of accessing the truth" and that her 5 January 2022 submission was *"a piece of evidence that arose after the filing of the appeal"*.

58. On 7 February 2022, the CAS Court Office, on behalf of the Panel, noted that the Appellant had requested copies of the files of Sports Resolutions UK and World Athletics in the case SR/165/2020, and invited the Respondent to submit its comments in this regard.

59. On 14 February 2022, World Athletics responded to the Panel's invitation and attached a link to the hearing bundle in the case SR/165/2020.

60. On 16 February 2022, the CAS Court Office informed the Parties that the Panel had decided to allow the Parties to file a second round of written submissions, and that a hearing would be held in this case by video-conference, further to Articles R44.2, R44.3 and R57 of the CAS Code. The Parties were also informed that the Panel had decided not to admit the Appellant's submission of 5 January 2022 to the case file, for reasons to be set forth in the Final Award.

61. On 4 March 2022, the Appellant requested an extension of ten days to file her Reply based on workload and equality concerns, which was granted.

62. On 18 March 2022, the Appellant filed her Reply within the extended deadline. She attached a report by Mr Manuel Alejandro Ruiz Martinez, aimed at demonstrating that the signatures on the doping control form were forged.

63. On 26 April 2022, the Respondent timely filed a Rejoinder.

64. On the same day, the CAS Court Office invited again the Parties to indicate whether they preferred a hearing to be held in this matter or for the Panel to issue an award based solely on the Parties' written submissions.

65. On 3 May 2022, the Appellant confirmed that she preferred for a hearing to be held by video-conference, whereas the Respondent was of the opinion that the Panel could render an Award based on the Parties' written submissions.

66. On 13 May 2022, the CAS Court Office informed the Parties that the Panel had decided to maintain its 16 February 2022 decision that a hearing would be held in this case by video-conference, further to Articles R44.2 and R57 of the CAS Code, and enquired the Parties about possible hearing dates.

67. On 13 May 2022, the CAS Court Office informed the Parties that the Panel, in view of their respective availabilities, had decided to hold a hearing by videoconference on 4 July 2022. It also invited them to provide a list of their hearing attendees, as well as other relevant logistical information.

68. On 20 May 2022, World Athletics stated that it did not intend to call any witnesses. However, it would ensure the availability on the proposed hearing dates of the Doping Control Officer ("DCO"), Mr Fernando Cabrera and the Chaperone, Ms Fabiola Patricia Baltazar Cruz, should it become necessary to hear witness evidence from them.

69. On 31 May 2022, the Athlete informed the CAS Court Office that she intended to call nine witnesses to give oral evidence at the hearing, and invited World Athletics to facilitate their presence. Those witnesses included an expert witness, Mr Martinez, who had submitted an expert report on the authenticity of signatures on the doping control form.

70. On 3 June 2022, World Athletics responded that the Athlete's request for witness evidence should be denied based on Articles R44.1, R51, R56 and/or R57 of the CAS Code, which require parties to list the evidence they intend to rely upon in their written submissions.

71. On 7 June 2022, the CAS Court Office invited the Parties to take part in a technical WebEx test on 28 June 2022 at 15:00 CET (Swiss time).

72. On 13 June 2022, the Athlete maintained her request for the witnesses previously indicated.

73. On 16 June 2022, the CAS Court Office informed the Parties that the Panel had decided to deny the Athlete's request, in light, *inter alia*, of her failure to timely specify the witnesses as required in her written submissions. It stated that the full reasons for this decision would be provided in the Final Award. It also sent an Order of Procedure to the Parties, and invited them to return a signed copy of it.

74. On 22 June 2022, the Respondent returned a signed copy of this Order of Procedure.

75. On 28 June 2022, the Athlete herself liaised with the CAS Court Office after unsuccessfully trying to connect to the technical WebEx test at 21:59 CET (Swiss time), which she mistakenly thought was the hearing. She alleged that her then-counsel, Mr Adrián Camargo Zamudio, Attorney-at-Law in Mexico City, Mexico, was not adequately representing her nor communicating with her. She then sent several further communications and exhibits in Spanish to the CAS Court Office between 30 June 2022 to 2 July 2022, by which she stated that she had no legal representation anymore and requested the proceedings to be suspended.

76. On 1 July 2022, the Appellant's then-counsel, Mr Camargo Zamudio, confirmed that his mandate had been terminated and requested the postponement of the hearing that was scheduled to be held on 4 July 2022.

77. On the same date, World Athletics objected to the postponement of the hearing. It submitted that the Athlete had not acted in good faith, that the exchange of written submissions and arguments was closed, and that this case should be resolved quickly.

78. On 4 July 2022, the Panel decided to postpone the hearing, despite World Athletics' *"powerful"* arguments. It referred to the right of defense, the sanction already imposed on the Athlete and the virtual nature of the hearing, and stated that further reasons would be provided in the Final Award. It highlighted that the sole purpose of the postponement was to enable the Athlete to instruct her new counsel to represent her at the hearing.

79. On 5 July 2022, the Athlete requested copies of the case files from *CAS 2019/A/6319*, i.e. the previous case between her and World Athletics, and from the case-at-hand (*CAS 2021/A/8311*), as well as the recording from the hearing held in *CAS 2019/A/6319* on 11 November 2019.

80. On 6 July 2022, the CAS Court Office noted that the counsel who represented the Athlete in each proceeding was already in possession of the relevant CAS case files. It provided them again as a courtesy.

81. On 15 July 2022, the Athlete confirmed that she was represented by three new lawyers, by Mr David Ulises Guzmán Palma, Ms Adriana Moreno Díaz and Mr Gustavo Adolfo Sánchez Blancas, Attorneys-at-Law in Mexico City, Mexico.

82. On 20 July 2022, the CAS Court Office liaised with the Parties with a view to rescheduling the hearing, and invited them to confirm their availabilities for the end of October 2022.

83. On 25 July 2022, the Appellant requested again the production of the full copy of the Sports Resolutions UK's case files, namely SR/Adhocsport/287/20181, CRM 00201762 and SR/165/2020.

84. On 29 July 2022, after having consulted the Parties, the CAS Court Office informed the Parties that the hearing would take place on 25 October 2022. It also invited them to provide a list of participants.

85. On 2 August 2022, the Respondent provided a list of participants for the hearing. It noted that the Appellant had already received all relevant case files, emphasised that this matter could not be relitigated, but nevertheless included once again links to the files requested.

86. On 3 August 2022, the CAS Court Office sent an updated Order of Procedure to the Parties, and invited them to return a signed copy of it.

87. On 4 August 2022, the Athlete provided a list of participants for the hearing, including a graphology expert, Mr Cuauhtémoc Keer Rendón, and a sports advisor, Mr Heraclio Éder Sánchez Terán.

88. On 16 August 2022, the Parties sent to the CAS Court Office their respective signed copies of the Order of Procedure. The Athlete signed the document herself.

89. On 17 August 2022, World Athletics objected to the presence of Mr Rendón and Mr Terán at the hearing. It highlighted that they had not been listed in the Appeal Brief and that the scope of the present proceedings was limited to the issue of Tampering.

90. On 23 August 2022, the Athlete provided further explanations and documents in this regard. She requested the Panel to authorise: (i) the submission of a notarised declaration regarding the failure to co-operate by her previous counsel; (ii) the admission of handwriting report by Mr Rendón to demonstrate that her signature had been falsified in certain documents relied upon as evidence against her, particularly her Reply brief

dated 28 March 2019 before the IAAF Disciplinary Tribunal (SR/Adhocsport/287/2018); and (iii) the participation of Mr Rendón as an expert at the hearing. She referred to human rights law principles and CAS jurisprudence to support her position.

91. On 24 August 2022, the Athlete clarified that Mr Terán would not appear at the hearing as a witness, but would participate as a counsel. She also raised alleged deficiencies in her defense of all of the four linked instances to date, including the present appeal proceedings.

92. On 31 August 2022, the Athlete provided the CAS Court Office with a revised notary declaration.

93. On 1 September 2022, World Athletics emphasised that the Panel had fully accommodated the Athlete's procedural rights and that the legal references quoted in this respect were misplaced. It stated that it would not object to the presence of Mr Terán at the hearing, if he did not appear as a witness. It maintained, however, its objection regarding Mr Rendón. It underlined in this regard that: (i) the exchange of written submissions and arguments was closed; (ii) the Athlete had not demonstrated any exceptional circumstances that would permit the production of new evidence; (iii) the references quoted were irrelevant; (iv) Mr Rendón had not prepared any expert report; and (v) the relevance of his testimony in respect of the Appellant's signatures was limited.

94. On 9 September 2022, the Athlete elaborated on the relevance of her proposed new witnesses. She announced further partial changes in the composition of her legal team, with Ms Xiadani Fernanda Mata León, Attorney-at-law in Mexico City, Mexico, replacing Mr Gustavo Adolfo Sánchez Blancas. She also asked World Athletics to be ordered to withdraw *"the document dated March 28, 2019 as evidence against [her]"*. This document was originally filed by the Appellant together with her Answer before the IAAF Disciplinary Tribunal in the Presence/Use proceedings.

95. On 15 September 2022, the Athlete requested the presence at the hearing of Mr Eleazar Velasco Navarro, Head of the Foreign Affairs Office of the Embassy of Mexico in Switzerland, as an independent observer, based on the Vienna Convention on Consular Relations.

96. On 16 September 2022, World Athletics objected to both the Appellant's requests to withdraw a document and to have Mr Navarro attend the hearing.

97. On 23 September 2022, the Panel decided to authorise Mr Terán to participate in the hearing in the capacity of legal adviser but not as a witness, and admit the notarised declaration, noting that these elements had been accepted and/or had not been expressly contested by World Athletics. It denied the Athlete's request to be authorised to submit an expert report by Mr Rendón, since the written proceeding stage was closed, and a previous report submitted by her previous counsel covered the same issue. It refused the Athlete's request to exclude the 28 March 2019 Answer and exhibits from the case file, as these documents were presented by her then-authorised lawyers, and have formed part of the original proceedings and Tampering proceedings since that time. Finally, it

indicated that further reasons for its decisions would be provided in the Final Award.

98. On 26 September 2022, the CAS Court Office sent a Draft Tentative Hearing Schedule to the Parties, including one hour for their respective opening and closing statements, 20 minutes for their rebuttals, and 10 minutes for the Athlete's Party statement. The Parties were also invited to file any comments they might have concerning the Draft Tentative Hearing Schedule.

99. On 27 September 2022, the Panel rejected the Appellant's request for the presence of Mr Velasco Navarro at the hearing as an independent observer, in light of Article R43 of the CAS Code and the fact that he would not act as a legal representative.

100. By letter dated 1 October 2022, the Athlete requested that the hearing be public pursuant to Article R57 of the CAS Code. She also invited the Panel to provide further information regarding its refusal to allow the presence and/or testimony of certain individuals at the hearing.

101. On the same date, the Athlete requested more time (two hours) for her opening and closing statements, and questioned the inclusion in the Draft Tentative Hearing Schedule of her Party statement. She also stressed the need for the transcript of the hearing to be carried out efficiently.

102. On 3 October 2022, World Athletics confirmed its agreement to the Draft Tentative Hearing Schedule, but indicated that it may need an additional 10 to 15 minutes for its opening/closing statements (and possibly less time for its rebuttal).

103. On 4 October 2022, the CAS Court Office informed the Parties that the hearing would be recorded, but that no transcript would be made, unless a party requests such service and pays an advance of costs for such. It also invited World Athletics to provide any comments it may have regarding the holding of a public hearing.

104. On the same date, the Panel reiterated that further reasoning regarding its refusal to allow the presence and/or testimony of certain individuals at the hearing would be provided in the Final Award.

105. On 6 October 2022, World Athletics requested an extension until 7 October 2022 to provide its comments regarding the holding of a public hearing. The Athlete immediately objected to this request.

106. On 7 October 2022, the Panel decided to grant the one-day extension sought by World Athletics to comment on the procedural issue of a public hearing.

107. On the same date, the Athlete accused the Panel of *"bias"* based on this decision, and complained of a violation of her human rights. She also requested that she be provided with *"Four certified copies at* [her] *expense of the hearing record, video and any other proof of the heading of the hearing dated April 17, 2019, corresponding to the arbitration number SR/Adhocsport/287/2018 IAAF v Maria Guadalupe Gonzalez Romero"*. She did the same regarding the CAS hearing dated 11 November 2019 (*CAS 2019/A/6319*).

108. On 10 October 2022, the CAS Court Office noted that the Athlete was already in possession of the CAS case file, but provided it again as a courtesy.

109. On the same date, World Athletics stated that it left it to the Panel to decide upon the Appellant's request that the hearing be made public. It specified, however, that it would not agree to any members of the public joining the hearing as a participant, or the hearing being moved to in-person to allow for public attendance.

110. On 12 October 2022, World Athletics rejected the Athlete's allegations of bias against the Panel. It underlined that the one-day extension granted by the Panel was insignificant and that the Appellant's human rights were not violated in the slightest and complained of the inappropriate tactic of using human rights in this way. It requested the Panel to take the Athlete's conduct into account when fixing the legal costs. It specified that the transcript related to the hearing in SR/Adhocsport/287/2018 *IAAF v Maria Guadalupe Gonzalez Romero* had been submitted as Exhibit 12 to its Answer Brief.

111. On 14 October 2022, the Panel granted the Athlete's request for a public hearing, further to Article R57 of the CAS Code. It specified that the video recording would be made publicly available shortly after the hearing.

112. On the same date, the CAS Court Office sent a revised Tentative Hearing Schedule to the Parties, on behalf of the Panel, comprising 1 hour 40 minutes for their respective opening/closing statements, 20 minutes for their rebuttals and 10 minutes for the Athlete's Party statement. It also pointed out that the time allocated for the Athlete's Party statement was in accordance with CAS practice, and recalled that the Athlete had made such a statement at the CAS hearing in the Presence/Use proceedings as well as that she could optionally make such a statement but did not have to. Finally, it clarified that no transcript would be taken at the hearing, since the Athlete had not requested from CAS an advance of costs for transcript services.

113. On 17 October 2022, the CAS Court Office sent an updated Order of Procedure to the Parties.

114. On 20 October 2022, the Appellant stated *inter alia*, that she would only sign this Order of Procedure if she was given assurances that the hearing recording would not be edited, which the CAS Court Office confirmed on the following day.

115. On 21 October 2022, the Respondent sent to the CAS Court Office its signed copy of the Order of Procedure.

116. On 22 October 2022, the Appellant sent to the CAS Court Office her signed copy of the Order of Procedure.

117. By letter dated 21 October 2022, which was transmitted by email to the CAS Court Office three days later, the Appellant sought to submit additional evidence pursuant to Article R56 of the CAS Code. This additional evidence consisted of 164 pages of new submissions and exhibits in Spanish, together with their English translations.

118. On the same date, the Respondent indicated to the CAS Court Office that it objected to

the written submission of the additional evidence as requested by the Appellant.

119. On 25 October 2022, the CAS Court Office informed the Parties that the Panel, having considered the Parties' respective positions in this regard, had decided to dismiss the Appellant's request of 21 October 2022. Accordingly, it decided that the written submission and documentation submitted by the Appellant on 21 October 2022 would not be admitted to the case file. It specified that the reasons for its decision would be provided in the Final Award.

120. On 25 October 2022, a hearing was held by videoconference. In addition to the Panel, Ms Kendra Magraw, CAS Counsel, and Ms Alexandra Veuthey, CAS Clerk, the following persons attended the hearing:

For the Appellant:	Ms María Guadalupe González Romero, Athlete Mr David Ulises Guzmán Palma, Counsel Ms Adriana Moreno Díaz, Counsel Mr Heraclio Éder Sánchez Terán, Sports Advisor Ms Mariana Velázquez Nava, Interpreter
For the Respondent:	Mr Adam Taylor, Counsel Ms Emma Stobart, Paralegal Mr Tony Jackson, AIU Ms Neha Dubey, AIU Ms Annalisa Cherubino, AIU

121. At the outset of the hearing, the Appellant raised an objection regarding the members of the Panel and the Respondent's counsel, who she alleged failed to present their identification and professional credentials.

122. She also complained about the Panel's refusal to review previous World Athletics and CAS proceedings, and accept new submissions and evidence, contrary to natural justice and World Athletics regulations. In contrast, the Respondent declared that it did not have any objections regarding the composition and constitution of the Panel, or any objections more generally whatsoever.

123. The President of the Panel clarified in this regard that there was no requirement for CAS members and counsel for the parties to identify themselves beyond the filing of a power of attorney. He emphasized that the Panel was not, in principle, empowered to review the findings of previous proceedings, nor to consider late submissions. He assured the Appellant, however, that her objections had been duly noted and reiterated that they would be addressed in the Final Award. He further indicated that CAS would not be responsible for technical or translation issues, but urged the counsel for the Parties to speak slowly to facilitate the interpreter's task, bearing in mind that the entire hearing, including oral pleadings, would be translated simultaneously by the interpreter provided by the Appellant as required by Articles R29, R44.2 and R57 of the CAS Code. The President of the Panel also encouraged counsel for the Parties to be as succinct as possible, in light of the impressive amount of written material that had already been filed and duly considered. Finally, he noted that the Appellant had amended the Order of Procedure to stipulate that the hearing video was not altered (to which the Respondent

did not object), and invited the Parties to proceed in accordance with the Tentative Hearing Schedule.

124. The Parties thereafter were given a full opportunity to present their cases, submit their arguments/submissions and answer the questions posed by the Panel. The Appellant raised new arguments regarding CAS' independence from sports federations, alleged flaws in the antidoping control and blood sample, the concepts of natural justice, "no punishment without law" and exhaustivity in relation to past World Athletics and CAS proceedings, and the proportionality of the sanction. At the request of the President of the Panel to clarify whether the Appellant alleged exceptional circumstances under Article 10.3.1. of the 2021 ADR, she pointed out that she had fully acknowledged her past failures but had been deprived of her procedural rights. The Respondent denied the existence of any such circumstances, and suggested a written exchange of submissions on this specific issue, should it be necessary.

125. At the end of the hearing, the Parties confirmed that they were satisfied with the conduct of the hearing and the related right to be heard, but the Appellant made a reservation about her right to be heard during the written submissions. The Athlete herself was then allowed to make a final Party statement after the conclusion of all of the evidence and submissions. She *inter alia* denied taking any Prohibited Substance, and asked the Panel to re-examine her sample and biological passport to allow her to prove her *bona fides*. She stated that she regretted lying about her meat contamination, but reiterated that she had been misguided by her former counsel, who presented this strategy as *"the only way out"*. She insisted that competitive sport was her whole life.

126. On 26 October 2022, the CAS Court Office informed the Parties that, unless the Appellant withdrew her request for a public hearing by the following day, the recording of the hearing would be made publicly available within five days.

127. On 28 October 2022, the CAS Court Office confirmed that it had not received any correspondence from the Appellant.

128. On 31 October 2022, the CAS Court Office informed the Parties that the link to the hearing had been activated for public viewing.

IV. THE PARTIES' SUBMISSIONS

129. The following summary of the Parties' positions and submissions does not comprise each and every contention put forward by the Parties. The Panel, however, has carefully considered all of the submissions made by the Parties, even if no explicit reference is made in what immediately follows.

A. The Appellant's Submissions

130. In her Appeal Brief, the Appellant requests the following relief:

"1- The REVOCATION of the Decision of the Disciplinary Tribunal Athletics Integrity Unit of the World Athletics, within the file SR/ 165/2020 issued by Mr. Lucas Ferrer, in

his capacity as Sole Arbitrator. Issued on July 30, 2021 and notified by email on August 9, 2021.

2. The payment of damages, losses and legal costs by the Athletics Integrity Unit of the World Athletics.

For the foregoing and founded, TO YOU GENERAL SECRETARY OF THE SPORTS COURT OF ARBITRATION, I sincerely request:

FIRST. To have me presented in due time and form in the terms of this writing, acknowledging my personality, formally presenting the MEMORY OF APPEAL, in accordance with article R51 of the Code.

SECOND. Have the attorneys authorized and designated address to receive all kinds of notifications and writings.

THIRD. At the appropriate procedural moment, issue a resolution that nullifies the Award of the Disciplinary Tribunal of the Athletics Integrity Unit of the World Athletics, within the file SR / 165/2020 issued by Mr. Lucas Ferrer, in his capacity as sole arbitrator. Issued on July 30, 2021 and notified by email on August 9, 2021".

131. The Appellant's submissions, in essence, may be summarised as follows:

(i) In the Appeal Brief, where the Appellant states the facts and legal arguments giving rise to the appeal, the Appellant presented her arguments as five 'grievances' or 'injuries'. Although the Panel appreciates that further arguments were presented during the proceedings as summarized below, the starting point is the following five grounds presented by the Appellant in the Appeal Brief:

1. Lack of *legitimatio ad processum* of Mr Ross Wenzel: Mr Ross Wenzel, who represented the Respondent at the World Athletics Disciplinary Tribunal hearing, did not *"prove his legal personality, with a legal instrument issued by... an official with powers within the AIU"*, which constitutes a violation of the principle of legality. The Appealed Decision must be set aside on this basis and a new decision be issued acquitting the Athlete of the Tampering violation and *"that has the force of material res judicata, in order to definitively end the matter under study"*.

2. The *ne bis inidem/res judicata* principles and the scope of the term 'doping control': The doping control was complete when the doping charge was notified, on 10 December 2018. The facts and documents filed by the Athlete's lawyers, without her authorisation, were not presented during the doping control period, but during the subsequent judicial phase. Hence, the Athlete's conduct does not fall within the scope of the doping control to be classified as Tampering pursuant to Article 2.5 of the 2019 ADR. In that sense, the Appealed Decision violates Article 7 of the European Convention of Human Rights ("ECHR"), which requires a legal basis for any conviction. In relation to the *ne bis inidem* and *res judicata* principles, the first sanction protected a public interest but the second

sanction, in the Tampering proceedings, was unnecessary and abusive and should be revoked.

3. Lack of assessment of the means of 'test' (proof) presented by the Athlete: The Athlete proposed the evidence of four witnesses before the World Athletics Disciplinary Tribunal whose attendance she could not compel and who were not called by the World Athletics Disciplinary Tribunal, resulting in a breach of the right of defense.

4. Lack of evaluation of the evidence: The World Athletics Disciplinary Tribunal did not consider the evidence presented by the Athlete, such as the informal study and analysis of the evidence that the Athlete presented in her Brief dated 11 November 2020 and the contract signed with her former counsel, which provides for very high fees. By doing so, it breached due process, legal writing and Roman law. The Athlete's original lawyers are also guilty of fraud in the Presence/Use proceedings.

5. Evaluation of illicit means of evidence: The documents relied upon by the AIU of the Athlete's false evidence were illegally obtained, in breach of Mexico national sovereignty and her human rights. Other evidence relied upon as proof of tampering, such as the medical report and the invoice, were sent by her first lawyers, who did not seek her consent and falsified her signature. The proofs sent with false signatures must be considered illegal and without any evidentiary value. The falsification of her signatures by her first lawyers without her consent and on multiple occasions has been established on the evidence.

(ii) Arguments relating to the Presence/Use Proceedings

- The doping control testing process was flawed, due to the absence of proper supervision, identification, qualifications and/or independence of the two people who conducted the test, who were also married, as well as the *"forged signatures"* on the doping control form. Manipulation during the doping control process is demonstrated by a report by a new handwriting expert (Mr Ruiz Martinez). Any proof accepted thereof in the Presence/Use Proceedings at the first instance and on appeal would violate the principles of natural justice.

- The presence of Trenbolone in the Athlete's blood was not demonstrated, based on the applicable standard of proof. To the contrary, based on expert evidence, the blood sample was *"normal"*.

(iii) Other procedural arguments

- The Members of the Panel and the Respondent's counsel failed to identify themselves through their identity credentials and law patents at the hearing held in this CAS case, *2021/A/8311*, on 25 October 2022. In addition, the Panel showed some partiality when it granted the Respondent a ten-day extension to file its Answer and a one-day extension to comment on the

procedural issue of a public hearing. More generally, CAS is not independent from sports federations.

- The Panel's refusal to review previous World Athletics and CAS proceedings, and accept new submissions and evidence, breaches the principles of natural justice and exhaustivity, as well as World Athletics regulations.

(iv) Sanction

- The Athlete should not be sanctioned at all, as she already received a four-year ban based on the first ADRV. Any additional sanction would violate the principles of *ne bis in idem* and *res judicata*. It would also breach the principle of proportionality and right to a fair trial pursuant to Article 6 of the ECHR.

- Alternatively, the sanction is disproportionate in itself and in light of the circumstances of the case. It should notably be reduced based on exceptional circumstances under Article 10.3.1. of the 2021 ADR, since the Athlete fully acknowledged her past failures but was deprived of her procedural rights.

B. The Respondent's Submissions

132. In its Answer, the Respondent requests the following relief:

"65. World Athletics respectfully requests that the Appeal of Ms Maria Guadalupe Gonzalez Romero be dismissed.

66. World Athletics also requests that the Athlete be ordered to pay the arbitration costs (if any) and to provide a significant contribution to World Athletics' legal and other costs".

133. The Respondent's submissions, in essence, may be summarised as follows:

(i) In response to the five grounds raised by the Appeal Brief, the Respondent stated:

1. The Athlete never requested any proof of World Athletics' former counsel, Mr Wenzel's, procedural standing. In any event, no such procedural requirement exists and any procedural error in this respect would be cured by the *de novo* nature of CAS proceedings.

2. The Athlete's arguments regarding the doping control testing process and identification of the Prohibited Substance are belated, outside the scope of these proceedings and groundless. The Athlete's submission on the definition of doping control "*is not just misguided but is plainly wrong*". The Athlete is not entitled to relitigate the proceedings that led to her first sanction, nor raise new arguments after the end of the written submissions. The arguments based on *res judicata* and *ne bis in idem* are "*fatally flawed*". The Tampering violation under Article 2.5 of the 2019 ADR that is the subject of these proceedings is an entirely different rule

violation to the Presence /Use violations under Articles 2.1 and 2.2 of the 2019 ADR that were the subject of the Presence/Use proceedings and the Presence/Use Appeal. In other words, these provisions sanction different conduct.

3. The Athlete failed to substantiate what attempts (if any) she had taken herself to contact/summon her witnesses. The World Athletics Disciplinary Tribunal had no powers in this respect. Any procedural flaw would anyway be cured by CAS *de novo* proceedings and the Athlete's argument is inconsistent with her position in these proceedings, since she did not mention those witnesses in her Appeal Brief.

4. The "*evidence filed in the Tampering Proceedings constituted clearly reliable means of proof of the Athlete's Tampering violation*".

5. The Athlete's submission in respect to the gathering of illegal evidence is moot, since she expressly admitted that she had lied (forged documents, false witness testimony). ADRVs can be established by "any reliable means", including admissions. The Athlete also failed to refer to specific provisions to demonstrate that the evidence gathered is illegal. In any case, according to CAS jurisprudence, even illegally/unlawfully obtained evidence can be considered in anti-doping proceedings (CAS 2009/A/1879; CAS 2010/A/2267-81; CAS 2011/A/2426; CAS 2016/0/4481).

(ii) Arguments relating to the Presence/Use proceedings:

- The Athlete blamed everybody but herself for her ADRVs (such as doping control officer, former lawyers, AIU, international conspiracy in race walking, all previous arbitrators, etc). However, the doping control process met all applicable standards and she is solely responsible for the consequences that unfolded.

- The Appellant already partially raised testing departure arguments at the time of the Presence/Use proceedings, with the CAS confirming on appeal in *CAS 2019/A/6319* that there was no sufficient evidence to support the existence of any irregularity and/or conflict of interests. To the extent that these arguments were not fully made at the time, they could and should have been.

- The presence of Trenbolone in the Athlete's blood sample was never questioned by the experts, who only pointed out that the blood parameters in the Athlete's biological passport were entirely normal, in that they contained no indication of anaemia.

- The Athlete cannot pretend that she did not know about her former counsel's strategy. In fact, she subsequently admitted knowing about, and even taking part in, the submission of untruthful material.

- The Athlete's explanations regarding her former counsel and meat consumption changed significantly and repeatedly over time, which affects her credibility (CAS 2017/A/4937). Moreover, she expressly admitted lying

and even contributing to the submission of false evidence when questioned during the polygraph test and Tampering proceedings (by approaching the owner of the Picanha Grill restaurant to get a receipt about a meal that she did not eat, facilitating false witness testimony, etc). In addition, the CAS panel unequivocally acknowledged the Athlete's admission in its award in *CAS 2019/A/6319* dated 2 July 2020, and the Appealed Decision maintains that the facts established in the Presence/Use proceedings against the Athlete constitute *"irrebuttable evidence"* pursuant to Article 3.2.5 of the 2019 ADR. Ultimately, the Athlete could not simply delegate her obligations to a third party without liability or consequence (CAS 2017/A/5301 & 5302, paras 198-199; CAS 2014/A/3798, para 94; CAS 2012/A/2763, para 9.31; CAS ADD 18/004, para 47).

(iii) Other procedural arguments

- The members of the Panel were fully independent and legitimate to deal with the present proceedings, regardless of the extensions were granted to the Parties. So was CAS, as per well-established precedents.

- The Panel fully accommodated the Appellant's procedural requests, by allowing a second exchange of submissions and postponing the hearing. For the remainder, it has in no way violated natural justice, but simply required the respect of the CAS Code and scope of each proceedings.

- The criminal guarantees enshrined in the ECHR do not apply in CAS arbitration (see "Guide on Article 6 of the European Convention of Human Rights", pages 11 in fine and 12, and the references mentioned).

(iv) Sanction

- The sanction is lawful, proportionate, and consistent with the general objectives of the fight against doping (CAS 2018/A/5546). It should not be reduced based on exceptional circumstances under Article 10.3.1. of the 2021 ADR. The Athlete should take responsibility for her actions instead of blaming everybody but herself, and acknowledge that all her procedural requests were fully accommodated by the IAAF/World Athletics Disciplinary Tribunals and CAS.

V. JURISDICTION

134. The question whether CAS has jurisdiction to hear the present dispute must be assessed on the basis of the *lex arbitri*. As Switzerland is the seat of the arbitration and not all the Parties are domiciled in Switzerland, the provisions of the Swiss Private International Law Act ("PILA") apply, pursuant to its Article 176.1. In accordance with Article 186 of PILA, the CAS has the power to decide upon its own jurisdiction ("*Kompetenz-Kompetenz*").

135. Pursuant to Article R27 of the CAS Code:

"These Procedural Rules apply whenever the parties have agreed to refer a sports-related dispute to CAS. Such reference may arise out of an arbitration clause contained in a contract or regulations or by reason of a later arbitration agreement (ordinary arbitration proceedings) or may involve an appeal against a decision rendered by a federation, association or sports-related body where the statutes or regulations of such bodies, or a specific agreement provide for an appeal to CAS (appeal arbitration proceedings).

Such disputes may involve matters of principle relating to sport or matters of pecuniary or other interests relating to the practice or the development of sport and may include, more generally, any activity or matter related or connected to sport".

136. Article R47 of the CAS Code provides as follows:

"An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body.

An appeal may be filed with CAS against an award rendered by CAS acting as a first instance tribunal if such appeal has been expressly provided by the rules of the federation or sports-body concerned".

137. In addition, Article 13.2.1 of the 2021 ADR states as follows:

"In cases involving International-Level Athletes or arising from Persons participating in an International Competition, the decision may be appealed exclusively to CAS".

138. The Panel is thus satisfied that there is a valid arbitration agreement between the Appellant and the Respondent for the present dispute by way of World Athletics regulations and that the Appealed Decision qualifies as a decision subject to appeal under the same regulations.

139. Finally, CAS jurisdiction was confirmed by the signature of both Parties to the Final Order of Procedure issued by the CAS Court Office.

140. Consequently, the Panel finds that it has jurisdiction to decide on the present appeal proceedings.

VI. ADMISSIBILITY

141. Pursuant to Article R49 of the CAS Code:

"In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document. When a procedure is

initiated, a party may request the Division President or the President of the Panel, if a Panel has been already constituted, to terminate it if the statement of appeal is late. The Division President or the President of the Panel renders her/his decision after considering any submission made by the other parties".

142. Article 12.5 of the 2021 ADR provides as follows:

"Decisions made by the Disciplinary Tribunal under Rule 12 above may be appealed exclusively to the CAS Appeals Division by any party to the proceedings before the Disciplinary Tribunal. The time to file an appeal to the CAS will be thirty (30) days from the date of first receipt of the reasoned decision by the appealing party. Where the appellant is a party other than World Athletics, to be a valid filing under this Rule 12.5, a copy of the appeal must be filed on the same day with World Athletics.... ".

143. In respect to the notification, Article 1.6.1 of the 2021 ADR adds:

*"Any notice to be given under these Anti-Doping Rules by the Integrity Unit or any party ("**Notifying Party**") will be deemed to have been given sufficiently to the party to whom the notice is required to be sent ("**Receiving Party**") if it is given in writing and delivered by one of the following means to the Receiving Party:*

(a) by post to the last known address of the Receiving Party;
(b) by personal delivery (including by courier) to the published physical address of the Receiving Party;
(c) by electronic mail or other electronic means of communication, to the email or other electronic address of the Receiving Party; or
(d) by facsimile to the published facsimile number of the Receiving Party.

[Comment to 1.6.1(c): In the case of notice to an Athlete, notice will be effective if the Integrity Unit sends it to the e-mail address recorded for that Athlete in ADAMS and, in the case of notice to a Member Federation, notice will be effective if the Integrity Unit sends it to the Member Federation's @mf.worldathletics.org e-mail address published by World Athletics]" (emphasis original).

144. In the present appeal proceedings, the Parties concurred that the time limit to file an appeal was thirty days as from the notification and that the Statement of Appeal was filed on 8 September 2021. They disagreed, however, as to the date of notification of the Appealed Decision, which gave rise to various procedural exchanges during October 2021.

145. The Respondent argued that the Appealed Decision had been notified to the Appellant via an email sent by Sports Resolutions UK on 30 July 2021. It requested that the procedure be terminated on the grounds that the appeal filed on 8 September 2021 was late and inadmissible.

146. The Appellant replied that she was only notified of the Appealed Decision in the email and attached correspondence to the Parties with a right of appeal (copied to her) dated 9 August 2021. She emphasised that the 30 July 2021 email was not a formal notification, but merely an invitation to make redactions.

147. In December 2021, the CAS Court Office informed the Parties, on behalf of the Panel, that the Respondent's request to terminate the proceedings was dismissed, and that the reasoning of this decision would be set in the Final Award.

148. The email of 30 July 2021 states that it was sent to the AIU and the Athlete *"via her lawyer only, for the limited purpose of inviting the parties to submit any requests for redactions"* (emphasis in original). It confirms that *"if no requests are received, the parties will be informed and the AIU will distribute the decision to those other parties with a right of appeal and publish shortly thereafter"*. The decision was also issued expressly on the basis that *"[t]he decision is **not** to be disclosed to any other individuals (i.e. third parties) at this stage"* (emphasis in original).

149. In the Panel's view, the email of 30 July 2021 accompanying the first delivery of the decision was for a limited purpose only and subject to a restriction that, on its face, meant that the Athlete could not discuss a possible appeal with any lawyer not previously involved in the case, nor file an appeal with CAS. A decision subject to such restrictions is not yet sufficiently received by the Athlete for the purpose of setting in motion the period of appeal. It was also only transmitted to legal counsel.

150. In contrast, the 9 August 2021 communication of the AIU was the first communication actually addressed to the Athlete. It has a formal tone, identifies the decision and penalty imposed, and includes the other parties with a right of appeal. Viewing the communications as a whole, the Athlete and her legal advisers might reasonably assume that the 9 August 2021 communication was the notification of the appeal. An ambiguity in the applicable rules and a series of communication should be interpreted so as not to deprive the Athlete of an important procedural right.

151. The notification is thus deemed to have taken place, in this case, on 9 August 2021.

152. Consequently, the Panel confirms finds that this appeal is admissible.

VII. APPLICABLE LAW

153. Pursuant to Article R58 of the CAS Code:

> *"The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision"*.

154. Article 13.7.5 of the 2021 ADR provides as follows:

> *"In all CAS appeals involving World Athletics, the governing law shall be Monegasque law and the appeal shall be conducted in English, unless the parties agree otherwise"*.

155. World Athletics submitted in its Answer that, whereas from 1 January 2021, the 2021 ADR came into effect, the issue of tampering shall be governed by the substantive anti-doping rules in effect at the time of the alleged violation in 2019 (i.e., the 2019 ADR) and not by the 2021 ADR. It also accepted, as the World Athletics Disciplinary Tribunal concluded, that for the purposes of determining the potential consequences, the 2021 ADR are applicable by virtue of the principle of *lex mitior*.

156. The Athlete did not specifically address the issue of substantive anti-doping rules, but reproduced some sections of the Appealed Decision and referred to Article 2.5 of the 2019 ADR with regard to tampering in her written submissions.

157. The Panel concludes that the laws applicable to this appeal are the World Athletics regulations (principally the ADR) and Monegasque law (subsidiarily). As noted above, however, the applicable version of the ADR is not expressly agreed to by the Parties and needs further examining.

A. The relevant regulations

a. The IAAF ADR 2019

158. The 2019 ADR came into force on 1 January 2019, as indicated in their introduction.

159. Article 1.7 establishes the principle of knowledge of the ADR:

> *"All Athletes, Athlete Support Personnel and other Persons shall be responsible for knowing what constitutes an Anti-Doping Rule Violation under these Anti-Doping Rules and for knowing the substances and methods included on the Prohibited List".*

160. Article 2 is entitled 'Anti-Doping Rule Violation'. Articles 2.1 and 2.2 establish the violations respectively of presence and use or a prohibited substance. Article 2.5 establishes the offence of 'Tampering or Attempted Tampering with any part of a Doping Control', the offence at issue in this appeal, which is defined in the following terms:

> *"Conduct which subverts the Doping Control process but which would not otherwise be included in the definition of Prohibited Methods. Tampering shall include, without limitation, intentionally interfering or attempting to interfere with a Doping Control official, providing fraudulent information to an Anti-Doping Organization, or intimidating or attempting to intimidate a potential witness".*

161. The Appendix defines the scope of the "Doping Control" as follows:

> *"All steps and processes from test distribution planning through to ultimate disposition of any appeal including all steps and processes in between such as provision of whereabouts information, Sample collection and handling, laboratory analysis, TUEs, results management and hearings".*

162. Article 3.1 is entitled 'Burdens and Standards of Proof' and reads as follows:

"The IAAF or other Anti-Doping Organisation shall have the burden of establishing that an Anti-Doping Rule Violation has been committed. The standard of proof shall be whether the IAAF has established the commission of the alleged Anti-Doping Rule Violation to the comfortable satisfaction of the hearing panel, bearing in mind the seriousness of the allegation that is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt. Where these Anti-Doping Rules places the burden of proof upon the Athlete or other Person alleged to have committed an Anti-Doping Rule Violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability".

163. Article 3.2 is entitled 'Methods of Establishing Facts and Presumptions'. Of particular importance to this appeal is Article 3.2.5:

"The facts established by a decision of a court or professional disciplinary tribunal of competent jurisdiction that is not the subject of a pending appeal shall be irrebuttable evidence against the Athlete or other Person to whom the decision pertained of those facts, unless that Athlete or other Person establishes that the decision violated principles of natural justice".

164. Article 10.3.1. of the ADR is concerned with the "Period of Ineligibility":

"For an Anti-Doping Rule Violation under Article 2.3 or Article 2.5 that is the Athlete or other Person's first anti-doping offence, the period of Ineligibility imposed shall be four years unless, in a case of failing to submit to Sample collection, the Athlete can establish that the commission of the Anti-Doping Rule Violation was not intentional (as defined in Article 10.2.3), in which case the period of Ineligibility shall be two years".

165. Article 10.7.1. of the ADR relates to "Multiple Violations":

"10.7.1 For an Anti-Doping Rule Violation that is the second anti-doping offence of the Athlete or other Person, the period of Ineligibility shall be the greater of:
(a) six months;
(b) one-half of the period of Ineligibility imposed for the first anti-doping offence without taking into account any reduction under Article 10.6; or
(c) twice the period of Ineligibility that would be applicable to the second Anti- Doping Rule Violation if it were a first Anti-Doping Rule Violation, without taking into account any reduction under Article 10.6.".

b. The World Athletics ADR 2021

166. The 2021 ADR came into force from 1 January 2021, pursuant to Article 1.7.1.

167. Articles 2, 2.1 and 2.2 of the ADR repeat, in essence, the principles enshrined in previous rules regarding the knowledge of the ADRV, as well as the presence and use of a prohibited substance.

168. Article 2.5 of the ADR prohibits "Tampering with any part of Doping Control". These two concepts are defined in Appendix 1 as follows:

*"**Tampering**: Intentional conduct that subverts the Doping Control process but that would not otherwise be included in the definition of Prohibited Methods. Tampering shall include, without limitation, offering or accepting a bribe to perform or fail to perform an act, preventing the collection of a Sample, affecting or making impossible the analysis of a Sample, falsifying documents submitted to an Anti-Doping Organisation or TUE committee or hearing panel, procuring false testimony from witnesses, committing any other fraudulent act upon the Anti-Doping Organisation or hearing body to affect Results Management or the imposition of Consequences, and any other similar intentional interference or Attempted interference with any aspect of Doping Control".*

*"**Doping Control**: All steps and processes from test distribution planning through to ultimate disposition of any appeal and the enforcement of Consequences, including all steps and processes in between, including but not limited to Testing, investigations, whereabouts, TUEs, Sample collection and handling, laboratory analysis, Results Management, and investigations or proceedings relating to violations of Rule 10.14 (Status during Ineligibility or Provisional Suspension)".*

169. Article 3.1 reiterates the definition of the burden and standard of proof, with slight edits that are not directly relevant to the issue at stake. Article 3.2.5, which addresses the "Methods of establishing Facts and Presumptions", remains unchanged.

170. Article 10.3.1. of the ADR governs the "Period of Ineligibility":

"For violations of Rule 2.3 or Rule 2.5, the period of Ineligibility will be four (4) years except: (i) in the case of failing to submit to Sample collection, if the Athlete can establish that the commission of the anti-doping rule violation was not intentional, the period of Ineligibility will be two (2) years; (ii) in all other cases, if the Athlete or other Person can establish exceptional circumstances that justify a reduction of the period of Ineligibility, the period of Ineligibility will be in a range from two (2) years to four (4) years depending on the Athlete's or other Person's degree of Fault; [...]".

171. Article 10.9.3(c) of the ADR relates to Multiple Violations and adds:

"If the Integrity Unit establishes that an Athlete or other Person committed a violation of Rule 2.5 in connection with the Doping Control process for an underlying asserted anti-doping rule violation, the violation of Rule 2.5 will be treated as a stand-alone first violation and the period of Ineligibility for such violation must be served consecutively (rather than concurrently) with the period of Ineligibility, if any, imposed for the underlying anti-doping rule violation. Where this Rule 10.9.3(c) is applied, the violations taken together will constitute a single violation for purposes of Rule 10.9.1".

B. The applicable version if the ADR and the principles *tempus regit actum* and *lex mitior*

172. The Panel observes that, according to well-established CAS jurisprudence, intertemporal issues in the context of disciplinary matters are usually governed by the general principle *tempus regit actum* or principle of non-retroactivity. This principle holds that: (i) any determination of what constitutes a sanctionable rule violation and

what sanctions can be imposed in consequence must be determined in accordance with the law in effect at the time of the allegedly sanctionable conduct; (ii) new rules and regulations do not apply retrospectively to facts occurring before their entry into force; (iii) any procedural rule – on the contrary – applies immediately upon its entry into force and governs any subsequent procedural act, even in proceedings related to facts occurred beforehand; and (iv) any new substantive rule in force at the time of the proceedings does not apply to conduct that occurred prior to the entry into force of that rule unless the principle of *lex mitior*, which requires to apply the most lenient sanction, makes it necessary (CAS 2021/A/8256, para 118; CAS 2009/A/1918, paras 18 et seq; CAS 2017/A/5003, para 139).

173. The principle is succinctly stated in the opening paragraph (and paragraph 68) of CAS 2018/A/5920:

"In accordance with the principle of tempus regit actum, an offence is to be judged on the basis of the substantive rules in force at the moment said alleged offence was committed, subject to the principle of lex mitior. However, the procedural aspects of the proceedings are governed by the rules in force at the time the appeal was lodged".

174. The principle of *lex mitior* is also recognized in the 2019 ADR (Article 21.3(iii)) and the 2021 ADR (Article 1.7.2(b)).

175. Given that the conduct for which the Appellant is reproached by World Athletics occurred in 2019, the Panel is required to take a closer look at the scope of the tampering provisions in the 2019 and 2021 versions of the ADR, as well as their related sanctions.

176. The Panel observes that Tampering was a sanctionable violation in the 2019 ADR and continued to be sanctionable under the 2021 ADR. The wording of Articles 2.5 of both versions of the ADR (and their Appendices) are not strictly identical, since the general definition originally provided was then complemented with more concrete examples (*"falsifying documents submitted to a* [...] *hearing panel, procuring false testimony from witnesses",* etc*).* However, both articles have, according to their respective formulations, an exemplary scope, as they use inclusive terms *("such as", "without limitation"*), and refer to the intentional nature of the offence (*"intentionally", "intentional conduct"*). Hence, with respect to the sanctionable conduct, the Appellant is not prejudiced by the application of the 2019 ADR.

177. What is significantly different between both versions is the length of the sanction, which World Athletics itself admits, has been reduced from a maximum sanction of eight years (twice the length of the first sanction) to four years (as a standalone violation).

178. Article 10.3.1 of the 2021 ADR now sets the Period of Ineligibility as follows:

"For violations of Rule 2.3 or Rule 2.5, the period of Ineligibility will be four (4) years except: [...] if the Athlete or other Person can establish exceptional circumstances that justify a reduction of the period of Ineligibility, the period of Ineligibility will be in a range from two (2) years to four (4) years depending on the Athlete's or other Person's degree of Fault; [...]".

179. Accordingly, with respect to the principle of *lex mitior*, the Panel notes that Articles 10.3.1. and 10.7.1. of the 2019 ADR allowed for the imposition of a Period of Ineligibility of eight years. By contrast, Articles 10.3.1. and 10.9.3(c) of the 2021 ADR are more favourable to the Appellant, with a Period of Ineligibility of four years and a possible reduction down to two years in case of exceptional circumstances.

180. In view of the above, the Panel decides, as did the Appealed Decision, that the definition of Tampering should be governed by the 2019 ADR, whereas its potential consequences should be determined by the 2021 ADR.

VIII. PRELIMINARY AND PROCEDURAL ISSUES

181. These proceedings have given rise to numerous preliminary and procedural issues. It is thus useful to recall some fundamental principles of CAS procedure.

182. Article R51 of the CAS Code reads as follows:

> *"Within ten days following the expiry of the time limit for the appeal, the Appellant shall file with the CAS Court Office a brief stating the facts and legal arguments giving rise to the appeal, together with all exhibits and specification of other evidence upon which it intends to rely [...].*
>
> *In its written submissions, the Appellant shall specify the name(s) of any witnesses, including a brief summary of their expected testimony, and the name(s) of any experts, stating their area of expertise, it intends to call and state any other evidentiary measure which it requests [...]".*

183. Article R56 of the CAS Code deals with additional submissions:

> *"Unless the parties agree otherwise or the President of the Panel orders otherwise on the basis of exceptional circumstances, the parties shall not be authorized to supplement or amend their requests or their argument, to produce new exhibits, or to specify further evidence on which they intend to rely after the submission of the appeal brief and of the answer [...]".*

184. The existence of "*exceptional circumstances*" within the meaning of Article R56 of the CAS Code should be demonstrated with sufficient certainty by the party seeking to supplement its case. In practice, new evidence is admitted if it has become available after the time limit for filing the appeal brief or the answer. Additional submissions are generally allowed when the respondent's answer contains defenses that need to be rebutted in writing. In light of the *iura novit curia* principle, additional legal arguments are permitted when it is obvious that they could not have been made at a previous stage and the delay does not put the other party at a procedural disadvantage. In any event, procedural good faith requires that ambush by new arguments or constantly "evolving" ones should not be permitted (RIGOZZI/HASLER, in ARROYO M, Arbitration in Switzerland – The Practitioner's Guide, 2nd ed., Wolters Kluwer, Alphen aan den Rijn, 2018, N10 ad Article R56, p. 1649ff, and the references mentioned; MAVROMATI/REEB, The Code of the Court of Arbitration for Sport: Commentary, Cases and Materials,

Wolters Kluwer, Alphen aan den Rijn, 2015, N4 ad Article R56, p. 496ff, and the references mentioned).

185. Article R57 of the CAS Code governs the scope of panels' review of review and hearings:

"The Panel has full power to review the facts and the law. [...]

After consulting the parties, the Panel may, if it deems itself to be sufficiently well informed, decide not to hold a hearing. At the hearing, the proceedings take place in camera, unless the parties agree otherwise. At the request of a physical person who is party to the proceedings, a public hearing should be held if the matter is of a disciplinary nature. Such request may however be denied in the interest of morals, public order, national security, where the interests of minors or the protection of the private life of the parties so require, where publicity would prejudice the interests of justice, where the proceedings are exclusively related to questions of law or where a hearing held in first instance was already public.

The Panel has discretion to exclude evidence presented by the parties if it was available to them or could reasonably have been discovered by them before the challenged decision was rendered [...]".

186. The CAS Panel's full power of review means that procedural defects in the previous proceedings, including alleged violations of the right to be heard, unfairness or even a lack of independence of the tribunal, can in principle be cured through the appeal. Exceptions to that rule include violations of core principles of the WADC, which are essential to the establishment of the ADRV decisions. Evidently, CAS' power of review only encompasses the appealed decision, and cannot extend to any previous proceedings or underlying decisions (for more details, see MAVROMATI/REEB, op. cit., N29 and N55 ad Art. R57, p. 5213ff and 522; CAS 2016/A/4727, paras 186ff).

187. In practice, public hearings remain the exception. They are only held at the express request of one of the parties, if the conditions in Article R57 of the CAS Code are met. Evidence that is presented for the first time before the CAS must be refused, at least if it is submitted in an abusive way and/or retained by the parties in bad faith for strategic reasons (see e.g. MAVROMATI/REEB, op. cit., N43ff ad Art. R57, p. 519ff and N65 ad Art. R57, p. 526).

188. Finally, Articles R44.2 and R44.3 of the CAS Code (applicable by virtue of Article R57 of the CAS Code) state that:

"The parties may only call [...] witnesses and experts which they have specified in their written submissions. Each party is responsible for the availability and costs of the witnesses and experts it has called. [...]

The Panel may limit or disallow the appearance of any witness or expert, or any part of their testimony, on the grounds of irrelevance. [...]

If it deems it appropriate to supplement the presentations of the parties, the Panel may at any time order the production of additional documents or the examination of witnesses, appoint and hear experts, and proceed with any other procedural step. The Panel may order the parties to contribute to any additional costs related to the hearing of witnesses and experts".

189. The Panel will refer to, and elaborate upon, these principles to the extent necessary in the following sections.

A. The Athlete's application for a second round of submissions and notification of Mr Wenzel

190. On 27 December 2021, the Athlete requested leave to file a Reply to World Athletics' Answer based on Article R44.1 of the CAS Code.

191. On 30 December 2021, World Athletics objected to this request. It clarified that Article R44.1 of the CAS Code was not applicable in appeal proceedings and argued that there were no exceptional circumstances within the meaning of Article R56 of the CAS Code. While objecting to the Athlete's request, the Respondent also requested the opportunity to file a Rejoinder if the Athlete were granted the ability to file a Reply.

192. On 3 January 2022, the Respondent informed the CAS Court Office that Mr Ross Wenzel had left Kellerhals Carrard on 31 December 2021 and requested that his email address be removed from the distribution list.

193. On the same date, the Athlete repeated her request to file a Reply, referring to Article R44.1 of the CAS Code. She also asked that Mr Wenzel continued to be notified, which was rejected by the Respondent. She identified no legal basis for the continued notification of Mr Wenzel, which was not authorized by the Panel.

194. On 14 January 2022, the Panel noted the various communications of the Parties and requested clarification of the relationship between the Reply and the Athlete's unsolicited submission of 5 January 2022 (see section VIII.B below) and whether there were any exceptional circumstances within the meaning of Article R56 of the CAS Code that justified a second round of submissions and/or the admissibility of the 5 January 2022 Submission. The Parties responded on 22 and 25 January 2022. On 16 February 2022, the CAS Court Office informed the Parties that the Panel had decided to authorize the Parties to file a second round of written submissions. The Panel, pursuant to Articles R57 and R44.3 of the CAS Code, directed the Athlete to file with her Reply certain documents referred to in her Appeal Brief but not included with that submission, if they were in her possession.

195. The Panel notes that notwithstanding the requirement under Article R56 of the CAS Code of 'exceptional circumstances' to justify the filing of new evidence, CAS jurisprudence recognizes greater flexibility to allow a second round of submissions *"if necessary"* (RIGOZZI/HASLER, op. cit., N10 ad Article R56, p. 1652, and the references mentioned; MAVROMATI/REEB, op. cit., N4 ad Article R56, p. 496ff, and the references mentioned). Article R44.3 of the Code of Sports-related Arbitration also permits a CAS panel to order a second round of submissions as "*any other procedural step*".

196. In the present case, the Panel allowed a second round of submissions for reasons of procedural efficiency and further to Article R44.3 of the CAS Code. In the circumstances of the case and having considered the Parties' respective positions in this regard, the Panel decided that it was appropriate to grant the Parties an additional round of submissions and that it would be procedurally efficient and conducive to the orderly presentation of the appeal to do so in advance of any hearing. The Respondent's procedural rights were protected by the right to file a Rejoinder. The Parties duly filed the Reply and Rejoinder within the time limits set by the Panel.

B. The Appellant's unsolicited submission dated 5 January 2022

197. On 5 January 2022, the Athlete filed an unsolicited submission entitled *"new supervening means of proof"*, which referred to flaws in the doping control testing process. She sought to exclude certain evidence and overturn the previous decisions of the IAAF/World Athletics Disciplinary Tribunals and CAS. She attached several "annexes" to support her argument, which she allegedly discovered after the filing of her Appeal Brief of 18 September 2021.

198. On 12 January 2022, World Athletics argued that this new submission was inadmissible based on Article R56 of the CAS Code. It also submitted that the arguments thereto had already been rejected in first instance proceedings and were, in any case, not relevant to the current issue of Tampering.

199. On 22 January 2022, the Athlete clarified, upon the CAS Court Office's request, that this unsolicited submission was separate and additional to her request to submit a Reply.

200. On 16 February 2022, the CAS Court Office informed the Parties, on behalf of the Panel, that the Athlete's additional submission was not admitted to the case file, referring to Article R56 of the CAS Code, and adding that further explanations would be provided in the Final Award.

201. The additional submission effectively amounted to new grounds of appeal, and not just new arguments or evidence in support of existing grounds. The Appellant did not demonstrate the existence of exceptional circumstances required by Article R56 of the CAS Code, and only referred to so-called *"new"* elements which were in fact not new since all actually pre-dated the Appeal Brief of 18 September 2021 by several months. This evidence was therefore presented in violation of the CAS Code without any justification.

202. The right to be heard also favored the exclusion of this evidence. The CAS procedure guarantees the right to be heard for both parties. The right to be heard is inseparable from a correlative obligation to respect the equal right of the other party, and therefore to respect procedural rules and time-limits. A party cannot make a submission not contemplated by the rules simply on the basis that the submission, on its view, is relevant and therefore must be considered by the Panel. The Athlete could have made the submissions and filed the related evidence in its Appeal Brief and chose not to do so.

203. Any other conclusion would open the door to multiple, belated and unsolicited submissions contrary to the expeditiousness of arbitration proceedings and the

procedural rules (for more details, see SFT 4A_274/2013, para 3.2; 4A_576/2012, para 4.2.2; 4A_312/2012, para 4.2.2.).

C. Proposed witnesses and experts, and the additional expert report of Mr Rendón

a. Proposed witnesses and experts

204. On 31 May 2022, the Athlete informed the CAS Court Office that she intended to call eight factual witnesses to give oral evidence at the hearing. In addition, the Athlete proposed to call an expert graphology witness, Mr Manuel Alejandro Ruiz Martinez.

205. On 3 June 2022, World Athletics answered that the Athlete's request should be denied based on Articles R44.2, R51, R56 and R57 of the CAS Code.

206. On 16 June 2022, the CAS Court Office informed the Parties that the Panel had decided to deny the Athlete's request, in light, *inter alia*, of her failure to timely specify the witnesses as required in her written submissions. It stated that the reasons for this decision would be provided in the Final Award.

207. In CAS appeals, each party is responsible for the presentation of their witnesses and experts and cannot specify further evidence on which they intend to rely after the filing of their written submissions, except on the basis of exceptional circumstances, pursuant to Articles R44.2 (applicable by virtue of Article R57 of the CAS Code), R51 and R56 of the CAS Code.

208. The Appellant did not specify any of the witnesses in her Appeal Brief or the Reply Brief, nor did she identify exceptional circumstances. In short, she proposed these witnesses in violation of the CAS Code, without any justification, and after the exchange of not only one, but two rounds of written submissions (MAVROMATI/REEB, op. cit., N4 ad Art. R56, p. 497, which refer to CAS 2011/A/2579, para 3.9).

209. In addition, certain witnesses related to the Presence/Use proceedings, and therefore their evidence would be irrelevant to the appeal on the Tampering charge. The Panel is empowered to disallow the appearance of any witness or expert on the grounds of irrelevance (Article R44.2 of the CAS Code).

210. The Appellant had submitted a graphology report by the proposed expert witness Mr Ruiz Martinez with her Reply dated 11 June 2021 (Escritura/Public Deed 770). The Reply (page 3) refers to *"the Expert Evidence in Graphoscopy that demonstrates the alteration of signatures. Including in the control that is part of this lawsuit"*. However, neither the Appeal Brief nor the Reply specified that the Appellant was calling Mr Ruiz Martinez as an expert. Accordingly, Mr Ruiz Martinez was also proposed by the Appellant as an expert in the 31 May 2022 letter in violation of Articles R44.2, R51 and R56 of the CAS Code.

211. Mr Ruiz Martinez's expert report submitted with the Reply is also irrelevant, which is a further ground for exclusion of his evidence under Article R44.2 of the CAS Code. This expert report relates to the authenticity of the signature of Ms Fabiola Patricia Baltazar Cruz on the doping control form. The Tampering allegations are based on the

Appellant's conduct *after* the positive doping test. Any irregularity in the doping control was a matter for the Presence/Use proceedings (where both a IAAF/World Athletics Disciplinary Tribunal and the CAS appeal panel in *CAS 2019/A/6319* upheld the validity of the doping control) but is not relevant to the current proceedings. The Panel notes at this point that the Appeal Brief (page 39) also referred to another expert report by Mr Ruiz Martinez (dated 9 November 2020; Escritura/Public Deed 735) which related to the authenticity of the signature of the Athlete on a document dated 28 March 2019. This report had been presented by the Athlete in the first instance proceedings on the Tampering Charge, but was not submitted in the appeal proceedings with either the Appeal Brief or the Reply. The authenticity of this signature assumed greater importance after the Athlete's change of counsel, as will be explained.

b. The new list of participants and additional expert report of Mr Rendón

212. On 4 July 2022, the hearing originally scheduled on that date was postponed at the Appellant's request. One month later, the Athlete, now represented by new counsel, provided a new list of participants for the hearing. This list included a graphology expert, Mr Cuauhtémoc Keer Rendón, and a sports advisor, Mr Heraclio Éder Sánchez Terán, and no factual witnesses.

213. On 17 August 2022, World Athletics objected to the presence of Mr Rendón and Mr Terán at the hearing, noting that they had not been listed in the Appeal Brief and that the scope of the present proceedings was limited to the issue of Tampering.

214. On 23 August 2022, the Athlete provided further explanations and documents in this regard. She also sought the admission of handwriting report by Mr Rendón to demonstrate that her signature had been falsified in documents that have been relied upon as evidence against her in the present proceedings, together with his participation as an expert at the hearing. She referred to human rights law principles and CAS jurisprudence to support her position.

215. On 24 August 2022, the Athlete clarified that Mr Terán would not appear at the hearing as a witness but would participate as a counsel.

216. On 1 September 2022, World Athletics stated that it would not object to the presence of Mr Terán at the hearing, if he did not appear as a witness. It maintained, however, its objection regarding Mr Rendón.

217. On 9 September 2022, the Athlete further responded to the objection of World Athletics, maintaining that the expertise of Mr Rendón was necessary to demonstrate that she was not responsible for the Tampering during the doping proceedings. She argued that World Athletics relied on the submission in the doping proceedings of 28 March 2019 (originally filed with the Appellant's Answer in first instance in the Presence/Use proceedings) as evidence of Tampering, and therefore evidence that the signature on this document was not hers was relevant to her defense. She concluded by requesting that World Athletics be ordered to withdraw *"the document dated March 28, 2019 as evidence against* [her]*"*.

218. On 16 September 2022, World Athletics rejected the Appellant's proposal that it withdraw the document dated 28 March 2019.

219. On 23 September 2022, the Panel decided to authorise Mr Terán to participate in the hearing in the capacity of legal adviser but not as a witness. It denied the Athlete's request to be authorised to submit an expert report by Mr Rendón, since the stage of the written proceedings was closed, and a previous report submitted by her previous counsel covered the same issue. It refused the Athlete's request to exclude the 28 March 2019 submission and exhibits from the case file, as these documents were presented by her then-authorised lawyers, and have formed part of the original proceedings and tampering proceedings since that time. Finally, it indicated that further reasons would be provided in the Final Award.

220. Mr Rendón's report was deemed inadmissible under Article R56 of the CAS Code, as it was not presented in a timely manner during the CAS written submission phase, and no exceptional circumstances had been alleged. It was also problematic from the perspective of the requirement to submit any available evidence prior to the challenged decision, enshrined in Article R57(3) of the CAS Code (on this latter point, see SFT 4A_246/2014, para 7.2.2 and SFT 4A_178/2014, para 5.3.3, which both state that evidence not submitted in first instance proceedings may be refused by CAS, without violating the rights of defense).

221. The application to produce a graphology report by Mr Rendón on the authenticity of the document dated 28 March 2019 was further complicated by the fact that, at the first instance, the Athlete had already presented an expert graphology report on this same issue by Mr Ruiz Martinez (dated 9 November 2020; Escritura/Public Deed 735; see supra VIII. C. a.). If the Athlete wished to call expert oral evidence on this issue then, in accordance with Article R51 of the CAS Code, she could have presented Mr Ruiz Martinez's original report, or a supplemental report, or a new report by Mr Rendón with the Appeal Brief (or later with the Reply) and specified that she intended to call Mr Ruiz Martinez or Mr Rendón at the hearing.

222. Accordingly, the Athlete had had a full opportunity to call expert evidence on the authenticity of the document dated 28 March 2019 prior to proposing Mr Rendón in August 2022 and had not used that opportunity. The Athlete's failure to present additional expert evidence during the written phase of the appeal or call an expert to give oral evidence at the hearing can be assumed to have influenced the Respondent's decisions on the presentation of expert evidence on the appeal, and therefore its right of defense.

223. Finally, early in the appeal proceedings, the Athlete had requested that the Respondent be required to produce the Sports Resolution file SR/165/2020 and the Panel granted this request. This file contains the expert report of Mr Ruiz Martinez dated 9 November 2020 (see page 745 of the pdf of SR/165/2020), which therefore is part of the evidence on the appeal. Accordingly, there was expert graphology evidence on the authenticity of the document dated 28 March 2019, presented by the Athlete herself, to which her counsel could refer to and rely on at the hearing. This is a further reason to exclude the proposed evidence by Mr Rendón.

D. The Appellant's change of counsel and postponement of the 4 July 2022 hearing

224. On 28 June 2022, the Athlete personally advised the CAS Court Office that her counsel was not adequately representing or communicating with her. She sent several further communications and attachments over the next few days, alleging that she no longer had any legal representation and requesting that the proceedings be suspended.

225. On 1 July 2022, the Appellant's counsel confirmed that his mandate had been terminated and requested the postponement of the hearing scheduled for 4 July 2022. World Athletics objected to the postponement of the hearing on the grounds that the Athlete had not acted in good faith, that the exchange of written submissions and arguments was closed, and that this case should be resolved expeditiously.

226. On 4 July 2022, the Panel informed the Parties of its decision to postpone the 4 July 2022 hearing. It referred to the right of defense, the sanction already imposed on the Athlete and the virtual nature of the hearing, and stated that further reasons would be provided in the Final Award. It specified that the sole purpose of the postponement was to enable the Athlete to instruct her new counsel to represent her at the hearing.

227. On 15 July 2022, the Athlete confirmed that she was represented by three new counsel, and announced partial changes in the composition of her legal team two months later.

228. On 25 October 2022, the hearing took place by video-conference in the presence of the Athlete, assisted by her counsel, a "sports advisor", Mr Terán, and an interpreter, as well as attended by World Athletics' representatives, the CAS Panel and CAS staff.

229. The Panel confirms its decision to postpone the scheduled 4 July 2022 hearing. The Panel recognized that there were powerful arguments against an adjournment, as set out by the Respondent in its 1 July 2022 communication, including evidence calling into question the Athlete's alleged lack of communication with her lawyers and knowledge of her case, and the need to bring a long-running case to a conclusion without further delay. A litigant has a responsibility to ensure that he or she is informed about the progress of the case. Nevertheless, the Panel considered that these factors were outweighed by the need to ensure that the Athlete had legal representation at the hearing and that her new lawyers had time to familiarize themselves with the briefs, evidence and history of the proceedings and prepare for the hearing. The sanction imposed by the World Athletics Disciplinary Tribunal and its significant consequences for the Athlete gave additional importance to her legal representation at the hearing. As the hearing was virtual, the costs and inconvenience of a late postponement were considerably reduced.

E. The Appellant's unsolicited submission dated 21 October 2022

230. By letter dated 21 October 2022, which was transmitted by email to the CAS Court Office three days later on 24 October 2022 (being the day immediately prior to the rescheduled hearing), the Appellant requested to submit additional evidence pursuant to Article R56 of the CAS Code. This additional evidence consisted of 164 pages of new submissions and exhibits in Spanish, together with their related English translations.

231. The Appellant submitted this material pursuant to Article R56 of the CAS Code on the

basis of exceptional circumstances (pages 3, 7-9 and 61 of the English translation). The Appellant argued that the need to safeguard a party's fundamental rights was always an exceptional circumstance, and that the new evidence demonstrated that the World Athletics Disciplinary Tribunal and the CAS panel in the Presence/Use proceedings would have made a different decision if this evidence had been available to them. She listed alleged breaches of her fundamental rights on pages 56-61 (English translation). She also developed previously made arguments, including the principle of *res judicata*, the scientific evidence related to her antidoping test, and the training of the doping control officer. Ultimately, she underlined that the arbitrators of the first CAS panel had *"manipulated the doping control procedure"* by tolerating and validating the actions of the DCOs, World Athletics' representatives and members of the IAAF/World Athletics Disciplinary Tribunals.

232. On the same date, the Respondent objected to the written submission of the additional evidence as requested by the Appellant.

233. On 25 October 2022 and prior to the commencement of the hearing held on the same date, the CAS Court Office informed the Parties that the Panel, having considered the Parties' respective positions in this regard, had decided to dismiss the Appellant's request of 21 October 2022. Accordingly, it decided that the written submission and documentation submitted by the Appellant on 21 October 2022 would not be admitted to the case file. The Panel stated that the reasons for its decision would be provided in the Final Award.

234. This additional evidence was, again, presented in violation of the procedure and time limits of Articles R51 and R56 of the CAS Code. The Athlete alleged exceptional circumstances but no exceptional circumstances were demonstrated to exist. This evidence could have been presented earlier in the proceedings in accordance with the CAS Code and there was no justification for its sudden and unexpected presentation of the eve of the hearing. The fact that the Athlete alleged that prior proceedings had resulted in a breach of her fundamental rights did not constitute an exceptional circumstance, as the Athlete had had the opportunity to make this submission and present this evidence both in the prior proceedings and in accordance with Article R51 of the CAS Code. Further, the arguments and evidence proposed by the Athlete related largely to the Presence/Use proceedings and were not relevant to the Tampering charge.

F. The Athlete's application for the attendance at the hearing of a Mexican representative and for a public hearing

235. On 15 September 2022, the Athlete requested that a representative of the Mexican embassy in Switzerland (Mr Eleazar Velasco Navarro) be present at the hearing as an observer and to have access to the file. World Athletics objected to such request one day later. On 27 September 2022, the Panel denied the Appellant's request, with reference to Article R43 of the CAS Code, which provides for the confidentiality of proceedings, and the fact that Mr Navarro would not act as a legal representative. Although the Appellant submitted a communication from Mexico to the Athlete (stating that Mr Navarro will 'accompany the case' or 'provide assistance to the case'), Mr Navarro himself did not request to attend the hearing or review the file. The Appellant was legally

represented and so did not require consular assistance. In addition to Article R43, Article R57(2) of the CAS Code provides that hearings take place in camera and Article R59 of the CAS Code states that the case record of the appeal shall remain confidential.

236. On 1 October 2022, the Athlete called for the hearing to be made public pursuant to Article R57 of the CAS Code. Ten days later, World Athletics stated, after being granted a short extension to file comments, that it left it to the Panel to decide upon this request.

237. On 14 October 2022, the Panel granted the Athlete's request for a public hearing, further to Article R57 of the CAS Code. It specified that the video recording would be made publicly available shortly after the hearing.

238. On 21 October 2022, the CAS Court Office confirmed, at the Athlete's request, that the hearing recording would not be edited.

239. On 25 October 2022, the hearing took place by video-conference, which the Athlete attended accompanied by her legal representatives and Mr Terán.

240. On 31 October 2022, the CAS Court Office informed the Parties, after confirming their wishes in this regard, that the link to the hearing had been activated for public viewing in an unedited form as requested by the Appellant.

G. Identification of Panel members and Respondent's counsel at the hearing

241. At the beginning of the hearing on 25 October 2022, the Respondent's counsel objected that the members of the Panel and the Respondent's counsel had not presented identification documents at the hearing, which the Respondent argued violated the principles of good faith and legal security.

242. However, there is no requirement in the CAS Code for the presentation of identity documents by all participants at the hearing. The members of the Panel had been duly appointed in accordance with the CAS Code, the participants at the hearing had been identified in advance and access to the hearing was strictly controlled by the CAS Court Office.

H. Other Procedural Objections

243. The Appellant questioned the independence of the Panel members in relation to procedural extensions of time granted to the Respondent, specifically a ten-day extension to file its Answer and a one-day extension to comment on the issue of a public hearing.

244. These serious allegations of bias were made in relation to routine procedural applications for extension of time (in one case, of a single day). The Athlete opposed these extensions of time and did not agree with the decisions to grant them, but identified no basis for the allegation that the decisions were not impartial. The decisions were taken after submissions from both parties and in accordance with CAS procedure.

245. If the Appellant believed that there were legitimate doubts as to the independence or

impartiality of any member of the Panel, then pursuant to Article R34 of the CAS Code, a formal challenge should have been made within seven days. The Appellant did not present any formal challenge to the members of the Panel in accordance with the CAS Code, and therefore these allegations do not need to be further considered.

246. In a similar way, allegations relating to the independence of the CAS as an institution, must be formulated without delay by the parties in their written submissions based on Article R55 of the CAS Code and related jurisprudence (see e.g. SFT 4A_520/2021, paras 5.3ff; CAS 2011/0/2574, passim; CAS 2022/A/8598, paras 58ff, and the references).Ultimately, the independence of CAS from sports federations has been confirmed on numerous occasions, both by the Swiss Federal Tribunal and by the European Court on Human Rights (see e.g. SFT 119 II 271; SFT 129 III 445; SFT 144 III 120; and judgment of the European Court of Human Rights, 2 October 2018, *Mutu and Pechstein v. Switzerland*, requests Nos. 40575/10 and 67474/10).

I. Arguments raised by the Appellant at the hearing

247. The Appellant raised new arguments during the 25 October 2022 hearing regarding CAS' independence from sports federations, alleged flaws in the antidoping control and blood sample, natural justice, "no punishment without law", exhaustivity in relation to past World Athletics and CAS proceedings, and the proportionality of the sanction. In this context, she questioned the qualifications/independence of the persons who conducted her doping test and the presence of Trenbolone in her blood, as well as the "irrebuttable nature" of her previous admissions and other findings contained in the decisions already in force, pursuant to Article 3.2.5 of the 2019 ADR. She also addressed, upon the President of the Panel's request, the length of the sanction through the lens of the "exceptional circumstances" provided for by Article 10.3.1. of the 2021 ADR.

248. The Respondent objected to some of these new arguments, which it considered to be belated and/or outside the scope of these proceedings, and requested a new exchange of submissions on the issue of the "exceptional circumstances" if deemed relevant.

249. Although the admissibility of some of these arguments is questionable, no decisions in this respect are required because these arguments have no bearing on the outcome of the case, for reasons that will be explained in the merits section (IX). The Panel also considers that it has sufficient information to decide the question of "exceptional circumstances" without further exchange of submissions, in the light of the explanations provided by the Parties at the hearing.

J. Concluding comments

250. The CAS Code prescribes the procedure for this appeal and following this procedure protects the rights of both parties. It ensures the development of the case in an orderly manner, with the identification of arguments, evidence and witnesses at prescribed procedural times, with due notice to the other party. The procedural rules guarantee the principles of legality and the right of defense of both parties.

251. Many of the preliminary and procedural issues in this case could have been avoided by

the orderly development of the Appellant's case by, for example, presenting evidence and identifying witnesses at the prescribed time in accordance with the CAS Code, avoiding unsolicited or surprise submissions, or addressing legal requisites such as exceptional circumstance when the rules so required. The Sports Resolution file, produced early in the appeal, was subsequently requested by the Appellant's lawyers on multiple occasions.

252. The Panel is confident that the present proceedings has been conducted with full respect for the principles of legality and the right to be heard. In particular, the Appellant's multiple procedural requests and objections have all been fully considered.

IX. MERITS

253. The Parties submissions on the merits have already been summarized (see paragraphs 129-133 and 247-249 above). The Parties' arguments developed and sometimes changed during the written phase and at the oral hearing. Taking into consideration all of the arguments raised by both Parties throughout the proceedings, the Panel has decided that the merits questions are best addressed in the following order and under the following headings:

A. Is the Evidence of Tampering in the Presence/Use Proceedings irrebuttable?;

B. Did the alleged Tampering take place during a Doping Control process?;

C. What are the implications of the other evidence relating to the Tampering Charge?;

D. *Ne bis in idem/res judicata*: are the Tampering Proceedings unnecessary and abusive?;

E. Other Arguments of the Appellant;

F. Sanctions; and

G. Conclusions.

A. Is the Evidence of Tampering in the Presence/Use proceedings irrebuttable?

254. The Appellant made many arguments relating to the deficiencies in the Presence/Use proceedings. The Panel begins by considering the relevance of the Presence/Use proceedings to this appeal in relation to the Tampering charge.

255. The Presence/Use proceedings comprise the IAAF Disciplinary Tribunal proceeding followed by the CAS procedure and Presence/Use Award in *CAS 2019/A/6319* dated 2 July 2020, dismissing the appeal, confirming that the Athlete had committed an ADRV and confirming the sanction of ineligibility for a period of four years from the date of notification of the award. There was no application by the Appellant to set aside CAS Presence/Use Award. Accordingly, this award is final and binding on the Parties

pursuant to Article R59 of the CAS Code, and Article 190(1) of the Swiss PILA. The *res judicata* effect of the award extends to the operative part of the award only and not to its reasons (SFT4A_633/2014).

256. Nevertheless, Article 3.2.5 of the 2019 ADR means that the facts established in the CAS Presence/Use Award *"shall be irrebuttable evidence against the Athlete or other Person to whom the decision pertained of those facts, unless that Athlete or other Person establishes that the decision violated principles of natural justice"*. The Panel considers that facts established in a decision for the purposes of Article 3.2.5 includes both contested facts subject to an express decision by the CAS Panel in the CAS Presence/Use Award and admissions recorded by the CAS Panel.

257. The facts established in the CAS Presence/Use Award which are relevant to the Tampering proceedings are:

- *"The Appellant stated that she genuinely and expressly accepts that she lied and presented and relied upon fabricated documents before the IAAF Disciplinary Tribunal. She explained that her former legal counsel explained to her that this was the only way to defend herself and that there were no other options for her"* (paragraph 45, final bullet point).

- *"The Appellant admitted freely before the Panel, and in her Appeal Brief, that she had not told the truth at the hearing in first instance before the IAAF Disciplinary Tribunal, that her evidence had been falsified, and that documents and evidence were fabricated"* (paragraph 81).

258. In order to rebut these facts, the Appellant is required to demonstrate, on a balance of probability, that the CAS Presence/Use Award violated the principles of natural justice. The Panel notes that the Appellant's submissions go well beyond the facts of Tampering to question the findings in the Presence/Use proceedings relating to the doping control process and the finding of an ADRV. In this way, the Appellant's argument assumes that ***any*** violation of natural justice in the Presence/Use proceedings, whether or not it relates to the findings of Tampering, will suffice to rebut the findings of Tampering. This proposition is dubious, but the Panel does not need to examine it further because the Appellant has not in any case demonstrated any breach of natural justice affecting the CAS Presence/Use Award.

259. In relation to the Tampering findings, these are based on the Athlete's own admissions in oral testimony at the hearing in *CAS 2019/A/6319* and were accompanied by apologies and regrets. These admissions were volunteered by the Appellant at the hearing, where she was legally represented. There is no indication of any breach of natural justice affecting these admissions.

260. The Appellant's other complaints regarding the Presence/Use proceedings (see paragraph 131(ii) above) have no basis, as discussed below.

261. The evidence relating to the doping control process was reviewed in the CAS Presence/Use Award and the CAS panel in that case found that no irregularity in the process had been proved. The Athlete presented her case on the doping control process

(including the questions of who was present, and the relationship between them) and it was considered and rejected by the CAS 2019/A/6319 panel. No violation of natural justice has been identified.

- The Athlete argued in the Presence/Use proceedings that Ms Fabiola Baltazar Cruz was not present at the anti-doping control (*CAS 2019/A/6319*, paragraph 70 of the CAS Award). The Athlete in the Tampering proceeding has submitted expert handwriting evidence that the signature of Ms Baltazar on the doping control form was falsified. This evidence could have been submitted in the Presence/Use proceedings but the Athlete did not do so. There is no breach of natural justice in a failure to consider possible evidence not before the tribunal;

- The Athlete criticized the qualifications of the DCO at the hearing. Again, this argument is irrelevant in the Tampering proceedings and could have been made in the Presence/Use proceedings.

- The Athlete's arguments relating to the presence of Trenbolone seek to re-litigate the merits of this issue and do not demonstrate any breach of natural justice.

262. For these reasons, the Panel finds there was no breach of natural justice affecting the Presence/Use proceedings and therefore the finding of Tampering in the CAS decision in *CAS 2019/A/6319* constitutes irrebuttable evidence against the Athlete in the Tampering proceedings.

B. Did the alleged Tampering take place during a Doping Control process?

263. The Appellant submitted that the alleged tampering did not occur during the doping control process, as required by Article 2.5 of the 2019 ADR, but during the subsequent judicial phase before the IAAF Disciplinary Tribunal.

264. This argument overlooks the expansive definition of 'Doping Control' in the Definitions section of the 2019 ADR:

"*Doping Control: All steps and processes from test distribution planning through* ***to ultimate disposition of any appeal*** *including all steps and processes in between such as provision of whereabouts information, Sample collection and handling, laboratory analysis, TUEs, results management* ***and hearings***". (emphasis added)

265. This expansive definition includes the judicial phase, the hearings and all steps up to the ultimate disposition of the appeal. The alleged tampering by the Athlete by presentation of false evidence to the IAAF Disciplinary Tribunal occurred prior to the ultimate disposition of the appeal and therefore falls within the Doping Control process, as defined.

C. What are the implications of the other evidence relating to the Tampering Charge?

266. Pursuant to Article R57 of the CAS Code, the Panel has full power to review the facts and the law. The Panel has reviewed the evidence of Tampering presented before the World Athletics Disciplinary Tribunal in Sports Resolution file SR/165/2020 which

forms part of the evidence on this appeal as well as the additional evidence presented by the Parties during this appeal.

267. In her appeal, the Athlete alleged that the World Athletics Disciplinary Tribunal did not consider the evidence presented by the Athlete in respect of the Tampering charge. This submission was not developed and is without basis. The World Athletics Disciplinary Tribunal carefully considered the evidence and the elements of the offence in reaching its decision that the Athlete's conduct qualified as Tampering pursuant to the definition of the 2019 ADR, and explained its reasoning in paragraphs 52-75 of the Appealed Decision.

268. The additional evidence and arguments of the Athlete during this appeal did not weaken the factual basis of the finding of Tampering. The Athlete presented with the Reply a report by a handwriting expert (Mr Ruiz Martinez) that concluded that the signature of Ms Baltazar Cruz on the doping control form did not match her true signature. However, as already mentioned, this evidence relates to the validity of the Doping Control process that was an issue in the Presence/Use proceedings, but not in the Tampering proceedings.

269. There was also discussion of the alleged falsification of the Athlete's signature on the 28 March 2019 submission filed by her lawyers as her Answer in the Presence/Use proceedings. The Athlete presented another expert report by Mr Ruiz Martinez, which concluded that the signature on the 28 March 2019 submission did not correspond with her signature, as an Exhibit to her Answer before the World Athletics Disciplinary Tribunal in the Tampering proceedings. This evidence supported the submission that the contents of the Answer, including the falsified hospital report and restaurant receipts, had been presented without her knowledge or consent. The Appellant submitted that this evidence must be considered illegal and without any evidentiary value, but did not demonstrate why this should be so under the applicable law, and this submission is accordingly dismissed.

270. It is not clear what purpose the exclusion of the 28 March 2019 submission would serve for the Athlete because she confirmed the false evidence in this submission in her oral evidence at the hearing before the World Athletics Disciplinary Tribunal (Decision, paras 67-68). She willingly adopted the admittedly false evidence presented by her lawyers.

271. The Panel considers that the Tampering charge is fully proved even without reference to the Answer and attached exhibits in the Presence/Use proceedings. The Panel considers that the Athlete's knowledge of and participation in the presentation of false evidence is fully proven by:

- Her own admissions in oral evidence submitted at the appeal stage of the Presence/Use proceedings, as recorded in paragraphs 45 and 81 of the Award in *CAS 2019/A/6319* (which for the reasons already explained constitutes irrebuttable evidence of Tampering).

- Her oral evidence before the IAAF Disciplinary Tribunal, where she endorsed features of the false evidence presented by her lawyers in the 28 March 2019

submission, including the medical diagnosis of anaemia and the visits and receipts to the Picanha Grill.

- The polygraph evidence submitted by the Appellant herself in the appeal stage of the Presence/Use proceedings. The expert recorded that when she was questioned about her defense strategies, the Athlete explained:

  "She knows that the reason why she lost the trial was that the false evidence proposed and submitted by the lawyers during the trial was very inconsistent. She recalled that, during the trial, they proposed as evidence invoices from a restaurant that was already closed or a gas station that sold food (not a restaurant), which she knew was false and not credible.

  When she was specifically questioned about her level of involvement in this proposal to lie and falsify evidence, she said that she only accepted the proposals made, but never proposed any ideas or much less fabricated any false evidence. For example, she said that her participation consisted in:

  - Asking a friend (at the lawyers' suggestion) to say that she had gone with her to eat liver

  - Asking the owners of a restaurant to say that she had certainly eaten liver with them (although the lawyers contacted these people and proposed them to lie)

  She insisted on the fact that the persons who obtained the false testimony from a doctor, as well as the bills and all the false evidence submitted during the trial, were the lawyers. She concluded stating, again, that she never proposed any lying and only accepted and agreed to lie, because the lawyers convinced her that this was the only way to defend her, although she knew that lying would not help her at all".

- The differences in her oral evidence at the two hearings in the Presence/Use proceedings (i.e. the hearing before the IAAF Disciplinary Tribunal and the CAS panel in *CAS 2019/A/6319*) and;

- Her admissions before the World Athletics Disciplinary Tribunal in the Tampering proceedings; *"during the hearing of the present proceeding, the Athlete candidly admitted again that (i) she asked her friend Ms. Villegas to provide false testimony before the Disciplinary Tribunal in the First Proceedings; and (ii) that she was aware that some of the information provided to the Disciplinary Tribunal in the First Proceedings was untruthful"* (Appealed Decision, para 67).

272. The Panel notes that the offence of Tampering requires proof of an element of intent of the part of the Athlete (see CAS 2021/A/7983, paras 218-220). As explained above, the Panel is satisfied that the Athlete knew the evidence presented to the IAAF Disciplinary Tribunal was false and actively participated in its presentation, and therefore intended to subvert the doping control process.

273. For these reasons, the Panel considers that the Athlete is guilty of conduct which subverts the Doping Control process within the meaning of Article 2.5 of the 2019 ADR through the presentation of false evidence in the Presence/Use proceedings with the intention of deceiving the IAAF Disciplinary Tribunal. The charge of an ADRV for Tampering has therefore been established.

D. Ne bis in idem/res judicata: *are the Tampering proceedings unnecessary and abusive?*

274. The Appellant invoked the principles of *non bis in idem* and *res judicata,* arguing that she had been sanctioned for her conduct in the Presence/Use Proceeding, and further proceedings for Tampering were unnecessary and abusive.

275. The fallacy of the Appellant's argument is to assume that because the Tampering allegations arose during the Presence/Use proceedings, therefore this misconduct is encompassed in the sanction of the Presence/Use proceedings. This is not correct because although the Tampering occurred in the Presence/Use proceedings, it was not the subject of those proceedings and nor was it sanctioned in them.

276. The Panel refers to and endorses the reasoning of the Appealed Decision on this point (paragraphs 83-89). *Res judicata* requires the satisfaction of the 'triple-identity' test; that is, that the principle only applies if the identity of the parties, the subject matter and the legal grounds are the same. The *non bis in idem* principle acts as a logical corollary of *res judicata* and prohibits a person from being prosecuted or sanctioned for an offence for which they have already been convicted or acquitted pursuant to a final decision of another body within the same regulatory framework (CAS 2015/A/4343, paras 92-110).

277. These principles do not apply in the current case because there is no identity of subject matter. The Presence/Use proceedings relate to a violation of Article 2.1 (Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample) or 2.2 (Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method) of the 2019 ADR. The present proceedings relate to a violation of Article 2.5 (tampering) of the 2019 ADR. The subject matter and elements of these violations are quite distinct and the sanctions relate to entirely different forms of misconduct.

E. Other Arguments of the Appellant

278. The Appellant argued that World Athletics' former counsel, Mr Wenzel, failed to prove his legal personality and was never afforded procedural standing before the World Athletics Disciplinary Tribunal. She also argued that the World Athletics Disciplinary Tribunal failed to summon several witnesses and to consider important evidence, and relied on an investigation that was conducted illegally, in breach of Mexican national sovereignty and her human rights.

279. At the hearing, the Appellant further insisted on the alleged flaws of the Tampering investigation and proceedings, and referred to the principles of natural justice and exhaustivity.

280. The Respondent rejected the possibility of any procedural irregularity before the World Athletics Disciplinary Tribunal. It stated in the alternative that any procedural flaw would in any case be cured in appeal by the *de novo* nature of CAS proceedings. The Respondent also pointed out that the Athlete had not demonstrated the illegality of the evidence gathered against her and, in any event, even illegally obtained evidence could be considered in anti-doping proceedings.

281. The Panel has already dealt with allegations regarding the identification of legal representatives in this appeal. The Appellant has not demonstrated any breach of applicable rules in the appearance of Mr Wenzel before the World Athletics Disciplinary Tribunal and this argument is accordingly dismissed.

282. The Appellant alleges that the World Athletics Disciplinary Tribunal failed to call certain witnesses. This submission is based on the premise that it is the duty of the World Athletics Disciplinary Tribunal to call witnesses that are mentioned or proposed by a party, which has not been demonstrated by the Appellant by reference to the World Athletics Disciplinary Tribunal Rules or the applicable law. In principle, the responsibility for the presentation of a case before an international tribunal, including securing the attendance of witnesses, rests with the parties, unless the rules expressly provide for the exercise of coercive powers by the tribunal. This principle governs, for example, CAS arbitrations, including this appeal (Articles R44 and R51 of the CAS Code). If certain witnesses were required for her defense, it was the Appellant's obligation to secure their attendance, including if necessary by making the application to compel their attendance to any tribunal with jurisdiction to so order. Rather than a breach of the right of defense, the Appellant seems simply to have failed to understand the applicable procedure.

283. There are many objections to the Appellant's challenge to the allegedly illegally obtained evidence presented to expose her false evidence at the first instance in the Presence/Use proceedings. The Appellant did not demonstrate that any evidence was illegally obtained. The allegedly illegally obtained evidence served to expose the false evidence of the Athlete but does not itself form a necessary part of the proof of Tampering; in this sense it was an issue of the Presence/Use proceedings (and this argument could have been made on appeal in those proceedings) rather than the Tampering proceedings. Finally, according to the Swiss Federal Tribunal and CAS jurisprudence, illegally obtained evidence is not excluded automatically in anti-doping proceedings. Rather, a balancing of interests is carried out, whereby the interests in establishing the truth are weighed against the protection of the legal interest violated in obtaining the evidence. This jurisprudence has not been addressed by the Appellant and the interests of truth in this case are strong (see e.g. SFT 4A/448/2013, para 3.2.2; CAS 2004/A/629, paras 16ff; CAS 2009/A/1879, paras 132ff; CAS 2011/A/2426, paras 75ff; CAS 2016/O/4481, paras 79ff, which also specify that doping violations may be established by "any reliable means" under the IAAF regulations).

F. Sanctions

284. Having found that the Appellant is guilty of Tampering, the Panel now moves to examining the consequences that must be drawn from such finding. In particular, the

Panel refers to Article 10.3.1 of the 2021 ADR, which provides as follows:

"For violations of Rule 2.3 or Rule 2.5, the period of Ineligibility will be four (4) years except: (i) in the case of failing to submit to Sample collection, if the Athlete can establish that the commission of the anti-doping rule violation was not intentional, the period of Ineligibility will be two (2) years; (ii) in all other cases, if the Athlete or other Person can establish exceptional circumstances that justify a reduction of the period of Ineligibility, the period of Ineligibility will be in a range from two (2) years to four (4) years depending on the Athlete's or other Person's degree of Fault; [...]".

285. Article 10.9.3(c) of the 2021 ADR also specifies that:

"If the Integrity Unit establishes that an Athlete or other Person committed a violation of Rule 2.5 in connection with the Doping Control process for an underlying asserted anti-doping rule violation, the violation of Rule 2.5 will be treated as a stand-alone first violation and the period of Ineligibility for such violation must be served consecutively (rather than concurrently) with the period of Ineligibility, if any, imposed for the underlying anti-doping rule violation. Where this Rule 10.9.3(c) is applied, the violations taken together will constitute a single violation for purposes of Rule 10.9.1.".

286. The Panel considers that Article 1.7 of the 2019 ADR is also relevant to the issue of sanctions (a more demanding expression of the knowledge obligation of athletes appears in Article 1.5.1 of the 2021 ADR):

"All Athletes, Athlete Support Personnel and other Persons shall be responsible for knowing what constitutes an Anti-Doping Rule Violation under these Anti-Doping Rules and for knowing the substances and methods included on the Prohibited List".

287. The Appellant argued that the sanction imposed on her is disproportionate in itself and in light of the circumstances of the case. In her opinion, it should be reduced based on exceptional circumstances under Article 10.3.1. of the 2021 ADR, since she fully acknowledged her past failures and was deprived of her procedural rights.

288. The Respondent maintained that the sanction is proportionate, and consistent with the general objectives of the fight against doping. It stated that it should not be reduced based on exceptional circumstances under Article 10.3.1. of the ADR, which was not even discussed in the Parties' written submissions. It pointed out to the fact that the Athlete had been blaming everybody but herself for four years instead of taking responsibility for her actions.

289. In the Appealed Decision, the World Athletics Disciplinary Tribunal imposed a sanction of four years ineligibility which must be served consecutively to the period of ineligibility imposed for the first ADRV, so that the period of ineligibility commences on 16 November 2022 and expires on 15 November 2026. After hearing this appeal, this Panel reaches the same conclusion.

290. In this regard the Panel will address with respect to the sanction the issues of: (i) *lex mitior*; (ii) proportionality; and (iii) exceptional circumstances.

(i) Lex Mitior

291. The Panel agrees with the World Athletics Disciplinary Tribunal that the principle of *lex mitior* (recognized by both the 2019 ADR and 2021 ADR, as well as CAS jurisprudence) applies so that the period of ineligibility of the Athlete is determined in accordance with Articles 10.3.1 and 10.9.3 of the 2021 ADR. These provisions require a sanction of ineligibility for a period of four years for a Tampering violation, to run consecutively (rather than concurrently) to the period of ineligibility for the first ADRV, unless the Athlete can establish exceptional circumstances, in which case the sanction can be reduced to a range of between two and four years.

292. The Respondent had previously accepted the application of *lex mitior* to this case (see paragraphs 22 and 155 above), and so there can be no procedural bar to its application by the Panel. The Athlete was not required to expressly raise the issue of the application of *lex mitior,* which had been applied by the World Athletics Disciplinary Tribunal and had not been challenged by the Respondent prior to the hearing.

(ii) Proportionality

293. Next, the Panel turns to the Appellant's argument that the four-year sanction is disproportionate.

294. The Panel rejects the submission that the sanction is disproportionate. The Panel shares the view expressed by other tribunals that have considered this question that the principle of proportionality is 'built in' to the WADC and the ADR designed to implement the WADC. As explained by the CAS panel in the *Guerrero* case, (which related to the 2015 WADC but is equally applicable here) relied on by the Respondent (CAS 2018/A/5546, paragraphs 86-87; see also CAS 2021/A/7983 at paragraphs 297-202):

"86. Additionally, the CAS jurisprudence since the coming into effect of WADC 2015 is clearly hostile to the introduction of proportionality as a means of reducing yet further the period of ineligibility provided for by the WADC (and there is only one example of its being applied under the previous version of the WADC). In CAS 2016/A/4534, when addressing the issue of proportionality, the Panel stated:

"The WADC 2015 was the product of wide consultation and represented the best consensus of sporting authorities as to what was needed to achieve as far as possible the desired end. It sought itself to fashion in a detailed and sophisticated way a proportionate response in pursuit of a legitimate aim" (para. 51).

87. In CAS 2017/A/5015 & CAS 2017/A/5110, the CAS Panel, with a further reference to CAS 2016/A/4643, confirmed the well-established perception that the WADC "has been found repeatedly to be proportional in its approach to sanctions, and the question of fault has already been built into its assessment of length of sanction" (emphasis added, para. 227) as was vouched for by an opinion of a previous President of the European Court of Human Rights there referred to see https://www.wada-ama.org/en/resources/legal/legal-opinion-on-the-draft-2015-worldanti-doping-code".

(iii) Exceptional circumstances

295. Finally, the Panel will consider the argument by the Appellant in response to a question from the Panel during the hearing regarding the existence of any exceptional circumstances that would justify a reduction of the sanction further to Article 10.3.1(ii) of the 2021 ADR.

296. In this regard, the Appellant's counsel said that the exceptional circumstances were integrated with other elements of the case and with Swiss law, and referred in this context to the principle of proportionality, the violations of the right of defense, the errors in the Presence/Use proceedings, and the absence of adequate proof in the Presence/Use and Tampering proceedings. The Panel notes that it has already addressed proportionality above, while the other matters referred to by the Appellant are either not relevant to the sanction on the Tampering charge or have already been considered and rejected earlier in this Award. The Panel is satisfied that the Appellant did not demonstrate any exceptional circumstances applicable in this case.

297. In respect to the Appellant's arguments, the Panel appreciates that the Athlete considers that there were procedural violations in the Presence/Use proceedings that were not properly considered in those proceedings and that this injury has been compounded by the fact that the Presence/Use proceedings gave rise to the Tampering proceedings, resulting in a total sanction of eight years. She argues that she has arrived at this position as a result of the strategy of her original lawyers, and clearly feels a strong sense of unfairness at the outcome of the two proceedings, which was clearly expressed in her statement at the hearing in this case.

298. The Panel recalls that Article 1.7 of the 2019 ADR mandates that all athletes are responsible for knowing what constitutes an ADRV. This personal responsibility is a cornerstone of a system designed to protect the fundamental right of all athletes to participate in doping-free sports, and therefore to promote health, fairness and equality for athletes worldwide. Each athlete has an obligation to know and obey these rules. Tampering is a violation established by these rules, and therefore the Appellant had the obligation to know that this offence existed, and to avoid conduct constituting tampering or to accept the consequences of the sanctions prescribed.

299. It is important to emphasize the personal nature of this responsibility. It cannot be delegated to agents or professional advisers and is not excused by an Athlete's reliance on them, or on officials, team members, family or any other person.

300. It has been amply proved that false evidence was presented to the IAAF Disciplinary Tribunal in the Presence/Use proceedings. This is grave example of Tampering and the Athlete cannot relieve herself of her culpability by alleging that she was acting on legal advice, or did not realize that the hearing constituted part of the doping control process. It is lamentable that the Athlete seems to have been poorly and cynically advised by her original lawyers, but even if she was, the Athlete followed this advice when it was her personal responsibility to reject it. The Tampering was intentional and calculated to enable the Athlete to avoid the consequences of the AAF.

301. The Panel accepts that the Athlete genuinely regrets her participation in the presentation of the false evidence, which has had severe consequences for her. These consequences include not only the Tampering charge, but also the lost opportunity to present an alternative case to the IAAF Disciplinary Tribunal based on alleged deficiencies in the Doping Control process. She had a second opportunity to present a genuine case on appeal, but only by revealing the falsity of the original case.

302. The legal procedure has protected and preserved the Athlete's right of defense, even in circumstances where the Athlete herself has trivialized and abused the right of defense by her easy acquiescence to the presentation of a false case at first instance.

303. It was argued that the Athlete had made a sincere apology and that this should be recognized in the sanction. The Respondent doubted the sincerity of the apology, which came only after the false case had been rejected. However, an apology is not an exceptional circumstance or otherwise recognized as a reason for a reduction in sanction under either the 2019 or 2021 ADR. In contrast, an athlete's prompt admission of an ADRV may, in certain specific circumstances, justify a reduction in the sanction, but the Athlete never invoked these procedures, and instead has denied her conduct constituted the offence of Tampering before both the World Athletics Disciplinary Tribunal and in this appeal.

304. The Athlete's legal strategy before the IAAF Disciplinary Tribunal in the Presence/Use proceedings led to the Tampering charge. It is not an excuse, or an exceptional circumstance, that legal advice is dishonest, misguided, unsuccessful, subsequently regretted, or results in a sanction that otherwise may have been avoided. The Athlete is responsible for her choice of advisers, and her decision to follow the strategies proposed.

G. Conclusions

305. In view of the above, the Panel finds in relation to the Notice of Charge dated 30 July 2021 alleging a violation of Article 2.5 of the 2019 ADR that:

1. There was no breach of natural justice affecting the CAS Presence/Use Award dated 2 July 2020 and therefore pursuant to Article 3.2.5 of the 2019 ADR the factual findings of lying and falsification of evidence in this decision constitute irrebuttable evidence against the Athlete of these facts;

2. The falsification of evidence referred to in the Notice of Charge occurred within the Doping Control process;

3. The Athlete is guilty of conduct which subverts the Doping Control process within the meaning of Article 2.5 of the 2019 ADR through the presentation of false evidence in the Presence/Use proceedings with the intention of deceiving the IAAF Disciplinary Tribunal. The charge of an ADRV for Tampering has therefore been established.

4. The principles of *ne bis in idem* and *res judicata* have no application to the determination of the Tampering Charge or its sanction.

5. The Appellant's procedural and evidential objections to the Tampering proceedings are rejected.

6. The sanction for the violation of Article 2.5 of the 2019 ADR is a period of ineligibility of four years to be served consecutively from the sanction imposed in the Presence/Use proceedings so that the period of ineligibility commences on 16 November 2022 and expires on 15 November 2026.

306. The appeal is accordingly dismissed, and the Appealed Decision is confirmed.

X. COSTS

307. These proceedings fall under Article R65.2 of the CAS Code, which provides:

"Subject to Articles R65.2, para. 2 and R65.4, the proceedings shall be free. The fees and costs of the arbitrators, calculated in accordance with the CAS fee scale, together with the costs of CAS are borne by CAS.

Upon submission of the statement of appeal, the Appellant shall pay a non-refundable Court Office fee of Swiss francs 1,000.— without which CAS shall not proceed and the appeal shall be deemed withdrawn.

[…]"

308. Article R65.3 of the CAS Code reads as follows:

"Each party shall pay for the costs of its own witnesses, experts and interpreters. In the arbitral award and without any specific request from the parties, the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such contribution, the Panel shall take into account the complexity and the outcome of the proceedings, as well as the conduct and financial resources of the parties".

309. Article R65.4 of the CAS Code provides as follows:

"If the circumstances so warrant, including whether the federation which has rendered the challenged decision is not a signatory to the Agreement constituting ICAS, the President of the Appeals Arbitration Division may apply Article R64 to an appeals arbitration, either ex officio or upon request of the President of the Panel".

310. Having considered the outcome of the arbitration, the conduct of the Parties in the arbitration, and their respective financial resources, the Panel decides that a contribution in the amount of CHF 6,000 (six thousand Swiss Francs) towards the Respondent's legal fees and other expenses incurred in connection with the present proceedings shall be awarded.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal of María Guadalupe González Romero is dismissed.

2. The decision rendered by the World Athletics' Disciplinary Tribunal on 30 July 2021 is confirmed.

3. The award is pronounced without costs, except for the Court Office fee of CHF 1,000 (one thousand Swiss Francs) paid by the María Guadalupe González Romero, which is retained by the Court of Arbitration for Sport.

4. María Guadalupe González Romero shall pay to World Athletics a contribution in the amount of CHF 6,000 (six thousand Swiss Francs) toward its legal fees and expenses incurred in connection with the present proceedings.

5. All other motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland
Date: 29 December 2023

THE COURT OF ARBITRATION FOR SPORT

David Cairns
President of the Panel

Mario René Archila Cruz
Arbitrator

John A. Dyson
Arbitrator