

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

CAS 2020/A/7294 Aleksandr Shustov v. World Athletics & Russian Athletics Federation (RusAF)

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition

President: Mr André Brantjes, Attorney-at-Law, Amsterdam, the Netherlands

Arbitrators: Dr Georgios Petrochilos QC, Attorney-at-Law, Paris, France

Mr Romano F. Subiotto QC, Avocat, Brussels, Belgium and Solicitor-Advocate,
London, United Kingdom

in the arbitration between

Mr Aleksandr Shustov, Russian Federation

Represented by Mr Marc Cavaliero and Ms Carol Etter, Attorneys-at-Law, Cavaliero & Associates AG, Zurich, Switzerland

- Appellant -

and

World Athletics, Monaco

Represented by Mr Ross Wenzel and Mr Nicolas Zbinden, Attorneys-at-Law, Kellerhals Carrard, Lausanne, Switzerland

- First Respondent -

and

Russian Athletics Federation (RusAF), Moscow, Russian Federation

Not represented

- Second Respondent -

* * * * *

I. THE PARTIES

1. Mr Aleksandr Shustov (the “Athlete” or the “Appellant”) is an international-level high jumper. The Athlete, *inter alia*, won the European Indoor Championships in Barcelona in 2010 and was placed third at the European Indoor Championships in Paris in 2011.
2. World Athletics (the “First Respondent”), formerly known as the International Association of Athletics Federations (the “IAAF”), is the body governing the sport of athletics at worldwide level. World Athletics is an association established under the laws of Monaco, with its registered seat in Monaco.
3. The Russian Athletics Federation (“RusAF” or the “Second Respondent”) is the national governing body of the sport of athletics in the Russian Federation, at least until the hearing date in the present proceedings before the Court of Arbitration for Sport (“CAS”) suspended as a member association of World Athletics and therefore not able to conduct a hearing process with respect to the Athlete.
4. World Athletics and RusAF are hereinafter jointly referred to as the “Respondents”, and together with the Athlete as the “Parties”.

II. FACTUAL BACKGROUND

5. Below is a summary of the main relevant facts, as established on the basis of the Parties’ written and oral submissions, the evidence examined in the course of the present appeal arbitration proceedings and at the hearing. This background serves the sole purpose of providing a synopsis of the matter in dispute. Additional facts may be set out, where relevant, in connection with the legal discussion.
6. The present appeal arbitration proceedings concern an appeal filed by the Athlete against an arbitral award issued by a sole arbitrator (the “Sole Arbitrator”) in *CAS 2019/O/6156* (the “Appealed Decision”), in which it was held that the Athlete had violated Rule 32.2(b) IAAF Competition Rules and a four-year period of ineligibility was imposed on the Athlete.

A. Background Facts

7. There is no official positive test result of a sample collected from the Athlete. The evidence in the present proceedings primarily derives from the reports prepared by Prof. Richard H. McLaren of 16 July 2016 and 9 December 2016 into systemic doping practices in Russian sport (the “McLaren Reports”), describing three counter-detection methodologies known as i) the Disappearing Positives Methodology; ii) the Sample Swapping Methodology; and iii) Washout Testing.
8. The Sole Arbitrator in *CAS 2019/O/6156* described these three counter-detection methodologies as follows in the Appealed Decision:

“Under the “Disappearing Positives” methodology, from late 2011, if an initial screen of a sample at the Moscow laboratory, of which Dr Rodchenkov was the then Director, revealed an Adverse Analytical Finding (“AAF”), the athlete would be identified and the Moscow Laboratory and a liaising person at the Russian Ministry of Sport would decide either to “SAVE” or to “QUARANTINE” him or her. If the athlete was “QUARANTINED”, the analytical work on the sample would continue and the AAF would be reported, in the ordinary way. But if the athlete was “SAVED”, the Moscow Laboratory would report the sample as negative in ADAMS and make the necessary manipulations to conceal the AAF in the Laboratory Information Management System (“LIMS”).

“Washout Testing” programmes were allegedly conducted prior to certain major events including the July 2012 London Olympic Games and the August 2013 Moscow World Championships, to decide whether an athlete in a doping programme was likely to test positive. This involved the collection and testing of samples at the Moscow Laboratory at frequent intervals to monitor the rate at which quantities of prohibited substances were declining so the athlete would test “clean” in competition. The Moscow Laboratory thus developed schedules to keep track of the athletes subject to this program (the “Moscow Washout Schedules”), such schedules were monitored and updated regularly by Dr Rodchenkov.

As for “Sample Swapping”, when the relevant athletes’ samples screened positive, (and if necessary were misreported in ADAMS) the “dirty” samples were swapped for clean urine they had provided in plastic bottles stored at the Moscow Laboratory, using (from early 2013) a tool to open and reseal the cap on the official “BEREG” bottles. This method was facilitated by the establishment and maintenance of a “Clean Urine Bank”, which comprised of unofficial samples provided by certain athletes, that were analysed, stored and recorded in the “Clean Urine Bank Schedule”.”

9. Within the context of the Second McLaren Report, a significant number of Russian athletes were identified who were alleged to have been involved in, or benefited from, the doping schemes and practices uncovered (the “Identified Athletes”). Prof. McLaren made the evidence in this respect publicly available in anonymised form in the publicly available Evidence Disclosure Package (the “EDP”).
10. On 24 November 2017, the Athletics Integrity Unit (“AIU”) of the IAAF informed the Athlete that he was charged with a violation of Rule 32.2 (b) of the 2012/2013 IAAF Competition Rules (“IAAF Rules”): *“Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method”*, and that the IAAF sought an increased four-year period of ineligibility to be imposed beyond the default two-year period of ineligibility for a violation of Rule 32.2(b) IAAF Rules, because of aggravating circumstances allegedly being present ((i) use of prohibited substances on multiple occasions; (ii) use of multiple prohibited substances; and (iii) committing anti-doping rule violation(s) as part of a doping plan or scheme). According to World Athletics, the

Athlete was one of the Identified Athletes referred to in the Second McLaren Report appearing in the EDP. The AIU submitted that the evidence found indicated as follows:

- “(i) One of your official doping control samples collected on 15 October 2012 was found to contain erythropoietin (EPO).¹”*
- “(ii) You feature on the Moscow Washout Schedules, which comprised athletes who were known to be following a doping programme.*
- “(iii) Three different exogenous anabolic steroids, viz. methasterone, methandienone and oxandrolone, were detected in the samples on the Moscow Washout Schedules.*
- “(iv) The five unofficial samples from the Moscow Washout Schedules demonstrate a washout of the abovementioned prohibited substances.*
- “(v) One official doping control sample from 31 July 2013, i.e. on the same date as the fourth unofficial sample from the Moscow Washout Schedules, which was found to contain methasterone, was also reported as containing the same substance. The sample was reported negative in ADAMS.”*

11. On 6 December 2017, the Athlete provided his explanation for the asserted anti-doping rule violations (“ADRVs”), denying the AIU’s allegations, questioning the reliability of the evidence relied upon by the AIU and inviting the AIU to investigate the matter further.
12. On 31 January 2018, the AIU informed the Athlete that it maintained its assertion that he had committed ADRV and that his case would be referred to CAS.

B. First Instance Proceedings Before the Court of Arbitration for Sport

13. On 15 February 2019, the IAAF filed a Request for Arbitration with CAS, naming RusAF and the Athlete as respondents, in proceedings that would later be referenced CAS 2019/O/6156.
14. On 24 May 2019, the Athlete filed an Answer. RusAF did not file an Answer.
15. On 22 July 2019, the IAAF filed a Reply.
16. On 16 September 2019, the Athlete filed a Second Response. RusAF did not file a Second Response.
17. On 30 October 2019, a hearing was held at the CAS Court Office in Lausanne, Switzerland.

¹ This allegation was not prosecuted in the first instance proceedings before CAS in CAS 2019/O/6156, nor in the present appeal arbitration proceedings.

18. On 5 June 2020, CAS issued the Appealed Decision, with the following operative part:

- “1. CAS has jurisdiction to decide on the subject matter of this dispute and the Request for Arbitration of the [IAAF] is admissible and is upheld.*
- 2. [The Athlete] is found guilty of anti-doping rule violations under Rule 32.2(b) of the IAAF Rules.*
- 3. A period of ineligibility of four (4) years is imposed upon [the Athlete], commencing on the date of this Award.*
- 4. All competitive results obtained by [the Athlete] from 8 July 2013 to 7 July 2017 are disqualified, with all resulting consequences (including forfeiture of any titles, awards, medals, profits, prizes and appearance money).*
- 5. The arbitration costs (to be determined and notified by the CAS Court Office) shall be paid by [RusAF].*
- 6. [RusAF] shall contribute the sum of CHF 2,500 (two thousand five hundred Swiss Francs) to the [IAAF’s] fees and expenses.*
- 7. [The Athlete] shall contribute the sum of CHF 2,500 (two thousand five hundred Swiss Francs) to the [IAAF’s] fees and expenses.*
- 8. All other and further prayers or requests for relief are dismissed.”*

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

19. On 20 July 2020, the Athlete lodged an appeal against the Appealed Decision with CAS, pursuant to Article R48 of the Code of Sports-related Arbitration (edition 2020 – the “CAS Code”), naming World Athletics and RusAF as Respondents. In the Statement of Appeal, the Athlete nominated Dr Georgios Petrochilos QC, Attorney-at-Law in Paris, France, as arbitrator.
20. On 14 August 2020, World Athletics and RusAF jointly nominated Prof. Massimo Coccia, Professor and Attorney-at-Law in Rome, Italy, as arbitrator.
21. On 4 September 2020, the Athlete filed his Appeal Brief, in accordance with Article R51 CAS Code.
22. On 28 October 2020, pursuant to Article R54 CAS Code, and on behalf of the President of the CAS Appeals Arbitration Division, the CAS Court Office informed the Parties that the arbitral tribunal appointed to decide the present matter was constituted as follows:

President: Mr André Brantjes, Attorney-at-Law in Amsterdam, the Netherlands;
Arbitrators: Dr Georgios Petrochilos QC, Attorney-at-Law in Paris, France;

Prof. Massimo Coccia, Professor and Attorney-at-Law in Rome, Italy.

23. On 2 November 2020, the CAS Court Office informed the Parties that Prof. Coccia had resigned as arbitrator.
24. On 9 November 2020, World Athletics nominated Mr Romano F. Subiotto QC, Avocat in Brussels, Belgium and Solicitor-Advocate in London, United Kingdom, as arbitrator, with the consent of RusAF.
25. On 12 November 2020, World Athletics filed its Answer, in accordance with Article R55 CAS Code. RusAF did not file an Answer.
26. On 20 and 23 November 2020 respectively, following an inquiry from the CAS Court Office in this respect, the Athlete and World Athletics indicated their preference for a hearing to be held. RusAF did not indicate its preference.
27. On 3 December 2020, pursuant to Article R54 CAS Code, and on behalf of the President of the CAS Appeals Arbitration Division, the CAS Court Office informed the Parties that the arbitral tribunal appointed to decide the present matter was constituted as follows:

President: Mr André Brantjes, Attorney-at-Law in Amsterdam, the Netherlands;
Arbitrators: Dr Georgios Petrochilos QC, Attorney-at-Law in Paris, France;
Mr Romano F. Subiotto QC, Avocat in Brussels, Belgium, and Advocate-Solicitor in London, United Kingdom.

28. On 23 December 2020, the CAS Court Office informed the Parties that the Panel had decided to hold a hearing.
29. On 16 and 18 February 2021 respectively, the Athlete and World Athletics returned signed copies of the Order of Procedure provided to them by the CAS Court Office on 11 February 2021. RusAF did not return a signed copy of the Order of Procedure.
30. On 25 February 2021, a hearing was held by video-conference. In addition to the Panel and Ms Andrea Sherpa-Zimmermann, CAS Counsel, the following persons attended the hearing:

For the Athlete:

- 1) Mr Aleksandr Shustov, the Athlete;
- 2) Mr Marc Cavaliero, Counsel;
- 3) Mr Alexandre Ponomarev, Interpreter.

For World Athletics:

- 1) Mr Huw Roberts, AIU Legal Counsel;
- 2) Mr Annalisa Cherubino, AIU Legal Assistant;

- 3) Mr Ross Wenzel, Counsel;
- 4) Mr Nicolas Zbinden, Counsel.

RusAF did not attend the hearing, despite having been duly invited.

31. The Panel heard evidence from the following persons in order of appearance:
 - 1) Mr Manuel Rundt, Managing Director of IT Compliance Systeme GmbH, expert witness called by the Athlete;
 - 2) Mr Andrew Sheldon MSc, Principal Forensic Consultant, expert witness called by World Athletics;
 - 3) Mr Geoff Arnold, Forensic Scientist specialising in toolmarks, ballistics, firearms, toolmark microscopy, ballistics microscopy, crime scene examination and ballistic incident interpretation, expert witness called by the Athlete;
 - 4) Prof. Christophe Champod, Professor of Forensic Science at the University of Lausanne, expert witness called by World Athletics;
 - 5) Prof. Christiane Ayotte, Director of the WADA-accredited laboratory in Montreal, expert witness called by World Athletics;
 - 6) Mr Aaron Richard Walker, Deputy Director of WADA's Intelligence and Investigations Department, expert witness called by World Athletics;
 - 7) Dr Julian Broséus, Principal Data and Scientific Analyst of WADA's Intelligence and Investigations Department, expert witness called by World Athletics.
 - 8) Dr Grigory Rodchenkov, former Director of the Moscow Laboratory, witness called by World Athletics.
32. Mr Rundt and Mr Sheldon were heard together during an expert conferencing session, as well as Mr Arnold and Prof. Champod. Mr Walker and Dr Broséus were also heard together. The Athlete was called as a witness initially, but was not heard eventually.
33. All witnesses and expert witnesses were instructed by the President of the Panel to tell the truth, subject to the sanctions of perjury under Swiss law. The Parties and the members of the Panel had full opportunity to examine and cross-examine the witnesses and expert witnesses in accordance with the hearing schedule.
34. The Parties were afforded full opportunity to present their case, submit their arguments and answer the questions posed by the members of the Panel.
35. Before the hearing was concluded, the Athlete and World Athletics expressly stated that they did not have any objection with the procedure adopted by the Panel and that their right to be heard had been respected.
36. The Panel confirms that it carefully heard and took into account in its decision all of the submissions, evidence, and arguments presented by the Parties, and all of the witness testimony, even if they have not been specifically summarised or referred to in the present award.

IV. SUBMISSIONS OF THE PARTIES AND REQUESTS FOR RELIEF

A. The Appellant

37. The Athlete's submissions, in essence, can be summarised as follows:

- *“Based solely on Mr Rodchenkov’s allegations, [the Athlete] was accused of being a “protected” athlete, who allegedly benefitted from a so-called “Washout Testing Program” put in place in advance of the 2013 Moscow World Championships. This Washout Testing Program allegedly consisted of collecting samples in regular intervals and subsequently testing those samples for quantities of prohibited substances to determine the rate at which those substances washed out, to make sure that the protected athletes would test “clean” in competition. According to Mr Rodchenkov, the Moscow Laboratory developed schedules in advance of both the 2012 London Olympic Games (the “London Washout Schedules”) and the 2013 Moscow World Championships (the “Moscow Washout Schedules”) to keep track of those athletes who were subject to the Program. The Washout Testing Program allegedly evolved over time: while prior to the 2012 London Olympic Games the washout testing would be performed with official Bereg kits and any official positive test would be reported negative in ADAMS, non-official containers such as Coke or baby bottles would be used prior to the 2013 Moscow World Championships.*
- *When [the Athlete] learned about the allegations made against him, because samples allegedly belonging to him appeared on the Moscow Washout Schedules, he was shocked. He had never heard or been part of any doping or Washout Testing Program. He denied the allegations made against him and immediately requested that World Athletics investigate the matter further.*
- *Because the McLaren Reports do not constitute, and were never meant to serve as, evidence of ADRVs committed by individual athletes – what Mr McLaren has expressly and repeatedly acknowledged since the issuance of his reports – World Athletics should indeed have investigated Mr Rodchenkov’s allegations.*
- *Regrettably, however, World Athletics failed to investigate anything.*
- *Unlike other sports federations, which thoroughly examined similar allegations by Mr Rodchenkov against other Russian athletes and concluded that they were ill-founded, World Athletics decided to accept Mr Rodchenkov’s accusations at face value, without any verification, and to pursue its case against [the Athlete] before the CAS. Even if any doping scheme existed (quod non), it does not lead to a conclusion that [the Athlete] had committed any particular ADRV. Therefore, World Athletics*

bears the onus of proving by concrete evidence that [the Athlete] had committed a specific ADRV.

- ***However, World Athletics has not provided evidence that [the Athlete] had committed any ADRV.** The only “evidence” relied upon by World Athletics are two sparse documents made available by Mr Rodchenkov in 2016 (i.e. the so-called Moscow Washout Schedules and a single email between Mr Rodchenkov and Mr Velikodniy referring to a sample allegedly belonging to [the Athlete]), and a witness statement by (again) the same Mr Rodchenkov, describing the alleged washout testing program in general terms. Mr Rodchenkov only makes very scarce references to [the Athlete] in his witness statement, which are – apart from allegations about his coach and other athletes – essentially limited to information mentioned in the alleged Moscow Washout Schedules. [...]*
- *Mr Rodchenkov has no first-hand knowledge whatsoever of [the Athlete] or his alleged implication in the purported doping scheme which did not exist in practice. World Athletics has not proven the contrary. In addition, and for the reasons mentioned below, he is not a truthful or credible witness.*
- *Nevertheless, the Sole Arbitrator in the first instance CAS arbitral proceedings accepted Mr Rodchenkov’s story as truth and found [the Athlete] guilty of committing multiple ADRVs. In reaching that decision, the Sole Arbitrator essentially relied on the two sparse documents mentioned above, considering that they were authentic and sufficiently probative. The Sole Arbitrator further dismissed all the expert evidence adduced by [the Athlete], systematically brushing aside the many flaws in World Athletics’ experts’ analysis.*
- *As further explained below, the Sole Arbitrator, in a previous (first instance) award, rendered in matter CAS 2018/O/5713, had already expressed strong views on the very evidence involved in the present case. In that previous case, too, the Sole Arbitrator found the athlete guilty of ADRVs, sanctioned her to a period of ineligibility of four years and disqualified her results over a four-year period. In his challenge against the Sole Arbitrator’s appointment, [the Athlete] pointed out that the Sole Arbitrator was not approaching this matter with a pair of fresh eyes and had, in fact, prejudged the matter. Regrettably, [the Athlete’s] challenge was ultimately rejected.*
- *When considered on the merits, the Sole Arbitrator’s reasoning does not withstand scrutiny, mainly for the following reasons.*
- *First, because there is no proof that these documents are authentic (i.e., proof that they were prepared at the time of the facts at issue without being subsequently modified). [...]*

- *Second, even if they were authentic, these documents would not prove that [the Athlete] committed an ADRV: [...]*
- *Furthermore, [the Athlete's] sample taken during the Moscow IAAF World Championship in 2013 was retested in 2017 by the Lausanne Laboratory and was confirmed to be negative. This constitutes reliable, scientific evidence. One would expect it to prove [the Athlete's] innocence beyond doubt. Regrettably, instead of accepting this as clear proof that [the Athlete] was not a doped athlete, the Sole Arbitrator followed World Athletics' allegations of "sample swapping", despite the fact that they were based on unreliable evidence which had for the most part been already discredited by previous CAS panels. The Sole Arbitrator's simplistic and, as will be further set out below, deficient reasoning on this point, which barely (if at all) discussed the merits of the experts' evidence, speaks volumes as to his superficial and biased handling of [the Athlete's] case. [...]*
- *It is important to stress that whether a washout program as alleged by Mr Rodchenkov took place in advance of the 2012 London Olympic Games and of the 2013 Moscow World Championships is not the question here. The question that the Panel must resolve is whether World Athletics has discharged its burden of proving that [the Athlete] – and no one else – had committed an ADRV.*
- *As demonstrated in this Appeal Brief, World Athletics has utterly failed to discharge its burden of proof. There is simply no reliable evidence that [the Athlete] had committed any ADRV.” (emphasis in original)*

38. On this basis, the Athlete submitted the following prayers for relief:

- “1. Annul the award CAS 2019/O/6156 dated 5 June 2020 in its entirety.*
- 2. Find that Mr Shustov is not guilty of any anti-doping rule violations under the 2013 IAAF Rules.*
- 3. Declare that no period of ineligibility is imposed on Mr Shustov;*
- 4. In the alternative, considerably reduce Mr Shustov's ineligibility period;*
- 5. Declare that none of Mr Shustov's results are disqualified;*
- 6. In the alternative, reduce the disqualification of Mr Shustov's results to the period starting from 8 July 2013 to 15 August 2013.*
- 7. Order World Athletics to bear the costs of the first instance arbitration proceedings as well as these appeal proceedings;*

8. *Order World Athletics to compensate Mr Shustov for the legal costs and other expenses incurred in the first instance and these appeal proceedings;*
9. *Order any other relief that the Panel deems appropriate.”*

B. The First Respondent

39. World Athletics’ submissions, in essence, can be summarised as follows:

- *“The evidence that [the Athlete] committed anti-doping rule violations and was protected as part of the Russian doping and anti-detection program is incontrovertible. His appeal adds nothing new to the defence that [the Athlete] put forward at first instance and does nothing to disturb the well-reasoned findings and conclusions of the Sole Arbitrator [...] at first instance.*
- *For reasons of procedural efficiency, the AIU will not restate its case in full in this Answer. However, World Athletics confirms, incorporates and will rely on the submissions and evidence set out in its Request for Arbitration at first instance, as well as its subsequent submission dated 22 July 2019 [...].*
- *[The Athlete] is one of a number of athletes that feature on the so-called Moscow Washout Schedules [...], which Dr. Rodchenkov made available to Professor Richard McLaren in the course of the investigation into the Russian doping scheme.*
- *The [Moscow Washout Schedules] show the washout of prohibited substances (in particular, steroids) in a group of track and field athletes that were known to be doping in advance of the World Championships held in Moscow in the summer of 2013.*
- *The purpose of the [Moscow Washout Schedules] was to ensure that athletes would be clean by the time that they competed in the World Championships. Every single one of the athletes featuring on the [Moscow Washout Schedules] has prohibited substances recorded next to his/her name. Indeed, the vast majority of those athletes have already been found guilty of anti-doping rule violations, many of them in connection with violations that are entirely distinct from the [Moscow Washout Schedules].*
- *Amongst all of the these [sic] athletes convicted based on the [Moscow Washout Schedules], [the Athlete] is the one with the strongest evidence against him, as follows:*
 - *[The Athlete] has five samples on the [Moscow Washout Schedules], all of which are indicated as being positive for prohibited*

substances, in particular the exogenous anabolic steroid known as methasterone: [...]

- *One of the positive samples on the [Moscow Washout Schedules] (viz. one provided “out-of-competition”) is corroborated by a contemporaneous email (EDP0148), which equally notes that “methasterone average” was detected in [the Athlete’s] sample with code number 2810121 (collected on 31 July 2013), as follows: [...]*
- *[The Athlete] is one of only two athletes on the [Moscow Washout Schedules] whose in-competition sample at the Moscow World Championships tested positive for methasterone, notwithstanding the washout monitoring [...];*
- *There is clear forensic, analytical and witness evidence that this positive sample from the World Championships was swapped before being transported to the Lausanne laboratory (where it subsequently tested negative upon re-analysis). More specifically:*
 - *Prof. Champod reported evidence of multiple T marks on [the Athlete’s] sample, which provide “very strong support” for a tampering of the bottle. He reported the same multiple T marks on the sample of Ms. Bulgakova, but not on any other bottle that he analysed from the Moscow World Championships. The samples of [the Athlete] and Ms. Bulgakova were the only “World Championship” samples containing prohibited substances per the [Moscow Washout Schedules].*
 - *The urine analysed in [the Athlete’s] sample in Moscow and Lausanne had completely different specific gravity (i.e. 1.029 and 1.020 respectively).*
 - *During the testimony at first instance, Dr. Rodchenkov specifically recalled swapping [the Athlete’s] World Championships sample.*
- *Whereas the evidence at first instance was already damning, further corroborative evidence has now become available through the Moscow Laboratory Management Information System (“LIMS”). In particular, the LIMS-related information confirms that:*
 - *Unofficial samples of [the Athlete] were analysed in the Moscow laboratory around the dates of the unofficial samples in the [Moscow Washout Schedules] (despite [the Athlete] denying that he ever provided urine unofficially);*

- *Unofficial urine of [the Athlete] and other athlete that tested positive during the Moscow World Championships (viz. Ms. Bulgakova) was analysed shortly after the two World Championships samples were provided by the two athletes (i.e. to check it was clear before swapping), and;*
- *The positive results from the official samples recorded in the [Moscow Washout Schedules] are confirmed by the LIMS. More specifically, the results of the three last (official) samples on the [Moscow Washout Schedules] are as follows: [...]*
- *[The Athlete's] positive sample from the World Championships on 16 August 2013 (with code 2808680) was even subject to a confirmation procedure, which was also positive for methasterone: [...]*
- *WADA's forensic experts were able to uncover the raw data from this confirmation procedure and regenerate the analytical chromatogram. The chromatograms are clearly positive for the substances recorded in the [Moscow Washout Schedules] (for all of [the Athlete's] samples), i.e. methasterone.*
- *In summary, [the Athlete] (like all the other athletes on the [Moscow Washout Schedules]) manifestly used multiple prohibited substances in the lead-up to the Moscow World Championships. In addition, [the Athlete] was subject to a sophisticated protection scheme, involving washout testing to avoid detection at the event, as well as urine swapping when it ultimately transpired that his sample was positive. [The Sole Arbitrator] was absolutely correct to find that [the Athlete] had committed anti-doping rule violations and to impose a four-year period of ineligibility on him."*

40. On this basis, World Athletics submitted the following prayers for relief:

- "I. Mr. Shustov's appeal is dismissed.*
- II. Mr. Shustov shall bear the arbitration costs (if any).*
- III. Mr. Shustov shall be ordered to contribute to World Athletics' legal and other costs."*

C. The Second Respondent

41. Despite being duly invited to do so, RusAF did not participate in the present appeal arbitration proceedings. It did not file any written briefs or prayers for relief and did not attend the hearing.

V. JURISDICTION OF CAS

42. Article R47 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.”

43. Rule 42(2) of the 2016/2017 IAAF Rules provides as follows:

“The following is a non-exhaustive list of decisions regarding anti-doping rule violations and Consequences that may be appealed under these Rules: [...] the decision of a single CAS arbitrator in a case referred to CAS in accordance with Rule 38.3 [...].”

44. Article 42(5) of the 2016/2017 IAAF Rules provides as follows:

“In any case arising out of an International Competition or involving an International-Level Athlete or his Athlete Support Personnel, the following parties shall have the right to appeal to CAS:

- a) The Athlete or other Person who is the subject of the decision being appealed;”*

45. The Panel notes that it is not in dispute that the Athlete is an International-Level Athlete in the sense of the 2016/2017 IAAF Rules.
46. The jurisdiction of CAS is not contested by World Athletics or RusAF and is explicitly confirmed by World Athletics by signing the Order of Procedure.
47. Based on the provisions set out above, the Panel finds that CAS has jurisdiction to adjudicate and decide on the present dispute.

VI. ADMISSIBILITY OF THE APPEAL

48. Article R49 CAS Code determines the following:

“In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against.”

49. Rule 42(15) 2016/2017 IAAF Rules provides as follows:

“Unless stated otherwise in these Rules (or the Doping Review Board determines otherwise in cases where the IAAF is the prospective appellant), the appellant shall have forty-five (45) days in which to file his statement of appeal with CAS, such period starting from the day after the date or receipt of the decision to be appealed [...].”

50. World Athletics and RusAF do not object to the admissibility of the appeal, and because the Athlete’s appeal complies with all requirements of Article R48 CAS Code, including the payment of the CAS Court Office fee, it follows that the Athlete’s appeal is admissible.

VII. APPLICABLE LAW

51. Article R58 CAS Code provides the following:

“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 that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.”

52. Rule 47(2) IAAF Rules provides as follows:

“These Anti-Doping Rules shall be interpreted as an independent and autonomous text and not by reference to the existing law or statutes of the Signatories or Governments.”

53. Rule 42(22) IAAF Rules provides as follows:

“In all CAS appeals involving the IAAF, CAS and the CAS Panel shall be bound by the IAAF Constitution, Rules and Regulations (including the Anti-Doping Regulations). In the case of any conflict between the CAS rules currently in force and the IAAF Constitution, Rules and Regulations, the IAAF Constitution, Rules and Regulations shall take precedence.”

54. Rule 42(23) IAAF Rules provides as follows:

“In all CAS appeals involving the IAAF, the governing law shall be Monegasque law and the arbitrations shall be conducted in English, unless the parties agree otherwise.”

55. It is not in dispute between the Parties and the Panel also agrees that, given that World Athletics alleges that the Athlete committed ADRVs in the year 2013, the substantive rules applicable to the present proceedings are the 2012/2013 IAAF Rules, that procedural issues are governed by the 2016/2017 IAAF Rules and that, to the extent that the IAAF Rules do not deal with a relevant issue, Monegasque law applies.

VIII. MERITS

A. The Main Issues

56. World Athletics submits that the Athlete violated Rule 32.2(b) IAAF Rules, which provides as follows:

“Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method.

- (i) it is each Athlete’s personal duty to ensure that no Prohibited Substance enters his body. Accordingly, it is not necessary that intent, fault, negligence or knowing Use on the Athlete’s part be demonstrated in order to establish an anti-doping rule violation for Use of a Prohibited Substance or a Prohibited Method.*
- (ii) the success or failure of the Use or Attempted Use of a Prohibited Substance or Prohibited Method is not material. It is sufficient that the Prohibited Substance or Prohibited Method was Used, or Attempted to be Used, for an anti-doping rule violation to be committed.”*

57. As to the burden and standard of proof, Rule 33 IAAF Rules provides as follows:

- “1. The IAAF, the Member or other prosecuting authority shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether the IAAF, the Member or other prosecuting authority has established an anti-doping rule violation to the comfortable satisfaction of the relevant hearing panel, bearing in mind the seriousness of the allegation which 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.*
- 2. Where these Anti-Doping Rules place the burden of proof upon the Athlete or other Person alleged to have committed an anti-doping violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability, except as provided in Rules 40.4 (Specified Substances) and 40.6 (aggravating circumstances) where the Athlete must satisfy a higher burden of proof.*
- 3. Facts related to anti-doping rule violations may be established by any reliable means, including but not limited to admissions, evidence of third Persons, witness statements, expert reports, documentary evidence, conclusions drawn from longitudinal profiling and other analytical information. [...]”*

58. It is therefore for World Athletics to establish that the Athlete violated Rule 32.2(b) IAAF Rules and that it shall do so to the comfortable satisfaction of the Panel.

59. With respect to the applicable standard of “comfortable satisfaction”, the Panel noted the following overview set forth by a sole arbitrator in CAS 2018/O/5712 and adheres thereto:

“The Sole Arbitrator observes that CAS jurisprudence provides important guidance on the meaning of the application of “comfortable satisfaction” standard of proof. This standard of proof is well-known in CAS practice, as it has been the normal CAS standard in many anti-doping cases even prior to the WADA-code, cf. CAS 2009/A/1912, at para. 54.

The Sole Arbitrator aligns with the analysis of CAS jurisprudence by the Panel in CAS 2017/A/5379, at paras. 704-707:

- *The test of comfortable satisfaction “must take into account the circumstances of the case”, cf. CAS 2013/A/3258, which include “[t]he paramount importance of fighting corruption of any kind in sport and also considering the nature and restricted powers of the investigation authorities of the governing bodies of sport compared to national formal interrogation authorities”, cf. CAS 2009/A/1920 and CAS 2013/A/3258.*
- *The gravity of the particular alleged wrongdoing is relevant to the application of the standard in any given case, cf. CAS 2014/A/3526 in which the Panel stated that the comfortable satisfaction standard is “a kind of sliding scale, based on the allegations at stake: the more serious the allegation and its consequences, the higher certainty (level of proof) the Panel would require to be “comfortable satisfied”.*
- *However, the standard of proof is not a variable one. The standard remains constant, but inherent in within that immutable standard is a requirement that the more serious the allegation, the more cogent the supporting evidence must be in order for the allegation to be found proven, cf. CAS 2014/A/3650 in which the Panel stated that, “the standard of proof does not itself change depending on the seriousness of (pure disciplinary) charges. Rather the more serious the charge, the more cogent the evidence must be in support”.” (CAS 2018/O/5712, paras. 130-131)*

60. Rule 42.20 IAAF Rules provides as follows:

“All appeals before CAS (save as set out in Rule 42.21) shall take the form of a re-hearing de novo of the issues on appeal and the CAS Panel shall be able to substitute its decision for the decision of the relevant tribunal of the Member or the IAAF where it considers the decision of the relevant tribunal of the Member or the IAAF to be erroneous or procedurally unsound. The CAS Panel may in any case add to or increase the Consequences that were imposed in the contested decision.”

61. Accordingly, as in fact argued by the Athlete, the Panel is not bound by the reasoning and findings of the Sole Arbitrator in *CAS 2019/O/6156*. The present proceedings are a full *de novo* review of World Athletics' decision. By such full re-hearing, any complaints of the Athlete against the alleged failure of the Sole Arbitrator to meet the applicable standards for independence and impartiality, and any alleged loopholes and inconsistencies in the reasoning of the arbitral award issued in *CAS 2019/O/6156*, are cured. Indeed, the Athlete does not request that the arbitral award in *CAS 2019/A/6156* be set aside as a consequence of the above allegations, but merely requests the Panel to review the evidence on file afresh.

62. The main issues to be resolved by the Panel are the following:

1. Did the Athlete violate Rule 32.2(b) IAAF Rules?
 - a. The credibility of Dr Rodchenkov's testimony
 - b. The authenticity and reliability of the Moscow Washout Schedules
 - c. The authenticity and reliability of the email dated 2 August 2013 related to the official 31 July 2013 sample
 - d. Evidence of the official Sample 5 collected at the Moscow World Championships being swapped
 1. Marks and scratches
 2. Specific gravity
 3. Conclusion with respect to swapping of Sample 5
 - e. Overall conclusion with respect to the alleged violation of Rule 32.2(b) IAAF Rules
2. What are the consequences of a violation of Rule 32.2(b) IAAF Rules?

1. Did the Athlete violate Rule 32.2(b) IAAF Rules?

63. World Athletics summarises the evidence against the Athlete as follows:

- “(i) The Athlete features on the Moscow Washout Schedules, which comprised athletes who were known to be following a doping programme. Indeed, every single athlete on the Moscow Washout Schedules has Prohibited Substances indicated in respect of their samples.*
- (ii) The Moscow Washout Schedules indicate that the Athlete was using three prohibited substances, viz. methasterone, oxandrolone and methandienone in the lead-up to the Moscow World Championships. A total of five officials and unofficial samples are comprised in the schedules.*
- (iii) The use of methasterone is supported by a “SAVE” email for an official sample collected on 31 July 2013, which is reflected in the Moscow Washout Schedules. The sample was ultimately reported negative following the “SAVE” email.*

(iv) The Athlete's use of methasterone is further supported by the fact that the World Championship sample described as containing methasterone on the Moscow Washout Schedules was subject to Sample Swapping [...]."

64. The Athlete maintains that the only evidence relied upon by World Athletics are two documents made available by Dr Rodchenkov (i.e. the Moscow Washout Schedules and an email dated 2 August 2013 sent by Dr Rodchenkov to Mr Velikodniy of the Moscow Laboratory, who allegedly created the Moscow Washout Schedules, referring to a sample allegedly belonging to the Athlete), and a witness statement by the same Dr Rodchenkov.
65. The Athlete maintains that Dr Rodchenkov has no first-hand knowledge whatsoever of the Athlete or his alleged implication in the purported doping scheme, which, according to the Athlete, did not exist in fact. The Athlete also submits that Dr Rodchenkov is also not a truthful or credible witness; questions the authenticity of the Moscow Washout Schedules and the email dated 2 August 2013; and submits that World Athletics has failed to adduce any evidence that meets forensic requirements to confirm the authenticity of the documents concerned.
66. The Panel will primarily assess the credibility of Dr Rodchenkov, the authenticity and reliability of the Moscow Washout Schedules and the email dated 2 August 2013, before turning to the alleged sample swapping.

a. The credibility of Dr Rodchenkov's testimony

67. As indicated above, the Athlete questions the reliability of Dr Rodchenkov's witness evidence.
68. Dr Rodchenkov stated, *inter alia*, the following in his witness statement:

"As a preliminary matter, I am aware that Mr. Shustov benefitted from the Program and was engaged in doping over the course of years. I know Mr. Shustov's coach – Mr. Evgeny Zagorulko – personally and I know that he used doping practices for decades throughout his career; in particular, he followed the doping protocols and directives of Dr. Sergey Portugalov. Indeed, other high jumpers coached by Mr. Zagorulko such as Elena Slesarenko and Anna Chicherova – both are Olympic Champions – have been found guilty of anti-doping rule violations."

69. As to the 2013 Moscow World Championships, Dr Rodchenkov stated the following in his witness statement, as later confirmed during the hearing:

"I have reviewed the documents at EDP0028 to EDP0038 [...] and can confirm that these are the Moscow Washout Tables that Dr. Sobolevsky created in the lead-up to the Moscow World Championships."

The Moscow Washout Schedules include five samples of [the Athlete] dated 8, 18, 25 and 31 July, and 17 August 2013. The first two July samples are unofficial samples whereas the latter three samples are official samples provided in Berekits; the 25 July and 17 August samples were provided on the occasion of the Russian National Championships and IAAF World Championships respectively whereas the 31 July samples was an out-of-competition sample.

All five samples contain methasterone (long-term metabolites). The two unofficial samples also contained methandrosterone (also known as methandienone). The reference to “NW” stands for “Night Watch”, which designates the long-term metabolite discovered by the Cologne laboratory in 2006.”

70. The Panel finds Dr Rodchenkov’s evidence generally credible insofar as he testified about the Russian state-sponsored doping program, about the disappearing positives, the washout testing and the sample swapping. Although Dr Rodchenkov provides little detail of his accusations specifically related to the Athlete, he does indicate that he recalls swapping a “dirty” sample of the Athlete during the 2013 Moscow World Championships. The Panel considers that this is indeed an event that one might be expected to remember, even after so much time has passed, particularly because Dr Rodchenkov recalls there were only two Russian athletes (the Athlete and Ms Bulgakova) who tested positive during the 2013 Moscow World Championships and whose samples had to be “saved” to avoid detection. The Panel considers that this would have caused some particular stress to Dr Rodchenkov, given that he was actively engaged in, and held accountable for, protecting athletes during a major international competition.
71. This is not to say that Dr Rodchenkov’s evidence is sufficient in and of itself to find the Athlete guilty of violating Rule 32.2(b) IAAF Rules. The testimony of Dr Rodchenkov is too general to allow such a conclusion, also considering Dr Rodchenkov’s prolonged leading role in Russia’s state-sponsored doping program and the illegal activities undertaken in this respect, which diminishes the overall credibility of his testimony. Rather, the evidence provided must be assessed in the context of additional evidence, within which the Panel will assess the evidence’s overall consistency and credibility.
72. There is no reason to assume that the Moscow Washout Schedules provided by Dr Rodchenkov are not reliable for the sole reason that they were made available to Prof. McLaren by Dr Rodchenkov. To the contrary, the Panel finds it logical and convincing that Dr Rodchenkov, as the former Director of the Moscow Anti-Doping Centre, was deeply involved in organising the state-sponsored doping program and in this capacity had access to the Moscow Washout Schedules and was privy to information related thereto.
73. The question is rather whether the Moscow Washout Schedules themselves are reliable evidence that can be linked to the Athlete.

b. The authenticity and reliability of the Moscow Washout Schedules

74. The Moscow Washout Schedules contain the following five references to the Athlete (hereinafter occasionally referred to as “Sample 1 – Sample 5”):

<i>Shustov 08/07</i>		<i>T/E = 1.8, methasterone long-term metabolite 900 000, traces of oxandrolone, !!methandrostenolone 80 000 NW !!</i>
<i>Shustov 18/07</i>		<i>T/E = 1.3, prohormones? Methasterone long-term metabolite 800 000, methandrostenolone 25 000 NW</i>
<i>Shustov 25/07</i>	<i>Russia</i>	<i>Methasterone long-term metabolite 50 000</i>
<i>Shustov 31/07</i>	<i>out-of-competition</i>	<i>Methasterone long-term metabolite 90 000</i>
<i>Shustov 17/08</i>	<i>World Championship (WC)</i>	<i>Methasterone long-term metabolite 60 000</i>

75. According to World Athletics, the Moscow Washout Schedules show the washout of prohibited substances (in particular, steroids) in a group of track and field athletes who were known to be doping in advance of the World Championships held in Moscow in the summer of 2013. World Athletics submits that the purpose of the Moscow Washout Schedules was to ensure that athletes would be “clean” by the time that they competed in the World Championships. Every single one of the athletes featuring on the Moscow Washout Schedules has prohibited substances recorded next to his/her name. Indeed, the vast majority of those athletes have already been found guilty of anti-doping rule violations, many of them in connection with violations that are entirely distinct from the Moscow Washout Schedules.
76. All five of Mr Shustov’s samples in the Moscow Washout Schedules are indicated as being positive for prohibited substances, in particular the exogenous anabolic steroid known as methasterone.
77. During the first instance proceedings, the IAAF relied on an expert report dated 31 October 2018 of Mr Sheldon (the “Sheldon Report”). This report largely relates to the emails investigated, but it contains the following conclusion with respect to the Moscow Washout Schedules relevant for present purposes:

“Conclusions – emails

Having completed the detailed analysis of the emails presented, I can conclude that all the messages are authentic and have been sent and received

between Gmail, Yandex, minstm.gov.ru and Rusada accounts and there are no signs of changes to the Internet Transport headers.

I can further conclude that all the mails were created between the 19th July 2012 and the 30th April 2015 and that four of the emails contain attachments.

Conclusions – Documents

I completed a detailed analysis of the documents presented and the documents identified as attachments to the previously examined emails. I identified a number of duplicate documents based on their MD5 HASH value. I summarise these documents below.

Files attached to emails

[...]

I noted a number of files that all have the same creation date and time but have had content added or removed at different dates. These files appear to be copies of one original, the earliest version of the file is EDP0035 and the latest is EDP0032. I list these files below in the order they were made.

[...]”

78. The Athlete contends that the Moscow Washout Schedules contain a number of discrepancies which cast doubt as to the veracity/reliability of the information they allegedly contain.
79. In this respect, the Athlete relies on an expert report prepared by Mr Rundt dated 17 August 2021 (the “ITCS Report”), who was engaged by the Athlete to “*assess whether the processing of the documents was conducted in accordance with forensic principles and forensic best practices and whether any conclusions can be made as to their authenticity and date of creation*”. In the ITCS Report, Mr Rundt analyses the Sheldon Report. Mr Rundt submits that “*[w]ith this report, I demonstrate that Mr Sheldon’s conclusions regarding the authenticity and the dates of creation of the EDP documents and emails were mostly based on wrong assumptions and are therefore inaccurate and misleading*”.
80. The ITCS Report contains the following executive summary:

“We understand that the EDP documents were extracted from Dr. Grigory Rodchenkov’s hard-drive and made available by him to Mr McLaren. We further understand that these EDP documents constitute the basis for the findings in the McLaren Report and that these documents are those relied upon by the IAAF against the athletes mentioned above.

Our analysis shows that the EDP digital evidence provided to us does not meet the standard set out by the forensic best practices established within the IT forensic community for several reasons further identified in this report.

To assess the authenticity and creation dates of any exported evidence and trace the evidence back to the original evidence, it is necessary to provide a strong and detailed documentation and a complete and gapless chain of custody. This is the most important forensic principle that forensic experts need to adhere to.

Regarding the EDP documents, due to the lack of hash value lists and proper documentation on the forensic preservation process, it is not possible to trace the evidence back to the original document. Consequently, it is not possible to establish the authenticity and the creation dates of the documents.

In fact creation dates can easily be modified. Internal metadata timestamps of office documents can be forged very easily without leaving any forensic traces. Forging these timestamps can be as easy as setting back the computers system clock to the date and time that you want the document to appear to be created and modified on. This could also be easily automated using so called "scripts". In the present report, I will also discuss the example of a 22 line Python sample script where it can be seen how easy it would be to create forged excel documents that are indistinguishable from genuine Excel documents by their timestamps. Therefore, neither Mr Sheldon nor I can tell whether any of the documents provided to us are genuine or if they have been manipulated by only looking at the internal metadata and/or the filesystem timestamps.

The documents and emails we have examined raise doubt about the origins of this evidence. All 11 email messages contain either headers that state the mail was delivered to Tim Sobolevsky's inbox or the "received" headers show that the last hop was always a Google mail server. Had they been extracted from the mailbox of Dr. Grigory Rodchenkov at Yandex as claimed, they would show multiple "received" headers including the received headers of Yandex.ru, where Dr. Grigory Rodchenkov's mailbox is located. It is therefore unclear how those messages came into the possession of Dr. Grigory Rodchenkov. This issue has not been addressed and explained to us.

This information is crucial for the assessment of the authenticity of those emails. Since emails can easily be forged, the emails' source and the documentation of the forensic evidence preservation process regarding these emails are essential for their evidentiary value."

81. The Athlete further points out that EDP0028, on the one hand, and EDP0029 and EDP0032 (all part of the Moscow Washout Schedules), on the other hand, may appear identical at first glance (Sample 5 in the table at para. 73 above). However, the purported level of methasterone attributed to Sample 5 differs between the various EDP documents

mentioned above. The Athlete maintains that there is no conceivable reason for such inconsistencies, other than that the very content of these documents is utterly unreliable or in fact untrue. Saving a document as a new document, renaming a document, etc., as World Athletics alleges was done with the original files, would never result in such inexplicable modifications of content.

82. The Panel finds that the mere fact that EDP0028, EDP0029 and EDP0032 differ with respect to one specific figure in respect of the Athlete does not of itself make the Moscow Washout Schedules unreliable. Whether the methasterone long-term metabolite was 95,000 (as in EDP0028) or 60,000 (as in EDP0029 and EDP0032), the fact remains that long-term metabolites of methasterone were recorded to have been detected in a sample ascribed to the Athlete. The salient fact is that metabolites were found.
83. The Panel finds that there may have been all sorts of reasons explaining this specific inconsistency in the Moscow Washout Schedules. For example, someone with access to the Moscow Washout Schedules may have corrected a figure considered to be mistaken based on a retest or other information.
84. The inconsistency with respect to the dates, i.e. Sample 4 is dated 25 July 2013 in the Moscow Washout Schedules, while the doping control form refers to 24 July 2013 and Sample 5 is dated 17 August 2013 in the Moscow Washout Schedules, while the doping control form refers to 15 August 2013, is considered insignificant by the Panel. The difference may simply be explicable by distinguishing the date of submitting to sample collection from the date of testing in the Moscow Laboratory.
85. The Panel finds that the Moscow Washout Schedules are generally reliable and that there is no reason to believe that the data comprised therein was altered after the extraction from Dr. Rodchenkov's hard-drive. More specifically, the Moscow Washout Schedules fit into the systemic doping practices in Russian sport uncovered and further investigated in the McLaren Reports, which ultimately resulted in the following sanctions being imposed that were not appealed by the Russian Olympic Committee:

"On 5 December 2017, based on the findings of a commission mandated by the IOC to investigate the matters that were the subject of the McLaren Reports (the "Schmid Commission"), the IOC Executive Board suspended the ROC and its President, barred all Ministry of Sport officials from the 2018 PyeongChang Olympic Games and fined the ROC USD 15 million. It also set up a mechanism for Russian athletes who could demonstrate they were not tainted by the doping schemes to participate in the 2018 PyeongChang Olympic Games as "Olympic Athletes from Russia". The ROC did not appeal against or otherwise challenge that decision." (CAS 2020/O/6689, para. 45)
86. The Panel has no doubt that a state-sponsored doping program took place in Russia.
87. As to the alleged unreliability of the Moscow Washout Schedules, the Athlete also relies on an expert report of Prof. Michael R. Graham, who was engaged by the Athlete in the

first instance proceedings to “assess whether the quantities of the prohibited Anabolic-Androgenic Steroids (“AAS”) appearing on the Moscow Washout Schedules could be credible from a scientific perspective and, in particular, whether those substances could wash out at the rate indicated in those schedules”. Prof. Graham reached the following conclusions in the executive summary of his report dated 13 September 2019 (the “Graham Report”):

“There is no evidence as to how the unofficial tests which have led to the information in the Moscow Washout Schedules were allegedly conducted and how the substances were allegedly detected. In other words, the underlying data is missing and I cannot comment on whether these alleged tests were conducted in a sound way, from a scientific perspective. I can however opine on whether the substances appearing on the Moscow Washout Schedules could, as such, be credible from a scientific perspective and, in particular, whether those substances could wash out at the rate indicated in those schedules – assuming that the underlying tests were indeed carried out in a scientifically sound way, for which there is no evidence.

In my professional opinion, the Moscow Washout Schedules contain information which is not scientifically credible. The concentrations of methasterone and methandrostendiolone indicated in the Schedule although scientifically credible in isolation could not co-exist with such low T/E ratios. [The Athlete] is said to have undergone a series of “unofficial” doping tests on 8 July 2013 and 18 July 2013, and a series of “official” doping tests on 24 July 2013 (sample 2808086), 31 July 2013 (sample 2810121) and 15 August 2013 (sample 2808680). Many elements of the so-called “Moscow Washout Schedules” that I understand have been provided by Dr Rodchenkov, demonstrate scientifically unpredicted concentrations of xenobiotic AAS, which would fall below the level required for scientific rigor as further explained below.”

88. The Graham Report was subsequently addressed by Professor Christiane Ayotte in a report dated 5 July 2019 (the “Ayotte Report”). World Athletics summarises the findings in the Ayotte Report as follows:

“As a preliminary matter, Professor Ayotte pointed out that the indicated abundances in the Moscow Washout Schedules (e.g. 50,000) can only be regarded as imprecise approximations of concentration; in any event, as we do not have the specific gravity measurement for any of the unofficial samples (which would directly affect the true concentration of the substances in the urine), it was wrong to draw rigid conclusions as to the scientific plausibility of an excretion pattern. This is a fortiori the case where we have no data as to the doping regimen, timing, dose, mode of administration, etc.”

89. The Panel acknowledges that there is no evidence that the unofficial samples of the Athlete listed in the Moscow Washout Schedules were taken in a sound way. However, the Panel finds that, if the Moscow Washout Schedules served any meaningful purpose,

the data must have been relatively reliable, because otherwise no insight would be provided into the washout of prohibited substances from the relevant athletes. Although certainly not as reliable as the results of testing conducted by WADA-accredited laboratories for official testing purposes, the Panel finds that the data is sufficiently reliable, particularly also given the fact that the data contained in the Moscow Washout Schedules was never intended to become publicly available.

90. On a more detailed note as to the scientific credibility of the information contained in the Moscow Washout Schedules, according to Prof. Graham, “[t]he T/E ratio refers to the ratio of testosterone to epitestosterone (is an endogenous steroid and an epimer of testosterone that is normally present in amounts roughly equal to testosterone in adult males)”.

91. As to the pharmacokinetics, Prof. Graham, *inter alia*, states as follows in the Graham Report:

“Methasterone cannot washout from 90 ng/ml (900,000 units) on 08.07.2013 (with a T/E of “1,8”) to 80 ng/ml (800,000 units) on 18.07.2013 (10 days) (with a T/E of “1,3”). Moreover, the T/E could not have decreased in the way it allegedly has between these two dates when the levels of methasterone stayed similar and when there is now in addition the alleged presence of “prohormones” which should have led to a further increase in T/E and not a decrease as is allegedly the case here. The T/E levels on 08.07.2013 and on 18.07.2013 would have been extremely high, and on the balance of probabilities, with such a cocktail of AAS in the system, much higher than 4, and would have remained elevated for the Moscow Championships [...]. Methasterone cannot then washout from 80 ng/ml (800,000 unites) on 18.07.2013 to 5 ng/ml (50,000 units) on 25.07.2013 (7 days), and then elevate again to 9/9.5 ng/ml (90,000/95,000 units) on 2 separate dates on 31.07.2013 and 17.08.2013 three weeks (17 days) apart, with a urinary concentration of Methasterone of 9.5 ng/ml (95,000 units) on 17.08.2013. The washout rate does not show an exponential pharmacokinetic decay and is incompatible with an elimination (washout) program.” (emphasis in original)

92. This particular contention is addressed by Prof. Ayotte in the Ayotte Report. Which World Athletics summarised as follows:

“Professor Ayotte rejects wholesale Professor Graham’s main objection i.e. that the steroids should have led to higher T/E ratios. Professor Ayotte explains that there is no material increase in T/E values associated with the use of synthetic steroids, not least as such steroids do not metabolise into testosterone. Using real-life examples, Professor Ayotte demonstrates that the Athlete’s T/E values are consistent with results that her laboratory has reported where synthetic steroids were detected and that the variation in the Athlete’s T/E values in the Moscow Washout Schedules are within the scope of normal biology and analytical variation.

93. Furthermore, the Ayotte Report itself provides, *inter alia*, the following:

First, the two T/E values at 1.8 and 1.3, measured from the initial testing procedures, are just showing normal biological and analytical variation, or should I say, the absence of variation with a mean value around 1.5. Deviations from 0.2 to 0.3 from the mean are perfectly normal; totally flat values are not expected, and would raise suspicion of manipulation. A “normal” profile of T/E values for a random male athlete over several years is presented in table 1 below.

[...]

Second, there is no drastic increase of T/E values associated with synthetic AAS. It is difficult to understand why the excretion of testosterone should be augmented by a synthetic anabolic androgenic steroid that is not metabolised into testosterone.

Multiple examples contradict his assertions. I have extracted randomly and rapidly four cases from our database that are presented in the following table 2, showing totally normal and low T/E values in the presence of several AAS, including methasterone and methandrostenolone (under its other name of methandienone in the table).

[...]

These data prove that T/E values are not affected as affirmed by Professor Graham by synthetic AAS (unless testosterone or one of its precursor steroids was used) and consequently, he cannot conclude as he did in paragraph 44. “in other words, the alleged information in the Moscow Washout Schedule concerning Mr Shustov regarding T/E ratios cannot, from a scientific perspective, be true”.

94. The Panel considers the explanation of Prof. Ayotte credible in demonstrating that the T/E ratio displayed with respect to the Athlete’s samples in the Moscow Washout Schedules is certainly not impossible and that, indeed, it falls within the range of what one would be expected to see.
95. The Athlete therefore has failed to demonstrate that the quantities of the prohibited AAS appearing on the Moscow Washout Schedules are not scientifically credible, as alleged by Prof. Graham.
96. The Panel feels comforted in this conclusion by the fact that no information is available as how and when the prohibited AAS was administered by the Athlete, which may obviously have a large impact on the quantity of the substances appearing on the Moscow Washout Schedules.

97. This is not to say that because Prof. Graham's criticism is dismissed, the information is necessarily authentic under scientific standards. Rather, it simply means that while having investigated the authenticity of the Moscow Washout Schedules, no particular problems with the authenticity or pharmacokinetics were found. While the burden to prove that the evidence presented is reliable lies with World Athletics, the Athlete has not succeeded in discrediting its veracity.
98. Furthermore, in the present appeal arbitration proceedings, World Athletics maintains that further corroborative evidence became available through the Moscow Laboratory Management Information System ("LIMS") albeit only after the award in *CAS 2019/O/6156* was issued. World Athletics submits the following in this respect:

"In particular, the LIMS-related information confirms that:

"(i) Unofficial samples of [the Athlete] were analysed in the Moscow laboratory around the dates of the unofficial samples in the [Moscow Washout Schedules] (despite [the Athlete] denying that he ever provided urine unofficially);

(ii) Unofficial urine of [the Athlete] and the other athlete that tested positive during the Moscow World Championships (viz. Ms. Bulgakova) was analysed shortly after the two World Championships samples were provided by the two athletes (i.e. to check it was clean before swapping), and;

(iii) The positive results from the official samples recorded in the [Moscow Washout Schedules] are confirmed by the LIMS. More specifically, the results of the three last (official) samples on the MWS are as follows:

id	code_int	code_ext	id_substance	id_met	scr_conc	DT_scr	scrin	id_user_scr	do
2084	11791	2808086	methasterone	18-nor-17b-hydroxymethyl-2a,17a-dimethyl-5a-androst-13-en-3-one	5	7.29.2013 11:55:38	4	grigory.dudko	0
2109	11791	2808086	chorionic gonadotrophin (CG)	#N/A	5.054	7.30.2013 12:19:59	8	nadia.savelieva	1
2149	12160	2810121	methasterone	18-nor-17b-hydroxymethyl-2a,17a-dimethyl-5a-androst-13-en-3-one	9	8.2.2013 12:35:27	4	tim.sobolevsky	0
2461	13075	2808680	methasterone	18-nor-17b-hydroxymethyl-2a,17a-dimethyl-5a-androst-13-en-3-one	4	8.19.2013 11:30:43	4	grigory.dudko	0

[The Athlete's] positive sample from the World Championships on 16 August 2013 (with code 2808680) was even subject to a confirmation procedure, which was also positive for methasterone:

id	id_found	code_ext	number_aliq	vol_aliq	proc	id_user_start	id_laborant	DT_start	AB	if_found	conf_conc	ATF	SD	DT_end
1574		2461	2808680	2	3 4	grigory.dudko	grigory.dudko	8.19.2013 14:43:35	0	1	3	1	0	8.21.2013 8:32:09

WADA's forensic experts were able to uncover the raw data from this confirmation procedure and regenerate the analytical chromatogram. The chromatograms are clearly positive for the substance recorded in the [Moscow Washout Schedules] (for all of [the Athlete's] samples), i.e. methasterone."

99. The Panel finds that the LIMS data provide important corroboration for the Moscow Washout Schedules. More specifically, raw data and PDF files referencing the name of the Athlete were uncovered in the LIMS data. Two PDF files were uploaded to the LIMS server on 10 and 20 July 2013, which coincides with the unofficial samples allegedly collected on 8 and 18 July 2013 that are referred to in the Moscow Washout Schedules.
100. According to the expert report prepared by Mr Aaron Richard Walker and Dr Julian Broséus from WADA's Intelligence and Investigations Department (the "WADA I&I Report"), the PDF files and the raw data could not initially be recovered from the official LIMS data because they had been irretrievably deleted from within the Moscow Laboratory on an unknown date by an unknown person.
101. The Panel notes that it is a fact that PDF files referencing the Athlete's name were each uploaded two days after unofficial samples were allegedly collected and that such PDF files were subsequently deleted when the LIMS data was handed over to WADA. This happened while a laboratory performing sample analysis should not know the identity of the athlete who provided the sample that was the subject of analysis. The Panel finds that this supports the conclusion that incriminating information in the LIMS data related to the Athlete was purposely concealed from the authorities, and that this enhances the likelihood that the information contained in the Moscow Washout Schedules is authentic and reliable.
102. Also, World Athletics' argument that the positive test results of the Athlete's three official samples are confirmed by the LIMS data is considered convincing by the Panel. Although World Athletics admits that the LIMS data provided to WADA on 17 January 2019 does not confirm the positive tests of the Athlete's samples (because such evidence had allegedly been deleted), it is confirmed in the LIMS data provided to WADA by a "whistle-blower" on 30 October 2017.
103. The Panel finds that, although the authenticity of the LIMS data provided to WADA by a "whistle-blower" on 30 October 2017 is not fully confirmed, it does constitute another string of evidence that corroborates the authenticity of the Moscow Washout Schedules, because it indicates that the three official samples of the Athlete dated 25 and 31 July and 17 August 2013 tested positive for methasterone.
104. Since the LIMS data provided to WADA on 30 October 2017 was not provided to WADA by Dr Rodchenkov, it is evidence derived from a different source, and as such it independently corroborates the reliability of the Moscow Washout Schedules and the testimony of Dr Rodchenkov.
105. Besides the inconsistency between EDP0028, EDP0029 and EDP0032, the Panel finds that there is no specific reason to believe that the Moscow Washout Schedules are unreliable.

c. The authenticity and reliability of the email dated 2 August 2013 related to the official 31 July 2013 sample

106. World Athletics further relies on an email dated 2 August 2013, allegedly sent by Dr Rodchenkov to Mr Aleksey Velikodny, which provides, *inter alia*, as follows:

“Dear Aleksey,

these are some kind of walking-by-themselves wild ones!..

[...]

2. methasterone average

12160	2810121	m	Kuliako [...]	2013-07-31	Training camp 11800	athletics	RU Novogorosc
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[...]

all of these are urgent for the debriefing in the evening

thanks

GMR”

107. According to World Athletics, this email confirms that Sample 4 had been found to contain “*methasterone average*”, while Sample 4 was reported as negative in ADAMS.
108. The reference number “2810121” purportedly refers to the official out-of-competition sample collected from the Athlete on 31 July 2013.
109. The Athlete maintains that the only official (and reliable) data in respect of a doping test (and the actual content of Sample 4) is to be found in the ADAMS system, which states that Sample 4 was clean. According to the Athlete, World Athletics adduced no evidence that could challenge the reliability of the information contained in ADAMS. The Athlete also submits that the only link between the Athlete and the email is the sample number, but that he cannot ascertain the origin and authenticity of the email. The Athlete argues that, on any view, the email cannot be treated as evidence that the Athlete was part of, or knew about, any doping scheme. Finally, the Athlete maintains that the unreliability of the email is further evidenced by the fact that, in his witness statement, Dr Rodchenkov never confirms (or even mentions) sending this email.
110. The Panel already addressed the authenticity of the Moscow Washout Schedules above, with reference to the Sheldon and ITCS Reports. However, such reports address not only the Moscow Washout Schedules, but also the authenticity of the emails exchanged, including the email dated 2 August 2013.
111. In this respect, the Athlete maintains that World Athletics failed to discharge its burden of proving the authenticity of these documents, because it failed to adduce any documents that meet the forensic requirements enumerated by Dr Rundt in the ITCS

Report: he was not provided with any forensic image, any hash values for the EDP documents relating to the original evidence, or any documentation regarding the evidence preservation process that would establish the chain of custody for the key documents relied upon against him. The Athlete submits that the analysis of timestamps is important for the purposes of assessing the creation and modification dates of evidentiary documentation. Timestamps are external metadata which describe the creation, modification and access times of a file. However, according to the Athlete, as specified by Mr Rundt, external metadata can easily be edited or removed unwillingly or intentionally with only a very rudimentary knowledge of IT. Accordingly, external metadata is not considered to be sufficient to confirm the origin of a file without the support of a thorough investigation. Also, the creation of a software or a “script” to automatically backdate multiple documents – and therefore modify the corresponding internal metadata without leaving a trace of such modification – is extremely easy.

112. The Panel does not accept the contention that it would be extremely easy to create a software or a “script” to automatically backdate documents. This obviously requires considerable knowledge of IT. More importantly, it also requires a desire to manipulate the data for which a motive would be required that is absent here. In any event, even if the email dated 2 August 2013 was from a later date and was backdated to 2 August 2013, this would not have any bearing on the Panel’s conclusion. The information contained in the email dated 2 August 2013 shows that it was prepared after 31 July 2013, because Sample 4 could not have been examined before such date. No irregularities or inconsistencies in the underlying metadata were detected.
113. Also, the Panel finds that World Athletics cannot be reproached for the fact that the emails concerned and the Moscow Washout Schedules do not comply with forensic requirements, because the Panel finds that this is not the standard to be applied. The Panel finds that the Athlete failed to establish that the emails and the Moscow Washout Schedules are not authentic, while they bear strong indications of being authentic in the Panel’s view, also because parts thereof are confirmed by the LIMS data, and while the Panel has no reason to see why they would have been manipulated. The Panel finds that this suffices to consider the evidence presented as reliable.
114. The Panel also accepts that the reference number “2810121” in the email dated 2 August 2013 relates to the Athlete. First of all, the Panel understands that such reference numbers are unique. Further, contrary to the Athlete’s arguments, there are further indications establishing a link between the email dated 2 August 2013 with the Athlete, besides the afore-mentioned reference number. Indeed, the information with respect to “methasterone average” being detected in sample “2810121”, as referred to in the email dated 2 August 2013, is also confirmed by the information contained with respect to the Athlete in the Moscow Washout Schedules, insofar it contains the following information: “*Methasterone long-term metabolite 90 000*”. Further, the email dated 2 August 2013 establishes a link between sample “2810121” and 31 July 2013, which information is also confirmed by the Moscow Washout Schedules. Accordingly, there is not one, but three links between the information contained in the email dated 2 August 2013 and the Moscow Washout Schedules.

115. On the basis of this evidence, the Panel finds that the information concerning the Athlete in the email dated 2 August 2013 is a further string of evidence linking the Athlete to the use of prohibited substances.

d. Evidence of the official Sample 5 collected at the Moscow World Championships being swapped

116. World Athletics maintains that, when it was detected by the Moscow laboratory that Sample 5, collected during the Moscow World Championships tested positive for methasterone, this sample was opened with a metallic tool and the “dirty” content of the sample was swapped with “clean” content to avoid detection of prohibited substances by the Lausanne laboratory, the laboratory assigned to officially test Sample 5.
117. In this respect, the Athlete maintains that there is no evidence of sample swapping and that Sample 5 was clean, as also confirmed by the retesting of this sample performed by the Lausanne laboratory in 2017.
118. World Athletics confirms that Sample 5 officially tested negative at the time and that also the retest was negative. However, already in the first instance proceedings before CAS, World Athletics maintained that these negative results are the consequence of sample swapping and submitted the following in this respect:

“(i) First, Dr. Rodchenkov has confirmed that the Sample Swapping Methodology was in place during the Moscow World Championships. More importantly, he specifically recalls swapping the Athlete’s World Championship sample before it was transported to the Lausanne Laboratory on 26 August 2013 [...]. Indeed, Dr. Rodchenkov informed [Prof. McLaren] of this fact before any proceedings were initiated against the Athlete [...].

*(ii) Second, the B bottle of the World Championship sample was analysed for scratches and marks by Professor Champod, who observed multiple T marks, which he describes as “typical of those observed consecutive to a tampering activity”. In his expert opinion, “the nature of the marks, their shape and compatibility with the working of tools at multiple locations thus provide **very strong support** for the proposition that the bottle has been tampered with as alleged compared to the proposition of normal use” [...].*

(iii) Third, both of the samples from the 2013 World Championships that are indicated on the Moscow Washout Schedules to have contained prohibited substances – belonging to [the Athlete] and Ms. Bulgakova respectively – were found to bear multiple T marks indicative of a forced opening of the B bottle. The other World Championship sample from the Moscow Washout Schedules – which belonged to Ms. Shkolina and was indicated to be clean – as well as a number of additional negative quality controls bore no such T marks.

(iv) Fourth, the specific gravity of the urine recorded by the Moscow Laboratory at 1.029 [...]. The specific gravity of the urine was measured once again by the Lausanne WADA-accredited Laboratory in 2018 at a level of 1.020 [...]. Such a change cannot be explained, save by a urine swapping.”

1. Marks and scratches

119. In the first instance proceedings before CAS, the IAAF relied on a report dated 27 July 2017 prepared by Prof. Champod regarding the B bottle of Sample 5 that it filed together with its Request for Arbitration in CAS 2019/O/6156 (the “First Champod Report”). Prof Champod concludes with respect to the T marks that *“the nature of the marks, their shape and compatibility with the working of tools at multiple locations allow us to conclude that these findings provide **very strong support** for the view that the bottle has been tampered with as alleged compared its normal use. By very strong support, we mean that, in our opinion, the observations are between 1000 and 10’000 times more likely if they are consecutive to tampering rather than a normal closing of the bottle.”* (emphasis in original). The First Champod Report was supplemented by another report from Prof. Champod on 30 November 2017.
120. In response to the First Champod Report relied upon by the IAAF in the first instance proceedings before CAS, the Athlete maintained that the methodology followed by Prof. Champod in his report as well as his findings are unable to prove that there was any tampering with Sample 5 (let alone that the sample’s content was swapped). The Athlete argued that Prof Champod’s methodology had already been discredited in an earlier CAS award (CAS 2017/A/5379). The Athlete relied on a report dated 23 May 2019, prepared by Mr Geoff Arnold, a forensic expert (the “First Arnold Report”), which refutes the methodology and findings of the First Champod Report. The executive summary of the First Arnold Report, *inter alia*, provides as follows:
- “The recorded evidence indicates that the initial instructions to the Champod Team are both biased and seek a low level of proof.*
- The recorded evidence indicates that the methodology devised by the Champod Team does not answer the question posed.*
- The recorded evidence indicates that there is little evidence of consideration and testing of alternative explanations (hypothesis) for the questioned marks. This leads me to believe that the reported procedures do not conform to the scientific method.”*
121. Still in the first instance proceedings before CAS, the IAAF submitted a Second Champod Report dated 22 July 2019 in response to the First Arnold Report. As summarised by the IAAF, the Second Champod Report addresses the following six principal criticisms of his methodology:

“First, Mr. Arnold criticised the scientific method used by Prof. Champod and his team. Prof. Champod explains that, contrary to Mr. Arnold’s allegations, the methodology was “a sound basis for the examination of questioned bottles”. In particular, it was based on the observation of a wide collection of marks, involved multiple steps, including an “audit by independent examiners from the Swedish National Forensic Centre (NFC)”, and involved a system of single- and double-blind control samples (i.e. samples which had no reason to be tampered with), the observation of which “allowed to confirm that [the] methodology [was] sound” [...].

Second, Mr. Arnold claimed that Prof. Champod failed to consider all alternative hypotheses. This is clearly wrong. As set out by Prof. Champod, all reasonable alternatives have been investigated. It was precisely the reason why the system of single- and double-blind control samples was put in place, “with a view to detecting any deviating result that could have led to revise the hypotheses investigated” [...]. Indeed, “[i]f any marks incompatible with the usage marks (called U marks) had been detected, we would have taken this into account and investigated alternative propositions as to the source of the marks. But such was not the case” [...].

Third, Mr. Arnold stated that Prof. Champod and his team had not used fully closed bottles, i.e. with 15+ clicks, in their experiments in order to “facilitate the results that they anticipated”. Prof. Champod explains that the reason why they had limited their experiments to bottles that were not fully closed is that, necessarily, the “tighter the bottle is closed, the more marks metal tools will leave when attempting to open it” [...]. Therefore, they had properly focused on the bottles, which had the highest probability of having less T marks and were as a result more relevant to the experiment. In addition, Prof. Champod demonstrates that he has been able to open a fully closed bottle (i.e. with 15+ clicks), which leaves recognizable marks.

Fourth, Mr. Arnold complained about the size of the “database used for empirical testing”. On the contrary, Prof. Champod is adamant that the “sample size (105 bottles for a total 1260 plastic cap faces) is large enough to gain a comprehensive understanding of the marks left on the bottles following their regular closure or re-opening with tools” [...].

Fifth, Mr. Arnold considered that there should have been a separate category for “inconclusive” marks. As set out by Prof. Champod, such a category would have been redundant. Indeed, all “inconclusive” marks was “assigned be default to the U mark category, considered as being consecutive to the usage of the bottle” following “a conservative approach” [...].

Sixth, Mr. Arnold criticised the fact that Prof. Champod and his team had not been able to identify the exact tools used in Russia to tamper with the bottles. Prof. Champod responds that this was not their mandate. Their mandate “was to make observations on the cap of the bottle and assess how they can be

expected under two set of alleged activities”, i.e. either regular closing and then forcible opening using metallic tools and resealing with the same cap or regular closing without any such alleged tampering [...]. By way of analogy, Prof. Champod refers to the case of an “expert who observed lands and grooves impressions on a recovered bullet to support the allegation that the bullet has been fired through a striated barrel” and would be criticized because he could not identify the gun, which shot the bullet, or the exact time when it was shot. As he states, “the question is not what gun fired the bullet, but whether or not the bullet has been fired in the first place” [...].

In addition, Prof. Champod addresses the complaints made by Mr. Arnold specific to the Athlete’s sample and confirms that all T marks observed on such bottle were recorded systematically. Ultimately, Prof. Champod concludes that “[g]iven all the data that we have acquired and disclosed, we can state that the so-called T marks we observed are compatible with the results that we have obtained with tools (and other tools will lead to similar observations) and that we have never seen such marks on any bottles that have been used regularly under real life conditions” [...].”

122. In turn, still during the first instance proceedings, the Athlete responded to the Second Champod Report by filing another report by Mr Arnold dated 16 September 2019 (the “Second Arnold Report”). As summarised by the Athlete, it is concluded in the Second Arnold Report that “*Prof. Champod’s response falls short of correcting the (many) flaws of his initial report*”. The Athlete made, *inter alia*, the following arguments in this respect:

“First, Prof. Champod’s claim that his methodology “establishes a sound basis for the examination of the questioned bottles” is misguided. The fact remains, as Mr Arnold points out, that “[t]he methodology is flawed from the initial tests, which resulted in unexpected results.” Prof. Champod had to adapt the parameters of the propositions with which he was asked to work, namely by adapting the degree of closure of the bottles (meaning that he had to assume that they were not closed “according to regular instructions”). As pointed out by Mr Arnold, this stands “in contradiction with the scientific process.” Furthermore, “[t]he methodology was also flawed in that it restricted the classification of observed marks to three categories, recorded as F, U and T. This indicates that the Champod team expected to achieve 100% accuracy in mark interpretation, contrary to the scientific process.” Even the Swedish National Forensic Centre (the “NFC”), which audited the methodology devised by Prof. Champod, flagged this issue.

Mr Arnold also points out that “[t]he methodology considered unskilled practitioners could be trained in 15 days to conduct what is a skilled forensic discipline.” Again, the audit had already referred to the restrictive nature of the training and pointed out that the identification of the marks according to the categories used by Prof. Champod was made “using a rather simple non-flexible approach of forensic examination and possible outcomes (as stated

also by the two hypotheses used), with no need for a regular forensic toolmark training to become a regular toolmark examiner.”

[...]

Prof. Champod and the IAAF place great reliance on the fact that Prof. Champod’s methodology “involved a system of single- and double-blind control samples.” However, as Mr Arnold emphasises, “[s]ingle and double-blind testing is not a substitute for complying with the scientific method: it is not a safety net for any flaws within the methodology and it will not replace lack of expertise in the forensic discipline.” [...]

Second, the Second Arnold Report (and the evidence already on the record) flatly refute the IAAF’s and Prof. Champod’s contention that “all reasonable alternatives have been investigated.” Mr Arnold stresses that “[t]he Champod team has consistently recorded in numerous reports that they did not consider any proposition outside the two formed within their own methodology as credible.” Furthermore, the single- and double blind system established was meant “to compensate for lack of experience. It is not a substitute for the testing of reasonable alternative hypotheses, in line with the scientific method.” This, too, was confirmed in the NFC audit. This discredits the IAAF’s allegation that exploring reasonable alternatives “was precisely the reason why the system of single- and double-blind control samples was put in place.”

Third, already in his first report, Mr Arnold explained that one of the main flaws of Prof. Champod’s methodology lied in the fact that the tests had been carried out on bottles that had not been closed according to regular instructions (that is, 15 or 15+ clicks). To address this criticism, Prof. Champod proceeded to create a new, unique tool allowing him to open a bottle that was closed according to regular instructions. However, as pointed out by Mr Arnold, “[t]he fact the sample bottles could be opened was never disputed, nor that using metallic tools would leave marks; the point of dispute is the origins of the questioned marks. The fact that the marks are compatible with the one set of circumstances tested provides no scientific support for the origins of the marks. Until the position and degree of concordance of the marks has been compared with that of the reasonable alternative hypotheses, the origins will remain unknown and the alternative hypotheses will remain valid. For instance, the simple tests I conducted confirm that the marks could have been caused by contamination by a particle of grit or the introduction of fingers manipulating the internal components of the plastic cap” [...]

It must be recalled that, prior to developing a new tool to open bottles closed “according to regular instructions”, Prof. Champod insisted that the observed marks were caused by the first tool they designed based on Mr Rodchenkov’s vague description. The fact that Prof. Champod now used a new tool (which is not based on Mr Rodchenkov’s recollection) to produce

marks following the opening of the bottles shows that there is a number of other tools and/or actions which could cause similar marks.

[...]

Fourth, Prof. Champod cannot be followed when he contends that the sample size used to study the marks “is large enough to gain a full understanding of the marks left on the bottles following their regular closure or re-opening with tools.” Mr Arnold maintains that this sample size is insufficient. The reference database should “include the number of bottles of [the same] type produced up to and including the date of the relevant sample (i.e. the Moscow World Championships) to reflect the sample base of the number of bottles in existence.” Against this number, the size of Prof. Champod database falls “into insignificance”. ”

Mr Arnold also points out that “[t]he sample size is not only insufficient in size, but also in breadth, as it relates to the two raised propositions only and consists of no samples from alternative hypotheses testing.” [...]

Fifth, one of the main flaws in Prof. Champod’s methodology lies in the fact that it provides no category for inconclusive marks. As already pointed out in [the Athlete’s] Answer, this is all the more problematic considering that, as admitted by Prof. Champod himself, “the marks left by the metal ring (due to force induced to the tool) cannot be easily distinguished from marks left by the metal ring when the bottle is normally closed.” Although this severely undermines the reliability of Prof. Champod’s findings, the IAAF and Prof. Champod argue that “such a category would have been redundant.” [...]

Mr Arnold further explains that “if the marks are inconclusive, they should be recorded as such.” In his view, the fact that Prof. Champod systematically assigned inconclusive marks to the ‘U’ marks category compromises the integrity of that specific category. [...]

Sixth, it is undisputed that, to this date, the origin of the marks observed on the sample bottles remains unknown. As already pointed out in [the Athlete’s] Answer, this leads to the conclusion that “Prof. Champod’s observations provide no evidence that the bottle of sample 2808680 has been tampered with and, as alleged by the IAAF, swapped.” [...]

Mr Arnold explains that [the two (limited) propositions on which Prof. Champod’s reports are based] are flawed, as they “do not consider both sides of the equation: they accept without test or interrogation the one side of the equation, i.e. that the act of tampering occurred and that the questioned marks, or marks of unknown origin, are the evidence of tampering using tools. The opposing side (or proposition) is that the marks are not evidence of tampering but are the result of other possible cases as reflected in the

suggested alternative hypotheses.” This would have required examining alternative hypotheses, which, as mentioned, Prof. Champod failed to do.

[...]

The restrictive approach adopted by Prof. Champod shows that his mindset was to test to prove their working hypothesis, i.e. that the bottle has been tampered with, rather than to take into account alternative hypotheses. In Mr Arnold’s words, “the mindset has been, ‘This is our conclusion; what facts can we find to support it?’, which is testing to prove the hypothesis, as opposed to the scientific method, which states, ‘Here are the facts; what conclusions can we draw from them?’, which involves testing to falsify by testing all reasonable alternative hypotheses.”

Finally, with regard to [the Athlete’s] specific sample B2808680, Prof. Champod and the IAAF assert that “all T marks observed on such bottle were recorded systematically.” Prof. Champod concludes by stating that “[g]iven all the data that we have acquired and disclosed, we can state that the so-called T marks we observed are compatible with the results that we have obtained with tools (and other tools will lead to similar observations) and that we have never seen such marks on any bottles that have been used regularly under real-life conditions.”

Prof. Champod’s statement with regard [the Athlete’s] sample B2808680 is misleading. In the words of Mr Arnold, “[c]ompatible with’ has the same meaning as ‘not incompatible with’. Therefore the marks they observed are not incompatible with marks they have obtained with tools. [...]”

123. Following the issuance of the arbitral award in CAS 2019/O/6156 and the Athlete’s appeal in this case, the Athlete submitted another report by Mr Arnold, dated 2 September 2020 (the “Consolidated Arnold Report”), aimed at “*summarizing the content of the two expert reports I prepared in said [CAS 2019/O/6156] proceedings*”, in which Mr Arnold also criticised the findings of the Sole Arbitrator in the Appealed Decision.
124. Having analysed all the afore-mentioned expert reports and following an expert conferencing session between Prof. Champod and Mr Arnold at the hearing, the Panel finds that the methodology used by Prof. Champod was appropriate and that his findings are generally warranted on the facts.
125. Most importantly, the Panel is convinced that that the scratch marks on the B sample bottle of Sample 5 are caused by a metallic tool designed to open the sample bottle without breaking it and allowing it to be closed again.
126. An analysis can always be criticised for being performed by insufficiently skilled practitioners or that the sample size was not large enough. The threshold to be applied in assessing Prof. Champod’s forensic investigation is however not that it must be

flawless. To put it differently, the standard of proof is not that the Panel be satisfied “beyond any reasonable doubt”, but that it be “comfortably satisfied”.

127. The Panel considers it entirely legitimate for Prof. Champod to focus his investigation on bottles that were not closed to the full 15 clicks. This is because conducting the investigation on fully closed sample bottles would have resulted in even clearer outcomes, as the scratch marks would have been more clearly visible on fully closed sample bottles, while any person seeking to open sample bottles in a concealed way would likely try to leave as few/small marks as possible. In any event, Prof. Champod later performed his investigation on fully closed sample bottles.
128. Furthermore, while Prof. Champod indeed “*systematically assigned inconclusive marks to the ‘U’ marks category compromises the integrity of that specific category*”, the Panel finds that this does not undermine Prof. Champod’s findings. Considering inconclusive marks as separate from “U” marks would not have resulted in an outcome of the investigation more favourable to the Athlete and does not undermine the overall findings of Prof. Champod.
129. The Panel agrees that, as contended by the Athlete, Prof. Champod’s investigation could certainly have considered hypotheses different from the two hypotheses investigated. However, the Panel finds that the Athlete failed to demonstrate that such other hypotheses could potentially have resulted in marks similar to the ones detected on the B bottle of Sample 5 to such extent that it would warrant investigating such hypotheses in more detail.
130. Consequently, the Panel finds that the findings of Prof. Champod are sound and that his investigation provides indeed “**very strong support for the view that the [B bottle of Sample 5] has been tampered with**”.

2. Specific gravity

131. It is undisputed that the specific gravity of the urine in Sample 5 was recorded by the Moscow Laboratory at 1.029, whereas the specific gravity of the urine measured by the Lausanne Laboratory in 2018 was measured at 1.020. World Athletics contends that such a change cannot be explained, save by urine swapping.
132. In this respect, the Athlete maintains that it is rather surprising that World Athletics would rely on such information, i.e. on the specific urine gravity of sample 2808680, reported by the Moscow Laboratory on the ADAMS database. The Athlete argues that World Athletics cannot, on the one hand, rely on the ADAMS database when it suits its case, and, on the other hand, claim that the other results recorded in ADAMS are wrong. The Athlete also contends that World Athletics’ allegation that a variation in specific gravity from 1.209 to 1.020 “*cannot be explained save by urine swapping*” is entirely unsubstantiated and disputed. Finally, the Athlete submits that World Athletics has adduced no evidence whatsoever as to how the specific gravity data recorded in ADAMS was analysed, whether the same method was used for each test, how the

sample was frozen and stored, how it was transported from Moscow to Lausanne, or any document accounting for any chain of custody of the sample.

133. The Athlete's contentions in this respect were supported by the expert report of Prof. Graham, who opined in the Graham Report that the disparity between the specific gravity measurements on testing (1.029) and further analysis (1.020) of Sample 5 could be explained by the *"calibration of the tools used to conduct the analysis, the storage process (i.e., freezing, thawing and refreezing), transportation at different temperatures or even the presence of bacteria."*
134. World Athletics rebutted Prof. Graham's findings in this respect with a report dated 5 July 2019 prepared by Prof. Christiane Ayotte (the "Ayotte Report"), concluding, as summarised by World Athletics, that *"a significant disparity in connection with the analytical equipment can be disregarded on the basis that both laboratories are subject to the WADA EQAS program. She states further that neither freezing-thawing cycles nor bacteria could account for the disparity. Professor Ayotte ultimately concluded that the difference in specific gravity was "a strong indication that the urine is not the same"*.
135. The Panel finds it somewhat inconsistent from World Athletics to rely on the data recorded in ADAMS for the specific gravity of Sample 5, but not for a finding that the sample concerned tested negative for prohibited substances.
136. If the contention is upheld that Sample 5 was "saved" by means of sample swapping and to thereby avoid detecting the prohibited substances present in Sample 5, the Panel finds that the information contained in ADAMS with respect to Sample 5 appears unreliable. It is however true that there does not appear to be any reason for the Moscow Laboratory to misrepresent the specific gravity of Sample 5, because this in itself is not indicative of prohibited substances being present.
137. Assuming that the Moscow Laboratory indeed measured a specific gravity of 1.029, while the Lausanne Laboratory measured a specific gravity of 1.020, the Panel finds that this indicates sample swapping, as the difference in specific gravity is so large that there is no feasible explanation for such disparity besides the swapping of samples.
138. The relevance of this argument based on specific gravity on the Panel's overall findings is however relatively limited, because the Panel finds that the data recorded in ADAMS with respect to Sample 5 was corrupted, as a consequence of which no data with respect to Sample 5 can be considered reliable, including the specific gravity measured.

3. Conclusion with respect to swapping of Sample 5

139. The Panel finds it particularly convincing that both Sample 5 and the sample from Ms Bulgakova, i.e. the two samples that Dr Rodchenkov recalls having been "saved", contain T marks, while other samples that tested negative contain no such T marks.

140. In that regard, the Panel also considers it particularly important that Dr Rodchenkov recalled having swapped two “dirty” samples during the Moscow World Championships in 2013 and that one of these two samples was of the Athlete.
141. This, combined with Dr Rodchenkov’s testimony and the findings in the McLaren Reports as to the sample swapping practices in the Russian state-sponsored doping program, fit well with one another and are mutually reinforcing.
142. All this is also confirmed by contemporaneous evidence in the form of the LIMS data, insofar as it confirms that the Moscow Laboratory analysed the Athlete’s official and unofficial samples.
143. The Panel also finds it likely that the T marks on the B bottle of Sample 5 were caused by scratch marks of sample swapping, based on the investigations of Prof. Champod.
144. Considering these pieces of evidence together, the Panel finds that Sample 5 was “saved” by the Moscow Laboratory and that the content of the sample that was subsequently tested by the Lausanne Laboratory was swapped, explaining the inconsistency of the data reported in ADAMS and the data reported in the Moscow Washout Schedules and the LIMS data.

e. Overall conclusion with respect to the alleged violation of Rule 32.2(b) IAAF Rules

145. Rule 33.3 IAAF Rules provides as follows:

“Facts related to anti-doping rule violations may be established by any reliable means, including but not limited to admissions, evidence of third Persons, witness statements, expert reports, documentary evidence, conclusions drawn from longitudinal profiling and other analytical information.”

146. The Panel finds that the evidential strands presented by World Athletics, taken individually, is sufficiently reliable. Taken together, the evidence is particularly forceful because the several individual pieces of (indirect) evidence mutually support each other and thereby make the overall body of evidence against the Athlete stronger.
147. It all starts with the witness testimony of Dr Rodchenkov, which finds a basis in the Moscow Washout Schedules and in the email dated 2 August 2013. While the Moscow Washout Schedules and the email dated 2 August 2013 indeed derive from the same source, i.e. Dr Rodchenkov, the Panel finds that the credibility of this evidence is considerably enhanced by the references to the Athlete in the LIMS data relied upon by World Athletics, which did not derive from Dr Rodchenkov.

148. The information contained in the Moscow Washout Schedules is considered to be scientifically sound and it fits well into the larger scheme of sample swapping practices applied as part of the Russian state-sponsored doping program.
149. The Athlete's bare denial to have ever taken any prohibited substances or that he never provided any "clean" urine for the purpose of swapping "dirty" samples are not sufficient to refute the consistent, contemporaneous body of evidence provided by World Athletics.
150. The reliability of the data displayed in the Moscow Washout Schedules as opposed to the data contained in ADAMS is further enhanced, because of the Panel's finding set out above that Sample 5 was indeed swapped.
151. All the evidence examined above, particularly when taken together, leads the Panel to the clear conclusion that it is satisfied to its comfortable satisfaction that the Athlete used prohibited substances, more specifically methasterone, oxandrolone and methandrostenolone in the period between 8 July and 17 August 2013 in the lead-up to the Moscow World Championships, thereby violating Rule 32.2(b) IAAF Rules.

ii. What are the consequences of a violation of Rule 32.2(b) IAAF Rules?

152. It is not in dispute between the Parties that Article 40.2 IAAF Rules comprises the applicable sanctioning framework for a violation of Rule 32.2(b) IAAF Rules:

"The period of Ineligibility imposed for a violation of Rules 32.2(a) (Presence of a Prohibited Substance or its Metabolites or Markers), 32.2(b) (Use or Attempted Use of a Prohibited Substances or Prohibited Method) or 32.2(f) (Possession of Prohibited Substances and Prohibited Methods), unless the conditions for eliminating or reducing the period of Ineligibility as provided in Rules 40.4 and 40.5, or the conditions for increasing the period of Ineligibility as provided in Rule 40.6 are met, shall be as follows:

First Violation: Two (2) years' Ineligibility"

153. In the Appealed Decision, the Sole Arbitrator considered that Rule 40.6 IAAF Rules was triggered and increased the default two-year period of ineligibility to four years.
154. The Athlete contends that "[t]he reasons underlying the decision of the Sole Arbitrator to increase the duration of the ineligibility are unclear as the award does not address the arguments brought forward by [the Athlete]" and that "the decision of the Sole Arbitrator does not comply with the requirement that particularly cogent evidence must be brought for a finding of aggravating circumstances under Rule 40.6 of the 2013 IAAF Rules". World Athletics maintains that the Athlete "manifestly used multiple prohibited substances in the lead-up to the Moscow World Championships. In addition, [the Athlete] was subject to a sophisticated protection scheme, involving washout testing to avoid detection at the event, as well as urine swapping when it ultimately transpired that his sample was positive. [The Sole Arbitrator] was absolutely correct to find that

[the Athlete] *had committed anti-doping rule violations and to impose a four-year period of ineligibility on him*".

155. The Panel notes that, if it is determined that the Athlete violated Rule 32.2(b) IAAF Rules, the Athlete does not challenge (and rightly so) that a two-year period of ineligibility is to be imposed on him on the basis of Rule 40.2 IAAF Rules, but that he only disputes that there are aggravating circumstances justifying an increased period of ineligibility. Accordingly, Rules 40.4 and 40.5 IAAF Rules are not relevant for the present proceedings.

156. By contrast, Rule 40.6 IAAF Rules is relevant. It provides as follows:

"If it is established in an individual case involving an anti-doping rule violation other than violations under Rule 32.2(g) (Trafficking or Attempted Trafficking) and Rule 32.2(h) (Administration or Attempted Administration) that aggravating circumstances are present which justify the imposition of a period of Ineligibility otherwise applicable shall be increased up to a maximum of four (4) years unless the Athlete or other Person can prove to the comfortable satisfaction of the hearing panel that he did not knowingly commit the anti-doping rule violation.

(a) Examples of aggravating circumstances which may justify the imposition of a period of Ineligibility greater than the standard sanction are: the Athlete or other Person committed the anti-doping rule violation as part of a doping plan or scheme, either individually or involving a conspiracy or common enterprise to commit anti-doping rule violations; the Athlete or other Person used or possessed multiple Prohibited Substances or Prohibited Methods or used or possessed a Prohibited Substance or a Prohibited Method on multiple occasions; a normal individual would be likely to enjoy performance-enhancing effects of the anti-doping rule violation(s) beyond the otherwise applicable period of Ineligibility; the Athlete or other Person engaged in deceptive or obstructing conduct to avoid the detection or adjudication of an anti-doping rule violation. For the avoidance of doubt, the examples of aggravating circumstances referred to above are not exclusive and other aggravating factors may also justify the imposition of a longer period of Ineligibility."

157. The Athlete, relying on CAS jurisprudence, submits that the pursuing party should "establish, in each individual case, that the individual athlete knowingly engaged in particular conduct that involved the commission of a specific and identifiable ADRV. In other words, the Panel must be comfortably satisfied that the Athlete personally committed a specific violation of a specific provision of the WADC" (CAS 2019/O/5379, para. 718) and maintains that "World Athletics failed to adduce any evidence, let alone any particularly cogent evidence, in support of its allegation that [the Athlete] was involved in a doping scheme. In fact, there is no credible assertion, no evidence whatsoever that [the Athlete] knew about the scheme alleged by World Athletics, let

alone that he knowingly participated in such scheme. Rather, the massive number of documents submitted by World Athletics is nothing but a smoke screen intended to distract from the lack of satisfying evidence supporting its case against [the Athlete].”

158. In view of the Panel’s finding that the Moscow Washout Schedules comprise reliable data that is confirmed through other sources of evidence, the Panel finds that World Athletics has in fact established that the Athlete used multiple prohibited substances, namely methasterone, oxandrolone and methandrostenolone, i.e. the substances identified in the Moscow Washout Schedules, which is an aggravating factor to be taken into account in sanctioning the Athlete.
159. By contrast, the Panel is not satisfied on the evidence World Athletics provided that there is sufficient evidence that the Athlete knew about or was involved in the swapping of Sample 5 during the Moscow World Championships. Although the Athlete must have provided clean urine prior to such sample swapping, the Panel finds this element alone insufficient to conclude that the Athlete was therefore aware that any “dirty” sample would be swapped by the Moscow Laboratory.
160. However, the Panel nonetheless finds that the Athlete knowingly formed part of a doping plan or scheme. The Panel is not convinced that the Athlete was aware of the full scale of the state-sponsored doping program in Russian sport. The Panel does find the Athlete cooperated in providing unofficial samples to the Moscow Laboratory (i.e. Samples 1 and 2). The Panel finds that the Moscow Washout Schedules, the veracity of which is confirmed by the testimony of Dr Rodchenkov and the LIMS data, establish that unofficial samples of the Athlete were tested.
161. Combining this with the established use of prohibited substances in the samples provided by the Athlete, which the Panel considers could not plausibly have occurred inadvertently, the Panel finds that the Athlete actively engaged in a doping plan or scheme by administering prohibited substances and by providing unofficial samples for the purposes of monitoring the washout of the substances concerned shortly before the Moscow World Championships.
162. The Panel finds that this plan or scheme was set up with the purpose of acquiring more detailed insight into administering the right dose of prohibited substances at the right time before an important event, thereby maximising the performance-enhancing effect of the substances during the competition concerned, while keeping the risk of detection low.
163. Although the Athlete may not have been aware of the full scale of the state-sponsored doping program in Russian sport, by accepting to administer multiple prohibited substances and by allowing his urine to be tested by means of unofficial tests by the Moscow Laboratory, the Athlete was personally engaged in experimenting with prohibited substances with the aim of enhancing his performance in contravention of the applicable anti-doping rules.

164. The Panel finds that the level of sophistication and the fact that three prohibited substances were used by the Athlete are clearly aggravating factors that justify the imposition of the maximum period of ineligibility within the scale provided for by Rule 40.6 IAAF Rules, i.e. the imposition of a four-year period of ineligibility.

165. Furthermore, Rule 40.8 IAAF Rules provides as follows:

“In addition to the automatic disqualification of the results in the Competition which produced the positive sample under Rules 39 and 40, all other competitive results obtained from the date the positive Sample was collected (whether In-Competition or Out-of-Competition) or other anti-doping rule violation occurred through to the commencement of any Provisional Suspension or Ineligibility period shall be Disqualified with all of the resulting Consequences for the Athlete including the forfeiture of any titles, awards, medals, points and prize and appearance money.”

166. The Panel acknowledges that, in the circumstances of the present proceedings, no “positive sample” as such is available. However, the Panel finds that the references in the Moscow Washout Schedules to prohibited substances being detected in the Athlete’s official and unofficial samples are to be assimilated to a “positive sample”. Accordingly, the Panel considers it appropriate that the consequences set forth in Rule 40.8 IAAF Rules apply as from 8 July 2013, the date Sample 1 was collected.

167. The Sole Arbitrator in CAS 2019/A/6156 reasoned as follows in the Appealed Decision:

“The Sole Arbitrator reasons here, on the one hand, the absence of any evidence of doping after 2013 and the harsh punishment that would be a disqualification through to the start of his ban, when the length of such disqualification exclusively depends on the length of the anti-doping procedure; and, on the other hand, the importance of his level of guilt, the damage caused to his competitors and history of sport as well as the absence of any real consequences of the imposed suspension.

Having weighed these parameters against each other, the Sole Arbitrator considers that the disqualification of all competitive results over a period of time of four years, i.e. the same duration as the period of ineligibility, is proportionate. [...]” (CAS 2019/O/6156, para. 107-108)

168. The main purpose of disqualification of results is not to punish the transgressor, but rather to correct any unfair advantage and remove any tainted performances from the record (LEWIS/TAYLOR (Eds.), *Sport: Law and Practice*, 2014, para. C.162, with further references).

169. Indeed, the Panel finds that the Athlete’s doping practices would likely have enhanced his performance also beyond the Moscow World Championships. The Panel finds that the knowledge acquired about the Athlete’s physiological response to the administration of prohibited substances, as reported in the Moscow Washout Schedules also taint the

Athlete's performances in the period after the Moscow World Championships. Because of this, and because of the severity of the Athlete's violation, the Panel considers it appropriate to disqualify the Athlete's results for a significant period. A period of four years appears to the Panel as appropriate, in particular because it is of equal length to the period of ineligibility imposed, and because the Panel considers that the Athlete did not bring forward any compelling arguments as to why such period of disqualification should be shortened.

170. Consequently, the Panel holds that the Appealed Decision is to be confirmed in full.

IX. COSTS

171. The Panel observes that Article R65 of the CAS Code provides the following:

"R65.1 This Article R65 applies to appeals against decisions which are exclusively of a disciplinary nature and which are rendered by an international federation or sports-body. [...]"

R65.2 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 the 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. [...]"

R65.3 Each party shall pay for the costs of its own witnesses, experts and interpreters. In the arbitral award, 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.

R65.4 If the circumstances so warrant, including the predominant economic nature of a disciplinary case or 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."

172. Since the present appeal is lodged against a decision of an exclusively disciplinary nature rendered by an international federation, no costs are payable to CAS by the Parties beyond the Court Office fee of CHF 1,000 paid by the Athlete prior to the filing of its Statement of Appeal, which is in any event retained by CAS.

173. Furthermore, pursuant to Article R65.3 of the CAS Code, and in consideration of the complexity and outcome of the proceedings, as well as the conduct and the financial resources of the Parties, the Panel rules that the Athlete shall bear his own costs and pay a contribution in the amount of CHF 2,000 (two thousand Swiss Francs) towards World Athletics' legal fees and other expenses incurred in connection with the present appeal arbitration proceedings.

* * * * *

ON THESE GROUNDS

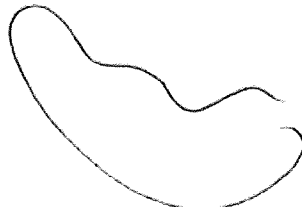
The Court of Arbitration for Sport rules:

1. The appeal filed on 20 July 2020 by Aleksandr Shustov against the decision issued on 5 June 2020 by the Court of Arbitration for Sport is dismissed.
2. The decision issued on 5 June 2020 by the Court of Arbitration for Sport is confirmed.
3. The costs of the arbitration, to be determined and served on the Parties by the CAS Court Office, shall be borne by Aleksandr Shustov.
4. The Athlete shall bear his own costs and pay a contribution in the amount of CHF 2,000 (two thousand Swiss Francs) towards World Athletics' legal fees and other expenses incurred in connection with the present appeal arbitration proceedings.
5. All other and further claims or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Date: 23 November 2021

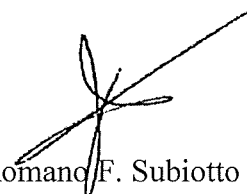
THE COURT OF ARBITRATION FOR SPORT



André Brantjes
President of the Panel



Georgios Petrochilos QC
Arbitrator



Romano F. Subiotto QC
Arbitrator