

Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2018/O/5672 International Association of Athletics Federations (IAAF) v. Russian Athletics Federation (RUSAF) & Anna Bulgakova

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. Anna Bulgakova, Stavropol, 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. Anna Bulgakova (the “Second Respondent” or the “Athlete”), born on 17 January 1988, is a Russian athlete specialising in hammer throw. She competed, inter alia, in the 2013 IAAF World Championships in Moscow 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 20 March 2017, the Athlete was informed by the IAAF that her sample collected on 16 August 2013 on the occasion of the 2013 IAAF World Championships in Moscow had been retested and tested positive for metabolites of Dehydrochloromethyltestosterone (“DHCMT”).
6. On 10 April 2017, the Athlete signed an Acceptance of Sanction Form. Thereby she accepted, as a sanction for the Moscow Retesting Violation, a period of ineligibility of two (2) years, starting 29 March 2017, and a disqualification of her competitive results for a period of 2 years from 16 August 2013.
7. This case concerns a claim by the IAAF against the Second Respondent for having committed further ADRV’s, in particular Rule 32.2 (b) of the 2012 (2013) 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.

8. The claim is mainly based 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”).
9. 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.
10. 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. According to Prof. McLaren, 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. 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*”.
11. 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 Berek 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”).
12. 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 Berek 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.
13. 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 Berek 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.
14. 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.
 15. 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 “Moscow Washout Schedule”). This Washout Schedule was updated regularly when new washout samples arrived in the Laboratory for testing.
 16. The Moscow Washout Schedule was 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 A0117 and A1155.
 17. 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 2013, in the lead-up to the 2013 IAAF World Championships, as well as in 2014, and that she benefitted from the Disappearing Positives Methodology and Washout Testing and that, as a consequence, the IAAF intended to refer the McLaren Evidence against the Athlete to the CAS with a view to seeking an increased sanction to the one she had accepted on the basis of aggravating circumstances. 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 A0117 and A1155. 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) Moscow Washout Testing

Six (unofficial) samples on the Moscow Washout Schedules are listed as belonging to you; they date from 30 June, 10 July, 17 July, 25 July, 30 July and 16 August 2013 (see for example EDP0032).

The following information is recorded on the Moscow Washout Schedules in respect of the 30 June sample:

- *Methasterone (too much, overload)*

The following information is recorded on the Moscow Washout Schedules in respect of the 10 July sample, together with the comment “prohormones’ overload”:

- *Prohormones (a lot, overload)*
- *Methasterone 2,000,000*
- *Long term metabolites 1,300,000*

The following information is recorded on the Moscow Washout Schedules in respect of the 17 July sample, together with the comment “remove!!”

- *Methasterone 1,700,000*
- *Long term metabolites 1,800,000*

The following information is recorded on the Moscow Washout Schedules in respect of the 25 July sample:

- *Methasterone 200,000*
- *Long term metabolites 500,000*
- *4-OH Testosterone 25 ng/mL9*

The following information is recorded on the Moscow Washout Schedules in respect of the 30 July sample:

- *Methasterone long term metabolite 190,000*

The final sample was taken during the Moscow World Championships on the day of the final of the women’s hammer throw competition i.e. 16 August 2013:

- *Methasterone long term metabolites 195,000*

(iii) Sample 2919493 DPM for Ostarine from May 2014

[...]

(iv) Sample 2917821 – DPM for Oxandrolone from August 2014

In an email dated 6 August 2014 from Alexey Velikodniy to Dr. Rodchenkov (EDP0469), it is stated that your sample with Code number 2917821 and collected on the occasion of a training camp in Novorgorsk on 4 August 2014 had tested positive for traces of oxandrolone and was to be SAVED.

Oxandrolone is an Exogenous Androgenic Anabolic Steroid prohibited under section S.1(a) of the WADA Prohibited List.

Sample 2917821 was reported as negative in ADAMS.”

18. The IAAF granted the Athlete an opportunity to admit the violation by 10 November 2017 or to provide her explanations in respect of this evidence by 17 November 2017 at the latest and informed her that on the basis of this evidence she would, if established, merit the imposition of an additional two year sanction to the two year sanction that she accepted in respect of the Moscow Retesting Violation. Further, the IAAF informed the Athlete that if she admitted the violations described above by 10 November 2017 at the latest, she will avoid the application of the additional two year sanction and that the IAAF would take no further action against her in respect of the McLaren Evidence.
19. On 17 November 2017, the Athlete disputed the allegations put forward against her and provided her explanations which were, in substance, the same then her submissions in the present proceedings and which are summarized below.
20. Not convinced by the explanations given by the Athlete, the IAAF informed the latter that her case would be referred to the CAS. 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).
21. 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

22. On 6 April 2018, the IAAF filed its Request for Arbitration against the RUSAF and Ms. Anna Bulgakova (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.
23. 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.

24. 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.
25. 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.
26. 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.
27. On 31 May 2018, the counsels to the Second Respondent informed the CAS Court Office that they would no longer represent the Second Respondent.
28. On 18 June 2018, the Second Respondent sent an email to the CAS Court Office which was considered to be the Athletes Answer. The First Respondent did not submit an Answer within the given deadline.
29. On 5 July 2018, the CAS Court Office, inter alia, 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.
30. 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.
31. 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 15 August 2018 and that participation via Skype may be, upon request, in particular by the Second Respondent, allowed by the Sole Arbitrator.
32. On 10 August 2018, the CAS Court Office informed the Parties that given the availability of the Claimant and the Second Respondent, a hearing would be held on Wednesday 15 August 2018 at 10.30am (CET) at the CAS Court Office in Lausanne, Switzerland, and that the Second Respondent's request to attend the hearing via Skype was granted.
33. 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. It was signed by the Claimant on 10 August 2018 and by the Second Respondent on 13 August 2018. The First Respondent did not reply to the CAS Court Office's letter.
34. On 15 August 2018, 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, Mr. Nicolas Zbinden, and Mr. Livio Marelli (counsels) (in person),
Mrs. Alexandra Volkova (Interpreter) (in person)

For the Athlete:

Ms. Anna Bulgakova (Athlete) (by skype)
Mrs. Jelena Bukova (Interpreter) (by skype)

35. The Interpreters were invited by the Sole Arbitrator to tell the truth subject to the sanctions of perjury under Swiss law.
36. At the inception of the hearing, the Parties confirmed that they had no objection to the constitution of the Panel. At the end of the hearing, the Parties confirmed that their right to be heard and their right to a fair trial had been fully respected and that they had no objections as to the manner in which the proceedings had been conducted.

IV. SUBMISSIONS OF THE PARTIES

A. The IAAF's submissions

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

- ii. CAS has jurisdiction to decide on the subject matter of this dispute.*
 - iii. The Request for Arbitration of the IAAF is admissible.*
 - iv. The Athlete is found guilty of one or more anti-doping rule violations in accordance with Rule 32.2(b) of the IAAF Rules.*
 - v. An additional period of ineligibility of up to two years is imposed upon the Athlete, commencing on the date of the expiration of the Ineligibility period accepted by the Athlete on 10 April 2017.*
 - vi. All competitive results obtained by the Athlete from 30 June 2013 through to the commencement of her provisional suspension on 29 March 2017 (to the extent not already disqualified by the Acceptance of sanction of 10 April 2017) are disqualified, with all resulting consequences (including forfeiture of any titles, awards, medals, profits, prizes and appearance money).*
 - vii. The arbitration costs be borne entirely by the First Respondent or, in alternative, by the Respondents jointly and severally.*
 - viii. The First Respondent, or alternatively both Respondents jointly and severally, shall be ordered to contribute to the IAAF's legal and other costs.*
37. 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 2013-2014, 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”). 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 follows from the Moscow Washout Schedule and the other McLaren Evidence that the Athlete committed Use violations in the years 2013 and 2014. She was one of the protected athletes who featured on the Moscow Washout Schedules. She underwent six unofficial doping controls out of which many contained at least two different prohibited exogenous anabolic steroids. An official sample provided in 2014 was found to contain Oxandrolone but was reported “negative” in ADAMS following a “SAVE” order.
- All of the substances found are exogenous anabolic steroids, prohibited under S1.1a of the WADA Prohibited List. Thus, the Athlete has breached Rule 32.2(b) of the 2012-2013 IAAF Rules.
- Pursuant to Rule 40.2. of the 2012-2013 IAAF Rules, the period of ineligibility for a violation of Rule 32.2(b) shall be two years, unless, inter alia, the conditions for increasing such period are met. Rule 40.6 of the 2012-2013 IAAF Rules provides: *“if it is established in an individual case involving an anti-doping rule violation [...] that aggravating circumstances at present which justify the imposition of the 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 [...] can prove to the comfortable satisfaction of the hearing panel that he did not knowingly commit the anti-doping violation.”* The 2012-2013 IAAF Rules list examples of aggravating circumstances such as *“the Athlete [...] committed the anti-doping rule violation as part of a doping plan or scheme, either individually or involving a conspiracy or common enterprise to commit anti-doping violations; the Athlete [...] used or possessed multiple Prohibited Substances or Prohibited Methods or used or possessed the Prohibited Substance or Prohibited Method on multiple occasions; a normal individual would enjoy performance-enhancing effects of the anti-doping rule violation(s) beyond the otherwise applicable period of*

Ineligibility; the Athlete [...] engaged in deceptive or obstructing conduct to avoid the detection or adjudication of an anti-doping rule violation.” Further, according to Rule 40.7 (d) of the 2012-2013 IAAF Rules, the occurrence of multiple violations may be considered as a factor in determining aggravating circumstances in the sense of Rule 40.6.

- In the present case there are several aggravating circumstances, namely (1) the use of multiple anabolic steroids in the lead up to a major competition in 2013; (2) an official sample that did test positive for a prohibited substance was declared as negative in ADAMS; (3) the Athlete was part of a centralised doping scheme and she provided unofficial samples for washout testing. Had all of these violations been assessed together at the time when the Athlete signed her acceptance of sanction, the Athlete would have received an aggravated sanction that would have been towards the higher end of the two to four year period of ineligibility that could have been imposed in such an event. Therefore, the IAAF requests that the Athlete be sanctioned with an additional two-year Ineligibility Period.
- The Athlete having already accepted the disqualification of her results for a period of two years from 16 August 2013, the IAAF submits that all other results obtained by the Athlete from the date of the first evidence of doping, i.e. the sample taken on 30 June 2013, must also be disqualified.

B. The Athlete’s submissions

38. Although not submitting a formal request for relief, the Athlete, in her Answer, can be understood as asking the Sole Arbitrator to:

- (i.) Declare the Athlete not guilty of any anti-doping rule violations in the years 2013 and 2014 Rule 32.2 (b) of the 2012 IAAF Rules, except for the one she already accepted a period of ineligibility for (i.e. sample of 16 August 2014);
- (ii.) Dismiss all claims raised by the IAAF to increase the period of ineligibility already accepted and to disqualify all competitive results obtained by the Athlete from 30 June 2013 through to the commencement of her provisional suspension on 29 March 2017;
- (iii.) The IAAF shall bear the entirety of the arbitration costs.

39. The Athlete’s submissions may be summarized as follows:

- The information provided by Dr. Rodchenkov is not reliable as is proven by the fact that sample 2919493 from 24 May 2014, initially attributed to her finally turned out to belong to another athlete. The code A0117 had been attributed to her by mistake. This shows that there are mistakes in the McLaren Evidence.
- The samples from 2013 (7 July, 10 July, 25 July, 30 July and 16 August 2013) were allegedly unofficial samples. However, the Athlete denies ever having given an “unofficial” sample. In any event, there are many inconsistencies concerning these samples. First, why did Dr. Rodchenkov, who in the beginning

apparently tested her every week, stop testing her two weeks before the major event, when the last sample (30 July 2013) apparently still shows the presence of prohibited substances? Second, the sample of 16 August 2013 cannot have been an “unofficial” sample because it was taken at the 2013 IAAF World Championships. Third, sample 2808021 from 30 July 2013 and sample 2807883 from 16 August 2013 both were official tests. Finally, the sample taken on 16 August 2013 cannot be used as evidence, because the Athlete has already been found guilty of an ADRV on basis of this sample.

- She has never used prohibited substances or a prohibited method. She has not been part of any cover up like the washout schedules or programs brought forward by the IAAF. She has never been included in any Moscow Washout List.
- If Dr. Rodchenkov saw the positive findings of the samples taken on 30 July and 16 August 2013 and did report them as negatives in ADAMS, why didn't he point that out in his writings? According to the Athlete, all these mismatches look like Dr. Rodchenkov has invented them intentionally in order to prevent people from understanding the real situation.
- She has never communicated with Dr. Rodchenkov. However, if what Dr. Rodchenkov states is true, shouldn't he have informed the Athlete of the positive samples because there was a high risk that she would test positive at international competitions.
- Concerning the sample of 4 August 2014, the Athlete provides a statement from RUSADA dated 10 May 2018, from which it follows that the sample did not reveal any prohibited substances. This finding is corroborated by the fact that on 12 August 2014, at a competition in Zurich, Switzerland, the Athlete gave a blood sample for the purpose of the ABP and that said sample did not reveal any anomaly. Thus, it is clear that the sample of 4 August 2014 cannot have contained Oxandrolone.

V. JURISDICTION

40. The IAAF ADR, which are applicable because the Request for Arbitration was filed on 6 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 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 2013 and 2014 and that, as the substantive anti-doping provisions were the same in the IAAF Rules in place between 2012 and 2014, the 2012-2013 IAAF Rules should apply to the present case.

55. The Athlete not having objected to the IAAF assertions, the Sole Arbitrator considers that the Parties agreed that the substantive aspects of the present procedure are to be governed by the 2012-2013 IAAF Rules. He 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*, which could be the IAAF ADR.

56. 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(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. 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 upon for the purpose of establishing facts related to an ADRV.

61. 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.

62. 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.
63. Second, in difference to the information related to Washout Schedules 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.
64. Third, 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).

65. This inference is not called into question by the allegation that Dr. Rodchenkov, from whose hard disk the Moscow Washout Schedule has been, according to the IAAF, extracted, would not be a reliable witness and that the mismatches in the Schedule pinpointed by Athlete show that Dr. Rodchenkov committed them “*intentionally [...] in order to prevent everybody from real understanding of the situation*”. Indeed, this allegation is not corroborated by any objective or material evidence and has therefore to be considered to be without any grounds. In particular, the Athlete did not explain why Dr. Rodchenkov would have had an interest in preventing other people from understanding the “*real situation*”. In addition, this allegation is clearly at odds with the fact that, in his email dated 6 August 2014, Mr. Velikodny informed Dr. Rodchenkov that the sample 2917821, provided by the Athlete on 4 August 2014, contained traces of Oxandrolone. The fact that, in a letter dated 10 May 2018, RUSADA informed the Athlete that it follows from ADAMS that said sample did not reveal any prohibited substances does not, in the view of the Sole Arbitrator, overturn this conclusion. Indeed, even the Athlete accepts the idea that Dr. Rodchenkov was not only in a position to report the samples as negative in ADAMS but in fact did so. Thus, in the present case, no evidential weight can be attributed to the results reported in ADAMS in the relevant time period.
66. 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.
67. 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, in particular 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. This is not contradicted by the fact, recalled by the Athlete, that the analysis of her sample provided on 16 August 2013 showed the presence of a prohibited substance as this AAF, as for many others related to athletes appearing on the Washout Schedules, was only discovered in a retest of the said sample by the Lausanne Laboratory. Moreover, 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 and Moscow 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/or the 2013 IAAF World Championships retested positive for exactly those substances referenced in the said Schedules.

68. The fact that the McLaren Evidence 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.
69. 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.
70. In view of these considerations, the Sole Arbitrator holds that the McLaren Evidence 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. Discussion on liability

71. As regards 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 Moscow Washout Schedule must be read in the context of the McLaren Reports as a whole and constitutes 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).
72. In regard to the specific case of the Athlete, the Sole Arbitrator notes that the Moscow Washout Schedule, refers to the Athlete on six (6) different occasions, in relation to samples provided on 30 June, on 10, 17, 25 and 30 July 2013 in the lead up to the 2013 IAAF World Championships and on 16 August 2013, day of the final of the women's hammer throw event at the said Championships. The Washout Schedule indicates, *inter alia*, that all sample contained Methasterone and/or its metabolites. Other substances found were Prohormones (sample of 10 July 2013) and 4-OH Testosterone (or 4-

Hydroxytestosterone, sample of 25 July 2013). Methasterone and 4-Hydroxytestosterone are listed as exogenous androgenic anabolic steroids on the 2013 WADA Prohibited List.

73. Regarding the argument of the Athlete according to which the sample provided on 16 August 2013 was not an unofficial sample and that she has already been sanctioned for the positive finding that resulted from its retest, the Sole Arbitrator holds, first, that the fact that the sample was wrongly qualified as “unofficial” test does not affect the reliability of the results shown by the ITP and registered on the Moscow Washout Schedule. Second, the fact that in the present case the result of the ITP performed by the Moscow Laboratory on the sample provided on 16 August 2013 cannot lead to a second sanction does not entail that the results of the ITP cannot be used as evidence to confirm the reliability of the Moscow Washout Schedule in general and the entries therein relating to the Athlete as it is in line with the findings of the retest of same sample performed by the Lausanne Laboratory.
74. Further, the arguments, raised by the Athlete, according to which she had never provided any unofficial sample nor taken part in a scheme and that the Moscow 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 (as to) 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 hid the “real situation” 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 2013 World Championships came. Moreover, as already mentioned above, there is no explanation as to what is meant by “*real situation*”. 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.
75. Concerning the sample provided on 4 August 2014 and the email from Mr. Velikodny according to which said sample had tested positive for traces of Oxandrolone, the Sole Arbitrator notes that the Athlete does not contest the authenticity of that email and refutes the result of the reported analytical finding on basis of the answer provided by the RUSADA on 10 May 2018 stating that, according to ADAMS, the analysis of the said sample did not reveal the presence of any prohibited substances. However, for the reasons already mentioned above (para 65), the Sole Arbitrator considers that the email in question (and the information it contains) is reliable evidence and that no evidential weight can be attributed to the results reported in ADAMS in relation to the sample provided by the Athlete on 4 August 2014. Moreover, the fact that the in-competition anti-doping test performed on the Athlete on 12 August 2014 did not reveal the presence of any prohibited substance does not allow the Sole Arbitrator to conclude that the sample provided on 4 August 2014 did not contain traces of Oxandrolone. Indeed, these traces could have washed out in the eight days separating the two tests.

76. Consequently, in the present case, the Sole Arbitrator considers that the McLaren Evidence and the Moscow Washout Schedule constitute reliable evidence that the Athlete used Methasterone and 4-Hydroxytestosterone to prepare for the 2013 IAAF World Championships in Moscow and used Oxandrolone in or around 4 August 2014.
77. In the light of these considerations, the Sole Arbitrator is comfortably satisfied that the Athlete is guilty of having used Prohibited Substances 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 Methasterone and 4-Hydroxytestosterone during her preparation for this major event as is shown by the results of the samples respectively provided on 30 June 2013, on 10, 17, 25 and 30 July as well as on 16 August 2013 as listed in the Moscow Washout Schedule. The Sole Arbitrator is further comfortably satisfied that the Athlete is guilty of having used another Prohibited Substance, i.e. Oxandrolone, in or around 4 August 2014.
78. 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

79. In the present case, it is uncontested that the Athlete is serving a period of ineligibility of two (2) years for the violation of Rules 32.2(a) of the 2012-2013 IAAF Rules as a result of the AAF in the retest of the sample provided on 16 August 2013 at the 2013 IAAF World Championships.
80. Pursuant to Rule 40.7(d)(ii) of the 2012-2013 IAAF Rules, “[i]f, after the resolution of a first anti-doping rule violation, facts are discovered involving an anti-doping rule violation by the Athlete or other Person which occurred prior to notification of the first violation, then an additional sanction shall be imposed based on the sanction that could have been imposed if the two violations would have been adjudicated at the same time. Results in all events dating back to the earlier anti-doping rule violation will be Disqualified as provided in Rule 40.8. To avoid the possibility of a finding of aggravating circumstances (Rule 40.6) on account of the earlier-in-time but later-discovered violation, the Athlete or other Person must voluntarily admit the earlier anti-doping rule violation on a timely basis after notice of the violation for which he is first charged (which means no later than the deadline to provide a written explanation in accordance with Rule 37.4(c) and, in all events, before the Athlete competes again). The same rule shall also apply when facts are discovered involving another prior violation after the resolution of a second anti-doping rule violation.”
81. Rule 40.2 of the 2012-2013 IAAF Rules provides that the period of ineligibility for violation of Rule 32.2(b) shall be two years, unless the conditions for eliminating or reducing the period of ineligibility (Rules 40.4 and 40.5 of the 2012-2013 IAAF Rules) or for increasing it (Rule 40.6 of the 2012-2013 IAAF Rules) are met.
82. Pursuant to Rule 40.6 (a) of the 2012-2013 IAAF:
- “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 anti-doping rule violation as a 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 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 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.”*

83. In relation to violations that have to be considered as one single violation, Rule 40.7(d)(i) of the 2012-2013 IAAF Rules provides that *“the sanction imposed shall be based on the violation that carries the more severe sanction; however, the occurrence of multiple violations may be considered as a factor in determining aggravating circumstances (Rule 40.6).”*
84. In the present case, the Sole Arbitrator agrees with the IAAF that if the violations in the centre of the present proceedings had been assessed together with the ADRV for which the Athlete has already accepted a period of ineligibility of two (2) years, all violations would have been considered, together, as single first violation and Rule 40.7(d)(i) would have applied.
85. The IAAF argues, that in the present case a certain number of aggravating factors set out in Rules 40.6 of the 2012-2013 IAAF Rules are relevant, namely (1) the Athlete used multiple exogenous anabolic steroids in the lead up to a major competition in 2013; (2) the official sample provided by the Athlete on 4 August 2014 was found to contain Oxandrolone but was reported as “negative” in ADAMS; (3) the Athlete was part of a centralised doping scheme.
86. The Sole Arbitrator notes (1) that the Moscow Washout Schedule shows that the Athlete used multiple prohibited substances in the lead up to the 2013 IAAF World Championships, (2) that the Athlete committed a violation of Rule 32.2(a) of the 2012-2013 IAAF Rules sanctioned with a two (2) year period of ineligibility, (3) that the Athlete used another prohibited substance in or around 4 August 2014, and (4) that all of these ADRV were committed as part of a (centralised) doping plan or scheme as the Athlete’s name appears with the name of other athletes on the Moscow Washout Schedule and in an email correspondence involving other people than themselves and as some of her official samples that tested positive for prohibited substances in the ITP were registered as negative in ADAMS.

87. In view of those considerations, the Sole Arbitrator is comfortably satisfied that the Athlete committed the violation of Rule 32.2(b) of the 2012-2013 IAAF Rules as part of a scheme, that the Athlete used multiple prohibited substances and that she used these prohibited substances (exogenous anabolic steroids) on multiple occasions.
88. Consequently, considering the seriousness of the Athlete's ADRV, the Sole Arbitrator finds that Rule 40.6(a) of the 2012-2013 IAAF Rules shall apply and that a period of ineligibility of two (2) years (from 29 March 2019) shall be added to the ongoing period of ineligibility of two (2) years which has been already accepted by the Athlete (from 29 March 2017) in order to have a global period of ineligibility of four years starting on 29 March 2017.

E. Disqualification

89. This case concerns ADRVs committed in 2013 and 2014 and the applicable rules should, according to the Parties, be the 2012-2013 IAAF Rules. Rule 40.8 of these Rules provides:

“In addition to the automatic disqualification of the results in the Competition which produced the positive sample under Rule 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.”

90. 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. 30 June 2013, until the date of provisional suspension of the Athlete, i.e. 29 March 2017, 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.
91. 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. 30 June 2013, until her provisional suspension, i.e. 29 March 2017, would have to be disqualified, unless fairness requires otherwise.
92. 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).
93. In the present case, the Sole Arbitrator considers that as the earliest prove of the violation of Rule 32.2(b) of the 2013-2013 IAAF Rules dates back to 30 June 2013 and as the Athlete has already accepted the disqualification of all of her competitive results obtained from 16 August 2013 to 15 August 2015, it is fair and appropriate to disqualify all competitive results achieved by the Athlete from the 30 June 2013, date of the first

entry in the Moscow Washout Schedule, to 15 August 2015. Indeed, although having held, when assessing the appropriate sanction, that the ADRVs committed in the years 2013 and 2014 were severe as he has accepted the existence of aggravating circumstances according to Rule 40.6 of the 2012-2013 IAAF Rules, the Sole Arbitrator, in the absence of any evidence that the Athlete used prohibited substances or methods after 4 August 2014, the Sole Arbitrator does not consider it fair to disqualify the results achieved by the Athlete between 16 August 2015, date of the end of the disqualification period already accepted by the Athlete, and the 29 March 2017, date of her provisional suspension.

IX. COSTS

94. 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.

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.”

95. 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.”

96. 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”*.

97. As regards 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.

98. 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.

99. 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 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 jointly and severally shall pay a total amount of CHF 3'000 (three thousand Swiss Francs) towards the legal fees and other expenses of the IAAF in connection with these proceedings.
100. The present award may be appealed to CAS pursuant to Rule 42 of the 2016-2017 IAAF Rules.

ON THESE GROUNDS

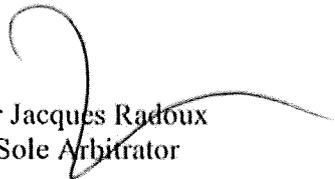
The Court of Arbitration for Sport rules that:

1. The Request for Arbitration 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. Anna Bulgakova on 6 April 2018 is admissible and partially upheld.
2. Ms. Anna Bulgakova committed anti-doping rule violations according to Rule 32.2(b) of the 2012-2013 IAAF Competition Rules.
3. Ms. Anna Bulgakova is sanctioned with a period of ineligibility of two (2) years starting on 29 March 2019, which shall be added to the period of ineligibility of two (2) years which is currently served by the Athlete since 29 March 2017.
4. All competitive results obtained by Ms. Anna Bulgakova from 30 June 2013 through to 15 August 2015 shall be disqualified, with all of the resulting consequences, including the forfeiture of any titles, awards, medals, points, prizes and appearance money.
5. The costs 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. Anna Bulgakova shall bear their own costs and are jointly and severally ordered to pay to the International Association of Athletics Federations (IAAF) the amount of CHF 3'000 (three 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: 14 February 2019

THE COURT OF ARBITRATION FOR SPORT


Mr Jacques Radoux
Sole Arbitrator