CAS 2023/O/9505 World Athletics v. Russian Athletic Federation & Ms. Ekaterina Guliyev

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition

Sole Arbitrator: Ms Annett Rombach, Attorney-at-Law, Frankfurt am Main, Germany

between

World Athletics

Represented by Messrs. Nicolas Zbinden, Adam Taylor and Michael Kottmann, Attorneys-at-law, Kellerhals Carrard in Lausanne, Switzerland

Claimant

and

Russian Athletic Federation

First Respondent

and

Ms. Ekaterina Guliyev (born Zavyalova, divorced Poistogova)

Represented by Mr Artem Patsev and Ms Anna Antseliovich, Attorneys-at-law with Clever Consult in Moscow, Russia

Second Respondent

I. THE PARTIES

1. World Athletics (the "Claimant" or "WA") is the international federation governing the sport of athletics worldwide and a signatory to the World Anti-Doping Code ("WADA Code"). WA has its registered seat and headquarters in Monaco.

2. The Russian Athletic Federation (the "First Respondent" or "RUSAF") is the national federation governing the sport of Athletics in Russia, with its registered seat in Moscow, Russia. RUSAF is the relevant member federation of WA for Russia, but its membership has been suspended since 26 November 2015.

3. Ms Ekaterina Guliyev (born Zavyalova, divorced Poistogova; the "Second Respondent" or the "Athlete") is a Turkish international-level athlete who represented Russia until 2021, *inter alia,* at the 2012 London Olympic Games, where she won the silver medal in the 800 meters competition.

4. WA, RUSAF and the Athlete are collectively referred to as the "Parties".

II. FACTUAL BACKGROUND

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

6. The two relevant samples in the present case were collected from the Athlete out-of-competition on 17 July 2012 (sample no. 2727526, hereinafter the "17/7/2012 Sample") and on 25 July 2012 (sample no. 2727501, hereinafter the "25/7/2012 Sample" and, together with the 17/7/2012 Sample, the "2012 Samples"). The 2012 Samples were reported as negative in World Anti-Doping Agency's ("WADA") Anti-Doping Administration & Management Systems ("ADAMS"), a web-based database management system for use by WADA's stakeholders. As will be further elaborated on below, WA, in these proceedings, contends that the respective ADAMS reportings were false, because the 2012 Samples allegedly contained Prohibited Substances.

A. Investigations with respect to suspected systematic doping practices in Russia

7. In May 2016, WADA appointed Prof. Richard McLaren to investigate allegations made by whistleblowers regarding the alleged existence of a sophisticated state-sponsored doping program in Russian sport, from which WA alleges the Athlete benefitted.

8. On 18 July 2016, Prof. McLaren delivered his first report (the "First McLaren Report"). The three "key findings" of the First McLaren Report were as follows:

> "*1. The Moscow Laboratory operated for the protection of doped Russian athletes, within a State-dictated failsafe system, described in the report as the Disappearing Positive Methodology.*
>
> *2. The Sochi Laboratory operated a unique sample swapping methodology to enable doped Russian athletes to compete at the Games.*
>
> *3. The Ministry of Sport directed, controlled and oversaw the manipulation of athlete's analytical results or sample swapping, with the active participation and assistance of the FSB* [the Federal Security Service of the Russian Federation], *CSP* [the Center of Sports Preparation of National teams of Russia], *and both Moscow and Sochi Laboratories."*

9. On 9 December 2016, Prof. McLaren delivered his second report (the "Second McLaren Report", and together with the First McLaren Report the "McLaren Reports"). In the Second McLaren Report, Prof. McLaren affirmed that *"[t]he key findings of the 1st Report remain unchanged"* and that:

> *"An institutional conspiracy existed across summer and winter sports athletes who participated with Russian officials within the Ministry of Sport and its infrastructure, such as the RUSADA, and the Moscow Laboratory, along with the FSB* [the Russian Federal Security Service]. *The summer and winter sports athletes were not acting individually but within an organised infrastructure as reported on in the 1st Report."*

10. In its report of 2 December 2017, the IOC Disciplinary Commission chaired by Samuel Schmid, Member of the IOC Ethics Commission, (the "Schmid Commission") also agreed that there was a *"systemic manipulation of the anti-doping rules and system in Russia, through the Disappearing Positive Methodology and during the Olympic Winter Games Sochi 2014"* (the "Schmid Report"). The findings of the Schmid Report were expressly accepted by the Russian Ministry of Sport on 13 September 2018.

11. Together with the Second McLaren Report, Prof. McLaren published Evidence Disclosure Packages ("EDPs") containing evidence relating to athletes he considered were involved in or benefitted from the above schemes. According to the McLaren Reports, relevant key elements of these schemes, which have been addressed also in other CAS cases (see, e.g., CAS 2021/A/7838 and 7839) involved the following:

    (i) "Disappearing Positives Methodology" ("DPM")

12. Where the initial screen of a sample revealed a Presumptive Adverse Analytical Finding ("PAAF"), the athlete would be identified and the Russian Ministry of Sport would

(through a Liaison Person) decide either to "SAVE" or to "QUARANTINE" the athlete in question. The PAAF would typically be notified by email from the Moscow Laboratory to one of the liaison persons, who would respond in order to advise whether athlete(s) should be "SAVED" or "QUARANTINED". If the athlete was "SAVED", the Moscow Laboratory would report the sample as negative in ADAMS; conversely, if the athlete was "QUARANTINED", the analytical bench work on the sample would continue and an adverse analytical finding would be reported in the ordinary manner. According to the Second McLaren Report, the DPM was used from late 2011 onwards.

(ii) "Washout Testing"

13. The McLaren Reports described a program of "Washout Testing" prior to certain major events, including the 2012 London Olympic Games and the Moscow World Championships. The Washout Testing was deployed in 2012 in order to determine whether the athletes on a doping program were likely to test positive at the 2012 London Olympic Games. At that time, the relevant athletes were providing samples in official doping control Bereg kits. Even when the samples screened positive, they were automatically (i.e. without the need for a specific SAVE order) reported as negative in ADAMS. As explained by Prof. McLaren, although the Washout Testing program had started earlier, the Moscow Laboratory, through its Deputy Director Dr. Timofei Sobolevsky, only developed schedules to keep track of those athletes who were subject to this Washout Testing in advance of the London Olympic Games (the "London Washout Schedules").

(iii) The "LIMS Data"

14. As explained in the joint witness statement of Mr. Aaron Walker and Dr. Julian Broséus of WADA Intelligence & Investigations ("WADA I&I") (the "WADA Statement"), on 30 October 2017, WADA I&I secured from a whistleblower a copy of the Moscow Laboratory Information Management System ("LIMS") data for the years 2011 to August 2015 (the "2015 LIMS"). The 2015 LIMS was found to include presumptive adverse analytical findings made on the initial testing of samples which had not been reported in ADAMS or followed up with confirmation testing.

15. The LIMS is a system that allows a laboratory to manage a sample through the analytical process and the resultant analytical data. Conceptually, the LIMS is a warehouse of multiple databases organized by year. The most relevant anti-doping data within the LIMS are those related to sample reception, analysis, and the actions of users within the system. This pertinent data is housed in key tables including: "bags", "samples", "screening", "found" (or "scr_results" prior to 2013), "confirmation", "MS_data" (or "Pro_4" prior to 2013) and "pdf".

16. Subsequently, as part of the reinstatement process of the Russian Anti-Doping Agency ("RUSADA"), WADA required that, *inter alia*, authentic analytical data from the

Moscow Laboratory for the years 2012 to 2015 be provided. In January 2019, access to the Moscow Laboratory was given to a team of WADA-selected experts, which were allowed to remove data from the Moscow Laboratory, including another copy of the LIMS data for the relevant years (the "2019 LIMS") as well as the underlying analytical PDFs and raw data of the analyses reported in the LIMS (the "Analytical Data"). The analytical PDFs are automatically generated from the instruments and contain the chromatograms, which demonstrate whether a substance is present or not in a given sample.

17. Further investigations were conducted by WADA I&I in collaboration with forensic experts from the University of Lausanne on the data retrieved from the Moscow Laboratory and evidence of manipulation of the 2019 LIMS was uncovered, in particular to remove positive findings contained in the LIMS. On that basis, WADA I&I concluded that the 2015 LIMS was reliable (and the 2019 LIMS was not), as explained at paragraphs 14 and 69 of the WADA Statement as follows [footnotes omitted]:

> *"14. ...* [w]*e assert that the 2015 LIMS Copy is an accurate copy of the original LIMS created contemporaneously as part of the Moscow Laboratory's analytical procedure and its contents can be relied upon as being accurate and forensically valid information, particularly the forensic validity of the detected Prohibited Substances. In other words, the 2015 LIMS Copy accurately records the true analysis results of samples analyzed by the Moscow Laboratory.*
>
> *69. More specifically, we assert* [...] *that since early June 2016, and continuing until 2019, a coordinated process was undertaken within the Moscow Laboratory in which LIMS data and associated underlying analytical data of select Russian athletes was identified and manipulated or deleted to conceal evidence of doping."*

18. Hence, WADA I&I identified evidence of deletions/alterations of Analytical Data to remove evidence of positive findings prior to WADA's retrieval mission in January 2019.

19. RUSAF's membership at WA had been suspended already in November 2015. This decision was repeatedly confirmed, with the result that RUSAF's WA membership remains suspended until today.

B. WA's case against the Athlete

20. On 17 July 2012, the Athlete was subject to an out-of-competition urine doping control. WA contends that, pursuant to the 2015 LIMS, boldenone and androsta-1,4,6-triene-3, 17-dione ("ATD") were found in this 17/7/2012 Sample. WA further alleges that the 17/7/2012 Sample was recorded in a London Washout Schedule and linked not only to boldenone and ATD, but also to dehydroepiandrosterone ("DHEA"). The 17/7/2012

Sample was reported as negative in ADAMS.

21. On 25 July 2012, the Athlete was subject to an out-of-competition urine doping control. WA contends that pursuant to an entry in a London Washout Schedule, DHEA was "possibly" found in that sample. The 25/7/2012 Sample was reported as negative in ADAMS.

22. By letter of 12 July 2022 the Athletics Integrity Unit ("AIU") of WA notified the Athlete of a potential anti-doping rule violation ("ADRV") based on the evidence relating to the 2012 Samples. The Athlete was invited to provide a full and detailed explanation with respect to the potential ADRVs.

23. By letter of 21 July 2022 the Athlete asserted, *inter alia*, that the evidence of an ADRV was not reliable and that the principle of *res judicata* prevented the AIU from initiating a case based on the 2012 Samples.

24. On 16 November 2022, the AIU informed the Athlete that it maintained its assertion that she had committed one or more ADRVs. The Athlete was granted a deadline until 30 November 2022 to state whether she wanted a hearing, failing which a decision would be rendered. Should she request a hearing, the Athlete was also asked to confirm whether she requested the matter to proceed under Rule 38.3 (first instance CAS hearing before a Sole Arbitrator with a right of appeal to the CAS) or Rule 38.19 (sole instance before a three-member CAS Panel with no right of appeal, save to the Swiss Federal Tribunal) of the 2016-2017 Competition Rules (the "2016 Rules").

25. On 29 November 2022, the Athlete emailed the AIU and requested a sole instance hearing (pursuant to Rule 38.19 of the 2016 Rules). On 13 February 2023, WA informed the Athlete that WADA did not agree to a sole instance hearing. It therefore asked her to confirm whether she requested a first-instance hearing before a Sole Arbitrator at CAS, or whether she was to forego a hearing, by 20 February 2023.

26. On 20 February 2023, the Athlete informed WA that she formally exercised her right to a first-instance hearing before a Sole Arbitrator at CAS.

C. Previous CAS proceedings against the Athlete (CAS 2016/A/4486)

27. On 8 March 2016, WA (under its former name IAAF) filed a request for arbitration against the Athlete before the CAS, in which the Athlete was charged to have committed ADRVs by using Prohibited Substances between 2012 and 2014 (including EPO, Peptides, and Oxandrolone). The case was registered under reference CAS 2016/A/4486 and will be referred to hereinafter as the "4486 Case".

28. On 7 April 2017, the panel in the 4486 Case rendered its full award, in which the Athlete was found to have committed an ADRV by using Oxandrolone in 2014 (the "2014 ADRV") according to Rule 32.2(b) of the IAAF Competition Rules. The Athlete was

sanctioned with a two-year period of ineligibility, starting from 24 August 2015, and all her competitive results obtained from 21 October 2014 through the commencement of her suspension on 24 August 2015 were disqualified, including resulting consequences.

29. The panel in the 4486 Case relied on the following evidence in reaching its decision (Final Award, paras. 100 et seq.):

- a statement from Ms Yulia Stepanova, a professional Russian 800m runner who testified about various conversations she has had with the Athlete about doping (the "Stepanova Statement");
- corroborating audio and video recording obtained secretly by Ms Stepanova.

30. Relevant to the Respondent's *res judicata* defense in the present proceedings (discussed below at Section **VII. A.**) is additional evidence which had been submitted by WA shortly before the hearing in the 4486 Case. A statement from Prof. McLaren dated 19 September 2016 (the "McLaren Affidavit") mentioned, *inter alia*, the two samples that are the subject of the present case. WA introduced the McLaren Affidavit, which included discussion of the 2012 Samples, into the 4486 proceedings on 20 September 2016 as follows:

> *"The Independent Person* [Prof. McLaren] *has now uncovered evidence that positive samples were also covered up through "washout testing schedules" in advance of major international competitions.* [...]
>
> *As set out by the Independent Person in his Affidavit, Ms. Poistogova was part of the washout testing schedule for the London Olympic Games.* ***Three of her samples – from 17 July 2012, 25 July 2012*** *and 31 July 2012 –* ***feature on internal spreadsheets of the Moscow Laboratory.***
>
> *Indeed,* ***Ms. Poistogova's sample from 17 July 2012 is reported as contained three prohibited substances viz. dehydroepiandrosterone, androstenedione (500ng/ml) and boldenone (20 ng/ml).*** [...]
>
> *The IAAF submits that* ***the Affidavit of Professor McLaren is further evidence*** *that Ms. Poistogova used prohibited substances.* [...] *The McLaren Affidavit is therefore directly relevant to the anti-doping rule violation which Ms. Poistogova has been charged and which is being tried by CAS as a first and sole instance.* [...]
>
> *In view of the fact that the hearing is scheduled to take place this Thursday (22 September 2016), the IAAF would not object if Ms. Poistogova were to seek a postponement of the hearing."*
>
> [emphasis added]

31. The Athlete objected to the postponement of the hearing and the admissibility of the McLaren Affidavit. The panel in the 4486 Case, however, admitted the McLaren

Affidavit to the case file. The Athlete was provided the opportunity to submit a post hearing brief on such new evidence.

32. In the 4486 Final Award, the Panel explained that for its decision, it did not rely on the McLaren Affidavit (para. 111):

> *"The Panel, though having accepted the McLaren Affidavit as evidence, did not find the evidence contained therein as particularly strong as it relates to the allegations brought in this procedure. So while such affidavit was accepted to the file, the Panel did not rely upon it to a substantial extent."*

33. Instead, the evidence on which the panel relied is summarized in the Final Award as follows: (paras. 116 et seq.):

> *"The Panel is comfortably satisfied that the Athlete is guilty of using Prohibited Substances. In particular, the Panel is comfortably satisfied that the Athlete used Oxandrolone during her autumn 2014 preparation.*
>
> *The Panel considers that it follows from the testimony of Ms Stepanova, supplemented by the recording of the conversation between her and the Athlete of 21 October 2014, that the Athlete was fully aware of her personal doping regime and was preparing for the then upcoming events using, around the time of such conversation, a course of 10 pills of Oxandrolone.*
>
> *The Panel is, in contrast, not comfortably satisfied that the evidence presented confirms that the Athlete used other Prohibited Substances at other times during her career (i.e., EPO in 2012 and Peptides in 2013). Given that there is no adverse analytical finding and that the Athlete vigorously denies having taken such substances and further denies having admitted to Ms Stepanova that she took such substances, the Panel considers it has to limit its findings to the substances in regard to which it can rely on a body of concordant factors and evidence. Regarding EPO: (i) Mr Dolgov himself on listening a number of times during the hearing to a section of the recording of 21 October 2014 said that he could not confirm that he heard the word "EPO" and that it could be "EPO", "EKO", "ETO" or a similar sounding word. Thus this recording cannot be considered as corroborating Ms Stepanova's Statement and testimony; (ii) the IAAF did not submit any other evidence corroborating Ms Stepanova's Statement or capable of establishing, to the Panel's comfortable satisfaction, the alleged use of EPO by the Athlete prior to the London Olympics in 2012. Similarly, regarding Peptides there were no specifics as to exact timing or method of application and possible other interpretation to the relevant sections of the recordings."*

III. THE PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

34. On 16 March 2023, the Claimant filed a request for arbitration ("Request for Arbitration") with the CAS in accordance with Article R38 of the CAS Code of Sports-related Arbitration (2023 edition) (the "CAS Code"). The Claimant requested that the matter be heard by the CAS as a first-instance body, but pursuant to provisions applicable to the CAS Appeals Arbitration Division (Articles R47 et seq.), in accordance with Rule 38.3 of the 2016 Rules.

35. On 22 March 2023, the CAS Court Office initiated the arbitration procedure and invited the Claimant, in accordance with Article R51 of the CAS Code, to file its Appeal Brief. It further informed the Parties that, in accordance with Rule 38.3 of the 2016 Rules, and pursuant to Article S20 of the CAS Code, the arbitration had been assigned to the Ordinary Arbitration Division of the CAS but would be dealt with according to the Appeals Arbitration Division rules (Articles R47 et seq.) by a sole arbitrator. The First Respondent was invited to forward the CAS letter to the Second Respondent and to provide the CAS Court Office with respective proof.

36. On 4 May 2023, the Claimant, after having been granted respective extensions, filed its Appeal Brief.

37. On 8 May 2023, the CAS Court Office invited the Respondents to submit their respective Answers within 20 days.

38. On 4 July 2023, within the extended time limit (upon request by the Second Respondent), the Second Respondent filed her Answer. The First Respondent did not file any Answer.

39. On 5 July 2023, the Parties were invited by the CAS Court Office to state whether they preferred a hearing and a case management conference ("CMC") to be held in the pertinent matter.

40. On 12 July 2023, pursuant to Article R40.3 of the CAS Code, and on behalf of the President of the CAS Ordinary Arbitration Division, the CAS Court Office informed the Parties that the Panel appointed to decide the case is constituted as follows:

    Sole Arbitrator: Ms Annett Rombach, Attorney-at-law in Frankfurt am Main, Germany

41. On the same day, the Claimant informed the CAS of its preference that a hearing be held, but that it did not consider the CMC necessary. The Second Respondent requested that the matter be decided solely on the basis of the written submissions. The First Respondent did not make any comments.

42. On 28 August 2023, the CAS Court Office informed the Parties that the Sole Arbitrator intended to hold a hearing via videoconference. Furthermore, the Parties were informed

that the Sole Arbitrator intended to obtain access, through the CAS, to the entire case file in the 4486 Case for the purpose of reviewing the full context in which the 2012 Samples were discussed in this procedure. The Parties were invited to comment on the intended production of the 4486 Case file by no later than 4 September 2023.

43. On 5 September 2023, the CAS Court Office acknowledged that none of the Parties had filed an objection to the production of the 4486 Case file.

44. On 19 September 2023, further to the Parties' submissions on their respective availabilities, the CAS Court Office informed the Parties that the hearing would be held on 21 November 2023, via video-conference.

45. On 10 November 2023, the CAS Court Office sent the following correspondence to the Parties:

> *"Furthermore, and in reference to the Respondent's correspondence dated 8 November 2023, the Parties are informed that – following the express agreement of World Athletics and Ekaterina Poistogova (nowadays Ekaterina Guliyev), the case file in CAS 2016/A/4486 will be made available to the Sole Arbitrator of the present proceedings in due course, and well ahead of the hearing scheduled to take place on 21 November 2023.*
>
> *Furthermore, and on behalf of the Sole Arbitrator, the Parties are informed that independent from her review of the case file in CAS 2016/A/4486, given that the issue of whether or not the principle of res judicata applies with respect to the samples 2727526 and 2725701 (defined by the Second Respondent as the "Old Charges") is highly controversial between the Parties and only relates to one part of the overall charges at issue here, the Sole Arbitrator finds that the upcoming hearing shall encompass the entire evidence put forward by the Appellant for its charges ("Old" and "New"), including testimony of the witnesses identified by the Claimant in its email of 7 November 2023.*
>
> *This decision is fully without prejudice as to the Sole Arbitrator's position in respect of the res judicata defense. It is made to preserve the efficiency of these proceedings, because the Sole Arbitrator is confident that the hearing on all issues of this case can be completed within the scheduled time, i.e. on one day."*

46. On 17 November 2023, the CAS Court Office sent the following correspondence to the Parties:

> *"On behalf of the Sole Arbitrator, the Parties are hereby provided with the following documents of the CAS 2016/A/4486 case file, which the Sole Arbitrator considers to be the most relevant with regard to the question of res judicata and the CAS proceedings of CAS 2016/A/4486. These are:*
>
> - *IAAF's Request for Arbitration*
> - *IAAF's Letter to CAS dated 20 September 2016*
> - *Final Award.*

The Sole Arbitrator further notes that if the res judicata doctrine were to apply in the present case, in accordance with CAS jurisprudence (e.g. CAS 2008/A/1557), a new CAS arbitration based on new evidence may still be admissible if the requirements for a revision are fulfilled. The Parties are invited to provide their position as to whether or not the requirements of a revision would be met in the present circumstances (assuming this were a case of res judicata) during their oral statement in the hearing.

For the sake of good order, the Sole Arbitrator notes that the above observations are fully without prejudice to a final decision in this regard and remain entirely preliminary."

47. On 20 November 2023, the Second Respondent provided comments in preparation of the hearing, including to certain medical issues relating to its witness Mr Matvey Telyatnikov, former coach of the Second Respondent.

48. On 21 November 2023, a hearing was held by video-conference. In addition to the Sole Arbitrator, Ms. Andrea Sherpa-Zimmermann and Ms. Carolin Fischer, Counsels to the CAS, the following persons attended the video hearing:

For WA:	Mr. Adam Taylor, Counsel Mr. Nicolas Zbinden, Counsel Ms. Laura Gallo, Legal Affairs, WA
For RUSAF:	Ms. Kristina Kucheeva, Head of RUSAF anti-doping and athletics integrity department
For the Athlete:	Ms. Ekaterina Guliyev, Athlete Mr. Artem Patsev, Counsel Ms. Anna Antseliovich, Counsel
Witnesses:	Prof. Christiane Ayotte, Director of the Doping Control Laboratory for the WADA-accredited INRS Centre Armand Frappier Health Biotechnology, called by WA Mr. Aaron Walker, WADA I&I, called by WA Dr. Grigory Rodchenkov, called by WA Mr. Matvey Telyatnikov, former coach of the Athlete, called by the Second Respondent
Interpreter:	Ms. Evgenia Sedelnikova, brought by the Second Respondent

49. The hearing began at 1:00 pm and ended at 21:45 pm without any technical interruption or difficulty. The Parties were given the opportunity to present their cases, to make their submissions and arguments and to answer questions posed by the Sole Arbitrator. The

witnesses were questioned by the Parties and the Sole Arbitrator. After the Parties' final and closing submissions and the Athlete's last word, the hearing was closed, and the Sole Arbitrator reserved her detailed decision for this written Award.

50. On 29 February and 4 March 2024, respectively, the Parties returned to the CAS Court Office duly signed copies of the Order of Procedure issued by the CAS Court Office on behalf of the Sole Arbitrator, on 26 February 2024.

51. In reaching the present decision, the Sole Arbitrator has carefully taken into account all the evidence and the arguments presented by the Parties, even if they have not been summarised in the present Award.

IV. THE POSITIONS OF THE PARTIES

52. The following outline of the Parties' positions is illustrative only and does not necessarily comprise every submission advanced by the Parties. The Panel confirms, however, that it has carefully considered all the submissions made by the Parties, whether or not there is specific reference to them in the following summary.

A. WA's Position and Request for Relief

53. WA submits the following in substance:

- Substantial evidence demonstrates that the Athlete committed a use-violation under Rule 32.2(b) of the 2012-2013 IAAF Competition Rules ("2012 Rules"). The violation primarily relates to the two samples collected from the Athlete on 17 July 2012 and 25 July 2012 (as evidenced by respective doping control forms). Both samples were falsely identified in the ADAMS system as negative.
- For the 17/7/2012 Sample, the 2015 LIMS indicated findings of boldenone and ATD with a T/E ratio of 4.5. Boldenone is an exogenous anabolic steroid prohibited under S1.1.a of the 2012 WADA Prohibited List. ATD belongs to the Hormone and Metabolic Modulators prohibited under S4.1 of the 2012 WADA Prohibited List.
- The 17/7/2012 Sample was also recorded in a London Washout Schedule, which, in addition to Boldenone and ATD, also recorded a finding of DHEA:

8971	2727526	f	17.07.2012	dehydroepiandrosterone, androstatrienedione (500 ng/ml), boldenone (20 ng/ml)

- DHEA is an endogenous anabolic steroid prohibited under S1.1.b of the 2012 WADA Prohibited List.
- The 25/7/2012 Sample was recorded in a London Washout Schedule with the following text:

9253	2727501	f	Moscow	25.07.2012	possibly dehydroepiandrosterone; the order was for EPO but it's not ready yet

- The use of such prohibited substances is supported by Prof. Ayotte, who

considered the analytical data relating to the 2012 Samples. Prof. Ayotte explains that the analytical records are consistent with a use of ATD, which metabolises into boldenone, and notes that it is not surprising that DHEA was found in the Athlete's sample, as DHEA is often contained in ATD supplements. Further, Prof. Ayotte explains that DHEA use can explain the high testosterone concentrations recorded in the 2012 Samples, which are "*outside the range of normal values measured in female athletes*" and inconsistent with the other samples of the Athlete, as well as the resulting abnormally high T/E ratio of 4.5 recorded in the 17/7/2012 Sample, as "*the administration of DHEA was shown to transiently increase the excretion of testosterone and its ratio to epitestosterone in females*".

- The detection of ATD and boldenone comes from two different analytical procedures, on two different instruments, under the supervision of two different analysts which further support the reliability of the analyses conducted by the Moscow Laboratory.
- Dr Rodchenkov has specific recollection of discussions about doping protocols with the Athlete's coach, Mr Matvey Telyatnikov, including in 2012 and 2013. Dr. Rodchenkov also explains that he conducted unofficial analyses of urine provided by Mr Telyatnikov.
- The Athlete's name also featured on Moscow Washout Schedules from July-August 2013.
- The LIMS and related evidence are comprehensive and meet the standard of proof required. The EDP documents and the LIMS data constitute reliable evidence for the purpose of establishing an ADRV.
- The Sole Arbitrator can be comfortably satisfied that the Use violation is established on the basis of the above. By way of comparison, in the recent cases of CAS 2020/O/6761 and CAS 2021/A/8012, the CAS found that the athletes had committed ADRVs based predominantly on evidence from washout schedules (as also exists in the present case), despite the fact that there was no corroborating LIMS evidence provided in those two cases.
- The Athlete benefited from an elaborate cover-up scheme administered by Russian authorities, both in 2012 and afterwards:
    - As the Athlete was part of the London washout program, her samples collected in the lead-up to the London Olympic Games were automatically reported as negative (although at least one of them was positive as recorded in the LIMS data and on the London Washout Schedules).
    - The analytical data with respect to the Athlete's 17/7/2012 was selectively deleted (and the positive records in the LIMS data were deleted, so that the 2019 LIMS data would appear fully negative). The WADA Statement notes that the Russian authorities went as far as to manipulate the chromatograms pertaining to the ATD analysis on the relevant analytical PDF (and only these chromatograms) to make them appear negative (i.e. supportive of their

manipulated 2019 LIMS). This PDF document was found in deleted state in the Moscow Laboratory data. In other words, the Russian authorities initially tried to falsify the relevant documents, but as the falsification was discernable to the eye, the documents were irretrievably deleted.

- The Athlete was part of the second washout program prior to the 2013 Moscow World Cup, as shown by the fact that her name appears on Moscow Washout Schedules on three occasions. The WADA Statement also notes that the Athlete's name was found on two raw data files (which were irretrievably deleted). The dates of these two files correspond to two of the Athlete's samples on the Moscow Washout Schedules. This evidence demonstrates that unofficial urine was tested and therefore had been provided by the Athlete.
- The Athlete's name was included in the LIMS in relation to a sample of the Athlete collected on 15 June 2014. The same sample was also recorded in an excel sheet sent by email by Mr. Velikodniy to the Moscow Laboratory. This list contained the name of 104 athletes who were "leaving" for "international competition" as emphasized by Mr. Velikodniy. The WADA Statement asserts that this sheet was a pre-departure list, meant to ensure that the athletes departing for an event would not test positive at it. For the Athlete, this was the 2014 European Team Championships in Germany, in which she competed on 21 June 2014.

- WA is not prevented under the principle of *res judicata* from bringing the presented case. When it sought to introduce the McLaren Affidavit into the 4486 proceedings, WA only sought to adduce it as "further evidence", which was "*directly relevant to the anti-doping rule violation with which Ms. Poistogova has been charged*". WA never sought to expand or amend the initial charge, which did not include the use of ATD, DHEA and/or boldenone in the lead-up to the 2012 London Olympic Games. The sanction sought by WA at the time only included disqualification from 8 August 2012: in other words, the sanction sought at the time did not cover the present ADRV charge (based on samples prior to 8 August 2012).
- Regarding sanction, WA does not submit that the ADRV prosecuted in this proceeding constitutes a second violation within the meaning of Rule 40.7(d)(i) of the 2012 Rules. It follows that the 2012 and 2014 ADRVs shall be considered together as one single first violation and the sanction to be imposed shall be based on the violation that carries the more severe sanction. A number of aggravating factors are relevant in the present case, which means that an increased sanction of a maximum of four years should be imposed on the Athlete, with credit for the two-year period of ineligibility served by the Athlete for her 2014 ADRV.

54. WA requests the following relief:

"*(i) CAS has jurisdiction to decide on the subject matter of this dispute.*

(ii) The Request for Arbitration of World Athletics is admissible.

(iii) Ekaterina Guliyev (née Zavyalova, divorced Poistogova) is found guilty of one or more anti-doping rule violations in accordance with Rule 32.2(b) of the 2012-2013 IAAF Competition Rules.

(iv) A period of ineligibility of four (4) years, or in the alternative between two (2) and four (4) years, is imposed on Ekaterina Guliyev (née Zavyalova, divorced Poistogova) commencing on the date of the (final) CAS Award, with credit to be given for the two (2)-year period of Ineligibility already served.

(v) All competitive results obtained by Ekaterina Guliyev (née Zavyalova, divorced Poistogova) from 17 July 2012 through to the commencement of any period of provisional suspension or ineligibility are disqualified, with all resulting consequences (including forfeiture of any titles, awards, medals, profits, prizes and appearance money).

(vi) The arbitration costs be borne entirely by the First Respondent or, in the alternative, by the Respondents jointly and severally.

(vii) The First Respondent, or alternatively both Respondents jointly and severally, shall be ordered to contribute to World Athletics legal and other costs."

B. The RUSAF's Position

55. RUSAF chose not to file any submissions of relevance to the merits of the case with CAS.

C. The Athlete's Position and Request for Relief

56. The Athlete submits the following in substance:

- It is not disputed that the Athlete provided the 2012 Samples, but WA is barred from pursuing charges in relation to these samples under the principle of *res judicata*, because the 2012 Samples had already been the subject of the 4486 Case, in which the Athlete was found to have committed an ADRV. WA brought the very same arguments and allegations in regards of the very same samples – the 2012 Samples – already in these 4486 proceedings. In the 4486 Award, the Athlete was cleared of any suspicion relating to the 2012 Samples. WA did not challenge the 4486 Award before the Swiss Federal Tribunal.

- The applicability of the *res judicata* principle in cases where the so-called triple-identify-test is met is well-established in CAS jurisprudence, see, e.g., CAS 2015/A/4026-4033, CAS 2019/A/6483, CAS 2019/A/6636, CAS 2020/A/6912.

- WA is also not allowed to try the present case as a "revision" of the 4486 Case. For the admissibility of a revision, the Claimant must demonstrate that it was unable to produce new facts/evidence in the previous proceedings. WA could have easily presented evidence/testimony from Prof. Ayotte and Dr. Rodchenkov in the

4486 proceedings, but failed to do so for unknown reasons.

- The Athlete understands that WA, in the present proceedings, also pursues "new charges" with respect to two samples allegedly provided by the Athlete on 17 and 25 July 2013 (the "2013 Samples"), which were allegedly recorded in a Moscow Washout Schedule. The Athlete does not recall having provided the 2013 Samples. No information on these alleged samples has ever been included in ADAMS, and WA failed to establish that any of the 2013 Samples existed in reality and that any of them, if existed, were provided by the Athlete.

- The washout schedules are not sufficient to prove the Use of Prohibited Substances in the absence of corroborating evidence from LIMS, since the "washout schedules" were proved to contain incorrect and unreliable information.

- The Sole Arbitrator should conclude that there is simply no evidence which can comfortably satisfy her that the new charge is proven according to the necessary standard of proof.

57. The Athlete requests the following relief:

"i. This Answer Brief is admissible.

ii. The World Athletics's Appeal against Ms Ekaterina Guliyev be dismissed in its entirety;

iii. The arbitration costs shall be borne by the World Athletics and the Russian Athletic Federation jointly and severally.

iv. Ms Ekaterina Guliyev is granted a fair contribution to her legal and other costs incurred with these proceedings."

V. JURISDICTION

58. Article R47 of the CAS Code provides, *inter alia*, 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."

A. Arbitration Agreement

59. In accordance with Rule 38.1 of the 2016 Rules, "[e]*very Athlete shall have the right to request a hearing before the relevant tribunal of his National Federation before any sanction is determined in accordance with these Anti-Doping Rules*".

60. Rule 38.3 of the 2016 Rules provides as follows:

"If a hearing is requested by an Athlete, it shall be convened without delay and the hearing completed within two months of the date of notification of the Athlete's request to the Member [...]. *If the Member fails to complete a hearing within two months, or, if having completed a hearing, fails to render a decision within a reasonable time period thereafter, the IAAF may impose a deadline for such event. If in either case the deadline is not met, the IAAF may elect, if the Athlete is an International-Level Athlete, to have the case referred directly to a single arbitrator appointed by CAS. The case shall be handled in accordance with CAS rules (those applicable to the appeal arbitration procedure without reference to any time limit for appeal). The hearing shall proceed at the responsibility and expense of the Member and the decision of the single arbitrator shall be subject to appeal to CAS in accordance with Rule 42* [...]."

61. The Sole Arbitrator observes that in the present case, it is undisputed that the Athlete was an international-level athlete and that RUSAF was the National Federation that should have heard this case in the first instance, even though its membership from WA has been suspended since 26 November 2015. Therefore, due to such suspension from membership, it was *per se* impossible for the First Respondent to hold a hearing "*within two months*" with regard to any of the ADRVs, as set out by Rule 38.3 of the 2016 Rules. Under these circumstances, WA was entitled to submit the matter to the CAS for a first instance decision to be rendered by a Sole Arbitrator (see also, e.g., CAS 2020/O/6759; CAS 2020/O/6761; CAS 2016/O/4463; CAS 2016/O/4464).

62. Furthermore, neither of the Respondents challenged the jurisdiction of the CAS during these proceedings. Therefore, the Sole Arbitrator finds that CAS has jurisdiction in the present case, in accordance with Rule 38.3 of the 2016 Rules.

B. The Second Respondent's *res judicata* defense

63. Although not having formally disputed the CAS's jurisdiction, the Second Respondent claims that the Claimant's requests fall outside the Sole Arbitrator's mandate because of the *res judicata* principle.

64. In this respect, the Second Respondent alleges that WA is barred from prosecuting her in relation to the 2012 Samples, because these samples have already been the subject of the 4486 Award, in which the panel had found that the evidence relied upon in the McLaren Affidavit relating to the 2012 Samples was insufficient to prove an ADRV. That WA now relies on additional (new) evidence to demonstrate that the Athlete committed a "use" violation in July 2012 is of no avail: The strict requirements of a "revision" are not met in the present case, according to the Second Respondent. Hence, the Sole Arbitrator has no mandate to make any ruling on the 2012 Samples.

65. The issue of *res judicata* is, in principle, a procedural question governed by the *lex arbitri*, i.e., Swiss law (see, e.g. CAS 2019/A/6483, paras. 115 et seq.). Under Swiss law, and in accordance with the jurisprudence of the Swiss Federal Tribunal (SFT), there is *res judicata* when the claim in dispute is identical to that which was already the subject of an enforceable judgment (identity of the subject matter of the dispute). The identity must be understood from a substantive and not grammatical point of view, so that a new

claim, no matter how it is formulated, will have the same object as the claim already adjudicated (Swiss Federal Tribunal, ATF 140 III 278 at 3.3; ATF 139 III 126 at 3.2.3). The principle of *res judicata* only applies to arbitral awards and court decisions. Under Swiss law, *res judicata* is part of the procedural public policy, and it applies both domestically and internationally (SFT, 4A_633/2014).

66. The effects of the *res judicata* principle are recognized in CAS jurisprudence and have been described as follows (CAS 2019/A/6483, para. 120):

> *"This aspect of the res judicata principle constitutes, as confirmed by the constant CAS case law (CAS 2013/A/3256 and CAS 2018/A/5800), the so-called "Sperrwirkung" (prohibition to deal with the matter = ne bis in idem), the consequence of which is that if a matter (with res iudicata) is brought again before the adjudicatory authority, the latter is not even allowed to look at it, but must dismiss the matter (insofar) as inadmissible. The second aspect of that principle being the so-called "Bindungswirkung" (binding effect of the decision), according to which the judge in a second procedure is bound to the outcome of the matter decided in res judicata."*

67. While the 4486 Case clearly involved the same parties as the present case, the Sole Arbitrator finds that the 4486 Award has no "*Sperrwirkung*" in relation to the present case, based on the following reasoning:

68. The *res judicata* effect only goes as far as the panel which issued the award in question decided on the matter in dispute. In this respect, the panel is strictly bound by the requests for relief pursued by the parties. A Swiss arbitral award in which the panel goes beyond the prayers for relief (*ultra petita*) or grants a relief different from what was requested (*extra petita*) is subject to annulment pursuant to Article 190(2)(c) PILA. The subject matter in dispute is, therefore, determined by the parties, not by the arbitral tribunal.

69. As a result, it is crucial to analyze how WA determined (the limits of) the subject matter pursued in the 4486 Case. In this respect, the Sole Arbitrator notes that WA's charges in the 4486 case involved the alleged use of EPO (in 2012), Peptides (in 2013) and Oxandrolone (in 2014). In proving "use" of these Prohibited Substances, WA relied on the Stepanova Statement and corroborating audio and video recordings made by Ms. Stepanova (see 4486 Award, para. 80). It did not rely on the 2012 Samples. These samples, mentioned in the McLaren Affidavit, were introduced into the 4486 proceedings as "*further evidence*" that the Athlete "*used prohibited substances*" (WA's letter of 20 September 2016). WA, however, did not introduce the 2012 Samples as separate charges. WA requested, *inter alia*, disqualification of the Athlete's competitive results "*from 8 August 2012*", which demonstrates that the 2012 Samples (dated 17 and 25 July 2012) were only used to corroborate the Athlete's allegedly heavy involvement in illegal doping practices, but were not pursued as independent ADRVs (as otherwise WA would have sought disqualification of the Athlete's results from 17 July 2012).

70. Given that WA's charges in the 4486 Case were limited as described above, the panel

had no mandate to make any decision on the 2012 Samples with *res judicata* effect. In fact, the panel in the 4486 Case did not do so, contrary to what the Second Respondent asserts. In paras. 116, 118 of the 4486 Award, the panel notes that, while it was comfortably satisfied that the Athlete used Oxandrolone in 2014, it was not comfortably satisfied that "*the evidence presented confirms that the Athlete used other Prohibited Substances at other times during her career (i.e., EPO in 2012 and Peptides in 2013)*" (emphasis added by the Sole Arbitrator). In fact, while the Respondent's *res judicata* argument heavily rests on this very sentence, the Second Respondent conveniently omitted to quote the underlined part of that sentence. However, this part of the sentence is crucial, because it demonstrates that the panel's statement that the Athlete did not use other Prohibited Substances at other times during her career is limited in scope to the two further substances on which WA based its case (EPO and Peptides). The 4486 Award does not mention the substances found in the 2012 Samples (boldenone, ATD and DHEA). Similarly, while the panel in the 4486 Award (para. 111) "*did not find the evidence contained* [in the McLaren affidavit] *particularly strong*" it also clarified that this was to the extent that such evidence "*relates to the allegations brought in this procedure*". These allegations were, however, limited to the use of EPO (in 2012), Peptides (in 2013) and Oxandrolone (in 2014) and concerned a different time period (starting in August 2012), whereas the present case involves boldenone, ATD and DHEA for earlier samples collected in July 2012.

71. As a result, the Sole Arbitrator finds that the claims pursued by WA in this case and in the 4486 Case are not identical. For this very reason, it is also immaterial whether WA could have produced the evidence relied upon in the present case (in particular, the 2015 LIMS, the WADA Statement and the report from Prof. Ayotte) earlier.

72. The Second Respondent's *res judicata* argument is dismissed.

VI. APPLICABLE LAW

73. Article R58 of the CAS Code states as follows:

> *"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."*

74. Rule 13.7.4 of the WA Anti-Doping Rules that entered into force on 1 January 2021 (the "WA ADR") states as follows:

> *"In all CAS appeals involving World Athletics, the CAS Panel shall be bound by the World Athletics Constitution, Rules and Regulations (including these Anti-Doping Rules). In the case of conflict between the CAS rules currently in force and the World Athletics Constitution, Rules and Regulations, the Constitution, Rules and Regulations shall take precedence."*

75. Rule 13.7.4 of the WA ADR further provides as follows:

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

76. Rule 1.4.2 of the WA ADR states that:

> "[t]*hese Anti-Doping Rules shall apply to* [...]
>
> *(f) the following Athletes, Athlete Support Personnel and other Persons:*
>
> *i) all Athletes who have signed an agreement with World Athletics or have been accredited or granted an official status by World Athletics/the Integrity Unit (for example, by way of inclusion in the International Registered Testing Pool or by designation of a Platinum, Gold, Silver or Bronze Label status) and all Athlete Support Personnel who have been accredited or granted an official status by World Athletics (for example, by way of an identity card) or who participate in International Competitions organised or sanctioned by World Athletics;*
>
> *(ii) all Athletes, Athlete Support Personnel and other Persons who are members of or authorised by any Member Federation, or any member or affiliate organisation of any Member Federation (including any clubs, teams, associations or leagues);*
>
> *(iii) all Athletes, Athlete Support Personnel and other Persons preparing for or participating in such capacity in Competitions and/or other activities organised, convened, authorised, sanctioned or recognised by (i) World Athletics (ii) any Member Federation or any member or affiliate organisation of any Member Federation (including any clubs, teams, associations or leagues), or (iii) any Area Association, wherever held, and all Athlete Support Personnel supporting or associated with such Athletes' preparation or participation* [...]"

77. As an athlete affiliated to RUSAF who has participated in the activities and competitions of RUSAF and WA for a number of years, the Athlete is subject to the WA ADR.

78. Pursuant to Rule 1.7.2(b) of the WA ADR, ADRVs committed prior to 3 April 2017 are subject, for substantive matters, to the rules in place at the time of the alleged ADRV and, for procedural matters, to the 2016 Rules, effective from 1 November 2015.

79. The anti-doping regulations in force at the time of the asserted ADRVs in 2012 were the 2012 Rules, and more particularly, Chapter 3 thereof.

80. In summary, therefore, the 2012 Rules shall govern the substantive aspects of the ADRVs and the procedural aspects shall be governed by the 2016 Rules. To the extent that the WA Rules do not deal with a relevant issue, Monegasque law shall apply (on a

subsidiary basis) to such issue.

VII. MERITS

81. Considering all Parties' submissions, and after the oral hearing, the main issues to be resolved by the Sole Arbitrator are the following:

A. Did the Athlete commit an anti-doping rule violation?

B. If question **A.** is answered in the affirmative, what is the appropriate sanction to be imposed on the Athlete?

A. Did the Athlete Commit an Anti-Doping Rule Violation?

82. The subject matter of the below analysis is the 2012 Samples. While the Second Respondent, in her Answer, assumed that WA was (also) basing its case on the 2013 Samples, WA clarified during the hearing that its charges were based only on the 2012 Samples. The 2013 Samples were used by WA as supportive evidence, but not as "stand-alone" evidence of a "use" violation under the relevant rules. In accordance with these clarifications made by WA during the hearing, the Sole Arbitrator's analysis of whether the Athlete committed one or more ADRVs will be limited to the 2012 Samples.

83. Before addressing the merits of the Parties' factual and legal arguments, the Sole Arbitrator finds it necessary to identify the relevant provisions which define (1) the anti-doping rule violations allegedly committed, (2) the burdens and standards of proof, as well as (3) the means of proof in their respect. On such basis, the Sole Arbitrator will then determine (4) whether the Athlete committed the alleged anti-doping rule violation(s).

1. Use of a Prohibited Substance

84. Rule 32.2 (b) of the 2012 Rules reads 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 and that no Prohibited Method is used. 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 antidoping rule violation to be committed."*

85. "*Use*" is defined in the 2012 Rules as:

"the utilisation, application, ingestion, injection or consumption by any means whatsoever of any Prohibited Substance or Prohibited Method."

86. As the above quotes demonstrate, the application of Rule 32.2 (b) of the 2012 Rules does not presume that an athlete used a prohibited substance knowingly.

2. Burdens and Standards of Proof

87. Rule 33 of the 2012 Rules (which is in line with Article 3.1 of the WADA Code) provides the following:

"Burdens and Standards of Proof

1. *the IAAF, 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, 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."*

88. In accordance with this provision, the burden of proof is firmly on WA to prove the alleged ADRV. The applicable standard of proof is that of comfortable satisfaction.

89. CAS jurisprudence has established the meaning and application of the "*comfortable satisfaction*" standard of proof. The test of comfortable satisfaction "*must take into account the circumstances of the case*" (CAS 2013/A/3258 para. 122). Those circumstances 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 as compared to national formal interrogation authorities*" (CAS 2009/A/1920; CAS 2013/A/3258).

90. CAS awards have also confirmed repeatedly that a panel is allowed to consider the cumulative effect of circumstantial evidence (see, e.g., CAS 2018/O/5667 para. 85; CAS 2021/A/7839, para. 106). Therefore, even if single items of evidence may each be inadequate to establish a violation to the comfortable satisfaction of a hearing panel, taking their cumulative weight together, they may suffice. As described in CAS 2021/A/7839, No. 4 [guiding principle]:

"In case there is no direct but only circumstantial evidence, the adjudicatory body must assess the evidence separately and together and must have regard to what is

sometimes called "the cumulative weight" of the evidence. It is in the nature of circumstantial evidence that single items of evidence may each be capable of an innocent explanation but, taken together, establish guilt beyond reasonable doubt. There may be a combination of circumstances, no one of which would raise a reasonable conviction, or more than a mere suspicion, but the whole taken together, may create a strong conclusion of guilt."

91. The gravity of the particular alleged wrongdoing is also relevant to the application of the comfortable satisfaction standard. In CAS 2014/A/3625 (para. 132), 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 'comfortably satisfied'".

3. Means of Proof

92. Pursuant to Rule 33.3 of the 2012 Rules, and in line with constant CAS jurisprudence, WA may resort to any reliable means to prove the alleged anti-doping rule violations. See, e.g., CAS 2021/A/7839 No. 3 [guiding principle]:

"As a general rule, facts relating to anti-doping rule violations (ADRV) may (i.e., it is permissible) be established by "any reliable means". This rule gives greater leeway to anti-doping organisations to prove violations, so long as they can comfortably satisfy a tribunal that the means of proof is reliable. As a result, it is not even necessary that a violation be proven by a scientific test itself. Instead, a violation may be proved through admissions, testimony of witnesses, or other documentation evidencing a violation. This rule is not a requirement that the evidence adduced be "reliable evidence". Rather, it is a rule as to the method or manner or form in which the facts that are necessary to sustain an allegation of an ADRV may be established, and the rule provides (in a nonexhaustive list) a number of examples of means of establishing facts which are characterised as "reliable"."

93. Such "reliable means" include circumstantial evidence, including but not limited to the LIMS data, EDP evidence and Washout Schedules (see also CAS 2019/A/6168, para. 215), as will be discussed further below.

4. Violation of Rule 32.2 (b) of the 2012 Rules

94. It is undisputed that the Athlete's 2012 Samples were reported as negative in the ADAMS system. As a result, no anti-doping rule violation based on the "presence" of a prohibited substance (Rule 32.2 (a) of the 2012 Rules) can be found. However, the absence of a sample reported as positive in the ADAMS system does not necessarily disprove an anti-doping rule violation under Rule 32.2 (b) of the 2012 Rules. The *prima facie* evidentiary value of the reporting in ADAMS can be overturned by evidence demonstrating that the reporting was false. The crucial question is whether the evidence submitted by WA is sufficient to allow for the conclusion that the 2012 Samples were indeed positive, and that the Athlete had actually used a prohibited substance.

a. The Russian Doping Scheme

95. As a starting point, the Sole Arbitrator considers that there was a systemic cover-up and manipulation of the doping control process within Russia in the manner described by Prof. McLaren in the McLaren Reports, commonly referred to as the Russian doping scheme during the 2010s (including during the period in which the 2012 Samples were collected from the Athlete). According to the First McLaren Report, *"the Ministry of Sport directed, controlled and oversaw the manipulation of athletes' analytical results or sample swapping, with the active participation and assistance of the FSB, CSP, and both the Moscow and Sochi laboratories."* The Second McLaren Report confirmed the key findings of the First McLaren Report. In particular, the McLaren Reports uncovered and described a number of counter-detection methodologies including the Disappearing Positives Methodology and Washout Testing. Together with the Second McLaren Report, Prof. McLaren published the EDP containing evidence relating to athletes he considered were involved in or benefitted from the above schemes.

96. The general evidential reliability of the McLaren Reports has been confirmed by previous CAS panels. For example, in CAS 2021/A/7840, para. 107,

> *"... the Panel accepts the McLaren Reports as a fair account of the Russian doping scheme and, in particular, accepts that the account of the Disappearing Positives Methodology set forth in the McLaren Reports is an accurate and compelling account of what took place in this regard. To be clear, on the basis of the McLaren Reports the Panel makes findings of fact as follows:*
>
> a. *The historic position in Russia was that doping of athletes was undertaken on an ad hoc, decentralised basis where coaches and officials working with elite athletes "in the field" provided those athletes with an array of performance-enhancing drugs (or "PEDs"). The difficulty with this approach was that it could not keep abreast of the developments in doping control, including in particular the introduction of the Athlete Biological Passport ("ABP") so that the athletes were at risk of being caught.*
>
> b. *In response, in or about 2012, the Russian Ministry of Sport sought to 'centralise' the doping effort and bring it under the control of the Moscow Laboratory. [...].*
>
> c. *Part and parcel of this new program was the Disappearing Positives Methodology deployed by the Moscow Laboratory. Samples were provided by the athletes and sent to the Moscow Laboratory for testing and analysis. The Moscow Laboratory conducted an ITP. Where the ITP revealed a potential AAF, the Moscow Laboratory would (through a liaison person) inform the Russian Ministry of Sport which would then decide either to "SAVE" or to "QUARANTINE" the athlete in question, and communicate that decision to the Moscow Laboratory. If the decision was made to "SAVE" the athlete, the Moscow Laboratory would report the sample as negative in ADAMS and, conversely, if the athlete was to be "QUARANTINED", the analytical bench work would continue and the AAF would be reported in the ordinary manner."*

97. The existence of a general doping scheme has also been acknowledged (to some extent) by the Russian Ministry of Sport in its letter to WADA of 13 September 2018 (see also CAS 2019/A/6168, para. 197).

98. On that basis, and also given that the Athlete does not expressly deny the existence of a general doping scheme in Russia, the Sole Arbitrator has no doubt about the existence of such scheme. Evidently, this doping scheme could only succeed, to the extent that it did, with the benefit of falsified results being recorded in ADAMS. Hence, due to the extensive doping practices in the Russian sport in the 2010s (including in 2012, the year in which the 2012 Samples were collected) and the partially corrupted Russian anti-doping regime in place during that time, the ADAMS entries by the Moscow Laboratory cannot enjoy unreserved reliability. What is more, the ADAMS entries are no evidence that the Athlete's samples were clean. Similarly, while the Sole Arbitrator accepts that the mere existence of a doping scheme does not suffice for the purposes of establishing an anti-doping rule violation in individual cases, the existence of such a scheme is a relevant fact to be taken into account in the evaluation of specific evidence available for individual athletes (see also CAS 2019/A/6168, para. 197).

b. The specific evidence against the Athlete

99. WA bases its claims regarding the Athlete's alleged ADRV on the 2012 Samples. There is no evidence as to the particulars of the alleged ADRV: It is not known precisely when and how the prohibited substances were allegedly administered by the Athlete. It is not known who allegedly administered the substances. And it is not known whether the Athlete was aware of the alleged doping, or even of the existence of a general doping scheme.

100. The Athlete denies any such knowledge. However, the Sole Arbitrator notes that it is each athlete's personal duty to ensure that no prohibited substance enters his or her body (Rule 32.2(b)(i) of the 2012 Rules). Accordingly, it is not necessary that intent, fault, negligence or knowing use on the Athlete's part be demonstrated in order to establish an ADRV for use of a prohibited substance. In addition, the success or failure of the use or attempted use of a prohibited substance is not material: it is sufficient that the prohibited substance was used or attempted to be used for an ADRV to be committed (Rule 32.2(b)(ii) of the 2012 Rules).

101. In support of the alleged use of a prohibited substance by the Athlete, WA relies on the following analytical and contextual evidence, to be assessed by the Sole Arbitrator separately and together (see also CAS 2019/A/6168, para. 212):

- the 2015 LIMS, which identifies the 17/7/2012 Sample as positive for boldenone and ATD;
- a London Washout Schedule, which recorded the 17/7/2012 Sample as positive for boldenone and ATD, and – additionally – DHEA;
- A London Washout Schedule, which recorded the 25/7/2012 Sample as "*possibly*" positive for DHEA;

- the expert opinion of Prof. Ayotte, who considered the available data relating to the samples;
- the WADA Statement (including the underlying analytical data), which analyses the history, presentation and reliability of the 2015 LIMS data as well as the evidence against the Athlete;
- the testimony of Dr. Rodchenkov, who spoke about his friendship with the Athlete's coach, Mr. Matvey Telyatnikov, and their discussions about extensive doping practices used by Mr. Telyatnikov for his trainees;
- the Moscow Washout Schedules, which confirm that the Athlete was heavily involved in and protected by the Russian doping scheme.

(i) The 17/7/2012 Sample

102. The Athlete does not dispute the collection of the 17/7/2012 Sample. This sample was recorded in the 2015 LIMS and identified as positive for boldenone and ATD. During the hearing, the Second Respondent stated that she does not principally contest the reliability of the 2015 LIMS data.

103. No underlying analytical PDF and raw data of the analyses reported in the 2015 LIMS were available. As explained in the WADA Statement, the PDF associated with the analysis of conjugated fractions in the 17/7/2012 Sample was deleted on an unknown date by an unknown person prior to WADA being allowed access to the Moscow Data. However, as also explained in the WADA Statement, a version of the deleted PDF could be recovered by forensic experts, and revealed that such (deleted) PDF had been manipulated. More specifically, the original chromatograms which confirmed the presence of ATD in the 17/7/2012 Sample had been replaced (via a "cut-and-paste" technique) with chromatograms showing that ATD was not present in the sample. While the original chromatograms could not be recovered, the WADA Statement explains that this sort of manipulation was a typical pattern for the protection and cover up of doped athletes. Because the replacement of chromatograms was discernible by eye, and thus readily detectible, they were deleted before WADA obtained access of the Moscow data. Mr. Walker's testimony, on behalf of WADA I&I, remained unchallenged on these points during the hearing. The Sole Arbitrator found Mr. Walker to be a credible expert witness, and his explanations were coherent and plausible. Therefore, she relies on the evidence in the WADA Statement.

104. Professor Ayotte confirmed that the (manipulated) chromatograms were entirely inconsistent with the high ATD concentration reported in the 2015 LIMS. Because the 2015 LIMS reporting of ATD and boldenone was presumably correct (and not substantively challenged by the Athlete), Prof. Ayotte concluded that the underlying PDF must have been manipulated, because the high concentration of ATD should have clearly been visible in the chromatogram. As a result, Prof. Ayotte confirmed the manipulation discovered forensically by IT experts of WADA I&I independently from an analytical perspective. Professor Ayotte further confirmed that the detection of both boldenone and ATD in one and the same sample, as per the 2015 LIMS, is coherent,

because boldenone is a metabolite of ATD. The reliability of these entries is further corroborated by the fact that two different testing procedures were used for identifying those substances, and that these were conducted by two different people. Professor Ayotte firmly excluded the possibility that the high concentrations of boldenone and ATD in the 17/7/2012 Sample have an endogenous origin. She explained that the observed T/E ratio of 4.5 is significantly higher than the T/E ratio in other samples of the Athlete, and the concentration of testosterone of 108 ng/ml is far outside the range of normal values in female athletes (which would be, at the highest, at 30 ng/ml). Prof. Ayotte concluded that based on all of these considerations, the presence of ATD and boldenone appears consistent with the administration of the former. Her testimony during the hearing confirmed the findings of her report and was credible and persuasive. There was no serious challenge to the expertise of Prof. Ayotte or to her expert evidence in relation to the material. In these circumstances, the Sole Arbitrator readily accepts this evidence, which provides analytical support of the 2015 LIMS data.

105. The 2015 LIMS data is also corroborated by a London Washout Schedule, in which the 17/7/2012 Sample is listed as containing boldenone and ATD, and – in addition – DHEA. Professor Ayotte explained that DHEA is sometimes included in ATD supplements.

106. Based on the evidence of the 2015 LIMS and the London Washout Schedule, including the related analyses and conclusions of two different experts (Professor Ayotte and WADA I&I), none of which have been seriously challenged by the Athlete, the Sole Arbitrator is comfortably satisfied that the 17/7/2012 Sample is evidence of the Athlete's use of Prohibited Substances. Hence, the Sole Arbitrator is comfortably satisfied that the Athlete committed an ADRV under Rule 32.2 (b) of the 2012 Rules.

107. In reaching this conclusion, the Sole Arbitrator did not rely on the testimony of Dr. Rodchenkov. While Dr. Rodchenkov provided detailed explanations on the general doping context in Russia in 2012 and 2013, including washout testing in the lead-up to the 2012 London Olympic Games and the 2013 Moscow World Championships, he did not provide any details in respect of the two samples on which WA's case against the Athlete rests in this proceeding. Therefore, while his testimony corroborates the existence of a general cover-up scheme, and while it also supports the suspicion that the Athlete benefitted from the extensive concealment activities carried out by the Moscow Laboratory (particularly through the Moscow Washout Schedules), it does not provide any particular insights into the 2012 Samples.

108. Finally, the Sole Arbitrator notes that the testimony of the Athlete's coach, Mr. Matvey Telyatnikov, was of no relevance, because it was limited to generic and unsubstantiated protestations of innocence, which are unfit to rebut the compelling forensic and analytical evidence provided by WA.

(ii) <u>The 25/7/2012 Sample</u>

109. For the 25/7/2012 Sample, no presumptive adverse analytical finding was recorded in the 2015 LIMS. According to Dr. Rodchenkov's testimony, this is not surprising,

because DHEA, which is a substance only very rarely found in athletes' samples, was never recorded in the LIMS as a matter of principle. DHEA was, however, included in London Washout Schedules (and later in Moscow Washout Schedules) to get a "full picture" on the athletes' status before their departures to the London Olympic Games (and the Moscow World Championships).

110. WA relies on a London Washout Schedule recording "*possibly dehydroepiandrosterone*" (DHEA) for the 25/7/2012 Sample and an "*order for EPO*" that was "*not ready yet*". WA also relies on a high concentration of testosterone measured in this sample (58 ng/ml), which, according to Professor Ayotte, is outside the range of testosterone found in bodies of female athletes. Professor Ayotte also explained that the use of DHEA seamlessly explains abnormally high values of testosterone.

111. While the 25/7/2012 Sample is not recorded as positive in the LIMS, a previous CAS panel, in the CAS 2021/A/8012 case, has found that washout schedules can be sufficient evidence to demonstrate a "use" violation if the particular athlete can be identified on the washout schedule, and if the washout schedule establishes use of a prohibited substance by the identified athlete (see CAS 2021/A/8012, para. 138). In that case, the athlete's name had featured on various Moscow Washout Schedules and was linked to the use of a variety of prohibited substances, including methastone, boldenone, oxabolone and DHEA.

112. In contrast, in the present case, the London Washout Schedule only mentions DHEA as "*possibly*" present in that sample. In other words, it appears that there was no clear testing result identifying DHEA (or any other prohibited substance) in the 25/7/2012 Sample with certainty. However, the Sole Arbitrator finds that other circumstantial evidence related to the London Washout Schedule corroborates the suspicion that the 25/7/2012 Sample contained DHEA, including the following:

- The previous 17/7/2012 Sample was identified with DHEA in a London Washout Schedule, only 8 days earlier. The 17/7/2012 Sample was also recorded with an abnormally high concentration of testosterone, which can be explained by the use of DHEA.
- For the 25/7/2012 Sample, the 2015 LIMS also recorded an abnormally high concentration of testosterone (at 58 ng/ml), although it was lower than in the 17/7/2012 Sample (at 108 ng/ml). The decrease in concentration can be explained by degradation within the 8-days period.
- The high testosterone concentrations in the 2012 Samples stand in stark contrast to the testosterone concentration in other samples stemming from the athlete. In her expert report, Professor Ayotte listed five other samples from the athlete, which feature normal testosterone concentrations between 8 ng/ml and 23 ng/ml.
- No other possible, let alone probable, explanation for the abnormally high testosterone concentration in the 25/7/2012 Sample has been introduced in the present proceedings. In fact, the rather short interval between the 17/7/2012 Sample and the 25/7/2012 Sample, with DHEA being found in the first sample,

makes it rather probable that DHEA, which was "possibly" identified also in the second sample, is the cause for the high testosterone concentration found in the second sample.

113. Based on the above, the Sole Arbitrator is comfortably satisfied that the 25/7/2012 Sample is further evidence for the Athlete's use of DHEA, a prohibited substance under the WADA Prohibited List, in July 2012.

B. What is the Athlete's sanction?

114. Having found that the Athlete committed an ADRV, the Sole Arbitrator moves to examining the consequences that must be drawn from such finding.

1. The duration of the Period of Ineligibility

115. Rule 40.2 of the 2012 Rules provides that the sanction to be imposed for an anti-doping rule violation under Rule 32.2 (b) of the 2012 Rules is as follows:

> *"The period of Ineligibility imposed for a violation of Rules* [...] *32.2(b) (Use or Attempted Use of a Prohibited Substances or Prohibited Method)* [...], *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."*

116. Rule 40.6 of the 2012 Rules, which addresses aggravating circumstances, sets forth:

> *"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 greater than the standard sanction, then the 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 antidoping 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 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.* [...]"

117. For the sake of clarity and for the avoidance of doubt the Sole Arbitrator wishes to underline that while in the present proceedings, the Athlete has been found to have committed two ADRVs on two different occasions, it follows from Rule 40.7 (d)(i) of the 2012 Rules that the two samples at issue here constitute only one anti-doping rule violation. The occurrence of multiple violations may, however, be considered as a factor in determining aggravating circumstances under Rule 40.6 of the 2012 Rules.

118. Furthermore, the Sole Arbitrator concurs with WA's view that the present ADRV and the 2014 ADRV shall also be considered together as one single first violation under Rule 40.7 (d)(i) of the 2012 Rules, and that the Period of Ineligibility imposed on the Athlete in the 4486 Award must be credited against any Period of Ineligibility to be imposed in the present Award.

119. That said, the Arbitrator has to determine the Period of Ineligibility, considering that, in the presence of aggravating circumstances, the Period of Ineligibility for a first violation can be increased to a maximum of four (4) years under Rule 40.6 of the 2012 Rules. WA submits a number of aggravating factors in the present case:

- The Athlete was part of a sophisticated doping scheme, namely the washout testing program in advance of the 2012 London Olympic Games. This washout testing was carried out in the run up to the most important event in international athletics. Its aim was to ensure that the athletes sent to the competition would not test positive.
- The Athlete's protection was heavy and lasted a number of years, as her participation in washout programs in 2012, 2013 and 2014 shows.
- A number of Prohibited Substances were recorded in the LIMS and London Washout Schedules in relation to samples of the Athlete;
- The fact that the Athlete committed the 2014 ADRV is in itself an additional aggravating factor per Rule 40.7(d)(i) of the 2012 Rules.

120. The Sole Arbitrator accepts that these circumstances, which have been demonstrated, *inter alia*, through the testimony of Dr. Rodchenkov (washout testing) and the 4486 Award (additional ADRV committed in 2014), constitute "aggravating circumstances" in the sense of Rule 40.6 of the 2012 Rules. In view of the severity and multiplicity of these aggravating circumstances, the Sole Arbitrator finds it appropriate to impose the maximum possible Period of Ineligibility for a first violation on the Athlete, which is four (4) years.

2. Commencement of the Ineligibility Period

121. Rule 40.10 of the 2012 Rules regarding the commencement of the Ineligibility Period

stipulates as follows:

> *"10. Except as provided below, the period of Ineligibility shall start on the date of the hearing decision providing for Ineligibility or, if the hearing is waived, on the date Ineligibility is accepted or otherwise imposed. Any period of Provisional Suspension (whether imposed or voluntarily accepted) shall be credited against the total period of Ineligibility to be served."*

122. In accordance with this rule, the Athlete's period of Ineligibility shall start on the date of the present Award. Since the Athlete has not been provisionally suspended, no credit is to be applied to the Period of Ineligibility imposed herein. Credit is to be given, however, for the Period of Ineligibility imposed on her in the 4486 Award.

3. Disqualification of Results

123. Moreover, the Sole Arbitrator notes that Rule 40.8 of the 2012 Rules regarding the disqualification of results states 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."*

124. WA submits that the Athlete's results as of 17 July 2012 (the date when the Athlete provided the 17/7/2012 Sample) shall be disqualified. If Rule 40.8 of the 2012 Rules where applied strictly and literally, this would result in a disqualification of results over a period of almost 12 years.

125. Notably, Rule 40.8 of the 2012 Rules does not contain any "fairness exception". However, the Sole Arbitrator finds that fairness considerations must be taken into account despite that Rule 40.8 of the 2012 Rules does not expressly mention them. The 2009 WADA Code, which was applicable at the time the 2012 Rules came into force, expressly provides for the "fairness exception" in its Article 10.8. Pursuant to Article 23.2.2 of the 2009 WADA Code, Article 10 (addressing sanctions against individuals) belongs to those articles which the Signatories to the WADA Code (including WA) must implement without substantive change. Hence, and in view of the drastic outcome a disqualification of results over a period of 12 years would have on the Athlete, compared to the period of Ineligibility imposed on her, the Sole Arbitrator feels compelled to apply the fairness exception in the present case.

126. If the Sole Arbitrator were to follow WA's request, the Athlete would be treated as if she had been continuously doped for more almost 12 years since the collection of the 2012 Samples.

127. Hence, the Sole Arbitrator finds that the established facts of the present case call for the application of the fairness exception enshrined in Article 10.8 of the 2009 WADA Code, which WA should have implemented without substantive changes. While retroactive disqualification of competitive results is a "*vital part of a credible anti-doping regime for various reasons*", including its "*deterrent effect on doping*" (*Manninen/Nowicki*, "Unless Fairness Requires Otherwise" – A Review of Exceptions to Retroactive Disqualification of Competitive Results for Doping Offenses", CAS Bulletin 2017/2, p. 8 et seq.), CAS panels have frequently found that the general principle of fairness must prevail in order to avoid disproportionate sanctions (see, e.g., CAS 2016/O/4481, para. 195; CAS 2018/O/5713, para. 71; CAS 2019/A/6167 para. 243 et seq.).

128. Several factors may be taken into consideration by CAS panels when assessing the principle of fairness. The decision is not to rest on any particular factor, but an overall evaluation of the evidence in support of fairness, including delays in results management, the athlete's degree of fault, sporting results unaffected by the administration of the prohibited substance, significant (financial or sporting) consequences, or – in the case of ADRVs based on non-analytical evidence –a long period of time between the commission of the ADRV and the athlete's suspension (see *Manninen/Nowicki*, *supra*, p. 8, 11 et seq.). As a matter of principle, CAS panels enjoy broad discretion in adjusting the disqualification period to the circumstances of the case.

129. In the present case, almost ten years passed between the Athlete's established ADRVs (on 17 and 25 July 2012) and the WA's notification of a potential ADRV (on 12 July 2022). This long time is not WA's fault, since it is the result of the unprecedented sophistication of the Russian cover-up doping scheme that was not (and probably could not be) detected until late in 2014. At the same time, and as explained above, there is no proof that the Athlete personally knew of the existence of that doping scheme. Yet, because the fairness exception shall be primarily assessed from the point of view of the athlete (*Manninen/Nowicki*, *supra*, p. 10), the extensive time required for uncovering, investigating and prosecuting anti-doping rule violations that were part of the Russian doping scheme cannot go to the Athlete's detriment when deciding on retroactive disqualification. Furthermore, at least for the time period after the collapse of the Russian doping system, the Panel appreciates that the Athlete never again tested positive.

130. Taking all of these factors into account, and exercising her broad discretion, the Sole Arbitrator finds it fair and appropriate to disqualify the Athlete's results from the date of the 17 July 2012 Sample until 20 October 2014, the day before the disqualification of further results was imposed by the panel in the 4486 Case (see no. 4 of the operative part of the 4486 Award: "*All competitive results obtained by Ms Ekatarina Poistogova from 21 October 2014 through to the commencement of her suspension on 24 August 2015 shall be disqualified.*").

131. Effectively, this ruling ensures that any results obtained by the Athlete between the 2012 ADRV (the subject of this procedure) and the 2014 ADRV (the subject of the 4486 Case) are invalidated. This is fair, because in light of the Athlete's presumably extensive involvement in the Russian doping scheme, evidenced by the discovery of the 2012 and

the 2014 ADRVs, it would be unjust to grant the Athlete the benefit of keeping results achieved in between her proven illegal practices. Hence, the Athlete's results between 17 July 2012 and 20 October 2014 shall be disqualified, with all the resulting consequences, including the forfeiture of any titles, awards, medals, points and prize and appearance money.

VIII. COSTS

132. Article R64.4 of the CAS Code provides the following:

> *"At the end of the proceedings, the CAS Court Office shall determine the final amount of the cost of arbitration, which shall include:*
>
> - *the CAS Court Office fee,*
> - *the administrative costs of the CAS calculated in accordance with the CAS scale,*
> - *the costs and fees of the arbitrators,*
> - *the fees of the ad hoc clerk, if any, calculated in accordance with the CAS fee scale,*
> - *a contribution towards the expenses of the CAS, and*
> - *the costs of witnesses, experts and interpreters.*
>
> *The final account of the arbitration costs may either be included in the award or communicated separately to the parties. The advance of costs already paid by the parties are not reimbursed by the CAS with the exception of the portion which exceeds the total amount of the arbitration costs."*

133. Article R64.5 of the CAS Code reads as follows:

> *"In the arbitral award, the Panel shall determine which party shall bear the arbitration costs or in which proportion the parties shall share them. As a general rule and without any specific request from the parties, the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such contribution, the Panel shall take into account the complexity and outcome of the proceedings, as well as the conduct and the financial resources of the parties."*

134. The Sole Arbitrator decides on the issue of costs *ex officio* and is not bound by the requests of the Parties. In accordance with Article R64.5 of the CAS Code, the Sole Arbitrator has broad discretion in respect of the making of any costs award, which shall be exercised by reference to all the circumstances of the case including the complexity and outcome of the proceedings and the conduct and financial resources of the parties.

135. The Sole Arbitrator notes that the Claimant lost a (albeit small) part of its claim due to an excessive request in terms of the disqualification of results. As a result, in light of her determination, the Sole Arbitrator exercises her broad discretion in respect of costs so as to order that the arbitration costs shall be borne in the proportions 90% (ninety percent) jointly by the Respondents and 10% (ten percent) by the Claimant.

136. Furthermore, pursuant to Article R64.5 of the CAS Code, the Respondents shall jointly pay an amount of CHF 4,000 (four thousand Swiss Francs) to the Claimant as a contribution to its legal costs and other expenses incurred in the present proceedings. Apart from that, each Party shall bear its own legal fees and expenses.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The Request for Arbitration filed on 16 March 2023 by World Athletics against the Russian Athletics Federation and Ms. Ekaterina Guliyev (born Zavyalova, divorced Poistogova) is partially upheld.

2. Ms. Ekaterina Guliyev (born Zavyalova, divorced Poistogova) is found guilty of an anti-doping rule violation under Rule 32.2(b) of the IAAF Competition Rules 2012-2013.

3. Ms. Ekaterina Guliyev (born Zavyalova, divorced Poistogova) is sanctioned with a Period of Ineligibility of four (4) years starting from the date of this Award, with credit to be given for the two -year period of Ineligibility imposed on her in the Final Award in *CAS 2016/A/4486 IAAF v. Ekaterina Poistogova*, which was already served.

4. All the competitive results obtained by Ms. Ekaterina Guliyev (born Zavyalova, divorced Poistogova) from 17 July 2012 until 20 October 2014 are disqualified, with all the resulting consequences, including the forfeiture of any titles, awards, medals, points and prize and appearance money.

5. The costs of the arbitration, to be determined and served separately to the Parties by the CAS Court Office, shall be borne 90% jointly by the Russian Athletics Federation and Ms. Ekaterina Guliyev (born Zavyalova, divorced Poistogova) and 10% by World Athletics.

6. The Russian Athletics Federation and Ms. Ekaterina Guliyev (born Zavyalova, divorced Poistogova) shall jointly pay an amount of CHF 4,000 (four thousand Swiss Francs) to World Athletics as contribution to its legal costs and other expenses incurred in the present proceedings.

7. All other and further requests of reliefs are dismissed.

Seat of arbitration: Lausanne, Switzerland
Date: 28 March 2024

THE COURT OF ARBITRATION FOR SPORT

Annett Rombach
Sole Arbitrator