CAS 2018/O/5674 International Association of Athletics Federations (IAAF) v. Russian Athletics Federation (RUSAF) & Tatyana Lysenko Beloborodva

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Mr Jacques Radoux, Legal Secretary to the European Court of Justice, Luxembourg

in the arbitration between

International Association of Athletics Federations (IAAF), Monaco

Represented by Mr Ross Wenzel and Mr Nicolas Zbinden, attorneys-at-law with Kellerhals Carrard, Lausanne, Switzerland

Claimant

and

Russian Athletics Federation (RUSAF), Moscow, Russia,

First Respondent

and

Ms Tatyana Lysenko Beloborodva, Zhukowsky Moscow Oblast, Russia

Second Respondent

I. PARTIES

1. The International Association of Athletics Federations (the "Claimant" or the "IAAF") is the world governing body for track and field, recognized as such by the International Olympic Committee (the "IOC"). One of its responsibilities is the regulation of track and field, including, under the World Anti-Doping Code ("WADC"), the running and enforcing of an anti-doping programme. The IAAF, which has its registered seat in Monaco, is established for an indefinite period of time and has the legal status of an association under the laws of Monaco.

2. The Russian Athletics Federation (the "First Respondent" or the "RUSAF") is the national governing body for the sport of Athletics in Russia, with its registered seat in Moscow, Russia. The RUSAF is a member federation of the IAAF for Russia, but its membership is currently suspended.

3. Ms Tatyana Lysenko Beloborodva (the "Second Respondent" or the "Athlete"), born on 9 October 1983, is a Russian athlete specialising in hammer throw. She competed, inter alia, in the 2012 London Olympic Games and it is uncontested that, for the purposes of the IAAF Competition Rules (the "IAAF Rules"), she is an "International-Level Athlete".

II. FACTUAL BACKGROUND

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

5. On 26 May 2016, the Athlete was informed by the IOC that her sample collected on 10 August 2012 on the occasion of the 2012 London Olympic Games had been retested (the "London Retesting Violation") and tested positive for metabolites of Dehydrochloromethyltestosterone ("DHCMT"). This substance was found both in the A- and the B-Sample of the Athlete. As a consequence, the IAAF provisionally suspended the Athlete from 2 July 2016.

6. On 6 October 2016, the IOC Disciplinary Commission found the Athlete to have committed an anti-doping rule violation ("ADRV") and disqualified her from the women's hammer throw event of the 2012 London Olympic Games in which she ranked 1st (the "IOC Decision"). The Athlete did not appeal the IOC Decision.

7. On 8 November 2016, the IAAF informed the Athlete that her case had been referred to it and that the IAAF recognised the IOC Decision in application of Rule 46 of the 2016-2017 IAAF Competition Rules. Thus, the Athlete was deemed to have committed an ADRV. Further, the Athlete was informed that her case would be referred to the CAS and she was granted a deadline until 16 November 2016 to state whether she preferred a first instance CAS hearing before a sole arbitrator with a right

to appeal to the CAS (IAAF Rule 38.3) or a sole instance before a panel of three arbitrators with no right to appeal, save to the Swiss Federal Tribunal (IAAF Rule 38.19).

8. On 15 November 2016, the Athlete provided explanations to the IAAF but failed to choose between the two proceedings referred to by the IAAF. Subsequently, on 18 November 2016 and 28 July 2017, the IAAF provided another opportunity for the Athlete to choose between the two above-mentioned proceedings and/or admit the ADRV which would have constituted a second violation as she had already served a first ineligibility period of two (2) years from 15 July 2007 until 14 July 2009. The Athlete was thus given the occasion to accept an eight-year ineligibility period and disqualification of results from 10 August 2012 by signing and returning an Acceptation of Sanction Form by August 2017. There is no evidence, that the Athlete ever replied to the last two letters if the IAAF.

9. This case concerns a claim by the IAAF against the Second Respondent for having committed several ADRV's, in particular Rule 32.2(a) (*Presence of a Prohibited Substance*) and Rule 32.2 (b) of the 2012 IAAF Rules (*Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method*). The RUSAF has been included in the claim as First Respondent, as it has not been able, due to the suspension of its IAAF membership, to conduct a hearing process in the present case.

10. The claim is based, first, on the London Retesting Violation, which would, if recognised, constitute an ADRV for Presence of a Prohibited Substance, and, second, on elements relating to the so-called "*Washout Schedules*" which have been described by Prof. Richard H. McLaren in his first report, submitted on 16 July 2016 (the "First McLaren Report"), as well as in his second report, submitted on 9 December 2016 (the "Second McLaren Report") and the underlying evidence (the "Washout Allegation").

11. The key findings of the First McLaren Report were summarized 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 athletes' analytical results or sample swapping, with the active participation and assistance of the Russian Federal Security Service, the Centre of Sports Preparation of National Teams of Russia and both Moscow and Sochi Laboratories.

12. The Second McLaren Report confirmed these key findings and contained a description of the so-called "*washout testing*" prior to certain major events, including the 2012 London Olympic Games and the 2013 IAAF World Championships in Moscow. The washout testing started in 2012, when Dr. Grigory Rodchenkov, the former director of the formerly WADA accredited laboratory in Moscow, developed a secret cocktail called the "Duchess" with a very short detection window (page 23 of the Second

McLaren Report). According to the Second McLaren Report, "*this process of pre competition testing to monitor if a dirty athlete would test 'clean' at an upcoming competition is known as washout testing*".

13. The Second McLaren Report went on to describe that the washout testing was used 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, according to said Report, providing samples in official doping control Bereg Kits. While the results of the Laboratory's initial testing procedure ("ITP"), which show the presence of Prohibited Substances, were recorded on the washout list, the samples were automatically reported as negative in the Anti-Doping Administration and Management System ("ADAMS").

14. The Second McLaren Report went on to explain that the covering up of falsified ADAMS information only worked if the sample stayed within the control of the Moscow Laboratory, and later destroyed. Given that Bereg kits are numbered and can be audited or also seized and tested, the Moscow Laboratory realized that it would be only a matter of time before it was uncovered that the content of samples bottle would not match the entry into ADAMS.

15. Therefore, according to the Second McLaren Report, the washout testing program evolved prior to the 2013 IAAF World Championships in Moscow. It was decided that the washout testing would no longer be performed with official Bereg kits, but from containers selected by athletes, such as Coke and baby bottles filled with their urine. The athlete's name would be written on the selected container to identify his or her sample (see page 85 of the Second McLaren Report).

16. The Second McLaren Report went on to explain that this "under the table" system consisted of collecting samples in regular intervals and subsequently testing those samples for quantities of prohibited substance to determine the rate in which those quantities were declining so that there was certainty the athlete would test "clean" in competition. If the washout testing determined that the athlete would not test "clean" at competition, he or she was not sent to the competition.

17. According to the Second McLaren Report, the Moscow Laboratory developed a schedule to keep track of those athletes who were subject to this unofficial washout testing program (the "Washout Schedules"). This Washout Schedule was updated regularly when new washout samples arrived in the Laboratory for testing.

18. The Washout Schedules were made public by Prof. McLaren on a website (https://www.ipevidencedisclosurepackage.net/). Amongst other documents that were made public were numerous email exchanges containing references to or from the Washout Schedule. All documents contained on the website were anonymized for privacy reasons. However, each identified athlete was attributed one or more code numbers which were substituted for their name on the relevant documents. Prof. McLaren then informed the IAAF that the code numbers for the Athlete were A0079, A0499 and A0500.

19. On 27 October 2017, the Athletics Integrity Unit of the IAAF informed, on behalf of the IAAF, the Athlete that the evidence provided by Prof. McLaren (the "McLaren

Evidence") indicated that she had used prohibited substances in the lead-up to the 2012 London Olympic Games and the 2013 IAAF World Championships, benefitting in each case from the Disappearing Positives Methodology and Washout Testing and that, as a consequence, the IAAF intended to refer not only the London Retesting Violation but also the McLaren Evidence against the Athlete to the CAS with a view to seeking a period of ineligibility of eight (8) years. The passage of this letter referring to the evidence concerning the Athlete reads as follows:

"(i) Accessing the Documents

All documents contained on the EDP website were anonymised, not least in order to protect the integrity of the on-going investigations. Each identified athlete was attributed one or more codes, which were substituted for their name on the relevant documents.

Your EDP codes are A0079, A0499 and A0500. You may access the relevant documents on the EDP website, in particular by entering into the search bar your individual athlete codes, the relevant sample codes or by entering a specific EDP document reference code (e.g. EDP1166).

The principal evidence of your anti-doping rule violations is summarized below and the most relevant EDP document codes are provided for convenience.

(ii) London Washout Testing

Two of your (official) doping control samples feature on the London Washout Schedules as follows: (i) sample 2728651 collected on 16 July 2012 (see, for example, EDP0019) and (ii) sample 2727809 collected on 21 July 2012 (see, for example, EDP0021).

The following information is recorded on the London Washout Schedules in respect of the 16 July 2012 sample (see EDP0019):

- *Oral Turinabol 20,000*
- *Methasterone 600,000*
- *Oxandrolone 20,000*
- *Desoxymethyltestosterone 120,000*

The following information is recorded on the London Washout Schedules in respect of the 21 July 2012 sample:

- *Methasterone 230,000*
- *Oral Turinabol 10,000*
- *Desoxymethyltestosterone 30,000*

Both samples were reported as negative in ADAMS as a result of the automatic "SAVE" for athletes featuring on the London Washout Schedules.

(iii) Moscow Washout Testing

Three (unofficial) samples on the Moscow Washout Schedules are listed as belonging to you; they date from 6, 17 and 24 July 2013 respectively (see, for example, EDP0028*).*

The following information is recorded on the Moscow Washout Schedules in respect of the 6 July sample:

- *T/E 18*
- *Trenbolone 7m*
- *Desoxymethyltestosterone 500,000*

The following information is recorded on the Moscow Washout Schedules in respect of the 17 July sample:

- *T/E 20*
- *Trenbolone traces*
- *40H Testosterone 220,00*
- *The rest is not clearly visible*

In respect of both the 6 July and 17 July 2013 samples, it is recorded that the Athlete was "following a scheme".

The Moscow Washout Schedule records that the 24 July 2013 sample "appears clear". In other words, the prohibited substances had washed out and could no longer be detected."

20. In the same letter the IAAF stated that regardless of the McLaren Evidence against the Athlete, it considered that the period of ineligibility for the London Retesting Violation would necessarily be eight years. The McLaren Evidence, although not relevant to lead up to any increase of that period of ineligibility, would however be relevant with regards to the question of the disqualification of the Athlete's results before the 2012 London Olympics Games. The IAAF granted the Athlete a deadline until 17 November 2017 to provide her explanations in respect of the McLaren Evidence against her.

21. On 17 November 2017, the Athlete disputed the allegations put forward against her arguing, inter alia, that the McLaren reports as well as the EDP documents contained a lot of contradictions, errors and inconsistencies and that Prof. McLaren himself had considered that his investigation was not directed against individual athletes. Further, the Athlete argued that she considered the charges brought against her to be

completely devoid of any grounds and that, considering the seriousness of the allegations, the IAAF had an extremely serious burden of proof, even if the standard of proof would be that of comfortable satisfaction of the panel. She added that Dr Rodchenkov gave her supplements that he later denied having given her and that he put her under pressure not to reveal that subject. Further, she noted that, in a previous case, a CAS panel had rejected allegations, similar to the ones brought forward against her, based on an affidavit by Prof. McLaren. She noted that she did not and does not admit to an ADRV at the 2012 London Olympic Games. The positive finding in the London Retesting is, according to the Athlete, due to a methodological error. In regard to the Moscow Washout Schedule, the Athlete argued that she had provided none of the samples listed by Dr. Rodchenkov in his files and she had never participated in any "scheme". The only sample that she provided at the 2013 IAAF World Championships in Moscow was an official sample that can be found on ADAMS. All the information contained in Dr. Rodchenkov's files show that they have been compiled in a hasty way and are, therefore inconsistent. As Dr. Rodchenkov was responsible for her first disqualification and ineligibility period in 2007, she was, ever since, in conflict with him and afraid that, in his position as chief of the Moscow laboratory, he could impose an undesirable disqualification on her.

22. Not convinced by the explanations given by the Athlete, the IAAF informed the latter, on 15 January 2018, that her case would be referred to the CAS. The IAAF granted the Athlete a deadline to state whether she preferred a first instance CAS hearing before a sole arbitrator with a right to appeal to the CAS (IAAF Rule 38.3) or a sole instance before a panel of three arbitrators with no right to appeal, save to the Swiss Federal Tribunal (IAAF Rule 38.19).

23. Although the Athlete had, within the given deadline, indicated her preference for her case to be heard as a single hearing, it was impossible for the IAAF to proceed as wished, as the World Anti-Doping Agency (the "WADA") did not give its consent to the Athlete's request.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

24. On 6 April 2018, the IAAF filed its Request for Arbitration against the RUSAF and Tatyana Lysenko Beloborodva (together the "Respondents") in accordance with Article R38 of the Code of Sports-related Arbitration (the "Code"). The IAAF asked for this Request to be considered as its Statement of Appeal and Appeal Brief for the purposes of R47 and R51 of the Code and in compliance with IAAF Rule 38.3 requested the matter to be submitted to a sole arbitrator, acting as a first instance body.

25. On 13 April 2018, the CAS Court Office initiated the present arbitration and specified that, in accordance with IAAF Rule 38.3, it had been assigned to the CAS Ordinary Arbitration Division but would be dealt with according to the CAS Appeals Arbitration Division rules, Articles R47 *et seq.* of the Code. The Respondents were further invited to submit, in line with Article R55 of the Code, their Answer within 30 days.

26. On 30 April 2018, the CAS Court Office noted the fact that the Second Respondent was represented by legal counsels and invited the Claimant and the First Respondent

to state whether they had an objection to the Second Respondent's request for an extension of time until 29 June to file her Answer. No such objections having been raised, the CAS Court Office, on 7 May 2018, informed the Parties that the Second Respondent was granted until 29 June 2018 to submit her Answer to the CAS.

27. On 16 May 2018, the CAS Court Office noted the agreement of the other Parties to the First Respondent's request to see the deadline to file its Answer extended to 29 June 2018 and, thus, granted the extension.

28. On 30 May 2018, the CAS Court Office, pursuant to Article R54 of the Code, informed the Parties that the arbitral panel appointed to hear the present case was constituted by: Mr Jacques Radoux, Legal Secretary to the European Court of Justice in Luxembourg.

29. On 31 May 2018, the counsels to the Second Respondent informed the CAS Court Office that they would no longer represent the Second Respondent.

30. On 4 July 2018, the CAS Court Office, *inter alia*, noted that the Respondents had failed to submit an Answer within the given deadline and invited the Parties to state, before 11 July 2018, whether they preferred a hearing to be held in this matter or for the Sole Arbitrator to issue an award based solely on the Parties' written submissions.

31. On 11 July 2018, the Claimant informed the CAS Court Office that it preferred for a hearing to be held in this matter. The Respondents did not express their position on the question of a hearing within the given deadline.

32. On 13 July 2018, the CAS Court Office informed the Parties that the Sole Arbitrator had decided to hold a hearing in this matter, which could be held in Lausanne on 16 August 2018 and that participation via Skype may be, upon request, allowed by the Sole Arbitrator.

33. On 26 July 2018, the CAS Court Office informed the Parties that given the availability of the Claimant and the absence of a response from the Respondents, a hearing would be held on Wednesday 16 August 2018 at 11:00am (CET) at the CAS Court Office in Lausanne, Switzerland.

34. On 6 August 2018, on behalf of the Sole Arbitrator, the CAS Court Office issued an Order of Procedure that was sent to the Parties and the latter were informed that the hearing would take place on 15 August 2018 at 1:30pm (CET). The Claimant signed the Order of Procedure on 10 August 2018. None of the Respondents signed said Order of Procedure.

35. On 15 August 2018, at 1:30 pm (CET) a hearing took place at the CAS Court Office. The Sole Arbitrator was assisted by Mrs Andrea Zimmermann, Counsel to the CAS, and joined by the following participants:

For the IAAF:
Mr Ross Wenzel and Mr Nicolas Zbinden, (counsels) (in person)

36. At the inception of the hearing, the Claimant confirmed that it had no objection to the constitution of the Panel. At the end of the hearing, the Claimant confirmed that its right to be heard and its right to a fair trial had been fully respected and that it had no objections as to the manner in which the proceedings had been conducted.

IV. SUBMISSIONS OF THE PARTIES

A. The IAAF's submissions

37. In its Request for Arbitration, the IAAF requested the following relief:

i. CAS has jurisdiction to decide on the subject matter of this dispute.

ii. The Request for Arbitration of the IAAF is admissible.

iii. The Athlete is found guilty of one or more anti-doping rule violations in accordance with Rule 32.2(a) and/or Rule 32.2(b) of the IAAF Rules.

iv. A period of ineligibility of eight years is imposed upon the Athlete, commencing on the date of the (final) CAS Award. The period of provisional suspension, provided that it is effectively served by the Athlete, starting from 2 July 2016 until the date of the (final) CAS Award shall be credited against the total period of ineligibility to be served.

v. All competitive results obtained by the Athlete from 16 July 2012 through to the commencement of her provisional suspension on 2 July 2016 (to the extend not already disqualified by the IOC Decision) 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 pursuant to Rule 38.3 of the IAAF Competition Rules 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 the IAAF's legal and other costs.

38. The IAAF's submissions, in essence, may be summarized as follows:

- It follows from article R58 of the Code that the IAAF Anti-Doping Rules (the "IAAF ADR"), which entered into force on 6 March 2018, apply. Pursuant to Rule 13.9.5 of the IAAF ADR: "*In all CAS appeals involving the IAAF, the governing law shall be Monegasque law and the appeal shall be conducted in English, unless the parties agree otherwise.*" The Athlete having been affiliated to RUSAF and having participated in competitions of RUSAF and IAAF, including at the time of the asserted ADRVs in 2012-2013, she is subject to the IAAF ADR. Pursuant to Rule 21.3. of the IAAF 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 2016-2017

IAAF Competition Rules, effective from 1st November 2015 (the "2016-2017 IAAF Rules"). The IAAF anti-doping regulations in force at the time of the asserted ADRVs, which shall apply for substantive matters, were the 2012-2013 IAAF Competition Rules (the "2012-2013 IAAF Rules"). According to Rule 32.2.(a) of the 2012-2013 IAAF Rules prohibits the Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample. Rule 32.2.(b) of the 2012-2013 IAAF Rules forbids the Use or attempted Use by an athlete of a Prohibited Substance or a prohibited Method. Pursuant to rule 33.3 of the 2012-2013 IAAF Rules, facts related to ADRVs "*may be established by any reliable means, including but not limited to admissions, evidence of third Persons, witness statements, experts reports, documentary evidence, conclusions drawn from longitudinal profiling such as the Athlete Biological Passport and other analytical information*".

- The IAAF submits that it is established that the Athlete committed, in violation of Rule 32.2(a) of the 2012-2013 IAAF Rules, an ADRV for Presence of a Prohibited Substance at the 2012 London Olympic Games.

- The IAAF further submits that the Athlete committed Use violations (Rule 32.2(b) of the 2012-2013 IAAF Rules) in the years 2012 and 2013 on the basis of the Washout Schedules. She was one of the protected athletes who featured on the London Washout Schedules and who's positive samples, i.e. the samples of 16 and 21 July 2012 which contained, according to the ITP retest, respectively four and three different Prohibited Substances, in the lead up to the 2012 London Olympic Games were automatically reported as negative in ADAMS by the Moscow Laboratory. As a result of this monitoring of the Athlete's values, the sample provided by the Athlete on 10 August 2012 at the 2012 London Olympic Games was found to be negative. However, and the London retesting violation shows, the Athlete's sample did contain metabolites of DHCMT. The analytical result from the official doping control sample at the 2012 London Olympic Games, therefore, corroborates the reliability of the London Washout Schedules. The Athlete also features on the Moscow Washout Schedules, which comprised athletes who were known to be following a doping program. The three samples from the Moscow Washout Schedules, i.e. 6, 17 and 24 July 2013, were found to contain a Prohibited Substance. The first sample contained viz. Trenbolone and Desoxymethyltestosterone. The second sample contained Trenbolone and 4-Hydroxytestosterone. In addition, the samples showed a very high T/E ratio of 18 and 20 respectively, which is well above the limit of 4, triggering an IRMS analysis to determine the presence of exogenous steroids.

- The found substances cover a wide range of exogenous anabolic steroids all prohibited under S1.1a of the WADA Prohibited List. Thus, the Athlete has breached Rule 32.2(b) of the 2012-2013 IAAF Rules.

- The Athlete has already served a first period of Ineligibility of two (2) years from 15 July 2007 until 14 July 2009. The ADRVs which are the object of the present proceedings are therefore to be considered together as a single second

violation and the sanction should be based on the violation that carries the most severe sanction.

- Considering the IAAF ADR currently applicable are more lenient than the 2012-2013 IAAF Rules, the former should, according to the *lex mitior* principle, apply in the present case. Pursuant to Rule 10.7 of the IAAF ADR, "*[f]or an Anti-Doping Rules Violation that is the second anti-doping offence of the Athlete or other Person, the period of ineligibility shall be the greater of: a) six months; b) one-half of the period of Ineligibility imposed for the first anti-doping offence without taking into account any reduction under Article 10.6; or c) twice the period of Ineligibility that would be applicable to the second Anti-Doping Rule Violation if it were the first Anti-Doping Rule Violation, without taking into account any reduction under article 10.6.*" In the present case littera c) should apply.

- As the violations based on the Retesting Violation in the McLaren Evidence involve Non-specified Substances, the sanction for these violations should be four years unless the Athlete can establish that they were not intentional. As the Athlete did not offer any explanation for how the prohibited steroids entered her system, the doping must clearly be presumed to have been intentional. As a result, the four-year period of ineligibility would be applicable pursuant to Rule 10.2.1 of the IAAF ADR if they were to be considered as first violation. The applicable sanction for the Athletes second ADRV under rule 10.7.1 of the IAAF ADR is therefore eight (8) years. Such period of Ineligibility should start on the date of the CAS Award.

- According to Rule 10.8 of the IAAF ADR, the Athlete's results in competition should be disqualified from the date the sample that showed a positive result was collected through to the start of any provisional suspension or ineligibility period (with all of the resulting consequences including forfeiture of any medals, titles, ranking points and prize and appearance money), unless the Disciplinary Tribunal determines that fairness requires otherwise.

- Given that the first doping evidence dates back to the sample provided on 16 July 2012, the Athlete's results must be disqualified from this date through the commencement of her provisional suspension on 2 July 2016. In the present case the fairness exception should not apply given the severeness of the violations and the fact that it is a second offence after 2007.

B. The Respondent's submissions

39. Although having been formally and repeatedly invited to participate in the present proceedings, neither RUSAF nor the Athlete filed any written submissions nor did they participate at the hearing.

V. JURISDICTION

40. The IAAF ADR, which are applicable because the Request for Arbitration was filed on April 2018, expressly permit ADRV cases to be filed directly with the CAS and

referred to a single arbitrator appointed by the CAS. In this regard, IAAF ADR Rule 38.3 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. Members shall keep the IAAF fully informed as to the status of all cases pending hearing and of all hearing dates as soon as they are fixed. The IAAF shall have the right to attend all hearings as an observer. However, the IAAF's attendance at a hearing, or any other involvement in a case, shall not affect its right to appeal the Member's decision to CAS pursuant to Rule 42. 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. A failure of a Member to hold a hearing for an Athlete within two months under this Rule may further result in the imposition of a sanction under Rule 45.*"

41. In this case, RUSAF was suspended and could therefore not hold a hearing in the deadline set out in Rule 38.3 of the IAAF ADR. Further, it is established that the Athlete is an International-Level Athlete in the sense of the IAAF ADR.

42. In the light of the foregoing, the Sole Arbitrator finds that the CAS has jurisdiction in this procedure. In addition, the jurisdiction of CAS was not contested by the Respondents.

VI. ADMISSIBILITY

43. Although the present procedure is a first-instance procedure and has, thus, been assigned to the Ordinary Arbitration Division, pursuant to Rule 38.3 of the IAAF ADR cited above, the rules of the appeal arbitration procedure set out in the Code shall apply. It has however to be noted that Rule 38.3 clearly states that this application is "*without reference to any time limit for appeal*". Thus, the Request for Arbitration in the present case has to be considered made in a timely manner.

44. The Sole Arbitrator further notes that the Request for Arbitration, to be considered as combined Statement of Appeal and Appeal Brief for the purposes of articles R47 and R51 of the Code, complies with the formal requirements set out by the Code. In addition, there are no objections as to the admissibility of the IAAF's claims.

45. In these conditions, the Sole Arbitrator finds that the Request for Arbitration is admissible.

VII. APPLICABLE LAW

46. The present procedure is based on Rule 38.3 of the IAAF ADR. As already mentioned above, it follows from that rule that in a case directly referred to CAS "*the case shall be handled in accordance with CAS rules (those applicable to the appeal arbitration procedure without reference to any time of limit for appeal)*".

47. Thus, the provisions of the Code applicable to the appeal arbitration procedure are relevant in the present procedure.

48. Article R58 of the Code provides 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."*

49. Rule 13.9.4 of the IAAF ADR provides as follows:

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

50. This case is not an appeal. However, the purpose of the direct hearing at the CAS is to shortcut the otherwise applicable procedure. The substantive outcome of the shortcut should not differ from the outcome of the otherwise applicable procedure. Therefore, Rule 13.9.4 must apply by analogy.

51. Pursuant to Rule 13.9.5 of the IAAF ADR, the governing law shall be Monegasque law. However, the IAAF rules in question are to be interpreted in a manner harmonious with other WADC compliant rules.

52. Pursuant to Rule 21.3. of the IAAF ADR, anti-doping rule violations committed prior to 3 April 2017 are subject, for substantive matters, to the rules in place at the time of the alleged anti-doping rule violation. With respect to the procedural matters, Rule 21.3. of the IAAF ADR provides that "*for Anti-Doping Rule Violations committed on or after 3 April 2017, these Anti-Doping Rules*" shall apply and that "*for Anti-Doping Rule Violations committed prior to 3 April 2017, the 2016-2017 IAAF Competition Rules*" shall apply. Thus, the procedural issues of the present arbitration shall be governed by the 2016-2017 IAAF Competition Rules.

53. According to Rule 21.3. of the IAAF ADR: "*the relevant tribunal may decide it appropriate to apply the principle of* lex mitior *in the circumstances of the case*".

54. The IAAF argues that the Athlete's alleged ADRVs occurred in the years 2012 and 2013 and that the2012-2013 IAAF Rules should, thus, apply. However, according to

IAAF, in application of the principle of *lex mitior* the sanction should be established on basis of the IAAF ADR which are more lenient than the 2012-2013 IAAF Rules.

55. Given that the alleged ADRV's took place in the year 2012 and 2013, the Sole Arbitrator holds that the substantive aspects of the present procedure are to be governed by the 2012-2013 IAAF Rules. The Sole Arbitrator further considers that in view of the wording of Rule 21.3 of the IAAF ADR the sanction should be determined on basis of the lex mitior, i.e. the IAAF ADR.

56. The Sole Arbitrator notes that, pursuant to Rules 33.1 of the 2012-2013 IAAF Rules, the burden of proof that an ADRV has occurred is on the IAAF and that the relevant standard of proof is that he must be comfortably satisfied that the Athlete committed an ADRV before making a finding against said athlete (see, e.g. CAS 2015/A/4163; CAS 2015/A/4129 and CAS 2016/A/4486).

VIII. MERITS

A. The Anti-Doping Rule Violations

57. The IAAF claims that the Athlete breached Rule 32.2(a) of the 2012-2013 IAAF Rules, prohibiting the Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete Sample, and Rule 32.2(b) of the 2012-2013 IAAF Rules, which prohibits the Use or Attempted Use of a Prohibited Substance or a Prohibited Method.

B. Discussion on the evidence taken into account by the Sole Arbitrator

58. In reaching his decision, the Sole Arbitrator has accepted into evidence all the evidence provided by the IAAF, in particular the McLaren Evidence.

59. In this regard, the Sole Arbitrator recalls that the admittance of evidence is subject to procedural laws. Given that the 2016-2017 IAAF Rules govern the admittance of evidence, the Sole Arbitrator has to refer to Rule 33(3) of these rules, which provides: *"Facts related to anti-doping rule violations may be established by any reliable means, including but not limited to admissions, evidence of third Persons, witness statements, expert reports, documentary evidence, conclusions drawn from longitudinal profiling such as the Athlete Biological Passport and other analytical information."*

60. Regarding the alleged Presence Violation in the year 2012, the Sole Arbitrator notes that the sample provided by the Athlete on 10 August 2012 at the London Olympic Games tested positive for DHCMT and that the Athlete did not appeal the IOC Decision.

61. As regards the other alleged ADRV, considering the very large scope of elements that could be admitted as evidence, the Sole Arbitrator holds that the McLaren Evidence has to be considered as evidence in the sense of the 2016-2017 IAAF Rules and that if considered as reliable, this evidence can be relied on for the purpose of establishing facts related to an ADRV.

62. Further, when evaluating whether he was comfortably satisfied that an ADRV had occurred, the Sole Arbitrator did take into consideration all relevant circumstances of the case. In the context of the present case, and by analogy to other cases handled by the CAS concerning similar issues relating to similar evidence (CAS 2017/A/5379 and CAS 2017/A/5422), the relevant circumstances include, but are not limited, to the following:

- the IAAF is not a national or international law enforcement agency. Its investigatory powers are substantially more limited than the powers available to such bodies. Since the IAAF cannot compel the provision of documents or testimony, it must place greater reliance on the consensual provision of information and evidence and on evidence that is already in the public domain. The evidence that it is able to present before the CAS necessarily reflects these inherent limitations in the IAAF's investigatory powers. The Sole Arbitrator's assessment of the evidence must respect those limitations. In particular, it must not be premised on unrealistic expectations concerning the evidence that the IAAF is able to obtain from reluctant or evasive witnesses and other source.

- in view of the nature of the alleged doping scheme and the IAAF's limited investigatory powers, the IAAF may properly invite the Sole Arbitrator to draw inferences from the established facts that seek to fill in gaps in the direct evidence. The Sole Arbitrator may accede to that invitation where he considers that the established facts reasonably support the drawing of the inferences. So long as the Sole Arbitrator is comfortably satisfied about the underlying factual basis for an inference that the Athlete has committed a particular ADRV, he may conclude that the IAAF has established an ADRV notwithstanding that it is not possible to reach that conclusion by direct evidence alone.

- at the same time, however, the Sole Arbitrator is mindful that the allegations asserted against the Athlete are of the utmost seriousness. The Athlete is accused, inter alia, of having used Prohibited Substances and having knowingly benefitted from a doping scheme and system that was covering up her positive doping results and registered them as negative in ADAMS. Given the gravity of the alleged wrongdoing, it is incumbent on the IAAF to adduce particularly cogent evidence of the Athlete's deliberate personal involvement in that wrongdoing. In particular, it is insufficient for the IAAF merely to establish the existence of an overarching doping scheme to the comfortable satisfaction of the Sole Arbitrator. Instead, the IAAF must go further and establish, in each individual case, that the individual athlete knowingly engaged in particular conduct that involved the commission of a specific and identifiable ADRV. In other words, the Sole Arbitrator must be comfortably satisfied that the Athlete personally committed a specific violation of a specific provision of the 2012-2013 IAAF Rules.

- in considering whether the IAAF has discharged its burden of proof to the requisite standard of proof, the Sole Arbitrator will consider any admissible "reliable" evidence adduced by the IAAF. This includes any admissions by the Athlete, any "credible testimony" by third Parties and any "reliable" documentary evidence or scientific evidence. Ultimately, the Sole Arbitrator

has the task of weighing the evidence adduced by the Parties in support of their respective allegations. If, in the Sole Arbitrator's view, both sides' evidence carries the same weight, the rules on the burden of proof must break the tie.

63. As to the reliability of the McLaren Evidence, the Sole Arbitrator, notes, first, that the findings of the Second McLaren Report in relation to the "Disappearing Positive Methodology", meet – according to the report – a high threshold, as the standard of proof that was applied was "beyond reasonable doubt" and, thus, can be considered as sufficiently reliable (OG AD 16/009, and CAS 2017/O/5039). In this regard, the Sole Arbitrator further notices that Dr Rodchenkov has, on several occasions, testified that the results that were supposed to be reported in ADAMS have been systematically registered as negative and that said testimony has, until now, not been proven wrong.

64. Second, neither Prof. McLaren's credibility nor his independence when establishing his reports have been objectively contested. The simple fact that he has been appointed as arbitrator by the WADA in cases at the CAS and has been during a certain period of time member of the WADA board does not affect the finding in his Reports as it is not even alleged that the WADA could have had an interest in seeing Prof McLaren make the findings he did in his Reports. This is even more so as the said findings put WADA and its management of the whole anti-doping system in a bad light.

65. Third, a mere allegation, such as the one brought forward by the Athlete in her letter to the IAAF dated 17 November 2017, that Prof. McLaren's findings are biased, not proven and/or are not reliable, does not constitute a substantiated contestation of the facts, such allegation being purely generic.

66. Fourth, the Sole Arbitrator considers that given the important number of athletes whose names were on the London Washout Schedule and whose samples provided at the 2012 London Olympic Games retested positive, said Schedule appears to be reliable evidence. This is further corroborated by the fact that the substances found in many of the retested samples provided at the 2012 London Olympic Games correspond to the substances listed, for the same athletes, on the London Washout Schedule.

67. Fifth, in difference to the information related to London Washout Schedule made public by Prof McLaren (and which had been made available to the athletes), in which the names of the athletes had been replaced by codes, the documents submitted as evidence by the IAAF in the present case, which are the initial documents revised by Prof McLaren and his team, contain the names of the athletes that provided the samples. Thus, this list is not affected by the errors that might have been made by Prof McLaren and his team when coding the information contained therein.

68. Sixth, the reliability of the metadata of the evidence relied upon by Prof. McLaren to establish his Reports and by the IAAF in the present case has, at this stage, never been successfully contested and its contemporaneous character has not been questioned by the Athlete. Thus, the Sole Arbitrator sees no reasons to do so either and follows, on this aspect, the existing CAS jurisprudence (CAS 2017/O/5039).

69. This inference is not called into question by the argument that Dr Rodchenkov, from whose hard disk the London Washout Schedule has been, according to the IAAF,

extracted, would not be a reliable witness because he allegedly would make sure that the doping tests turned out positive without the athletes having used any of the prohibited substances found in order to extort money from the said athletes. Indeed, this allegation is not corroborated by any objective or material evidence and has therefore to be considered to be without any grounds. In this respect, the Sole Arbitrator notes that the allegations brought against Dr Rodchenkov cannot be compared to the ones put forward by Russian track and field athletes against other Russian Officials, as in those cases there was reliable and substantiated evidence corroborating the accusations (CAS 2016/A/4417-4419-4420). This allegation does moreover not seem convincing as an extortion scheme does not require the establishment of said Washout Schedules and certainly does not require, first, the presence of athletes whose samples did not show any adverse analytical finding in the initial testing procedure ("ITP") of the Moscow Laboratory and, second, the details and comments which can be found on the Washout Schedules.

70. Further, the Sole Arbitrator notes that it is uncontested that Dr Rodchenkov, as director of Moscow Laboratory, was in a position to have access to all relevant data and information necessary to establish the Washout Schedules either himself or get them established by one of his subordinates at the Laboratory. It is moreover uncontested that the Moscow Laboratory was one of the leading anti-doping laboratories in the world and that it had the capacity to detect even the slightest traces of substances in a reliable manner. Finally, it is uncontested that Dr Rodchenkov had (and still has) the scientific knowledge and experience required to establish the Washout Schedules. Thus, the evidence based on his scientific expertise can be considered reliable as well.

71. The Sole Arbitrator holds that no element has been brought forward to validly contest the argument that Dr Rodchenkov or one of his colleagues from the Moscow Laboratory (Mr Tim Sobolevsky) set up the London and the Moscow Washout Schedules for the purpose of assuring that the athletes on the list would not test positive at the events they were preparing. In particular, the Sole Arbitrator's notes that no convincing element has been brought forward that would explain how Dr Rodchenkov could have established, after having left his position of/as director of the Moscow Laboratory but before the publication of the results of the London Retests, a list with the names of athletes that allegedly had used prohibited substances, list which then turned out to be largely in line with the list of athletes whose samples provided at the 2012 London Olympic Games and the 2013 IAAF World Championships retested positive for exactly those substances referenced in the said Schedules. The fact that the EDP documentation contains, as Prof McLaren has acknowledged during a hearing in another procedure cases (CAS 2017/A/5379 and CAS 2017/A/5422), some errors does not invalidate the reliability of the whole findings as such, as an occasional error in the allocation of the codes in some cases does not affect the veracity of all the codes and the content of the samples allocated to the athletes. In any event, as already mentioned above, in the present matter, the evidence submitted by the IAAF does not contain the code number attributed to the Athlete, but the Athlete's name.

72. Moreover, according to constant CAS jurisprudence, the mere protestation of an athlete that he or she never used a Prohibited Substance or a Prohibited Method is, by

itself without sufficient weight to discharge the burden lying upon the athlete to prove lack of intent (CAS 2016/A/4534 and CAS 2017/A/5295).

73. Finally, with regards to the argument that the positive findings in the retesting of the sample provided at the 2012 London Olympic Games was due to the faulty detection method developed, *inter alia*, by Dr Rodchenkov, the Sole Arbitrator notes that such argument has already been thoroughly analyzed and then rejected by the CAS (CAS 2016/A/4803, 4804 & 4983). As no new elements have been raised in relation to this issue, the Sole Arbitrator does not see any valid grounds to distance himself from the findings of the Panel in those three cases.

74. The circumstance, that in other cases (CAS 2017/A/5379 and CAS 2017/A/5422) a Panel held that the mere fact that an athlete was on the Duchess List is not itself sufficient for the Panel to be comfortably satisfied that said athlete used prohibited substance cannot, in the view of the Sole Arbitrator, be transposed to the present or other cases in connection with the Washout Schedules as some of these Washout Schedules refer to samples given on a specific day, by a specific athlete in the context of an official anti-doping test. The fact that said athlete was tested can therefore not be contested. The only element that could be contested is the positive finding by the Moscow Laboratory in its initial testing procedure ("ITP") related to the sample. However, as already mentioned above, the Sole Arbitrator considers that there is no convincing explanation other than then the one that the Washout Schedules have been established in a contemporaneous manner and on basis of the findings in the ITP carried out by the Moscow Laboratory as to how Dr Rodchenkov could have, *ex post*, established a list of fictive positive tests belonging to a large number of athletes out of which a relatively big part had, as it would turn out later, provided samples at the 2012 London Olympic Games and the 2013 IAAF World Championships that contained the Prohibited Substances that are to be found on the Washout Schedules.

75. With regards to the arguments that, in a previous case, a CAS panel had rejected allegations based on an affidavit by Prof. McLaren, similar to the ones brought forward against the Athlete in the present case, it is sufficient to note that it follows from the award in case CAS 2016/A/4486, that the Panel considered the weight of the McLaren Affidavit to be *de minimis* in those proceedings. Thus, no inference can be made on basis of that case for other proceedings. In any event, it has to be added that the affidavit as well as the attached evidence was expressly admitted and that the Panel, by doing so, implicitly acknowledged that the evidence was reliable.

76. In regard to the Moscow Washout, the Athlete argued that she had never provided none of the samples listed by Dr. Rodchenkov in his files and she had never participated in any "scheme". The only sample that she provided at the 2013 IAAF World Championships in Moscow was an official sample that can be found on ADAMS. All the information contained in Dr. Rodchenkov's files show that they have been compiled in a hasty way and are therefore inconsistent. In view of these considerations, the Sole Arbitrator holds that the McLaren Evidence and the Washout Schedules (the London Washout Schedule and the Moscow Washout Schedule) are reliable elements that, taken together, form a body of concordant factors and evidence strong enough to establish an ADRV in this specific case.

C. Decision on liability

The occurrence of a violation of Rule 32.2(a) of the 2012-2013 IAAF Rules

77. The Sole Arbitrator notes that DHCMT has been found in both the Athlete's A-and B-sample taken on 10 August 2012 at the 2012 London Olympic Games.

78. The Sole Arbitrator further notes that the Athlete did not appeal the IOC Decision to disqualify her results obtained in the hammer throw event at the 2012 London Olympic Games and that, in the present proceeding, the Athlete did not contest the adverse analytical finding (AAF).

79. The Sole Arbitrator recalls that even the assertion, contained in the Athlete's letter to the IAAF dated 17 November 2017, according to which the AAF would only be due to the faulty methodology developed by Dr Rodchenkov, lacks any objective grounds and has, in substance, already been rejected by the CAS (see CAS 2017/A/5379 and CAS 2017/A/5422).

80. DHCMT is an exogenous anabolic androgenic steroid prohibited under section S1.1.a. of WADA's 2012 Prohibited List.

81. Based on the above, the Sole Arbitrator is comfortably satisfied that the Athlete violated Rule 32.2(a) of the 2012-2013 IAAF Rules.

The occurrence of a violation of Rule 32.2(b) of the 2012-2013 IAAF Rules

82. In regard of the alleged violation of Rule 32.2(b) of the 2012-2013 IAAF Rules, the Sole Arbitrator, first, recalls that in the present proceedings there is no indication that the information contained in the McLaren Reports would not be reliable. Second, he shares the view, expressed by other Panels, that the Washout Schedules must be read in the context of the McLaren Reports as a whole and constitute evidence that an athlete whose name appears on the said Washout Schedule used the prohibited substance(s) listed as having been found in his or her sample(s).

83. In regard to the specific case of the Athlete, the Sole Arbitrator notes that the London Washout Schedule contains two (2) different entries related to the Athlete that show the presence of several different prohibited exogenous anabolic steroids (DHCMT, Methasterone, Desoxymethyltestosterone and Oxandrolone), the first one dating back to 16 July 2012. In this regard, it has to be recalled that it is not contested that the name on the London Washout Schedule refers to the Athlete. Further, it is not contested that on the dates of these entries the Athlete underwent official anti-doping control tests although both samples were reported as negative on ADAMS.

84. Given that the presence of one of the four substances, i.e. DHCMT, detected by the ITP performed by the Moscow Laboratory in the sample provided on 16 July 2012, was established by the retest of the sample taken on 10 August 2012 the Sole Arbitrator considers that the AAF at the 2012 London Olympic Games confirms/corroborates the evidence according to which (establishing) the Athlete used one or more prohibited substances to prepare for this competition.

85. As regards the Moscow Washout Schedule, the Sole Arbitrator recalls that the said Schedule refers to the Athlete on three occasions, in relation to samples provided on 6, 18 and 24 July 2013 in the lead up to the 2013 IAAF Word Championships in Moscow. The Washout Schedule indicates, inter alia, that the first sample contained Trenbolone as well as Desoxamethyltestosterone and that the second sample contained Trenbolone and 4-Hydroxytestosterone. These substances are exogenous steroids.

86. The argument, raised by the Athlete in her letter dated 17 November 2017, according to which she had never provided any unofficial sample nor taken part in a scheme, and that the Washout Schedule is inconsistent, cannot, in the eyes of the Sole Arbitrator, be followed. Indeed, first, as already mentioned above, the Athlete did not offer any valid explanation why her name would have appeared on the Moscow Washout Schedule. Second, the allegation that the Washout Schedule is inconsistent or has been compiled in order to blackmail athletes is contradicted by the fact that the analytical results of the different samples do show a pattern according to which the values found dropped more and more the closer the start of the World Championships came. Moreover, there is not only no proof that Dr Rodchenkov tried to blackmail the Athlete but it is clear that in order to do so, it was not necessary to establish a detailed list like the Moscow Washout Schedule which contains references to tests/analyses that show no use of prohibited substances. Further, the Athlete offered no explanation whatsoever as the why the Washout Schedule would contain remarks like "following a scheme" or "appears clean". Third, in the view of the Sole Arbitrator, the mere protestation of the Athlete that she never used a Prohibited Substance and/or that she never provided a sample in another container than an official one does not affect the status of the Moscow Washout Schedule as reliable evidence. Indeed, in the present case, the [only] violation that is reproached to the Athlete is the use of one or more prohibited substances, and not the provision of clean urine in non-official containers for the purpose of enabling her positive urine samples to be swapped at a later stage.

87. In the present case, the Sole Arbitrator thus considers that the Moscow Washout Schedule constitutes reliable evidence that the Athlete used Prohibited Substances, i.e Trenbolone, Desoxamethyltestosterone and 4-Hydroxytestosterone, to prepare for the 2013 IAAF World Championships in Moscow.

88. In the light of these considerations, the Sole Arbitrator is comfortably satisfied that the Athlete is guilty of having used Prohibited Substances in the lead up to the 2012 London Olympic Games. In particular, the Sole Arbitrator is comfortably satisfied that the Athlete used Oral Turinabol (DHCMT) and Oxandrolone during her preparation for this major event as is shown by the results of the sample (2728651) as listed in the London Washout Schedule and dated 15 July 2012. The Sole Arbitrator is further comfortably satisfied that the Athlete is guilty of having used Prohibited Substances in the lead up to the 2013 IAAF World Championships in Moscow. In particular, the Sole Arbitrator is comfortably satisfied that the Athlete used Trenbolone, Desoxamethyltestosterone and 4-Hydroxytestosterone during her preparation for this major event as is shown by the results of the samples respectively provided on 6 and 18 July 2013 as listed in the Moscow Washout Schedule.

89. Based on the above, the Sole Arbitrator finds that the Athlete violated Rule 32.2(b) of the 2012-2013 IAAF Rules.

D. Decision on sanction

90. In the present case, it is uncontested that the Athlete has already served a first period of ineligibility of two (2) years for an ADRV from 15 July 2007 until 14 July 2009 following a positive test for 6α-methylandrostendione in 2007.

91. The Athlete's offences must, therefore, be sanctioned as a second ADRV.

92. In the present case, the IAAF argues that the different violations should be considered as a single second ADRV and not as two separate ones that could then be considered as multiple violations. The consequence is that the sanction imposed shall be on the violation that carries the most severe sanction.

93. The Sole Arbitrator notes that in the present case the IAAF does not rely on the existence of aggravating circumstances that would entail a higher sanction than a standard one.

94. With regards to second ADRVs, Rule 40.7.(a) of the 2012-2013 IAAF Rules provides as follows:

> "Second Anti-Doping Rule Violation: *For an Athlete or other Person's first anti-doping rule violation, the period of Ineligibility is set out in Rules 40.2 and 40.3 (subject to elimination, reduction or suspension under Rules 40.4 or 40.5 or to an increase under Rule 40.6). For a second anti-doping rule violation, the period of Ineligibility shall be within the range set out in the table below*:

2nd violation *1st violation*	*RS*	*FFMT*	*NSF*	*St*	*AS*	*TRA*
RS	*1-4*	*2-4*	*2-4*	*4-6*	*8-10*	*10-life*
FFMT	*1-4*	*4-8*	*4-8*	*6-8*	*10-life*	*Life*
NSF	*1-4*	*4-8*	*4-8*	*6-8*	*10-life*	*Life*
St	*2-4*	*6-8*	*6-8*	*8-life*	*life*	*Life*
AS	*4-5*	*10-life*	*10-life*	*life*	*life*	*Life*
TRA	*8-life*	*life*	*life*	*life*	*life*	*Life*

> *Definitions for the purpose of the second anti-doping rule violation table:*
>
> *RS (Reduced Sanction for Specified Substance under Rule 40.4): the anti-doping rule violation was or should be sanctioned by a reduced sanction under Rule 40.4 because it involved a Specified Substance and the other conditions of Rule 40.4 have been met).*

FFMT (Filing Failures and/or Missed Tests): the anti-doping rule violation was or should be sanctioned under Rule 40.3(c) (Filing Failures and/or Missed Tests).

NSF (Reduced Sanction for No Significant Fault or Negligence): the anti-doping rule violation was or should be sanctioned under Rule 40.5(b) because No Significant Fault or Negligence under Rule 40.5(b) was proved by the Athlete.

St (Standard Sanction under Rule 40.2 or 40.3(a)): the anti-doping rule violation was or should be sanctioned by the standard sanction under Rule 40.2 or Rule 40.3(a).

AS (Aggravated Sanction): the anti-doping rule violation was or should be sanctioned by an aggravated sanction under Rule 40.6 because the conditions set out in Rule 40.6 were established.

TRA (Trafficking or Administration): the anti-doping rule violation was or should be sanctioned by a sanction under Rule 40.3(b) for Trafficking or Administration."

95. According to this disposition, in a case like the present one, which follows a first Period of Ineligibility that can be considered as standard period, the Period of Ineligibility would be between eight (8) years and a lifetime, in case the sanction imposed for the second violation is a standard one, and lifetime, in case the second violation is reproved, for example, with an aggravated sanction.

96. With regards to the sanction for a second ADRV, Rule 10.7 of the IAAF ADR provides as follows:

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

97. Given that the ADRVs at hand, i.e. a Presence Violation and a Use Violation of non-specified substances, would, on basis of the IAAF ADR, both entail a Period of Ineligibility of four (4) years if they were a first violation and if it was not established that they were unintentional, the sanction following from the application of Rule 10.7.c) of the IAAF ADR would be a Period of Ineligibility of eight (8) years.

98. With regards to the non-intentional character of the violations, the Sole Arbitrator recalls that the burden of proof in this respect is on the Athlete and that, in the present case, the latter did not file any written submissions and did not participate at the hearing. In these conditions, the Sole Arbitrator cannot proceed to a reduction of the standard sanctions set out for these violations.

99. Thus, the Sole Arbitrator holds that according to the *lex mitior* principle the sanction shall, in the present case, be imposed according to Rule 10.7.c) of the IAAF ADR rather than on the basis of Rule 40.6 of the 2012-2013 IAAF Rules.

100. In view of the above and in view of the fact that both violations at hand, i.e. the Presence Violation and the Use Violation, lead, according to Rule 10.2.1 of the IAAF ADR, to the same standard sanction of four (4) years, it is not necessary to determine which of the two violations carries the most severe sanction.

101. The present violation being the Athlete's second ADRV, the Sole Arbitrator finds that, pursuant to Rule 10.7.c) of the IAAF ADR, the Period of Ineligibility shall be eight (8) years.

102. In its relevant parts, Rule 10.10.2 of the IAAF ADR provides as follows:

"*The period of Ineligibility shall start on the date that the decision is issued provided that:*

(a) any period of Provisional Suspension served by the Athlete or other Person (whether imposed in accordance with Article 7.10 or voluntarily accepted by the Athlete or other Person in accordance with Article 7.10.6) shall be credited against the total period of Ineligibility to be served. To get credit for any period of voluntary Provisional Suspension, however, the Athlete or other Person must have given written notice at the beginning of such period to the Integrity Unit, in a form acceptable to the Integrity Unit (and the Integrity Unit shall provide a copy of that notice promptly to every other Person entitled to receive notice of a potential Anti-Doping Rule Violation by that Athlete or other Person under Article 14.1.2) and must have respected the Provisional Suspension in full. No credit against a period of Ineligibility shall be given any time period before the effective date of the Provisional Suspension or voluntary Provisional Suspension, regardless of the Athlete or other Person's status during such period. If a period of Ineligibility is served pursuant to a decision that is subsequently appealed, then the Athlete or other Person shall receive a credit for such period of Ineligibility served against any period of Ineligibility that may ultimately be imposed on appeal;

(b) [...]

(c) *where there have been substantial delays in the hearing process or other aspects of Doping Control not attributable to the Athlete or other Person, the period of Ineligibility may be deemed to have started at an earlier date, commencing as early as the date the Anti-Doping Rule Violation last occurred (e.g., under Article 2.1, the date of Sample collection). All competitive results achieved during the period of Ineligibility, including retroactive Ineligibility, shall be Disqualified.*"

103. In the present case, the IAAF argues that the period of ineligibility should start on the date of the CAS award.

104. In this regard, the Sole Arbitrator notes that although the period of time elapsed between the 10 August 2012, date on which the sample was provided and the retest of said sample seems significant, it cannot be considered as a delay insofar as the necessity to proceed to said retest only arose in 2016 due to the publication of the McLaren Reports. The same has to be said about the period of time that elapsed after the case was referred to the IAAF for the imposition of consequences over and above those related to the 2012 London Olympic Games. Indeed, this period of time was mainly used to give the Athlete the opportunity to present her arguments and defend her case.

105. Moreover, even though a certain time elapsed between the Athlete's last manifestation on 17 November 2017 (date of her letter to the IAAF) and the filing of the Request for Arbitration by the IAAF on 6 April 2018, the Sole Arbitrator observes that this interval was mainly due to the fact that, in absence of any response by the Athlete, the IAAF reiterated its invitation to the latter to state whether she preferred a hearing before a Sole Arbitrator or before a Panel of three arbitrators. Further, it has to be noted that the Athlete has been represented by counsels in the proceeding before the CAS and has, after a request in this sense by said counsels, been granted an extension of time until 29 June to file her Answer.

106. Thus, in absence of any substantial delay in the hearing process or other aspects of Doping Control that would justify the application of Rule 10.10.2 (c) of the IAAF ADR, the period of ineligibility of eight (8) years should, in principle, start on the date of the present award.

107. However, considering that the Athlete's provisional suspension is still in force, namely since 2 July 2016, the eight-year period of ineligibility shall, pursuant to Rule 10.10.2(a) of the IAAF ADR, start on 2 July 2016.

E. Disqualification

108. Rule 10.8 of the IAAF ADR provides that:

> "*In addition to the automatic Disqualification, pursuant to Article 9, of the results in the Competition that produced the Adverse Analytical Finding (if any), all other competitive results of the Athlete obtained from the date the Sample in question was collected (whether In-Competition or Out-of-Competition) or other Anti-Doping Rule Violation occurred through to the start of any Provisional Suspension or Ineligibility period shall be Disqualified (with all of the resulting consequences, including forfeiture of any medals, titles, ranking points and prize and appearance money), unless the Disciplinary Tribunal determines that fairness requires otherwise.*"

109. Although the IAAF sought, in its written submissions, that the Athlete's results should be disqualified from the date of the proof of the earliest ADRV, i.e. 16 July 2012, until the date of provisional suspension of the Athlete, i.e. 2 July 2016, it acknowledged, at the hearing, that the Sole Arbitrator could, on the basis of the fairness exception set out in Rule 10.8 of the IAAF ADR, reduce that period.

110. The Sole Arbitrator notes that according to the wording of Rule 10.8 of the IAAF ADR, all the competitive results of the Athlete as from the moment of the earliest

violation, i.e. 16 July 2012, until her provisional suspension, i.e. 2 July 2016, would have to be disqualified, unless fairness requires otherwise.

111. According to established CAS jurisprudence, the principle of proportionality requires a panel to assess whether a sanction is appropriate to the violation committed in the case at stake (CAS 2016/O/4481 and CAS 2017/O/5039), excessive sanctions being prohibited (CAS 2017/O/5039 and case-law cited).

112. While being aware that when assessing whether a sanction is excessive, a judge must review the type and scope of the proved rule-violation, the individual circumstances of the case, and the overall effect of the sanction on the offender (CAS 2017/O/5039), the Sole Arbitrator also notes that the question of fairness and proportionality in relation to the length of the disqualification period vis-à-vis the time which may be established as the last time that the Athlete objectively committed a doping offence can be taken into consideration (CAS 2016/O/4682).

113. In the present case, in view of the above, taking into consideration that this is the Athlete's second ADRV after having served a period of ineligibility from 15 July 2007 until 14 July 2009, that the Athlete violated Rule 32.2 (a) as well as Rule 32.2 (b) of the 2012-2013 IAAF Rules, that the Use Violations cover a large number of different prohibited substances and were committed on several occasions in the lead up to major events, the Sole Arbitrator finds that the disqualification of all competitive results over a period of time of almost four (4) years, i.e. from 16 July 2012 until 2 July 2016, does not seem unfair and disproportionate, even if there is no evidence that the Athlete was using a prohibited substance and/or a prohibited method after the 17 July 2013, date of the last positive entry listed on the Moscow Washout Schedule.

114. Consequently, in accordance with Rule 10.8 of the IAAF ADR, the Sole Arbitrator finds that all competitive results obtained by the Athlete from 16 July 2012 until 2 July 2016 shall be disqualified with all resulting consequences, including the forfeiture of any titles, awards, points, prizes and appearance money.

IX. COSTS

115. Pursuant to article R64.4 of the Code:

"*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 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.*

116. *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.*"

117. Article R64.5 of the Code provides that:

> "*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.*"

118. Pursuant to Rule 38.3 of the 2016-2017 IAAF Rules, in a case like the one at hand, "*the hearing [by the CAS] 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*".

119. With regards to the arbitration costs, the IAAF, primarily, requested that these costs be born entirely by the First Respondent pursuant to Rule 38.3. of the 2016-2017 IAAF Rules.

120. Given the clear wording of Rule 38.3 of the 2016-2017 IAAF Rules, the Sole Arbitrator determines that the costs of arbitration, to be calculated by the CAS Court Office and communicated separately to the Parties, shall be borne entirely by the First Respondent.

121. As a general rule, the CAS grants the prevailing party a contribution towards the legal fees and other expenses incurred in connection with the proceedings. In the present matter, having taken into consideration of the complexity of the case, the outcome of the proceedings, the conduct and the financial resources of the Parties, the Sole Arbitrator finds that the First and Second Respondent shall each bear their own costs, if any, and that the First and Second Respondent shall jointly and severally pay a total amount of CHF 2'000 towards the legal fees and other expenses of the IAAF in connection with these proceedings.

122. The present Award may be appealed to CAS pursuant to Rule 42 of the 2016-2017 IAAF Rules.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The request filed by the International Association of Athletics Federations (IAAF) with the Court of Arbitration for Sport (CAS) against the Russian Athletics Federation (RUSAF) and Ms Tatyana Lysenko Beloborodva on 6 April 2018 is admissible and upheld.

2. Ms Tatyana Lysenko Beloborodva committed anti-doping rule violations according to Rule 32.2(a) and to Rule 32.2(b) of the 2012-2013 IAAF Competition Rules.

3. Ms Tatyana Lysenko Beloborodva is sanctioned with an eight-year period of ineligibility starting on 2 July 2016.

4. All competitive results obtained by Ms Tatyana Lysenko Beloborodva from 16 July 2012 through to the commencement of her suspension on 2 July 2016 shall be disqualified, with all of the resulting consequences, including the forfeiture of any titles, awards, medals, points, prizes and appearance money.

5. The cost of this arbitration, to be determined and served upon the Parties by the CAS Court Office, shall be borne by the Russian Athletics Federation (RUSAF).

6. The Russian Athletics Federation (RUSAF) and Ms Tatyana Lysenko Beloborodva shall each bear their own costs and are jointly and severally ordered to pay to the International Association of Athletics Federations (IAAF) the amount of CHF 2'000 (two thousand Swiss Francs) as a contribution towards the International Association of Athletics Federations' legal fees and expenses incurred in relation to the present proceedings.

7. All other or further motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland
Date: 31 January 2019

THE COURT OF ARBITRATION FOR SPORT

Mr Jacques Radoux
Sole Arbitrator