TAS / CAS
TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

Arbitration CAS 2023/O/9401 World Athletics (WA) v. Russian Athletic Federation (RUSAF) & Yelena Korobkina, award of 27 September 2023

Panel: Mr Jacques Radoux (Luxembourg), Sole Arbitrator

Athletics (middle-distance & long-distance)
Doping (trenbolone, ostarine, oxandrolone)
CAS jurisdiction under Rule 38.3 of the 2016 IAAF Competition Rules
Time limit to appeal
Determination of the substantive and procedural rules applicable to an anti-doping rule violation
Burden and standard of proof
Establishment of the presence of prohibited substances
Sanction
Disqualification of results and fairness exception

1. **Pursuant to Rule 38.3 of the IAAF Competition Rules 2016-2017, an Anti-Doping Rule Violation (ADRV) involving an international-level athlete affiliated to a national federation member of WA, should be dealt with in first instance by the national federation within two months. In case of suspension from WA membership of the relevant national federation, WA is entitled to submit the matter to the CAS for its decision in first instance by a single arbitrator. The decision of the single arbitrator shall be subject to appeal to CAS in accordance with Rule 42.**

2. **Rule 38.3 of the applicable IAAF Competition Rules 2016-2017 provides that the proceedings shall be governed by the CAS Code and must be handled in accordance with the rules of the appeal arbitration procedures. However, this provision expressly establishes that the time limit for appeal envisaged in the CAS Code does not apply to the proceedings.**

3. **According to Rule 1.7.2 (b) of the 2021 WA ADR applicable at the time of the filing of the request for arbitration, any case shall be governed with respect to the substantive aspects by the version of the anti-doping rules in force at the time the alleged ADRV occurred unless the hearing panel determines that the principle of *lex mitior* appropriately applies under the circumstances of the case. Under Rule 38.3 of the IAAF Competition Rules 2016-2017, in a case directly referred to CAS, the *"case shall be handled in accordance with CAS* [procedural] *rules"*.**

4. **Pursuant to Rules 33.1 of the applicable 2012 and 2014 IAAF Competition Rules, the burden of proof that an ADRV has occurred is on WA and the relevant standard of proof is that of comfortable satisfaction. Pursuant to Rule 33.2 of the 2012 and 2014 IAAF Competition Rules, when the burden of proof is placed on the *"Athlete […] alleged to have committed an anti-doping violation to rebut a presumption or establish***

specified facts or circumstances, the standard of proof shall be by a balance of probability, except as provided in Rules 40.4 (Specified Substances) and 40.6 (aggravating circumstances) where the Athlete must satisfy a higher burden of proof".

5. **With respect to the applicable means of proof, Rule 33.3 of the 2012 and 2014 IAAF Competition Rules, provides that facts relating to ADRVs may be established by *"any reliable means".* The use of prohibited substances may therefore be established by any credible witness statements and testimonies, reliable documentary evidence, scientific evidence and email exchanges. In this respect, "Washout schedules" quoting the name of the relevant athlete in relation to samples whose analysis revealed the presence of prohibited substances and a Laboratory Information Management System (LIMS) that is accurate, authentic, and that presents a contemporaneous account of original data providing confirmation of use by the athlete of a prohibited substance, can be taken into account. When evaluating whether an ADRV occurred all relevant circumstances of the case shall be considered. In case there is no direct evidence of use by the athlete, the adjudicatory body must assess the evidence separately and together and must have regard to what is sometimes called "the cumulative weight" of the evidence in view of the nature of the alleged doping scheme.**

6. **Pursuant to Rule 40.2 of the applicable 2012 and 2014 IAAF Competition Rules, in case of a first violation, the period of ineligibility for a violation of Rule 32.2(b) i.e. use of a prohibited substance, shall be two years, unless the conditions for eliminating or reducing the period of ineligibility (Rules 40.4 and 40.5) or for increasing it (Rule 40.6) are met. In this respect, the commission of such violation as part of a scheme, using multiple prohibited substances and using these prohibited substances on multiple occasions and over a two years period, is serious. Consequently, Rule 40.6(a) shall apply.**

7. **The general principle of fairness must prevail when determining the length of the disqualification period. 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, 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. A strict application of the rule that would lead to a disqualification of the athlete's results for a period exceeding ten (10) years would be considerably longer than the maximum period of ineligibility of four (4) years that may be imposed under the applicable IAAF Competition Rules.**

I. PARTIES

1. World Athletics (the "Claimant" or "WA"), formerly known as the International Association of Athletics Federations (the "IAAF"), is the international governing body of the sport of athletics, recognized as such by the International Olympic Committee. WA has its seat and headquarters in Monaco. It is a signatory to the World Anti-Doping Code (the "WADC"), in compliance with which it has, from the year 2020 onwards, adopted a set of rules, namely the World Athletics Anti-Doping Rules (the "WA ADR"), to eradicate doping in athletics. Before 2020, those Anti-Doping Rules were adopted almost yearly and part of what was known as "IAAF Competition Rules".

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 WA for Russia, but its membership is currently suspended.

3. Ms Yelena Korobkina (the "Second Respondent" or the "Athlete") is a Russian middle-distance and long-distance runner having competed, *inter alia*, in the 2013 and 2015 IAAF World Championships, the 2014 European Championships as well as the 2013 and 2015 European Indoor Championships. It is uncontested that for the purposes of the WA ADR, she is an "International-Level Athlete".

4. WA, the First Respondent and the Second Respondent are collectively referred to as the "Parties".

II. FACTUAL BACKGROUND

5. 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' written 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 this award (the "Award") only to the submissions and evidence it considers necessary to explain its reasoning.

6. This case concerns a claim by WA against the Second Respondent for having violated Rule 32.2 (b) of the 2012/2013 and 2014/2015 IAAF Competition 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.

7. The claim is based on the Athlete's inclusion in the so-called *"Moscow Washout Schedule"*; alleged positive tests arising of (official and unofficial) doping controls in 2013 and 2014 as shown in the Moscow Washout Schedule and the Laboratory Information Management System ("LIMS") data of the Moscow Laboratory (the database used by the Moscow Laboratory to

store results of testing of samples), and her inclusion in the so-called "Clean Urine Bank" in 2015.

8. The Moscow Washout Schedules 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 "EDP evidence").

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 Positives Methodology (the "DPM").

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 World Anti-Doping Agency (the "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 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 (the "ADAMS") as described in the Second McLaren Report.

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 were 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.

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 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.

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 schedule developed by the Moscow Laboratory to keep track of those athletes who were subject to this unofficial washout testing program is referred to as the "Moscow Washout Schedule". This Washout Schedule was updated regularly when new washout samples arrived in the Laboratory for testing.

16. In October 2017, the WADA received an extract of the LIMS data of the Moscow Laboratory from a whistle-blower. That extract related to samples obtained in the period from January 2012 to August 2015 (the "WADA LIMS" or the "2015 LIMS"). The WADA LIMS copy was found to include presumptive adverse analytical findings ("PAAFs") made on the ITP of samples which had not been reported in the ADAMS nor followed up with confirmation testing.

17. In the context of the re-instatement procedure of the Russian Anti-Doping Agency ("RUSADA") as compliant with the WADC, a WADA expert team was permitted to enter the Moscow Laboratory between 10 and 17 January 2019, and make copies of the Moscow Data. Over 23 terabytes of data were obtained, including a copy of the LIMS database (the "Moscow LIMS" or "2019 LIMS"). In April 2019, Russian authorities sent to WADA a large number of samples that had been in storage in the Moscow Laboratory.

18. On 17 December 2021, the Athletics Integrity Unit, on behalf of WA, informed the Athlete that the evidence provided by Prof. McLaren and the LIMS data indicated that she had potentially committed Anti-Doping Rule Violations ("ADRV's"). The passage of this letter referring to the evidence concerning the Athlete reads as follows:

*"1) **Moscow Washout Schedules***

Your name appears on the Moscow Washout Schedules as follows (see eg. EDP0032)

Korobkina 02/07		T/E = 11, trenbolone (a lot)
Korobkina 17/07		T/E = 1, prohormones
Korobkina 25/07	parallel representation'	T/E = 1.3
Korobkina 31/07	out-of-competition	traces of ostarine

Trenbolone is an exogenous anabolic steroid prohibited under S1.1.a of the 2013 WADA Prohibited List. Ostarine is a selective androgen receptor modulator prohibited under S1.2 of the 2013 WADA Prohibited List.

2) Sample 2809282

On 31 July 2013, you were subject to an out-of-competition, urine doping control. The 2015 LIMS indicates that ostarine was found in this sample.

Ostarine is a selective androgen receptor modulator prohibited under S1.2 of the 2013 WADA Prohibited List.

Sample 2809282 corresponds to the fourth sample referred to in the Moscow Washout Schedule reproduced at para […] above.

The sample was reported negative by the Moscow laboratory.

3) Sample 2917629

On 25 July 2014, you were subject to an in-competition urine doping control. The 2015 LIMS indicates that metabolites of trenbolone and oxandrolone were found in this sample.

Trenbolone and oxandrolone are exogenous anabolic steroids prohibited under S1.1.a of the 2014 WADA Prohibited List.

Sample 2917629 is mentioned in an email sent by Timofei Sobolevsky to Liaison Person Velikodniy on 29 July 2014, with the following text under the heading "athletics Russia's Championship [RC]" (see EDP0448):

Korobkina

Trenbolone, oxandrolone

The sample was reported as negative by the Moscow laboratory.

4) Clean Urine Bank

Your name appears in a Clean Urine Bank issued in 2015 (EDP0757) next to the code X064".

19. In the same letter, the Athlete was granted the opportunity to admit the ADRV or to provide her explanations in respect of the above evidence by 14 January 2022 at the latest. She was informed that, on the basis of the existing evidence, she would, if established, merit the imposition of a period of ineligibility of up to four (4) years (pursuant to Rule 32.2 (b) and Rule 40.6) and the disqualification of her results (including forfeiture of any medals, titles, points, prize money and prizes) from 2 July 2013. Further, the Athlete was informed that if she promptly admitted the alleged ADRV's by 14 January 2022, she could avoid the application of the increased sanction (Rule 40.6) and limit said period of ineligibility to a maximum of two (2) years. The AIU added that if the Athlete admitted the asserted ADRVs

by signing and returning the enclosed Acceptance of Sanction Form, the AIU would limit the period of disqualification to the period from the first evidence of doping, *i.e.* 2 July 2013, until two years after the last evidence of doping, *i.e.* 24 July 2016.

20. On 14 January 2022, the Athlete informed the AIU that she had never requested to be included on, or knowingly participated in, any athlete protection program allegedly in place in Russia at relevant times and has never intentionally used any prohibited substances. She further invited the AIU, in case the latter were to proceed with its investigation, to provide a conformation from the Moscow Laboratory – via RUSADA – that neither sample 2809282 nor sample 2917629 were transferred to the WADA and are not available for re-testing.

21. On 25 March 2022, the AIU informed the Athlete that it considered that the Athlete had committed an ADRV and that she was charged with the Use of Prohibited Substances (including ostarine, trenbolone and oxandrolone) pursuant to Rule 32.2 (b) of the IAAF Competition Rules. The AIU granted the Athlete until 8 April 2022 to state whether she preferred a first instance hearing before a sole arbitrator of the Court of Arbitration for Sport (the "CAS") in Lausanne, Switzerland, with a right to appeal to the CAS (Rule 38.3 of the 2016 IAAF Competition Rules) or a sole instance before a CAS panel composed of three arbitrators with no right to appeal, save to the Swiss Federal Tribunal (Rule 38.19 of the 2016 IAAF Competition Rules).

22. On 6 April 2022, the Athlete informed the AIU that she requested the case to be heard by a sole arbitrator of the CAS sitting as a first instance according to Rule 38.3 of the 2016 IAAF Competition Rules.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

23. On 20 January 2023, WA filed its Request for Arbitration against the RUSAF and Ms Yelena Korobkina (together the "Respondents") in accordance with Article R38 of the Code of Sports-related Arbitration (version 2023, the "Code"). WA 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 requested, in compliance with Rule 38.3 of the 2016 IAAF Competition Rules, the matter to be submitted to a sole arbitrator, acting as a first instance body.

24. On 27 January 2023, the CAS Court Office initiated the present arbitration and specified that, in accordance with Rule 38.3 of the 2016 IAAF Competition Rules, it had been assigned to the CAS Ordinary Arbitration Division but would be dealt with according to the CAS Appeals Arbitration Division rules, *i.e.* Articles R47 *et seq.* of the Code. The Respondents were invited to submit, in line with Rule 42.15 of the IAAF Competition Rules and Article R55 of the Code, their Answer within 30 days of receipt of the email containing the above information.

25. On 14 February 2023, the CAS Court Office forwarded the arbitrator's acceptance and statement of independence form signed by Mr Jacques Radoux, who had been appointed as Sole Arbitrator in the present case, directing the Parties to the information disclosed by Mr Radoux and reminding them that, pursuant to Article R34 of the Code, an arbitrator may be challenged within seven (7) days after the ground for the challenge has become known.

26. On 22 February 2023, the CAS Court Office informed the Parties that no challenge against the appointment of Mr Radoux had been file within the prescribed deadline.

27. On 28 February 2023, CAS Court Office informed the Parties that it had not received an Answer from the Respondents within the deadline of thirty (30) days that expired on 27 [recte: 26] February 2023 and that the Sole Arbitrator was nevertheless to proceed with the arbitration in accordance with Article R44.1 of the Code.

28. On 1 March 2023, the Second Respondent requested, via an email from her counsels, a "3-week-extension" to file her Answer.

29. On the same day, the CAS Court Office invited the Claimant and the First Respondent to comment on the Second Respondent's request, pointing out that their silence would be considered as agreement.

30. On 2 March 2023, the Claimant informed the CAS Court Office of its objection to the request given, inter alia, that the request was made after the deadline for the Answer, *i.e.* 27 February 2023, had expired and that it was not supported by any explanations as to why the deadline was not met.

31. On 3 March 2023, the CAS Court Office informed the Parties that in light of the Claimant's objection to the Second Respondent's request for extension of time, it would be for the Division President or the Sole Arbitrator to rule on that request.

32. On the same day, the Second Respondent (i) explained that she did not have regular access to her email account in February and was not able to review the statement of appeal by the end of the given deadline due to her medical condition (pregnancy) and the fact that the email had ended in her "junk email folder"; (ii) argued that, although WA/AIU were aware that counsels represented the Athlete in connection with the AIU's notice of charge, they did not copy the counsel on any correspondence with the CAS; (iii) stated that due to medical issues in relation with her pregnancy, she was not in a position to review the appeal and instruct her counsel before the end of the deadline to file her Answer. The Second Respondent therefore reiterated her request to be granted until 19 March 2023 to file her Answer.

33. Still on the same day, the CAS Court Office invited the Second Respondent to produce, by 8 March 2023, any supporting evidence in relation to her current state of health and that could provide information that she was, therefore, not in a position to comply with the deadlines and other instruction set out in the CAS Court Office letter of 27 January 2023. The Parties were further informed, that the Claimant would be granted a reasonable deadline to file its comments thereto.

34. On 8 March 2023, the Second Respondent was granted a final extension to provide the requested information/evidence until 13 March 2023.

35. On 14 March 2023, the CAS Court Office acknowledged receipt, on the 13 March 2023, of the Second Respondent's email, medical certificate and statement of health and invited the Claimant to comment on that information by 17 March 2023.

36. On 15 March 2023, the CAS Court Office informed the Parties that the arbitral tribunal appointed to hear the present case was constituted by Mr Jacques Radoux, Référendaire at the Court of Justice of the European Union, Luxembourg, as Sole Arbitrator.

37. On 17 March 2023, the Claimant informed the CAS Court Office that, albeit that the Second Respondent had not put forward any exceptional circumstances which would justify a restitution of the expired deadline to file her Answer, it would – exceptionally – not object to the Second Respondent being granted a short deadline to file a submission in response but without *"any supporting documentary/witness/expert evidence"*.

38. On 20 March 2023, the CAS Court Office informed the Parties that the Sole Arbitrator considered that the explanations provided by the Second Respondent with respect to the failure of filing her answer and to meet the deadline to request an extension of time for doing so do not constitute "exceptional circumstances" in the sense of Article R56 of the Code. Following the Claimant's consent, the Second Respondent was nonetheless invited to file an Answer by 31 March 2023, however *"without any supporting document/witness statement/expert report etc"*..

39. On 21 March 2023, following a demand from the Second Respondent, the CAS Court Office informed the Parties that the Second Respondent's request to be granted an extension of the deadline to file her Answer falls under Article R56 of the Code and that, in light of the Sole Arbitrator's finding that the Second Respondent had not established the existence of "exceptional circumstances" in the sense of that provision, an Answer can only be admitted insofar as it conforms to the Claimant's agreement.

40. On 22 March 2023, the Second Respondent informed the CAS Court Office that she considered the Claimant's agreement to be unreasonable and unlawful as it would effectively violate her right to be heard and to have a fair hearing. She further pointed out that none of the exhibits to the Request for Arbitration had been uploaded to the CAS e-filing system and that an upload to a third-party file sharing service would not be valid according to Article R31 of the Code. According to the Second Respondent, the case should thus not proceed until this mistake was rectified.

41. On the same day, the CAS Court Office informed the Parties (i) that the request for arbitration was filed by email and courier and the exhibits by email only (via a link) as explicitly permitted by Article R31 (5) of the Code and (ii) that all materials submitted by the Claimant with its Request for Arbitration have been transmitted properly to the Respondents by email as DHL does not operate in Russia anymore. The CAS Court Office provided the Second Respondent with a copy of the letter dated 27 January 2023, the Claimant's Request for Arbitration of 20 January 2023 (including the cover letter), a copy of the CAS Court Office email of 27 January 2023 and a copy of the email's delivery receipt to the Second Respondent.

42. Still on the same day, the Second Respondent requested the uploading of the Claimant's relevant exhibits on the CAS e-filing platform as the WeTransfer file sharing service was unavailable in Russia making it impossible for the Second Respondent to download these exhibits.

43. On 24 March 2023, the CAS Court Office acknowledged receipt, on the 22 March 2023, of an email by the Claimant in which the latter withdrew its consent to the filing of written submissions by the Second Respondent and informed the Parties, on behalf of the Sole Arbitrator, that the withdrawal of this consent was rejected and that the Second Respondent was to submit her Answer no later than 31 March 2023. The Second Respondent was further provided with a secure link to a copy of the Request for Arbitration and the exhibits attached thereto.

44. On 31 March 2023, the Second Respondent filed her Answer accompanied by some exhibits.

45. On 4 April 2023, the CAS Court Office acknowledged receipt of the Second Respondent's Answer and informed the Parties, *inter alia*, that, unless the Parties agree, or the Sole Arbitrator orders otherwise on the basis of exceptional circumstances, Article R56 of the Code provides that the Parties should not be authorised to supplement or amend their requests or their arguments, nor to produce new exhibits, nor to specify further evidence on which they intend to rely, after the submission of the Appeal Brief and of the Answer. The Parties were further invited to state whether they preferred a hearing to be held in the present matter and whether they requested a case management conference with the Sole Arbitrator in order to discuss procedural issues, the preparation of the hearing (in any) and any issues related to the taking of evidence.

46. On 6 April 2023, the CAS Court Office invited the Claimant to comment, by 12 April 2023, on the evidentiary measure requested by the Second Respondent in her Answer.

47. On 12 April 2023, the Claimant informed the CAS Court Office, *inter alia*, that it considered that all of the Second Respondent's document production requests should be denied.

48. On 19 April 2023, the CAS Court Office, on behalf of the Sole Arbitrator, advised the Parties that (i) the exhibits filed by the Second Respondent with her Answer were inadmissible but that she could rely on publicly available evidence or evidence that had been filed by the Claimant; (ii) the Second Respondent's request to hear Mr Sergey Epishin and Prof. Pascal Kintz as "Athlete's Witnesses" and Mr Timofey Sobolevsky and Mr Oleg Migashev as "Other Witnesses" was denied as she was not allowed to file evidence/exhibits with her Answer; (iii) the Second Respondent's request concerning a statement by RUSADA that no chain of custody or digital files in relation to the 2013 and 2014 samples are available for review and concerning the production of certain number of documents that she had already produced with her Answer were denied; (iv) the Second Respondent's request for the production of LIMS data related the her urine samples collected between 2012 and 2015 (save for the 2013 and 2014 Samples) in possession of the Claimant was granted; (v) that the Sole Arbitrator had decided to hold a hearing in the present matter and suggested several dates at the end of May.

49. On 2 May 2023, the CAS Court Office acknowledged receipt of the filing, by the Claimant, of the LIMS data for the Athlete's samples from 2012 to 2015.

50. On 2 June 2023, the CAS Court Office informed the Parties that the hearing by video-conference would be held on 28 June 2023.

51. On 12 June 2023, the CAS Court Office, on behalf of the Sole Arbitrator, issued an order of procedure in the present proceedings and requested the Parties to return a signed copy of it. The Claimant and the Second Respondent signed the Order of Procedure on 19 June 2023.

52. On 28 June 2023, a hearing was held via video-conference. The Sole Arbitrator was assisted by Mr Fabien Cagneux, Managing Counsel at the CAS. In addition to the Sole Arbitrator and the CAS Managing Counsel, the following participants attended the hearing:

For the Claimant: Mr Nicolas Zbinden, counsel;
Mr Adam Taylor, counsel;
Mr David Casserly, counsel;
Laura Gallo, World Athletics;
Prof. Christiane Ayotte, expert;
Dr Grigory Rodchenkov, witness;
Ms Avni Patel, counsel of Dr Rodchenkov;
Ms Tatyana Hay, translator for Dr Rodchenkov;
Mr Aaron Walker, expert;
Dr. Julian Broséus, expert.

For the First Respondent: Ms Kristina Kucheeva, Head of the Anti-Doping and Integrity Department

For the Second Respondent: Elena Korobkina, party
Mr Sergei Lisin, counsel;
Mr Segei Mishin, counsel.

53. At the outset of the hearing, the Parties declared that they had no objections as to the constitution of the Panel.

54. The Second Respondent, *in limine litis*, reiterated her argument according to which the exclusion of the evidence she filed constitutes a violation of her right to be heard and her right to a fair hearing. She, thus, requested the adjournment of the hearing. The Claimant objected to such adjournment. The Sole Arbitrator considered that such adjournment was not necessary as there were no new elements in the case justifying a delay in the procedure.

55. In this regard, the Sole Arbitrator recalls that the right to be heard and the right to a fair hearing/trial, as set in Article 6 of the European Convention of Human Rights, are not absolute and may be subject to some restrictions, provided that these restrictions correspond to objectives of general interest pursued by the measure in question and that they do not entail, with regard to the objectives pursued, a disproportionate and intolerable interference which infringes upon the very substance of the rights guaranteed. The procedural deadlines set out in the Code are specifically aiming at safeguarding the procedural rights and equality of arms of the parties to a procedure. As follows from the jurisprudence of the Swiss Federal Tribunal, the right to be heard, as set out in Article 4 of the Swiss Constitution, which includes the right to administer relevant evidence, has to be exercised within the given time (*"rechtzeitig"*) and according to the formal requirements (*"formrichtig"*) (BGE 106 II 170, BGE 101 Ia 103). However, in the present case, the Second Respond did not submit her Answer within the

given deadline, *i.e.* 27 February 2023, and requested, contrary to the provisions of Article R32 al.2 of the Code, an extension of said deadline after the initial time limit had already expired. Hence, in the absence of an agreement by, *inter alia*, the Claimant, the Second Respondent's request to be allowed to file any evidence with her Answer had to be rejected. The same applies to the Second Respondent's request to adjourn the hearing on the grounds mentioned above.

56. During the hearing, the Sole Arbitrator heard evidence from the following experts and witnesses: Dr Grigory Rodchenkov, Prof. Christiane Ayotte, Mr Aaron Walker and Dr Julian Broséus, all named by the Claimant. Before taking Dr Rodchenkov's evidence, the Sole Arbitrator invited the Interpreter to translate the truth subject to the sanction of perjury under Swiss law. Before taking their evidence, the Sole Arbitrator informed all of the witness and experts of their duty to tell the truth subject to sanctions of perjury under Swiss law. The Parties and the Sole Arbitrator had the opportunity to examine and cross-examine them. Dr Rodchenkov as well as Mr Aaron Walker and Dr Julian Broséus confirmed their written statements. Finally, the Athlete also made a statement.

57. Following the witness' examination, the Parties were given full opportunity to present their case, submit their arguments and submissions, and answer the questions posed by the Sole Arbitrator. At the end of the hearing, the Claimant and the First Respondent confirmed that they were satisfied with the procedure throughout the hearing, and that their right to be heard and their right to a fair trial had been respected during the hearing. The Second Respondent however explicitly reiterated her argument that the decision to exclude the evidence provided by her was inappropriate and violated her right to a fair hearing, in particular her right to be heard. Regarding the conduct of the hearing, the Second Respondent did not have any reservations.

IV. SUBMISSIONS OF THE PARTIES

58. The following summary of the Parties' positions and submissions is illustrative only and does not necessarily include each and every contention put forward by the Parties. The Sole Arbitrator, however, has carefully considered all of the submissions made by the Parties, even if no explicit reference is made in what immediately follows.

A. The Claimant's Position

59. The Claimant relies on (i) the findings of the McLaren Reports, in particular the DPM and the Washout Schedules, (ii) the LIMS data, in particular the 2015 LIMS and the 2019 LIMS and the underlying analytical PGFs and raw data of the analyses reported in the LIMS (the "Analytical Data"); (iii) the EDP Evidence, in particular the Moscow Washout Schedule and the Clean Urine Bank; (iv) the evidence of Dr Rodchenkov; (v) the evidence of Mr Walker and Dr Broséus, and (vi) the evidence of Prof. Ayotte. It considers that all of these elements of evidence are reliable evidence. In this regard it recalls that the CAS has repeatedly held that the EDP documents were reliable evidence for the purposes of establishing an ADRV under the relevant rules and that some CAS panels have recognized the authenticity of the 2015 LIMS (CAS 2020/O/6689, WADA v. RUSADA) and have found the 2015 LIMS to be an

accurate, authentic and contemporaneous account of the original data, whose contents can be relied upon as accurate and valid (CAS 2021/A/7839, WADA v. ICF & Lipkin).

60. As regards the evidence of the Athlete's alleged ADRVs, the Claimant refers, firstly, to the fact that the Athlete's name appears four (4) times in the Moscow Washout Schedule for the period of July 2013.

Korobkina 02/07		T/E = 11, trenbolone (a lot)
Korobkina 17/07		T/E = 1, prohormones
Korobkina 25/07	parallel representation'	T/E = 1.3
Korobkina 31/07	out-of-competition	traces of ostarine

61. The Athlete's inclusion in that Schedule referred to the presence of trenbolone and ostarine in her samples. Trenbolone is an exogenous anabolic steroid prohibited under S1.1.a of the 2013 WADA Prohibited List. Ostarine, for its part, is a non-specified substance and a selective androgen receptor modulator prohibited under S1.2 of the 2013 WADA Prohibited List. The first entry on 2 July 2023, referring to trenbolone, would relate to an unofficial sample and the fourth entry on 31 July 2013, which refers to ostarine, would correspond with the official sample 2809282, as indicated by the reference to "out-of-competition".

62. Secondly, the Claimant adds, in relation to Sample 2809282, that, as evidenced by the Doping Control Form ("DCF"), on 31 July 2013, the Athlete was subject to an out-of-competition urine doping control. The 2015 LIMS would indicate that ostarine was found in this sample. However, Sample 2809282, which corresponds to the fourth entry of the Moscow Washout Schedule, was reported as negative in the ADAMS by the Moscow Laboratory.

63. Thirdly, the Claimant relies on Sample 2917629 which was, according to the DCF, collected from the Athlete on 25 July 2014 and was an in-competition urine doping control. The 2015 LIMS would indicate that metabolites of trenbolone and oxandrolone were found in this sample, specifically "Epitrenbolone", 18-nor-17a-hydroxymethyl17b-methyl-2-oxo-5a-androst-13-en-3-one" and "18-nor-17b-hydroxymethyl-17a-methyl-2-oxo-5aandrost- 13-en-3-one". Both substances are non-Specified Substances and exogenous anabolic steroids prohibited under Section 1.1.a of the 2014 WADA Prohibited List. The Claimant notes that the EDP document EDP0448 shows that on 26 July 2014, the Athlete's sample 2917629 was added to a list of samples contained within an email sent by Mr Aleksey Velikodny (a liaison person for the Russian Ministry of Sport) to Dr Sobolevsky and Dr Rodchenkov of the Moscow Laboratory, stating that Ms Irina Rodionova (Deputy Director of the Centre of Sports Preparation of National Teams of Russia) was requesting a more detailed analysis of the samples. The same EDP document EDP0448 would show that on 29 July 2014, Dr Sobolevsky emailed Mr Velikodny, with Dr Rodchenkov in copy, that trenbolone and oxandrolone had been discovered in the sample of the Athlete. Sample 2917629 was reported as negative in the ADAMS by the Moscow Laboratory. The Claimant asserts that this is a result of the email exchange referred to above.

64. Fourthly, the Claimant notes that the Athlete's name also appears in the Clean Urine Bank issued in 2015, listed as EDP0757, next to the clean urine sample code X064.

65. Lastly, the Claimant relies on the witness statement of Dr Rodchenkov in which he explains, *inter alia*, his specific knowledge of the Athlete's role in the Russian doping scheme. In particular, he states that she was coached throughout her career by Mr Sergey Epishin, a coach for female runners on the Russian National Team, who utilized doping protocols in his training methods and was therefore protected by Mr Aleksey Melnikov, distance running state coach, and Ms Irina Rodionova, deputy director of the Centre for Sport Preparation. This was in Dr Rodchenkov's direct knowledge, including through conversations with Mr Melkinov and Ms Rodionova, and Mr Epishin bringing samples to him for under-the-table analysis. Dr Rodchenkov also confirms the factual accuracy of the Moscow Washout Schedules and the clean urine bank documentation as they relate to the Athlete, as well as the Velikodny-Sobolevsky email correspondence.

66. Given that Rule 32.2(b) of the 2012/2013 and 2014/2015 IAAF Competition Rules, which were applicable at the time of the alleged ADRVs, forbids the *"Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method"* and that *"Use"*, in the sense of Rule 32.2(b), may be established by any reliable means, including but not limited to admissions, evidence of third parties, witness statements, expert reports, documentary evidence, conclusions drawn from longitudinal profiling such as the Athlete Biological Passport and other analytical information (Rule 33.3 of the 2012/2013 and 2014/2015 IAAF Competition Rules).

67. In the present case, the 2015 LIMS data, read in combination with the relevant DCFs and the Moscow Washout Schedule, would show that the Athlete tested positive on two separate occasions, in 2013 and 2014, for multiple anabolic steroids and a SARM. These tests were all falsely reported as negative in the ADAMS by the Moscow Laboratory. In addition, the Moscow Washout Schedule shows that unofficial urine collected from the Athlete contained prohibited substances. The occurrences of the positive tests coincid with a build-up to important competitions, *i.e.* the 2013 IAAF World Championships and the 2014 European and European Team Championships. The Athlete features within the Moscow Washout Schedule, which comprised athletes who were known to be following a doping programme, every single athlete on the Moscow Washout Schedule having a Prohibited Substance indicated in respect of one of their samples. In addition, the Athlete's name figures in the LIMS data and in a Clean Urine Bank produced in 2015. The CAS has repeatedly held that the EDP documents, in particular the Moscow Washout Schedules, as well as the McLaren Reports and the LIMS data are reliable evidence (CAS 2020/O/6759, CAS 2020/O/6761, CAS 2021/A/7839, CAS 2021/A/7838) and, taken in combination, allow a panel to come to the conclusion that an ADRV has been committed. The evidence produced in the present matter would clearly show that the Athlete has used Prohibited Substances and has, as a result, committed a violation of Rule 32.2(b) of the 2012/2013 and 2014/2015 IAAF Competition Rules.

68. In application of Rule 40.2 of the 2012/2013 IAAF Competition Rules, providing for a standard period of ineligibility of two (2) years, and Rule 40.6 of the same Rules, setting out an increased period of ineligibility in presence of aggravated circumstances, the Athlete should be sanctioned with an ineligibility period of four (4) years. Such period of ineligibility would, in the present case be warranted in view of the fact that the Athlete (i) used multiple Prohibited Substances in the lead-up to the 2013 IAAF World Championships and the 2014 European

Championships, events in which she achieved successful results, (ii) used Prohibited Substances on multiple different occasions, including across multiple years, (iii) was part of a sophisticated doping scheme, including the washout testing programme in advance of the 2013 IAAF World Championships. In the Athlete's case, and according to Rule 40.7(d) of the 2012/2013 IAAF Competition Rules, the 2013 and 2014 ADRVs should not be considered as multiple violations but together as a single first violation and the sanction should be based on the violation that carries the more severe sanction.

69. Pursuant to Rule 40.10 of the 2012/2013 IAAF Competition Rules, the period of ineligibility should start on the date of the notification of the CAS award and, pursuant to Rule 40.8 of the same Rules, all results of the Athlete should be disqualified from 2 July 2013, date of the Athlete's first entry in the Moscow Washout Schedules, until the date of the CAS award, except if the Athlete were to prove that fairness required otherwise. The latter would however be difficult, considering that the doping was severe, repeated and sophisticated.

70. In view of the above, the Claimant, in its Request for Arbitration, requested the following relief:

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

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

(iii) Yelena Korobkina is found guilty of one or more anti-doping rule violations in accordance with Rule 32.2(b) of the 2012/2013 and/or 2013/2014 IAAF Competition Rules.

(iv) A period of Ineligibility of four years, alternatively between two and four years, is imposed upon Yelena Korobkina, commencing on the date of the (final) CAS Award.

(v) All competitive results obtained by Yelena Korobkina from 2 July 2013 through to the commencement of any period of provisional suspension or ineligibility are disqualified, with all resulting consequences (including forfeiture of any titles, awards, medals, profits, prizes and appearance money).

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

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

B. The First Respondent's Position

71. The First Respondent did not submit an Answer or any other written submissions containing requests for relief.

72. During the hearing, the First Respondent stated that it did not have any particular view on the case and that it would accept and respect any decision taken by the CAS in the present matter.

C. The Second Respondent's Position

73. The Second Respondent's submissions may, in essence be summarized as follows.

74. Between July 2012 and the end of 2015, she has been training and competing over large periods of time outside of Russia and has not only been available for anti-doping testing to other agencies than RUSADA, but has effectively been tested many times without any of the tests, analysed by other WADA-accredited laboratories than the Moscow one, having revealed an ADRV. Moreover, for many of the samples tested by the Moscow Laboratory, there would be no LIMS data showing a positive result and there would be no evidence that the Moscow Laboratory had falsely reported these samples as negative.

75. The Claimant's arguments are not clear, but rather confusing as the alleged ADRV is only based on circumstantial evidence. The question is whether any of the evidentiary elements that are present in this case are sufficient, either individually or collectively, to establish to the Sole Arbitrator's comfortable satisfaction, that the Athlete used prohibited substances at relevant times. The probative value of each evidentiary element should be evaluated insofar as it relates to the circumstances and allegations in the Athlete's individual case and supports a finding that the Athlete personally committed the specific "use" ADRV as alleged by the Claimant.

76. The Second Respondent recalls that the burden of proof to establish that an ADRV has occurred lies with the Claimant and that the applicable standard of proof is that of "comfortable satisfaction". However, when the burden of proof is placed upon the Athlete to rebut a presumption or to establish specified facts or circumstances, the standard of proof shall be "by a balance of probability". Given that the Claimant relies on the presumption that in 2013 and 2014 the Moscow Laboratory conducted its sample analysis and procedures in accordance with the International Standard for Laboratories (ISL), it would be sufficient for the Athlete to establish, by a balance of probability, a departure from the ISL that could reasonably have caused a presumptive AAF. Thus, once the Athlete establishes the departure by a balance of probability, the Athlete burden on causation is the somewhat lower standard of proof – *"could reasonably have caused"*. If the Athlete satisfies these standards, the burden shifts back to the Claimant to prove to the comfortable satisfaction of the Sole Arbitrator that the departure did not cause the presumptive AAF.

77. Regarding the reliability of the evidence produced by the Claimant, the Second Respondent argues:

- that little weight can be place on Dr Rodchenkov's written evidence, as was personally responsible for the systemic cover-up, the tampering with samples and other wrongdoings in the Moscow Laboratory and has been considered to not be a credible witness by the WADA Independent Commission and Prof. McLaren himself. Even CAS panels' have considered that only limited weight should be given to his testimony. The same applies to the digital evidence provided by Dr Rodchenkov, as it is possible that certain data he disclosed to WADA may have been manipulated. There is no forensic evidence that the selected pages from his diaries disclosed in the present matter represent true copies of the original diaries or that the entries in the diaries were done by Dr Rodchenkov himself and on the dates, they relate to. Further,

in absence of the true digital scans of the complete diaries, it is impossible to ascertain that no other information relevant for this case has been omitted from the evidence package. The diaries' scans are inadmissible evidence as they are not forensically reliable and incomplete.

- the LIMS data did not have any features to ensure its data integrity and security and despite the existence of the LIMS, the Moscow Laboratory continued to record some elements of the samples' workflow on paper only. Consequently, at all relevant times, for the purposes of a "presence" anti-doping case, only paper records (kept by the Laboratory would have a legal value. Should any conflict arise between a LIMS record and a paper record, paper record would prevail. Thus, only limited weight should be given to any LIMS data (2015 LIMS and 2019 LIMS) unless the data is corroborated by other reliable evidence.

- that the 2015 LIMS is, at best, actionable intelligence that needs to be corroborated by other reliable evidence for the purposes of any anti-doping proceeding, *inter alia*, as it is unknown who provided this data and how it was provided, as it is unknown whether the LIMS dump contained any of the pdf or raw analytical files – or other date from the Moscow Laboratory, as the chain of custody of the evidence has been interrupted between the date of the dump (3 September 2015) and the date WADA took possession of the USB drive (31 October 2017).

- that the authenticity of the 2019 LIMS and the alleged manipulation of the data it contains are outside the scope of these proceedings. The Sole Arbitrator's review, regarding the LIMS data, should be limited only to the evidence of presumptive AAF in the 2013 and 2014 Samples and should disregard the evidence of alleged LIMS data manipulation after 2016.

- that the evidentiary values of the analytical files (pdf or raw format) related to the 2013 and 2014 Samples is higher that of the LIMS data and other "circumstantial" evidence. However, it seems undisputed between WADA and Russian authorities that certain pdf files from the Moscow Laboratory have been manipulated and WADA's assertion that certain raw analytical files have been manipulated is only based on logical reasoning and circumstantial evidence.

- that the evidentiary value of the Athlete's Data Package, consisting of a collection of LIMS records, Carved LIMS files, pdf and raw files related to the 2013 and 2014 Samples, is undermined by the failure to follow basic forensic chain of custody rules. Further, it is not established that the WADA extracted all and any data related to the 2013 and 1014 Samples from the 2015 LIMS and the fact that no other LIMS Data has been made available by WADA with respect to other tests that were collected from the Athlete and analyzed by the Moscow Laboratory in 2012-2015 undermines the integrity of the LIMS evidence in this case.

78. As regards the Moscow Laboratory, the Second Respondent submits that the Laboratory was not ISL compliant and/or analytically reliable in 2013 and 2014. In support of this submission, she argues (i) that there is no greater contravention of the ISL than the DPM being undertaken at the relevant times by the Moscow Laboratory, (ii) that the McLaren Reports and Dr Rodchenkov's witness statement show that the Laboratory was proceeding to undercover testing, (iii) that the tests concerned performance-enhancing drugs, (iv) that there was a risk

of human and technical error that could affect the analytical reliability of the tests done by the Moscow Laboratory, (v) that WADA's assumption that the Moscow Laboratory could not distinguish Double-Blind from the "External Quality Assessment Scheme) ("EQAS") from routine samples is contradicted, amongst others, by the EDP emails and Dr Rodchenkov's book called "The Rodchenkov Affair", (vi) that following an audit of the Moscow Laboratory in 2013, WADA's Health, Medical and Research Committee noted that "several corrective actions need further completion", (vii) that, in November 2013, the Disciplinary Committee of WADA decided to suspend the accreditation of the Moscow Laboratory for six months if certain corrective actions were not completed by 1 December 2013 and by 1 April 2014 which proves that WADA was satisfied neither with the Moscow Laboratory's quality management system nor the accuracy and reliability of the results reported by that Laboratory, (viii) that there is evidence, in the EDP emails, that in June 2015 there was a massive samples' contamination – and resulting analytical mistakes – shoving that, at various times, mistakes and unreliable analytical results occurred in the Moscow Laboratory.

79. Concerning the LIMS data related to the Athlete, the Second Respondent considers that (i) there is nothing in the LIMS Data that supports the identification and the quantification of Ostarine in the 2013 Sample and of Trenbolone and Oxandrolone metabolites in the 2014 Sample ; (ii) there has been a poor quality of the tests at the Moscow Laboratory; (iii) the review of the raw files has indicated that the volume of injection of the samples was 0.00 µl, which means no injection, (iv) these inconsistencies prevent any claim of AAF and therefore the characterization of ADRVs in both 2013 and 2014 Samples.

80. In view of the above, the Second Respondent submits that (i) numerous departures from the ISL affected the samples testing in 2013 and 2014, (ii) the intensity of the "unofficial" testing by the Moscow Laboratory in 2013 together with poor quality management might have reasonably caused the contamination of the 2013 Sample with Oxandrolone and/or a technical error by the staff leading to the attribution of the Oxandrolone to the 2013 Sample, (iii) the EDP evidence of samples contamination and frequent analytical mistakes undermines WADA's position that the Moscow Laboratory was analytically reliable at all material times, (iv) the numerous departures of the Moscow Laboratory from the ISL shift onto WA the burden of demonstrating that such departures did not cause the presumptive AAF in the 2013 and 2014 Samples.

81. As regards other evidence drawn from the LIMS to establish that the Athlete was allegedly a "protected" athlete, *i.e.* absence of a CP, EDP emails, the Athlete's name in the LIMS date for Sample 2920147, the deletion of two raw data and pdf files saved in the name of the Athlete within the Moscow LIMS, the Second Respondent argues, primarily, that this evidence has no bearing on the issue on whether or not she committed a breach of Rule 32.2(b) of the IAAF Competition rules. The Second Respondent argues, alternatively, that the underlying evidence of the allegations above should be given no or only little weight as (i) there is no evidence whatsoever that the Athlete knowingly requested or consented to any kind of "protection" by the Moscow Laboratory, (ii) the communication of the Athlete's presumptive AAF to Russian officials by Mr Sobolevsky may be a simple consequence of contamination or poor-quality testing of the 2014 Sample, (iii) the failure to conduct a CP with respect to the 2013 and 2014 Samples can be explained by very poor quality of respective screening tests and/or discovery

of contamination by the Moscow Laboratory staff, (iv) aside from the email correspondence in respect of the 2014 Sample, there are no other "incriminating" emails in the EDP that would confirm that the Athlete was "protected", which is surprising given the number of the Athlete's samples that were analyzed by the Moscow Laboratory between 2012 and 2015.

82. As to the 2012 events, the Second Respondent notes that none of the allegations raised by Dr Rodchenkov in his witness statement and/or testimony directly relate to the Athlete and that they are not based on any other witness or documentary evidence than his own diaries. On top, Dr Rodchenkov's allegations regarding Mr Epishin's training methods and athletes is misleading and makes no sense.

83. Regarding the 2013 Moscow Washout Schedules, the Second Respondent argues, *inter alia*, that that these Schedules appear confusing and unreliable as (i) the Athlete was tested five times in July 2013 (including the unofficial 'washout' samples) but only four of these tests appear in the Moscow Washout Schedules and (ii) Washout 1 on 2 July 2013 allegedly had a very high concentration and the other three tests in July 2013 did not catch any traces of Trenbolone albeit the fact that this anabolic steroid has a very long excretion time. In any event, even if the Sole Arbitrator were to consider that the Moscow Washout Schedules has some probative value, this would not mean that it constitutes conclusive evidence that the Athlete used prohibited substance in or around July 2013. Indeed, there is no direct physical evidence or witness testimony to substantiate the Claimant's allegation regarding the Athlete's provision of three unofficial urine samples as they appear on the Moscow Washout Schedules. The Claimant's case is an entirely indirect and inferential one.

84. As regards the events in 2014, the Second Respondent maintains that Dr Rodchenkov's allegations in relation to the presumptive finding of prohibited substances in the 2014 Sample are just based on his "understanding" and not on direct knowledge as well as on his "interpretation" of the EDP evidence. However, none of these allegations would be corroborated by any other witness or documentary evidence.

85. Concerning the Clean Urine Bank, the Second Respondent highlights that the relevant question is whether the Athlete indeed provided clean urine in 2015 for the purpose of swapping her urine samples after the use of a prohibited substance. However, there would be no direct physical evidence or witness testimony to substantiate the Claimant's allegation in this regard. Indeed, *inter alia*, (i) no charges have been brought against the Athlete for use of any prohibited substances or tampering with the samples from 2015 onwards; (ii) the Claimant does not specify the date when, or location where, the Athlete is alleged to have provided clean urine for this purpose ; (iii) Dr Rodchenkov did not personally witness collection or testing of the clean urine samples of the Athlete, nor can he provide any evidence that this urine was used for future swapping and (iv) no evidence has been presented of any communications sent by or to the Athlete that refer to the collection, transmission, storage or use of clean urine for the purpose of urine substitution.

86. Still regarding the evidence brought forward by the Claimant, the Second Respondent finally adds that, contrary to what the panel in CAS 2017/A/5379 has held, there is, in the present case, no evidence of any direct implication of the Athlete, in any form, in the alleged protection scheme or of any use of prohibited substances.

87. The Second Respondent thus considers that the Claimant has not discharged its burden of establishing to the comfortable satisfaction of the Sole Arbitrator that the Athlete used or attempted to use a prohibited substance contrary to Rule 32.2(b) of 2012 and 2014 IAAF Competition Rules.

88. Moreover, some reasonable alternative explanations can be given to the incriminating evidence adduced by the Claimant in this case. If the 2015 LIMS data in respect of the 2013 and 2014 Samples are correct, they can be reasonably attributed to possible analytical mistakes or mistakes and frequent contamination of samples. In this scenario, the communication of the presumptive AAF for the 2014 Sample by the Moscow Laboratory to the Ministry of Sport is a logical consequence of the analytical mistake if one excepts the existence of DPM. Further, the absence of any "save" email in relation to the 2013 and 2014 Samples and the absence of any other "incriminating" LIMS Records or EDP emails can be explained by lack of "protection" effectively afforded to the Athlete at the relevant times. Even the email request from Mr Velikodny to check the 2014 Sample, allegedly at the initiative of Ms Rodionova, is not *per se* indicative of any protection scheme for the benefit of the Athlete given that – if Ms Rodionova were to have been in charge of preventing any of the Russian athletes being tested positive at important competitions – she had good reasons to enquire on any samples to make sure that even "unprotected » athletes were "clean". Finally, if it is accepted that Dr Rodchenkov and Mr Sobolevsky had to report AAFs to the Russian officials and assist them in the doping cover-up by other means, it is more likely than not that these individuals acted willfully and diligently and it would, therefore, be reasonable to accept that they would rather over-report or report false positives than try to "under-report" or conceal any false positives.

89. In view of the above arguments, the Second Respondent, in her Answer, requested the Sole Arbitrator to:

"(a) dismiss the Claimant's Request for Arbitration.
(b) declare that Ms. Korobkina is not guilty of any anti-doping rule violation under the IAAF [Competition Rules].
(c) declare that no period of ineligibility is imposed on Ms. Korobkina.
(d) declare that none of Ms. Korobkina's results are disqualified.
(e) order the Claimant to bear the costs of the arbitration in these proceedings (if applicable).
(f) order the Claimant to compensate Ms. Korobkina for the legal fees and other expenses incurred in connection with these proceedings, from the date of the notice of allegation till the date of the hearing, and
(g) order any other relief that the Sole Arbitrator deems just and appropriate".

V. THE HEARING

90. At the hearing, as already described above, the Sole Arbitrator heard evidence from the witnesses and experts (i) on the issue of the reliability of the LIMS, including on its manipulation; (ii) on the capability of the Moscow Laboratory to detect the substances at stake, and finally (iii) on the assessment of the analytical results.

91. The evidence of the witnesses and experts can be summarized as follows:

➢ Dr Grigory Rodchenkov:

Dr Rodchenkov, who was the head of the Moscow Laboratory until his resignation in November 2015, has submitted a witness statement in the present matter and starts his testimony by confirming the content of that witness statement. In response to a question from the Claimant, he specifies that in paragraph 48 of his witness statement he refers to his worries about the athletes training with Mr Epishin. He reiterated that the samples brought in by Mr Epishin of athletes that had already left to compete in Helsinki were tested to make sure that the prohibited substances had already washed out. If such was not the case, the athletes would not be allowed to compete.

He confirmed that it was his "understanding" that the Athlete was using a steroid-based protocol, explaining that the Moscow Washout Schedule shows *"that on top of testosterone she also had trenbolone and the only source of clean trenbolone was [Mr] Kiushkin and two weeks later we see the traces of prohormones and prohormones is something that was distributed by Kiushkin as well. Therefore, I'm convinced that she was taking prohibited substances"*.

Regarding the absence of documentation in relation to his meetings with Mr Melkinov and Mr Epishin, he states that the whole program was secret and therefore no documents were kept and whenever he received raw data he would destroy the documents the following day. However, his diaries would contain references of him preparing the Washout Tables

With respect to the diaries and their authenticity, he confirmed that the excerpts submitted in the present matter were written by him and the that authenticity has already been examined and was confirmed.

He stated that trenbolone has not a very long excretion time as it has the fastest washout time from all anabolic steroids and fifteen (15) days would be more than enough for trenbolone to wash out. A week would even be enough for a large dose to wash out. Later he added that, for an athlete like the Second Respondent, one week would have been sufficient for trenbolone to wash out.

He further contested that, in 2013 and 2014, the Moscow Laboratory could not provide reliable analysis of anti-doping samples or had problems with contamination. If there had been a slight doubt in the Laboratories capacities, it would have lost its WADA-accreditation – which it did not. The Laboratory had a quality control protocol that allowed it to be, with the Cologne and the Lausanne WADA-accredited laboratories, amongst the best anti-doping laboratories in the world.

In response to a question from the Second Respondent, Dr Rodchenkov pointed out that after the WADA audit of the Moscow Laboratory, the latter's accreditation was never suspended.

Regarding the dates of the entries in his diaries relating to 2014 and the fact that the upper part of some pages would mention the year 2015, he explained that the pages on the left of his diaries were showing the calendar of the actual year and the right page would show the calendar of the following year.

Dr Rodchenkov further stated that for athletes that had been confirmed for the scheme and which were on the list approved by Mr Nagornykh, there was no need, after an AAF in the ITP, to waste resources on a CP. The results would be in written documents transmitted to Mr Nagornykh. Those athletes were protected. He added that, as regards the Moscow Washout Schedules, he knew to which athlete a specific sample was belonging as those samples were brought to him by Mr Velikodny, Mr Kiushkin and, occasionally, by Ms Rodionova in a box and he would then check the sample for the name, the date, and to make sure it did not leak. For the official samples collected by RUSADA he would immediately receive a text message or if there was a list of samples the list would be brought to him. He stated that he does not specifically remember how they got the name in relation to the Athletes official samples but specified that, prior to starting the testing, Mr Sobolevsky did have the names of all the protected athletes.

Dr Rodchenkov stated not having personally witnessed Ms Korobkina providing an unofficial clean urine sample. He added that he did not have a direct contact with the athletes and that he was not involved in the testing procedure that was done by Mr Sobolevsky but only got the results.

Regarding the Athlete, he stated that he could not add anything else than what is in the Washout Schedule and that some parameters figure behind the Athlete's name in the 2015 [Clean Urine Bank] table. He added that the purpose of the collecting of clean urine in 2015 was to have clean urine that would have the same steroid profile as the one of a sample that was not clean, resp. to have 2-3 clean samples that would allow to make a mix to get as close as possible to the steroid profile.

In response to a question from the Sole Arbitrator, Dr Rodchenkov explained that all of the samples on the London Washout Schedule were official samples and that the Schedule was created after he had left for London to the 2012 Olympic Games.

He finally acknowledged that Exhibit GR5, line 65, does not offer any indication as to the date the alleged clean urine sample was provided by the Athlete but Mr Velikodny would have all the data in relation to a sample, like the date of the sample collection.

- Prof. Christiane Ayotte:

Prof. Ayotte was, until two days before the hearing, the Director of the *Laboratoire de contrôle du dopage* at the *INRS Institut Armand-Frappier* in Québec, Canada, *i.e.* the only Canadian laboratory accredited by WADA; she has a background in organic chemistry and has directed studies on the metabolism of prohibited substances and their detection; she was and still is a member of various WADA committees and acted as biological expert in the examination of

the Moscow LIMS and the McLaren Independent Commission and has examined and evaluated the LIMS data in several dozens of cases.

As to the two relevant samples from the LIMS, *i.e.* Sample 2809282 and Sample 2917629, she explained that for Sample 2809282, the PDF files and the raw files were not available. For the Sample 2917629 the PDF file for the anabolic steroid testing was not available, but the raw file was. The latter showed, after regeneration of the data, a negative result. That result is however inconsistent with the LIMS results from the ITP, that showed a finding of trenbolone. The concentration registered in the LIMS does not just correspond to a trace and, thus, the result of the regenerated raw files does not correspond to what was entered into the LIMS. The same conclusion is valid for the two oxandrolone metabolites identified. Regarding these two metabolites, the LIMS makes sense but the regenerated data from the raw data does not. What is found in the LIMS is what is expected on basis of the excretion of the long-term metabolites of oxandrolone.

Regarding the excretion time of trenbolone, Prof. Ayotte stated that, according to the literature, the metabolite was detectable for twelve (12) days, meaning that the finding figuring in the Washout Schedule and separated by fourteen (14) days is not incompatible with "a lot" of trenbolone metabolite having been detected on the 2 July 2013. However, what would miss in the present case would be the exact time/date of the last intake.

Concerning the T/E ratio found in the Washout Schedule of July 2013, Prof. Ayotte highlighted that she had no files or analytical results to look at in relation with the July samples. She stated that it looks like the Athlete's normal ratio seems to be from 1 to 1,1. The finding of a T/E of 11 (on 2 July 2013) is much higher than expected normal variation of the T/E ratios, even in female athletes. There would thus be two possibilities: either there was an administration of testosterone or a precursor of testosterone or, if the sample was collected out of competition, there was a confounding factor like the presence of ethanol caused by heavy ethanol drinking in the few hours before the sample collection. The T/E Ratio would be clearly outside the range of the values as expected for this athlete.

In response to a question from the Second Claimant, Prof. Ayotte stated that she had received the raw files for both of the Athlete's Samples (2809282 and 2917629), but that for ostarine there was no raw file available. There were no PDF files for any of the two samples.

She stated that just kept the chromatograms that she generated and does not have the injection numbers at which they were set.

She further stated that she went straight to the windows and the testing of trenbolone and oxandrolone metabolites and did not check whether there was something abnormal with regards to the timing when the injection was made or when the sample was received. What she found abnormal was the base line that was flattened, which make no sense and did not match the observations recorded in the LIMS. She would have expected at least something to show up. A flatline like the one for oxandrolone is not consistent with a positive finding.

She stated that she did not investigate the calibration of the instruments. She added that she was not provided with information contained in the LIMS with regards to the log-files of the instruments used.

- Mr Aaron Richard Walker and Dr Julian Broséus:

Mr Walker is Deputy Director of the WADA Intelligence and Investigations Department ("WADA I&I") and Dr Broséus is Principal Data and Scientific Analyst at the WADA I&I.

The experts explained that WADA received a first version of the LIMS by a whistleblower in October 2017 (the WADA LIMS). WADA investigations revealed that this was an accurate copy of the original LIMS. In January 2019, the WADA received a second copy of the LIMS (the Moscow LIMS). The analyses of the two copies showed that the entire WADA LIMS, *i.e.* over 63000 samples existed in the Moscow LIMS but was intentionally deleted and replaced by the data in the Moscow LIMS before being transferred to WADA in January 2019.

As regards Sample 2809282, Mr Walker explained that there are several reasons why, according to him, this sample correspondents to the sample four (4) from the Washout Schedule, particularly: the Washout Schedule was contemporaneously created in 2013; the Washout Schedule shows that the sample was collected out-of-competition and the LIMS report for this sample shows that information as well, as does the DCF and one can see it in the LIMS data itself. The LIMS data for the specific sample shows that, like said in the Washout Schedule, there was an AAF for ostarine at a low concentration.

Mr Walker went on to state that there are a lot of elements showing that the Athlete was a protected athlete.

In the first wave of protection, these elements are constituted by a series of emails exchanged between the Moscow Laboratory and the Ministry of Sport, Mr Velikodny, in particular on 26 July 2014 regarding sample 2917629 belonging to the Athlete. The Moscow Laboratory complied with the request for a more detailed analysis of that sample and on 30 [recte: 29] July 2014, they recorded the finding of trenbolone and oxandrolone in that sample. After that finding, the Mosco Laboratory was simply following the process of the DPM. Even if there is, in the present case no email asking the Laboratory to apply this DPM, it is clear that there was a directive communicated to the Laboratory because they stopped the mandatory CP and falsely reported the sample as negative in the ADAMS. Actually, for both samples, the 2809282 and the 2917629, the CP was not conducted and both samples were reported negative in the ADAMS. The Athlete was also named in the Clean Urine Bank spreadsheet, which signifies that she had at least provided one unofficial sample of clean urine to store in order to replace the urine of an official in-competition sample which may contain prohibited substances. The Athlete's name is also mentioned in the Moscow Washout Schedule in relation to four (4) individual samples, that Schedule being an example of a method of protection as it relates to the preemptive testing protocol of the Moscow Laboratory. The Washout Schedule shows that prohibited Substance were discovered in the samples collected from the Athlete and that the anonymity of the samples was, contrary to the international standards, not respected. Finally, the Athlete had two (2) Raw data (and) PDF files in her

name within the Moscow data which signifies that those files were generated from unofficial samples provided to see whether the Athlete could safely compete outside of Russia as far as the prohibited substances were concerned. The metadata of the information that sits behind those files shows that they were created in 2014 and 2015.

In the second wave of protection, the records, of the discovering of ostarine in one of the Athlete's samples and oxandrolone and trenbolone in the other sample, were deleted from the Moscow LIMS copy. This would be a classic example of protection. There has also been a deletion of specifically relevant PDF files and the manipulation of the two testing procedures in favor of the Athlete by showing the findings were negative.

Regarding the question whether the LIMS as a data storage system was secure and that paper records from the Moscow Laboratory should, when they exist, therefore take precedence, Mr Walker stated that the relevant international standards did not require a laboratory to operate a LIMS. Those standards did require a paper or an electronic internal chain of custody record. There were no integrity or security obligations on that data. The system created by the Moscow Laboratory was reliable and the Moscow Laboratory never lost its accreditation. It was always compliant in this respect. Paper records should thus not take precedent and the LIMS data is, according to the WADA's investigations, the only credible record.

Regarding the capacity of the Moscow Laboratory to accurately detect the prohibited substance, Mr Walker stated that if the Moscow Laboratory had not been capable of accurately detecting these substances, the doping scheme would have collapsed. Accurate detection would mean non-contamination and history has shown that the protection scheme deployed in Russia was very successful for many years. Moreover, WADA periodically tested the Moscow Laboratory's capacities to detect prohibited substances and in every instance the Laboratory correctly identified the prohibited substance.

In response to questions from the Second Respondent, Mr Walker stated that he did not personally witness the retrieval and the analysis of digital evidence concerning the Moscow Washout Schedule and the Clean Urine Bank as that evidence was collected during the McLaren investigation but that he did his own investigation as to the accuracy of that evidence, in terms of some forensic experts, and did not repeat the steps done by the McLaren.

Regarding the WADA LIMS database received by a whistleblower in 2017, Mr Walker stated that they know through observable digital evidence, and proof is almost beyond reasonable doubt, that the data was not manipulated intentionally or inadvertently in any time between 2015 and 2017. If it had ben, they could never have found an exact copy of that database over 63000 samples in the Moscow LIMS.

He stated that the WADA had not been handed any paper records of the Moscow Laboratory and that they were advised by the Laboratory that the paper records were all removed by the investigation committee of the Russian Federation.

Mr Walker stated that he has not seen evidence in connection with Dr Rodchenkov's affirmation that the Moscow Laboratory was allegedly able to detect the double-blind samples, not even in the correspondence appearing in the EDP evidence.

In response to a question from the Sole Arbitrator, Mr Walker stated that, according to him, one indication that an athlete was a "protected athlete" under the Russian doping scheme is that no CP was conducted after an ITP revealed a PAAF. This first indication could then be reinforced by a second indication, *i.e.* that the samples were reported as negative in the ADAMS. In the present case, in respect of the Athlete's relevant samples, both of those things occurred.

Mr Walker further stated that the properties of the data like the Washout Schedule can be altered and that in relation to the Moscow LIMS they have found some alterations. They have not seen that in relation to the Washout Schedule.

92. Finally, the statement of the Athlete at the end of the hearing can be summarised as follows:

Ms Korobkina has never resorted to any prohibited substances and was not aware of any protection afforded to her. Further, she has never met Dr Rodchenkov. She has provided samples for anti-doping purposes all over the world and has nothing to hide and trusts that this will be taking into consideration. She also trusts that a fair and right decision will be taken by the CAS.

VI. JURISDICTION

93. WA maintains that the jurisdiction of the CAS derives from Rule 38.3 of the 2016-2017 IAAF Competition Rules (the "2016 IAAF Competition Rules"), effective from 1 November 2015. Indeed, pursuant to Rules 1.7.2 (b) of the 2021 WA Anti-Doping Rules ("WA ADR"), applicable at the time of the filing of the Request for Arbitration in the present matter, ADRVs committed prior to 3 April 2017, *"shall be governed by the substantive anti-doping rules un effect at the time the alleged anti-doping rule violation occurred […] unless the hearing panel determines that the principle of lex mitior appropriately applies under the circumstances of the case"* and with regard to the procedural matters by the *"2016-2017 IAAF Competition Rules"*.

94. Article 38.3 of the 2016 IAAF Competition Rules provides as follows:

"If a hearing is requested by an Athlete, it shall be convened without delay and the hearing completed within two months of the date of notification of the Athlete's request to the Member. 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. […]".

95. In the present case, RUSAF's IAAF/WA membership was suspended following, *inter alia*, decisions from the IAAF/WA Council on 26 November 2015, 4 December 2018, 23 September 2019 and in November 2022. The WA Congress maintained the suspension of RUSAF at its meetings on 25 September 2019 and 17 November 2021. As a consequence of its suspension, RUSAF was not in a position to conduct the hearing process in the Athlete's case by way of delegated authority from WA pursuant to Rule 38 of the 2016 IAAF Competition Rules.

96. Consequently, RUSAF is not in a position to convene a hearing within the two-month time period set out in Rule 38.3 of the 2016 IAAF Competition Rules. In these circumstances, it is not necessary for the WA to impose a deadline on RUSAF for this purpose.

97. Further, in the present matter, it is undisputed that the Athlete is an International-Level Athlete in the sense of the IAAF Competition Rules.

98. In the light of the foregoing, the Sole Arbitrator finds that the CAS has jurisdiction in this procedure. In addition, he observes that the jurisdiction of the CAS was not contested by the Respondents and that the Second Respondent expressly confirmed that jurisdiction by signing and returning the Order of Procedure to the CAS Court Office.

VII. ADMISSIBILITY

99. 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 2016 IAAF Competition Rules 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.

100. 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 WA's claims.

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

VIII. APPLICABLE LAW

102. Pursuant to Rules 1.7.2 (b) of the 2021 WA ADR, applicable at the time of the filing of the Request for Arbitration in the present matter, ADRVs committed prior to 3 April 2017, *"shall be governed by the substantive anti-doping rules un effect at the time the alleged anti-doping rule violation occurred […] unless the hearing panel determines that the principle of lex mitior appropriately applies under*

the circumstances of the case" and with regard to the procedural matters by the *"2016-2017 IAAF Competition Rules"*.

103. The present procedure is, as already mentioned above, based on Rule 38.3 of the 2016 IAAF Competition Rules. 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)"*.

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

105. 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".

106. Pursuant to Rule 42.23 of the 2016 IAAF Competition Rules, 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"*.

107. According to Rule 42.24 of the 2016 IAAF Competition Rules, in *"all CAS appeals involving the IAAF, the governing law shall be Monegasque law and the arbitrations shall be conducted in English, unless the parties agree otherwise"*.

108. In the present matter, WA argues that the Athlete's alleged ADRV's occurred in the years 2013 to 2014. Thus, the Sole Arbitrator holds that the substantive aspects of the present matter are to be governed by the 2012-2013 IAAF Competition Rules (the "2012 IAAF Competition Rules") and the 2014-2015 IAAF Competition Rules (the "2014 IAAF Competition Rules").

109. Finally, the Sole Arbitrator notes that, pursuant to Rules 33.1 of the 2012 and 2014 IAAF Competition Rules, the burden of proof that an ADRV has occurred is on WA 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.

IX. MERITS

A. The Alleged Anti-Doping Rule Violations

110. WA claims that the Athlete breached Rule 32.2(b) of the 2012 and/or the 2014 IAAF Competition Rules, which prohibits as follows:

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

(i) it is each Athlete's personal duty to ensure that no Prohibited Substance or enters his or her body. Accordingly, it is not necessary that intent, fault, negligence or knowing Use on the Athlete's part be demonstrated in order to establish an anti-doping rule violation for Use of a Prohibited Substance or a Prohibited Method.

(ii) the success or failure of the Use or Attempted Use of a Prohibited Substance or Prohibited Method is not material. It is sufficient that the Prohibited Substance or Prohibited Method was Used, or Attempted to be Used, for an anti-doping rule violation to be committed".

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

111. As already mentioned above, pursuant to Rules 33.1 of the 2012 and 2014 IAAF Competition Rules, the burden of proof that an ADRV has occurred is on WA and the relevant standard of proof is that of comfortable satisfaction, *"bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt"*. With respect to that applicable standard of proof, the Sole Arbitrator notes that as is clear from the CAS jurisprudence, this standard is well-known in CAS practice, *"as it has been the normal CAS standard in many anti-doping cases even prior to the WADA-code"* (CAS 2018/O/5712).

112. Pursuant to Rule 33.2 of the 2012 and 2014 IAAF Competition Rules, when the burden of proof is placed on the *"Athlete […] alleged to have committed an anti-doping violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability, except as provided in Rules 40.4 (Specified Substances) and 40.6 (aggravating circumstances) where the Athlete must satisfy a higher burden of proof"*.

113. With respect to the applicable means of proof, Rule 33.3 of the 2012 and 2014 IAAF Competition Rules, provides that facts relating to ADRVs 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"*.

114. As regards the alleged ADRV, considering the very large scope of elements that could be admitted as evidence, the Sole Arbitrator has accepted into evidence all the evidence provided by the Claimant, in particular the EDP evidence as well as Dr Rodchenkov's witness statement and testimony, Prof. Ayotte's expert evidence and Mr Walker and Mr Broséus statement and evidence/testimony. As to the Second Respondent's request to declare the scans of Dr Rodchenkov's diaries "inadmissible" the Sole Arbitrator holds that this request must be dismissed as the alleged forensic unreliability and the alleged incompleteness of this evidence may, if accepted, at most affect its weight but not it's admissibility.

115. 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, *inter alia*:

(i) the fact that WA's investigatory powers are substantially more limited than the powers available to national law enforcement agencies and that evidence that it is able to present before the CAS necessarily reflects these inherent limitations in these investigatory powers;

(ii) that these investigatory powers were, on top, limited by the fact that the Russian authorities set up an investigation committee that did not grant the WADA full access to all the paper records/documentation of the Moscow Laboratory;

(iii) that, in his case there is no direct evidence of use by the Athlete – all the evidence is circumstantial. In this context, the Sole Arbitrator considers that the evidence must be assessed separately and together and he must have regard to what is sometimes called "the cumulative weight" of the evidence in view of the nature of the alleged doping scheme (CAS 2018/O/5713 and CAS 2021/A/8012). The Sole Arbitrator may draw inferences from the established facts where he considers that the established facts reasonably support the drawing of such 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 Claimant has established an ADRV notwithstanding that it is not possible to reach that conclusion by direct evidence alone;

(iv) the fact that the Sole Arbitrator is mindful that the allegations asserted against the Athlete, *i.e.* that she has used Prohibited Substances and has knowingly benefitted from a doping scheme and system that was covering up her positive doping results and registered them as negative in the ADAMS, are of the utmost seriousness. Given the gravity of the alleged wrongdoing, the Claimant has to adduce cogent evidence of the Athlete's personal involvement in that wrongdoing, the Sole Arbitrator having to be comfortably satisfied that the Athlete personally committed a specific violation of a specific provision of the 2012 and/or 2014 IAAF Competition Rules, and

(v) that in considering whether the Claimant has discharged its burden of proof to the requisite standard of proof, the Sole Arbitrator will consider any admissible reliable evidence adduced by WA. This includes 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.

116. As to the Mc Laren reports and their finding in relation to the existence of the DPM and the Washout Schedules, the Sole Arbitrator notes that, according to the Second McLaren Report, these findings meet 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). Moreover, in 2018, the existence of a systemic doping scheme in Russia has been acknowledged by the Russian minister of Sport, Mr Pavel Kolobkov, and by the

President of the Russian Olympic Committee, Mr Aleksander Zhukov. Further, the Respondents have not seriously contested the existence of an overarching doping system in Russia. However, the fact that the Sole Arbitrator may be convinced of the existence of the generalized doping scheme in Russia during the relevant years, *i.e.* 2013 to 2015, does not discharge the Claimant of the burden of establishing, to the Sole Arbitrator's comfortable satisfaction, that the Athlete has knowingly participated in the scheme by personally committing one or more prohibited actions.

117. As regards the EDP documents, in particular the Moscow Washout Schedule and the email exchange between Mr Velikodny and the Moscow Laboratory, the Sole Arbitrator notes that the parties seem to be in agreement that all IT forensic principals might not have been fully respected during the recovery of the EDP documents. However, this does not necessarily affect the authenticity and the reliability of this evidence. Indeed, the Sole Arbitrator notes that, in the present matter, there is no sign or evidence that the Moscow Washout Schedule or the emails submitted as evidence by WA were forged. In particular, Mr Walker confirmed that WADA had made their own independent forensic examination to ensure that the evidence was reliable. Moreover, one of the authors of the documents and recipients of the emails, *i.e.* Dr Rodchenkov, confirmed in his witness statement and in his testimony before the Sole Arbitrator the origin and the authenticity of the relevant documents and emails submitted as evidence in the present case. Particularly in view of the fact that Dr Rodchenkov confirmed the authenticity of the documents EDP0028 to EDP0038 as being the Moscow Washout Schedules that Dr Sobolevsky created in the lead-up to the 2013 Moscow Word Championships, the Sole Arbitrator considers that there is no valid ground for him to put into doubt the authenticity and/or contemporaneous nature of the evidence submitted by the Claimant if Dr Rodchenkov were found to be a credible and reliable witness in the present matter.

118. In this regard, the Sole Arbitrator, while being aware that some CAS panels have attached only limited weight to some aspects of Dr Rodchenkov's testimony (e.g. CAS 2017/A/5379), notes that this has occurred when this testimony was in conflict with or uncorroborated by other evidence. This is, however, not the case in the present matter as the main evidence brought forward by the Claimant is documentary evidence. Moreover, during the hearing, Dr Rodchenkov answered all the questions in a forthright, honest and reasonable manner. In the opinion of the Sole Arbitrator, Dr Rodchenkov neither exaggerated nor sought to play down his personal implication in the general doping system described in the McLaren Reports. As a result, the Sole Arbitrator finds Dr Rodchenkov's witness statement and testimony in the present matter to be absolutely credible.

119. In view of the above, the Sole Arbitrator considers that the Moscow Washout Schedules are a contemporaneous account of the washout testing program deployed by the Moscow Laboratory and that the documents submitted in the present matter are genuine and can be attributed a probative value. The Sole Arbitrator notes that the Athlete's name appears in the Moscow Washout Schedules in relation to four (4) different Samples respectively dated 02/07, 17/07, 25/07 and 31/07. It has not been alleged that the name "Korobkina" showed in that Washout Schedule would refer to another athlete than the Second Respondent. Further, according to the Moscow Washout Schedule, the analysis of the first of these samples revealed

the presence of trenbolone whereas the analysis of the last of these samples revealed the presence of ostarine. The Sole Arbitrator therefore finds that the Moscow Washout Schedules show that, on or about 2 July 2013, the Athlete used trenbolone and that, on or about 31 July 2013, the Athlete used ostarine.

120. Regarding the first of these samples, the Sole Arbitrator notes that the Second Respondent's argument according to which the finding of "trenbolone (a lot)" would be contradicted by the fact that in the sample dated 17 July 2013 no trenbolone has been found – although trenbolone has "very long excretion times" – has been contradicted by Dr Rodchenkov and Prof. Ayotte during the hearing. Indeed, both stated, in substance, that a period of fourteen (14) days would be enough in a case like the Athlete's for trenbolone to washout from the athlete's system. Given Dr Rodchenkov's and Prof. Ayotte's high expertise and experience in this field, the Sole Arbitrator sees no reason not to take these statements at face value.

121. With respect to the sample dated 31 July 2013, the Sole Arbitrator notes that the finding of ostarine in that sample appears to be confirmed by the 2015 LIMS data relating to Sample 2809282 which indicates that ostarine was found in this sample.

122. As regards the reliability of the 2015 LIMS, the Claimant relies, principally, on the joint statement of Mr Walker and Dr. Broséus, to state that the 2015 LIMS is reliable and that it shows, together with the Moscow LIMS, how the staff of the Moscow Laboratory manipulated the LIMS data to conceal positive results likes the ones Athlete's Samples 2809282 and 2917629. The Athlete in turn submits that the LIMS data is not reliable as the LIMS was not designed in a way to ensure its data integrity and security. Further, it could not be excluded that the 2015 LIMS data has been manipulated before it was handed over to the WADA.

123. In the Sole Arbitrator's view, Mr Walker's explanation that, *inter alia*, the comparison between the 2015 LIMS and the Moscow LIMS shoves that the 2015 LIMS is reliable as an exact copy of that database of over 63000 samples was found in the Moscow LIMS, is very convincing. The Sole Arbitrator notes, first, that this argument has not been contested by the Second Respondent. Second, the Second Respondent's allegation that a possible manipulation of the 2015 LIMS before it was handed over to the WADA is not supported by any evidence and does not contain any indication as to whom might have manipulated that data and for what reason. The allegation, that the Moscow Laboratory was trying to hide its own shortcomings is, in the present case, not substantiated. In particular, the Second Respondent's allegation according to which, in the relevant years, that the Moscow Laboratory had issues relating to the analytical reliability, had experienced some samples' contamination that lead to false results and was not ISL conform, has to be weighed against the uncontested fact that, although under investigation by WADA, the Moscow Laboratory has not, at the time, seen its accreditation suspended. It must therefore be considered as having been able to produce reliable analytical results. As to the contamination problem referred to by the Second Respondent, the Sole Arbitrator notes that such episodes have been observed in other WADA accredited Laboratories as well and have, as the reference by the Second Respondent to some EDP emails show, generally left some traces. However, in the present case, these is no such trace for the relevant time period, *i.e.* 2013 and 2014. Moreover, and in any event, the simple possibility of such a contamination occurring does not allow to draw any conclusions as to the probability

of such occurrence and as to the general reliability of the analytical results of the Moscow Laboratory. Indeed, the Sole Arbitrator considers that the effectiveness of the Russia doping scheme in general and the washout testing in particular was dependent on the capacity of the Moscow Laboratory to correctly identify the results of the sample analysis. This of itself shows clearly that the Moscow Laboratory performed sample analyses in a highly accurate manner and that, where applicable, such accurate results were thereafter manipulated in the LIMS and reported as negative in the ADAMS in order to "protect" some specific athletes.

124. In view of the above, the Sole Arbitrator shares the view of another CAS panel which previously found that *"the 2015 LIMS is an accurate, authentic, and contemporaneous account of original data"* and that *"its contents can be relied upon as accurate and valid"* (CAS 2021/A/7839 and CAS 2021/A/7840).

125. This finding is not invalidated by the Athlete's argument according to which the LIMS was not a "secure" system and did not correspond to the generally applicable standards. Indeed, as Mr Walker convincingly stated during the hearing, the relevant international standards did not require a WADA-accredited laboratory to operate a LIMS and in case a laboratory opted for an electronic internal chain of custody record, there were no integrity or security obligations on that data. The fact that the Moscow Laboratory never lost its accreditation is a good indication that the LIMS was a reliable system.

126. As already mentioned, the 2015 LIMS contains information in relation to two samples of the Athlete:

- For Sample 2809282, which was, according to the relevant DCF, collected out-of-competition on the 31 July 2013, the LIMS shows a finding of ostarine.

- For Sample 2917629, which was, according to the relevant DCF, collected in-competition on 25 July 2014, the LIMS shows findings of "epitrenbolone", "18-nor-17a-hydroxymethyl-17b-methyl-2-oxo-5a-androst-13-en-3-one" and "18-nor-17b-hydroxymethyl-17a-methyl-2-oxo-5a-androst-13-en-3-one", which are metabolites of trenbolone and oxandrolone.

127. Thus, on the one hand, the 2015 LIMS provides confirmation of use, on or around 31 July 2013, on the part of the Athlete of ostarine, which is a selective androgen receptor modulator that was prohibited under the S1.2 of the 2013 Prohibited List. On the other hand, it provides evidence of use, on or around 25 July 2014, on part of the Athlete of trenbolone and oxandrolone, which are non-specified Substances and exongenous anabolic steroids that were prohibited under S1.1a of the 2014 Prohibited List.

128. The evidence of the finding in relation to Sample 2917629 is, in the Sole Arbitrator's view, corroborated by the fact that, in an email dated 29 July 2014 and send to Mr Velikodny, in which Dr Rodchenkov in copy, Mr Sobolevsky indicated under the name of the Athlete "trenbolone, oxandrolone". This email is listed as EDP0448 and part of the EDP documents that the Sole Arbitrator considers to be accurate and authentic evidence.

129. In the Sole Arbitrator's view, the email exchange does not only corroborate the use of prohibited substances by the Athlete on or around 25 July 2014 as documented in the 2015 LIMS, but also provides important documentary evidence that the Athlete was a "protected athlete" under the Russian doping scheme. Indeed, that fact in his email dated 26 July 2014, Mr Velikodny asked the Moscow Laboratory to perform a more detailed analysis of the Sample 2917629 while adding the Athlete's name, *i.e.* "Korobkina", behind the number of the sample, is a clear indication that the Ministry of Sport knew to whom this sample belonged and was willing to share that confidential information with the Moscow Laboratory. The Sole Arbitrator considers that such flagrant violation of the applicable standards and rules can, in view of all the circumstances of the case and in light of the overarching doping scheme that existed, at the time, in Russia, only be explained by the fact that the Athlete was a protected athlete. The Second Respondent's alternative explanation in respect of this email does not seem convincing. Indeed, if Ms Rodionova wanted none of the Russian athletes to test positive at important competitions abroad, all samples of all Russian athletes should have been tested and all the results reported to Ms Rodionova. There would, thus, have been no need to request the results of just a few of them.

130. The finding that the Athlete was a "protected athlete" is, for its part, corroborated by the fact that the testing procedures for Samples 2809282 and Sample 2917629 have been stopped after the ITP and that no CP was launched in relation to these two samples. Moreover, as the Claimant rightly pointed out, both samples were reported as negative in the ADAMS even though there was, according to the evidence produced by the Claimant, no specific "save" email for the Athlete. This way to proceed largely corresponds, in the Sole Arbitrator's view, to what Dr Rodchenkov described in his witness statement as the first scenario of the DPM. Indeed, according to this statement, *"The first scenario occurred when sample codes of known protected athletes were sent to the Moscow Laboratory. When sample codes of protected Russian Athletes were communicated to the Moscow Laboratory, the urine analysis were terminated after Initial Testing Procedures and the results were reported as negative in ADAMS. Protected athletes' sample codes were typically communicated to the Moscow Laboratory via text message […] from involved Russian officials or via messenger to the Moscow Laboratory as a document including a table of athlete sample codes. If laboratory analysts detected prohibited substances, those findings were reported to the Deputy Minister for Sports, Yury Nagornykh […]".*

131. The Sole Arbitrator accepts Dr Rodchenkov's statement on this aspect as a coherent and credible account of how, in general terms, the LIMS was manipulated and, in particular, how the DPM worked in practice. He further notes that the existence and functioning of the DPM has been also confirmed by other CAS Panels (CAS 2021/A/7838; CAS 2021/A/7839; CAS 2021/A/7840).

132. Regarding the Claimant's allegation that the Athlete was a "protected athlete", the Sole arbitrator finds that, in addition to the above mentioned elements of evidence, the comparison between the 2015 LIMS and the 2019 LIMS as described by Mr Walker and Dr Broséus in their common statement of evidence provides strong indications that the Second Respondent was, indeed, a "protected athlete". The relevant parts of this statement read as follows:

"J. MANIPULATION OF PDF FILES

44. Following the completion of an analysis of a sample aliquot, an [ITP] Raw Data file is created by the analytical instrument. A PDF is then generated from the Raw Data. A PDF contains information such as the Raw Data and Instrument Computer names as well as the operator and the date of analysis. More importantly, the PDF indicates whether prohibited substances were detected in the sample aliquot.

45. The PDFs associated with the analysis of conjugated fractions (e.g., Ostarine) in sample 2809282 ('12121') and anabolic steroids (e.g., Trenbolone, Oxandrolone) in sample 2917629 ('9398') had been deleted from the Moscow Data on an unknown date by an unknown person from within the Moscow Laboratory. This correlates to two PDFs having been deleted.

46. Despite the deletion, using specialised software, with the assistance of digital forensic experts, we recovered copies of the two deleted PDFs (the 'Manipulated PDFs') from "carved" […] files on the Fileserver.

47. Examination of the Manipulated PDFs revealed each had been selectively manipulated (from positive to negative). More specifically, the original chromatograms of the Prohibited Substances that were detected in the samples had been replaced with chromatograms that had been 'cut-and-pasted' into the PDF. The replacement chromatograms now showing that there were no Prohibited Substances detected in the samples. The original chromatograms could not be recovered. The Manipulated PDFs were also recovered without metadata. In other words, information relating to their date of creation, date of manipulation and ultimate deletion were no longer present in the files.

48. Although absent of metadata, the Manipulated PDFs held information within their content […] including, the file name ('c_12121'), the local Path of the original Raw Data file ('2013\SCR\08') and the fact that it was automatically generated from Raw Data acquisitioned from the instrument computer 'Maximus' on 1 August 2013.

[…]

49. In the above example, the file name 'c_12121' denotes that a sample with the (internal) Laboratory Code '12121' underwent ITP analysis for conjugated fractions (which is denoted by the reference 'c_'). The Laboratory Code 12121 correlates with sample 2809282.

50. Taking Picture 2, below, the file content reveals the PDF was generated following the ITP analysis for anabolic steroids (denoted by the reference 'a_') in a sample with the Laboratory Code '9398'. The Laboratory Code 9398 correlates with sample 2917629.

[…]

51. With the help of digital forensic experts, an integrity assessment was conducted on all PDFs connected with samples 2809282 and 2917629. The Manipulated PDFs are the only PDFs associated with the respective samples that have been manipulated (from positive to negative). More specifically, in respect to sample 2809282 the original chromatogram for Ostarine had been replaced with another chromatogram (see Picture 3, below) that had been 'cut and paste' into the PDF. In other words, the 'signal' represented in this PDF for this chromatogram is not the true signal of the substance that the Moscow Laboratory originally based its assessment on in sample 2809282.

52. In respect to sample 2917629 the original chromatogram for the Trenbolone metabolite Epitrenbolone and the substance Oxandrolone had been replaced with chromatograms (see Picture 4, above) that had been 'cut and paste' into the PDF. In other words, the 'signal' represented in the Manipulated PDF for these chromatograms are not the true signals of the substances that the Moscow Laboratory originally based its assessment on in sample 2917629.

53. In summary, the Manipulated PDFs do not support the presence of Ostarine in sample 2809282, or Oxandrolone and the Trenbolone metabolite, Epitrenbolone, in sample 2917629. In other words, these PDFs correlate to the falsified data in the 2019 LIMS Copy for the respective samples and not the true data as recorded in the 2015 LIMS Copy.

54. This incongruence in the content of the Manipulated PDFs align with the pattern of protection we have observed in relation to other protected Russian athletes, protection which included the manipulation of Raw Date from 'positive' (where a Prohibited Substance was detected) to 'negative' (where it now appears that a Prohibited Substance was not detected).

55. We assert the Manipulated PDFs were deleted from the Moscow Data because in many instances we have observed that this method of protection was discernable to the eye, and thus readily detectable. Consequently, the PDFs were deleted in search of a less discoverable means of protection.

K. SEARCH LOGS

56. Commencing 16 August 2016, and concluding 15 November 2018, the samples 2809282 and 2917629 were repeatedly and inexplicably searched within the LIMS by staff from the Moscow Laboratory.

57. 20 of the searches were made by the then Laboratory Director […], and 61 searches were made by staff from the Moscow Laboratory's Sample Registry Recording Department.

58. Notably, most of the searches (32) were made by […] the Sample Manager of the Moscow Laboratory Sample Registry Recording Department. […]

59. We assert that when viewed against the following chronology, the searches were part of a coordinated process in which data (e.g LIMS, PDF and Raw Data) related to samples 2809282 and 2917629 were identified and manipulated or deleted from within the Moscow Laboratory:

(i) On 18 May 2016, WADA announced the commencement of an Independent Person (Richard McLaren) to investigate Doctor Rodchenkov's allegations of Russian state manipulation of the doping control process.

(ii) On 18 July 2016, the McLaren Investigation published the first of its two reports.

(iii) On 21 July 2016, the Investigative Committee entered the Moscow Laboratory, conducted searches, and seized evidence including some Moscow Data. […]

(iv) On 16 August 2016 and 6 September 2016, sample 2809282 was searched within the LIMS. […]

(v) On 17 August 2016, 22 August 2016 and 6 September 2016, sample 2917629 was searched within the LIMS. […]

(vi) On 9 December 2016, the McLaren Investigation published its second, and final report. This report was accompanied by an Evidentiary Disclosure Package Website which contained evidence (e.g., Save Emails) the investigation had uncovered.

(vii) On 25 December 2016, sample 2917629 was searched twice within in the LIMS. […]

(viii) Commencing January 2017, WADA began a process of formal engagement with Russian authorities (e.g., the Ministry) to determine the criteria that RUSADA would have to fulfill to be reinstated to the list of Code-compliant Signatories. These criteria included a requirement that the Russian Government must provide WADA access to the Moscow Data. In other words, by approximately January 2017, Russian authorities were aware that WADA would, inevitably, gain access to the Moscow Data and any evidence of wrongdoing contained therein would be exposed. […]

(ix) On 17 August 2017, sample 2917629 was searched twice within the LIMS. […]

(x) On 20 September 2018, RUSADA was advised of and accepted the post-reinstatement requirement to provide the Moscow Data to WADA.

(xi) On 6 October 2018, samples 2809282 and 2917629 were searched within the LIMS. […]

(xii) On 25 October 2018, sample 2809282 was searched within the LIMS. […]

(xiii) On 15 November 2018, sample 2917629 was searched within the LIMS. […]

L. DELETION OF LIMS DATA

60. Following recovery from the Moscow Laboratory, the 2019 LIMS Copy was compared to the 2015 LIMS Copy. This analysis involved a global, sample-by-sample comparison of the data sources. In other words, every record of every sample in the 2015 LIMS Copy was compared with every record of every sample in the 2019 LIMS Copy.

61. From the original pool of 63,279 'unique' samples housed in the 2015 LIMS Copy, there were 24542 samples (and their associated data) present in the 2015 LIMS Copy that were absent from the 2019 LIMS Copy. Moreover, there were 32843 samples and 22 "Bags" present in both Data Sources that contain discrepancies (differences) in their respective data values.

The Athlete's Samples

62. Samples 2809282 and 2917629 were part of the 245 samples where discrepancies existed between the 2015 and 2019 LIMS Copies (collectively, the 'Data Sources').

63. More specifically, the data recorded in the tables, 'Bags', 'Samples', 'Screenings', 'MS_data' and 'PDFs' for these two samples matched completely between the Data Sources. However, differences were observed in the 'Found' and 'log_do' tables in that the most important analytical records had been removed (deleted) from these tables in the 2019 LIMS Copy. More specifically:

(i) In sample 2809282, the recorded discovery of Ostarine was missing from the 2019 LIMS Copy. In other words, the 2015 LIMS Copy recorded a reportable AAF for Ostarine, while the 2019 LIMS Copy did not.

(ii) In sample 2917629, the recorded discovery of Trenbolone and Oxandrolone in this sample – more specifically, their metabolites 'Epitrenbolone', '18-nor-17a-hydroxymethyl-17b-methyl-2- oxo-5a-androst-13-en-3-one' and '18-nor-17b-hydroxymethyl-17a-methyl-2-oxo-5a-androst- 13-en-3-one' – was missing from the 2019 LIMS Copy. In other words, the 2015 LIMS Copy recorded a reportable AAF for metabolites of Trenbolone and Oxandrolone, while the 2019 LIMS Copy did not.

64. As stated, the question as to which version of the LIMS database is authentic was resolved by reliance upon observable digital evidence. More specifically, the Moscow Data contains observable digital evidence that the records from the entirety of the data from the 2015 LIMS Copy previously existed in the Moscow LIMS but were intentionally deleted from that database – and replaced with the data as housed in the 2019 LIMS Copy – prior to its delivery to WADA on 17 January 2019".

133. The Sole Arbitrator further notes that several CAS panels have previously confirmed the large-scale manipulation of the 2019 LIMS data by the Russian authorities as part of the Russian institutionalized doping scheme. In particular, in CAS 2020/O/6689, the CAS panel confirmed the *"deliberate, sophisticated and brazen alterations, amendments and deletions [of the LIMS data, and that those manipulations] were intentionally carried out in order to remove or obfuscate evidence of improper activities carried out by the Moscow Laboratory as identified in the McLaren Reports […]".*

134. In the present case, although the Second Respondent argued that, *inter alia*, the allegation that the 2019 LIMS showed that some data relating to the Athlete had been deleted has no bearing on the issue of whether or not she had committed a "use" ADRV, she raised, in the following, no argument directed against the evidence contained in statement of Mr Walker and Dr. Broséus. Further, the Sole Arbitrator considers that this argument coincides, in substance, with the Second Respondent's argument according to which the *"authenticity of the 2019 LIMS, as well as alleged manipulation of the 'Moscow Data' are outside the scope of these proceedings"*. However, as also rightly pointed out by the Second Respondent, the Claimant mainly relies on the 2019 LIMS to establish that the Athlete was a "protected athlete" which, in turn, might be of relevance when assessing whether there are aggravating circumstances in the present matter.

135. Finally, regarding the allegation that the Athlete's name was found on a Clean Urine Schedule issued in 2015 and in which one sample of urine was recorded, the Sole Arbitrator notes that this Schedule is part of the EDP evidence provided (EDP0757) and can, thus, be considered as reliable. Although the Second Respondent stated that she has never provided clean urine for swapping and argues that there is no evidence on when or how she would have provided that the sample appearing in the Clean Urine Bank, the Sole Arbitrator notes that it remains unclear for what other purpose than the one invoked by the Claimant or as explained by Dr Rodchenkov during the hearing, *i.e.* to have clean urine that would have the same steroid profile as the one of a sample that was not clean for the purpose of swapping the samples, this Schedule/Bank would have been created. Further, the fact that, in his answer to questions from the Second Respondent's counsel, Dr Rodchenkov acknowledged*, inter alia*, not having personally witnessed the Athlete providing an unofficial clean urine sample and not having had a direct contact with the athletes does not, in the present case, lead to the conclusion that Dr Rodchenkov's testimony is only hearsay as his witness statement and testimony are mainly related to documents and emails that he has first-hand knowledge of and in the creation of which he was either personally involved or closely associated to. However, the Sole Arbitrator agrees with the Second Respondent's arguments that (i) no charges have been brought against

her for "use" of any prohibited substances or tampering with the samples from 2015 onwards and (ii) the Claimant does not specify the date when, or the location, where, the Athlete is alleged to have provided the sample appearing in the Clean Urine Bank. Thus, in the Sole Arbitrator's view, the fact that the Athlete's name appears in the Clean Urine Bank is, in the present case, at the utmost only relevant to determine whether the athlete was a "protected athlete" and is irrelevant for determining whether or not the Athlete committed a "use" ADRV.

Conclusion

136. In the light of the above considerations, the Sole Arbitrator is comfortably satisfied that the Athlete, in or around July 2013, used trenbolone and ostarine and, on or around 25 July 2014, used trenbolone and oxandrolone, all of which were prohibited substances at the time of use.

137. Intent of the Athlete to dope or knowledge that she was doping is not necessary to establish that an ADRV occurred under Rule 32.2(b) of the 2012 and the 2014 IAAF Competition Rules since, as provided under that provision, the mere use of a prohibited substance, which in the present case has been proven by the evidence on file, is sufficient for that purpose.

138. However, considering that the use of the above-mentioned substances over the considered period of time and with the result that the Athlete, whenever tested outside of Russia, tested negative requires a well organised and planned doping schedule or programme, the Athlete has to be considered, according to the Sole Arbitrator, as having committed the ADRVs knowingly. Moreover, the Sole Arbitrator holds that in consideration of the fact that the Athlete took, over the course of several years, several different prohibited substances and that none of her official anti-doping tests performed in Russia ever revealed an Adverse Analytical Finding, the Athlete must have understood or at least cannot have reasonably ignored that she was a "protected athlete", benefitting from the DPM, and a part of an overarching doping scheme.

139. Based on the above, the Sole Arbitrator finds that the Athlete violated Rule 32.2(b) of the 2012 and the 2014 IAAF Competition Rules.

C. Decision on the sanction

140. In the present case, it is uncontested that the Athlete has previously not been found guilty of having committed an ADRV.

141. Further, the Claimant argues that, pursuant to Rule 40.7(d)(i) of the 2012 IAAF Competition Rules, the 2013 ADRV and the 2014 ADRV shall be considered together as one single first violation and the sanction to be imposed shall be based on the violation that carries the most severe sanction.

142. Rule 40.7(d)(i) reads as follows:

"For the purposes of imposing sanctions under Rule 40.7, an anti-doping rule violation will only be considered a second violation if it can be established that the Athlete or other Person committed the second anti-doping

rule violation after the Athlete or other Person received notice pursuant to Rule 37 (Results Management) or after reasonable efforts were made to give notice of the first anti-doping rule violation; if this cannot be established, the violations shall be considered together as one single first violation and 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)".

143. In application of Rule 40.7(d)(i) of the 2012 and 2014 IAAF Competition Rules, this case has thus to be considered a first violation case.

144. Pursuant to Rule 40.2 of the 2012 and 2014 IAAF Competition Rules, in case of a first violation, the period of ineligibility for a 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) or for increasing it (Rule 40.6) are met.

145. Rule 40.6 (a) of the 2012 and 2014 IAAF Competition Rules provides that:

"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".

146. The Claimant argues that, in the present case, a certain number of aggravating factors set out in Rules 40.6 of the 2012 and 2014 IAAF Competition Rules are relevant, *i.e.* (i) the Athlete used multiple prohibited substances and did so in the lead-up to the 2013 IAAF World Championships and the 2014 European Championships; (ii) the Athlete used prohibited substances on multiple different occasions across multiple years; (iii) the Athlete was part of a of a sophisticated doping scheme, including the washout testing program which aimed at ensuring that the athletes sent to competitions would not test positive.

147. The Second Respondent has, apart from her request to have no period of ineligibility imposed on her and have none of her competition results disqualified, not made any submission in relation to the applicable sanction.

148. The Sole Arbitrator notes, first, that the Moscow Washout Schedule and the 2015 LIMS show that the Athlete used multiple prohibited substances in the lead up to the 2013 IAAF World

Championships. Second, the LIMS 2015 shows that the Athlete used multiple prohibited substances on or around 25 July 2014, *i.e.* in the lead-up to the 2014 European Athletics Championships there were held in Zurich (Switzerland) between 12 and 17 August 2014. Third, these ADRVs were committed as part of a doping plan or scheme as the Athlete's name appears with the name of other athletes on the Washout Schedules, in email correspondence involving other people than herself and as some of her official samples that tested positive for prohibited substances in the ITP were registered as negative in the ADAMS. Fourth, as already mentioned above, the Athlete has to be considered, according to the Sole Arbitrator, as having committed the ADRVs knowingly. In this regard, it is important to add that, according to Rule 40.6 (a) of the 2012 and 2014 IAAF Competition Rules it was up to the Athlete to *"prove to the comfortable satisfaction of the hearing panel that [she] did not knowingly commit the anti-doping rule violation"*. However, in the present case, the Athlete has been unable to persuade the Sole Arbitrator to his comfortable satisfaction that she did not knowingly commit the ADRVs.

149. In view of those considerations, the Sole Arbitrator is comfortably satisfied that the Athlete committed the violations of Rule 32.2(b) of the 2012 and 2014 IAAF Competition Rules as part of a scheme, that she used multiple prohibited substances and that she used these prohibited substances (trenbolone, ostarine and oxandrolone) on multiple occasions and over a period two years (2013 and 2014).

150. Consequently, considering the seriousness of the Athlete's ADRVs, the Sole Arbitrator finds that Rule 40.6(a) shall apply and that a period of ineligibility of four (4) years is appropriate in relation to the degree and the severity of the Athlete's misbehaviour.

151. With respect to the date of commencement of the sanction, the Claimant has requested that the ineligibility period commence on the date of the CAS award.

152. Pursuant to Rule 40.10 of the 2012 and 2014 IAAF Competition Rules:

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

153. In the present case, none of the exceptions referred to in the first sentence of Rule 40.10 is applicable, in particular, no provisional suspension has been imposed on the Athlete.

154. Thus, the Sole Arbitrator finds that the period of ineligibility shall start on the date of this award.

155. As to the period of disqualification, the relevant provision, *i.e.* Rule 40.8 of the 2012 and 2014 IAAF Competition Rules, reads as follows:

"In addition to the automatic disqualification of the results in the Competition which produced the positive sample under Rules 39 and 40, all other competitive results obtained from the date the positive Sample was collected (whether In-Competition or Out-of-Competition) or other anti-doping rule violation occurred through

to the commencement of any Provisional Suspension or Ineligibility period shall be Disqualified with all of the resulting Consequences for the Athlete including the forfeiture of any titles, awards, medals, points and prize and appearance money".

156. The Claimant requested that all competitive results obtained by the Athlete from 2 July 2013 through to the commencement of any period of provisional suspension or ineligibility are disqualified. In its answer to a question from the Sole Arbitrator, the Claimant argued, *inter alia*, that, in the present case, there is no reason not to disqualify any results based on the fairness exception. In particular, the Claimant stated that the Athlete has not provided any evidence to establish that the fairness exception should play. In any event, at the minimum, the period of disqualification would have to stretch over four (4) years after the last evidence of doping. The Athlete argued that if the Sole Arbitrator was to conclude that an ADRV occurred in 2014, the 2015 Clean Urine Bank Schedule not showing any evidence of an ADRV in 2015, then the sanction should, at the utmost, be a disqualification of the results for two (2) years.

157. The Sole Arbitrator notes that Rule 40.8 of the 2012 and 2014 IAAF Competition Rules does not explicitly contain a fairness exception. However, CAS panels have previously deemed that that Rule, or its equivalents, include a fairness exception (e.g. CAS 2016/O/4464, CAS 2017/O/4980 and CAS 2018/O/5667) or at least that it cannot be excluded that a general principle of "fairness" may be applied in deciding whether some results are to be left untouched even in the absence of an explicit rule to this effect (e.g. CAS 2015/A/4005 and CAS 2017/O/5332).

158. The Sole Arbitrator considers the general principle of fairness must prevail when determining the length of the disqualification period.

159. 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 and CAS 2018/O/5671). Indeed, as another CAS panel has held, *"although the main purpose of the disqualification of results is not to punish the transgressor but rather to correct any unfair advantage and to remove any tainted performances from the record […], having regard to the fact that the disqualification of results embraces the forfeiture of any titles, awards, medals, points, and prizes, as well as appearance money, disqualification may be considered equal to a retroactive ineligibility period and therefore a sanction […]"*.

160. As recalled in CAS jurisprudence, *"it is also important not to forget that the primary reason behind this measure (i.e. the disqualification of the sporting results of an athlete that cheated) is not to sanction him or her, but to ensure fair play and equal opportunities for all athletes, annulling those results achieved by those who acted or is reasonable to believe that have acted dishonestly vis-à-vis their competitors, being involved in any kind of ADRV, which is one of the most despicable breaches of the fundamental principles of sport. But, at the same time, it should be taken into account that, in certain exceptional circumstances, the strict application of the disqualification rule can produce an unjust result. In particular, this may be the case when the potential*

disqualification period covers a very long term, which is normally the case when the facts leading to the ADRV took place long before the adjudicating proceedings started which usually occurs when they are opened as a result of the re-testing of a sample or of the uncover of a sophisticated doping scheme. In addition, in this type of cases it may be difficult to prove that the athlete at stake used prohibited substances or methods during such a long period of time" (CAS 2021/A/7839 and CAS 2021/A/8012).

161. In the present case, a strict application of the rule such as requested by the Claimant would lead to a disqualification of the Athlete's results from 2 July 2013 (date of the first entry in the Moscow Washout Schedule) trough to the date of this Award, a period exceeding ten (10) years. This period would be considerably longer than the maximum period of ineligibility of four (4) years that may be imposed under the applicable IAAF Competition Rules.

162. The Sole Arbitrator take the view that, although he has 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 IAAF Competition Rules, it would not be fair, in the absence of any evidence that the Athlete used prohibited substances or methods in the year 2015 or thereafter, to pronounce such a long disqualification of the Athlete's competitive results. Indeed, (i) the last ADRV took place in 2014, long before the present arbitral proceedings; (ii) the ADRVs relate solely the events which took place in 2013 and 2014, and (iii) there is no evidence that the Athlete has "used" any prohibited substances after the 25 July 2014. The Sole Arbitrator notes, in this respect, that it follows from the AIU's letter dated 17 December 2021, mentioned in para.19 above, that the AIU also considered that the period of disqualification should be limited to the period from the first evidence of doping, i.e. 2 July 2013, until two years after the last evidence of doping, i.e. 24 July 2016.

163. Given the circumstances of the present case, the Sole Arbitrator consider it appropriate to disqualify the Athlete's competitive results from 2 July 2013, *i.e.* the date of the commission of the first "use" ADRV, to 24 July 2016, *i.e.* two (2) years after the last established "use" ADRV on or around 25 July 2014. Together, the disqualification and the ineligibility periods total slightly more than seven years, which the Sole Arbitrator considers to be a proportionate sanction for a severe offence.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The Request for Arbitration filed by World Athletics with the Court of Arbitration for Sport against the Russian Athletics Federation (RUSAF) and Ms Yelena Korobkina on 20 January 2023 is partially upheld.

2. Ms Yelena Korobkina committed anti-doping rule violations according to Rule 32.2(b) of the 2012 and 2014 IAAF Competition Rules.

3. Ms Yelena Korobkina is sanctioned with a period of ineligibility of four (4) years starting on the date of notification of the present award.

4. All competitive results obtained by Ms Yelena Korobkina from 2 July 2013 through to 24 July 2016 included shall be disqualified, with all of the resulting consequences, including the forfeiture of any titles, awards, medals, points, prizes and appearance money.

5. (…).

6. (…).

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