

CAS 2016/O/4684 The Russian Olympic Committee (“ROC”), Lyukman Adams, Kseniya Aksyonova, Tatyana Arkhipova, Victor Butenko, Timofey Chalyy, Elena Cherniaeva (Kozlova), Dmitriy Chizhikov, Artem Denmukhametov, Gulshat Fazlitdinova, Aleksey Fedorov, Ekaterina Galitskaia, Georgy Gorokhov, Elena Isinbaeva, Pavel Ivashko, Darya Klishina, Oxana Kondratyeva, Ekaterina Koneva, Vasilii Kopeikin, Elena Korobkina, Ilya Krasnov, Vladimir Krasnov, Antonina Krivoshapka, Maria Kuchina, Denis Kudryavtsev, Anna Kukushkina, Alla Kuliatina, Alexandr Lesnoi, Sergej Litvinov, Danil Lysenko, Yuliya Maltseva, Alena Mamima, Nikolay Markov, Aleksandr Menkov, Anna Misochenko, Olga Mullina, Marina Pandakova, Elena (Yuelena) Panova, Marina Panteleyeva, Yulia Pidluzhnaya, Evgeniya Polyakova, Sergey Polyanskiy, Mariya Ponomareva, Alina Prokopeva, Vera Rebrik (Rebryk), Ekaterina Renzhina, Aleksey Reunkov, Vera Rudakova, Ilgizar Safiullin, Ivan Shablyuev (Shablyuyev), Sergey Sharypov, Anna Shchagina, Ilya Shkurenov, Sergey Shubnikov, Maksim Sidorov, Anzhelika Sidorova, Kristina Sivkova, Aleksei Sokirskii, Ekaterina Sokolenko, Ekaterina Strokova, Dmitri Tarabin, Irina Tarasova, Pavel Trenikhin, Sardana Trofimova, Daniil Tysplakov, Ivan Ukhov, Roman Yevstifeyev, Svetlana Vasilyeva, Natalia Vlasova v. The International Association of Athletics Federations (IAAF)

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Mr Luigi Fumagalli, Professor and Attorney-at-law, Milan, Italy
Arbitrators: Mr Jeffrey G Benz, Attorney-at-law, Los Angeles, USA
His Honour James Robert Reid QC, Hampshire, United Kingdom
Ad hoc Clerk: Mr Tom Asquith, Barrister in London, United Kingdom

in the arbitration between

THE RUSSIAN OLYMPIC COMMITTEE (“ROC”), LYUKMAN ADAMS AND 67 OTHERS (“the Claimant Athletes”), Russian Federation

Represented by Mr. Mike Morgan, Morgan Sports Law LLP, London, United Kingdom and Mr Howard Jacobs of the Law Offices of Howard L. Jacobs Westlake Village, USA

Claimants

and

INTERNATIONAL ASSOCIATION OF ATHLETIC FEDERATIONS (“IAAF”),
Monaco

Represented by Mr. Jonathan Taylor, Bird & Bird LLP, London, United Kingdom

Respondent

I. PARTIES

1. The Russian Olympic Committee (“ROC”) is the National Olympic Committee for the Russian Federation recognized as such by the International Olympic Committee (“IOC”) under and for the purposes of the *Olympic Charter*.
2. The other claimants are 68 individual athletes (the “Claimant Athletes”): Lyukman Adams, Kseniya Aksyonova, Tatyana Arkhipova, Victor Butenko, Timofey Chalyy, Elena Cherniaeva (Kozlova), Dmitriy Chizhikov, Artem Denmukhametov, Gulshat Fazlitudinova, Aleksey Fedorov, Ekaterina Galitskaia, Georgy Gorokhov, Elena Isinbaeva, Pavel Ivashko, Darya Klishina, Oxana Kondratyeva, Ekaterina Koneva, Vasilii Kopeikin, Elena Korobkina, Ilya Krasnov, Vladimir Krasnov, Antonina Krivoshapka, Maria Kuchina, Denis Kudryavtsev, Anna Kukushkina, Alla Kuliatina, Alexandr Lesnoi, Sergej Litvinov, Danil Lysenko, Yuliya Maltseva, Alena Mamima, Nikolay Markov, Aleksandr Menkov, Anna Misochenko, Olga Mullina, Marina Pandakova, Elena (Yuelena) Panova, Marina Panteleyeva, Yulia Pidluzhnaya, Evgeniya Polyakova, Sergey Polyanskiy, Mariya Ponomareva, Alina Prokopeva, Vera Rebrik (Rebryk), Ekaterina Renzhina, Aleksey Reunkov, Vera Rudakova, Ilgizar Safiullin, Ivan Shablyuev (Shablyuyev), Sergey Sharypov, Anna Shchagina, Ilya Shkurenev, Sergey Shubenkov, Maksim Sidorov, Anzhelika Sidorova, Kristina Sivkova, Aleksei Sokirskii, Ekaterina Sokolenko, Ekaterina Strokova, Dmitri Tarabin, Irina Tarasova, Pavel Trenikhin, Sardana Trofimova, Daniil Tysplakov, Ivan Ukhov, Roman Yevstifeyev, Svetlana Vasilyeva, Natalia Vlasova) of Russian nationality, affiliated to the Russian athletics federation (ARAF, now RusAF), a member of the International Association of Athletics Federation.
3. The International Association of Athletics Federation (the “IAAF”) is the world governing body for track and field, recognized as such by the IOC. One of its responsibilities is the regulation of track and field, including, under the World Anti-Doping Code (“WADC”), the running and enforcing of an anti-doping programme consistent with the WADC. The IAAF is also subject to the provisions of the *Olympic Charter*.

II. FACTUAL BACKGROUND

A. Introductory Remark

4. Below is a summary of the relevant facts and allegations based on the parties’ written and oral submissions, pleadings and evidence adduced. Additional facts and allegations found in the parties’ submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, it refers in its award only to the submissions and evidence it considers necessary to explain its reasoning for the case.
5. In this regard, the Panel wishes to make clear that the case heard, and the award it renders, is not about “collective punishment” of athletes – a measure on which the Panel expresses no view. It is also not about the presumption of guilt of innocent athletes. It is only about the applicability (and indeed the application) of specific rules

within the IAAF system and in the *Olympic Charter* with respect to the consequences for affiliate athletes of the suspension of the national federation to which they belong. The question whether the Claimant Athletes are directly or indirectly responsible for anti-doping rule violations, because of their actions, omissions or nationality, is not the object of this award and was not before the Panel.

B. Events in 2015

6. On 2 November 2015, ARAF (the All-Russia Athletics Federation) became RusAF (the Russian Athletics Federation). The CAS Panel will refer to the Russian federation as RusAF except where ARAF was used in contemporaneous documents.
7. On 9 November 2015, an independent commission (“IC”) presided over by Richard Pound QC submitted a report to the President of the World Anti-Doping Agency (“WADA”). The IC’s mandate was the examination of allegations made on television programs aired by the German television channel ARD, with particular reference to athletics in Russia and the IAAF. Amongst several recommendations made against various bodies, the report recommended that WADA should immediately declare ARAF to be non-compliant with the WADC.
8. On 13 November 2015, the IAAF Council provisionally suspended ARAF with immediate effect under Articles 6.11(b) and 14.7 of the IAAF Constitution. At the same time, it was decided that in order to regain full membership ARAF would need to satisfy a list of criteria, to be verified by a task force specifically appointed for such purpose (the “Taskforce”). The consequences of the suspension were described to be the following:
 - “- *athletes, and athlete support personnel from Russia may not compete in International Competitions including World Athletics Series competitions and the Olympic Games;*
 - *Russia will not be entitled to host the 2016 World Race Walking Team Championships (Cheboksary) and 2016 World Junior Championships (Kazan)*
 - *that ARAF delegates the conduct of all outstanding doping cases to [the Court of Arbitration for Sport] CAS”.*
9. On 25 November 2015, Mr Mikhail Butov, the General Secretary of ARAF, wrote to Mr Nick Davies, the Deputy General Secretary of the IAAF. By that letter, ARAF stated in pertinent part as follows:

“In reply to your letter on 25 November I would like to confirm once again our recognize [sic] of suspension. We recognize suspension without a hearing”.
10. On 26 November 2015, the IAAF Council confirmed the full suspension of ARAF.
11. On 11 December 2015, the Taskforce’s terms of reference were posted on the IAAF’s website. Various conditions were set out for the reinstatement of RusAF (the “Reinstatement Conditions”). Verification criteria (the “Verification Criteria”) were set out in an annex.

C. Events in 2016

12. On 17 June 2016, the IAAF Council stated in a press release that Mr Rune Andersen, an independent chairperson of the Taskforce monitoring RusAF, had recommended that RusAF should not be reinstated to membership of the IAAF because several important Verification Criteria had not been met, specifically:
 - a. The deep-seated culture of tolerance (or worse) for doping that led to RusAF being suspended in the first place appeared not to have changed materially.
 - b. A strong and effective anti-doping infrastructure capable of detecting and deterring doping had still not been created.
 - c. There were detailed allegations, which were already partly substantiated, that the Russian authorities, far from supporting the anti-doping effort, had in fact orchestrated systematic doping and the covering up of adverse analytical findings.
13. As a result, the IAAF Council decided not to reinstate RusAF to IAAF membership. The consequence, said the IAAF Council, was that Russian athletes remained ineligible under IAAF rules to compete in international competitions (the “International Competitions”), as defined in the IAAF Competition Rules, edition 2015-2016 (the “Competition Rules”), including the European Championships and the track-and-field events at the 2016 Olympic Games in Rio de Janeiro, Brazil (the “Rio Olympic Games” or the “2016 Olympic Games”).
14. On the same day, the IAAF Council passed a rule amendment to the effect that if there were any individual athletes who can clearly and convincingly show that they were not tainted by the Russian system because they had been outside the country, and subject to other, effective anti-doping systems, including effective drug-testing, then they should be able to apply for permission to compete in International Competitions, not for Russia but as a neutral athlete.
15. Further, the IAAF Council recommended that any individual athlete who had made an extraordinary contribution to the fight against doping in sport should also be able to apply for permission to compete in International Competitions (as a neutral athlete). The IAAF implemented a new rule in its Competition Rules, namely Rule 22.1A, and a new definition of “*Neutral Athlete*”.
16. As a result of such modifications, the pertinent provisions of the Competition Rules state as follows:

DEFINITIONS

Neutral Athlete

As specified in Rule 22.1A, an athlete who is granted special eligibility by the Council to compete in one or more International Events in an individual capacity and who satisfies at all relevant times any conditions to such eligibility specified by the Council. All provisions in the Rules and Regulations that are applicable to athletes shall apply equally to Neutral Athletes, unless expressly stated otherwise; and any coach, trainer, manager, Athlete Representative, agent, team staff, official, medical or para-medical personnel, parent or any other Person employed by or working with a

Neutral Athlete participating in an International Competition shall be an Athlete Support Personnel for purposes of these Rules.

RULE 22 Ineligibility for International and Domestic Competitions

1. *The following persons shall be ineligible for competitions, whether held under these Rules or the rules of an Area or a Member. Any athlete, athlete support personnel or other person:*

(a) *whose National Federation is currently suspended by the IAAF. This does not apply to national competitions organised by the currently suspended Member for the Citizens of that Country or territory;*

[...]

1A. *Notwithstanding Rule 22.1(a), upon application, the Council (or its delegate(s)) may exceptionally grant eligibility for some or all International Competitions, under conditions defined by the Council (or its delegate(s)), to an athlete whose National Federation is currently suspended by the IAAF, if (and only if) the athlete is able to demonstrate to the comfortable satisfaction of the Council that:*

(a) *the suspension of the National Federation was not due in any way to its failure to protect and promote clean athletes, fair play, and the integrity and authenticity of the sport; or*

(b) *if the suspension of the National Federation was due in any way to its failure to put in place adequate systems to protect and promote clean athletes, fair play, and the integrity and authenticity of the sport, (i) that failure does not affect or taint the athlete in any way, because he was subject to other, fully adequate, systems outside of the country of the National Federation for a sufficiently long period to provide substantial objective assurance of integrity; and (ii) in particular the athlete has for such period been subject to fully compliant drug-testing in- and out-of-competition equivalent in quality to the testing to which his competitors in the International Competition(s) in question are subject; or*

(c) *that the athlete has made a truly exceptional contribution to the protection and promotion of clean athletes, fair play, and the integrity and authenticity of the sport.*

The more important the International Competition in question, the more corroborating evidence the athlete must provide in order to be granted special eligibility under this Rule 22.1A. Where such eligibility is granted, the athlete shall not represent the suspended

National Federation in the International Competition(s) in question, but rather shall compete in an individual capacity, as a “Neutral Athlete”.

17. The Panel shall refer to Rules 22.1(a) and 22.1A, and the new definition of “*Neutral Athlete*”, as the “*Contested Rules*”.

18. On 23 June 2016, the IAAF provided guidelines as to the application of Rule 22.1A (the “*Guidelines*”).

19. On 24 June 2016, the IAAF wrote to RusAF confirming the decisions which the IAAF Council had taken on 17 June 2016.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT (“CAS”)

20. On 2 July 2016, the parties entered into an “*Arbitration Agreement*” (the “Arbitration Agreement”) under which they agreed to submit the dispute, which had arisen between them as to a number of issues, to arbitration at the Court of Arbitration for Sport (“CAS”) pursuant to Article R38 of the Code of Sports-related Arbitration (the “Code”), for adjudication according to an expedited procedure.
21. In the Arbitration Agreement the parties agreed *inter alia* that the Panel would be constituted as follows: Mr Luigi Fumagalli (President); Mr Jeffrey Benz and His Honour Robert Reid QC (Arbitrators).
22. The Arbitration Agreement, at its Article 2, identified the disputed issues to be the following (these were the only issues before the Panel in these proceedings):
- “2.1. *Is IAAF Competition Rule 22.1(a) valid and enforceable in the circumstances of the present dispute?*
- 2.2. *Is IAAF Competition Rule 22.1A valid and enforceable in the circumstances of the present dispute? In particular (but without limitation), can IAAF Competition Rule 22.1A validly and/or lawfully exclude Russian track and field athletes from International Competition (as that term is defined in IAAF Competition Rule 1.1):*
- 2.2.1. *who are not currently subject to any period of ineligibility for the commission of an anti-doping rule violation?; and/or*
- 2.2.2. *who are part of the IAAF Registered Testing Pool?; and/or*
- 2.2.3. *on the basis that they have not lived or do not live outside of Russia?*
- 2.3. *Under the Olympic Charter, is the ROC entitled to nominate and is the IOC entitled to accept the entry of Russian track and field athletes to compete at the Rio Olympic Games even if they are not eligible to participate under IAAF Competition Rule 22.1(a) and 22.1A?*
- 2.4. *Under the Olympic Charter, if any Russian track and field athletes are eligible to compete at the Rio Olympic Games under IAAF Competition Rule 22.1A, is the ROC entitled to have them compete as representatives of Russia, or may they only participate in an individual capacity, not representing any country?”*
23. In the Arbitration Agreement the parties also agreed that the IOC would be invited to participate in the arbitration as an interested party with respect to issues 2.3 and 2.4. The IOC, however, in a communication dated 15 July 2016 finally decided “*not [to] participate as a party to the abovementioned arbitration*”.
24. On 3 July 2016, the Claimants filed a Request for Arbitration and Statement of Claim (the “Claim”).
25. On 10 July 2016, the IAAF filed a Response to the Claimants’ Request for Arbitration and Statement of Claim.

26. On 15 July 2016, an appeal was submitted by 67 of the 69 Claimants (the “Appeal”). Those two Claimants who are not party to the Appeal are 1) the ROC and 2) Ms Darya Klishina. The Appeal was heard at the same time as the Claim. It is the subject of a separate award (see CAS 2016/A/4703).
27. On 19 July 2016, a hearing took place before the CAS Panel at the Maison de la Paix, Chemin Eugene-Rigot 2, 1202 Geneva, Switzerland.
28. At the hearing, the parties, by their counsel, made extensive submissions in support of their respective cases. One of the 68 Claimant Athletes, Ms Isinbaeva, personally present, rendered a declaration. At the conclusion of the hearing, finally, the parties expressly stated that their right to be heard and to be treated equally in the proceedings had been fully respected.
29. On 21 July 2016, the CAS Panel issued the operative part of this Award.

IV. SUBMISSIONS OF THE PARTIES

30. The following outline of the parties’ positions is illustrative only and does not necessarily detail every submission advanced by the Claimants and the Respondent. The Panel has nonetheless carefully considered all the submissions made by the parties, whether or not there is specific reference to them in the following summary.

A. The Claimants’ submissions

31. The Claimants’ submissions may be summarized as follows:

IAAF Competition Rules 22.1(a) and 22.1A are inconsistent with the WADC

32. As a member of the Olympic Movement and in accordance with Rules 25 and 43 of the *Olympic Charter*, the IAAF is required to comply with the WADC.
33. Further, Article 3.8 of the IAAF Constitution requires the IAAF to “*play a leading role in the fight against doping*”. Therefore, any act which undermines the WADC would be a violation of its own Constitution. Consistently, IAAF Competition Rule 48.1 mandates that the CAS and other tribunals must respect the “*policies and standards set out in the WADA Code*” and as “*accepted by the IAAF*”. As a consequence, the CAS Panel must ensure that the IAAF’s decisions and rules do not contravene the WADC.
34. Harmonisation is both a key objective and a key element of the WADC.
35. Article 23.2.2 of the WADC specifies that “*No additional provision may be added to a Signatory’s rules which changes the effect of the Articles.*”
36. As can be seen from an IAAF press release dated 17 June 2016, the IAAF has made clear that its decision not to reinstate RusAF and Russian athletes is based entirely on (i) the alleged deficiencies of the RusAF’s “*anti-doping infrastructure*” and “*partly substantiated*” allegations of “*systematic doping*” in Russia (the “*Anti-Doping Breaches*”) and (ii) the presumption that all Russian athletes are, as a result, “*tainted*”

by the Russian system” (the “Suspected Anti-Doping Breaches”).¹

37. Accordingly, the Contested Rules have operated as a sanction for the RusAF’s Anti-Doping Breaches and for the Russian athletes’ Suspected Anti-Doping Breaches.
38. At the very least, Rule 22.1(a) has been applied as, in part, a sanction (even if also in part an eligibility rule). To determine the nature of Rule 22.1(a) it is necessary to consider its impact, not merely its description (CAS 2011/A/2658 *BOA v WADA*). It is also necessary to consider the perception of the rule.
39. Accordingly, Rule 22.1(a) has had the effect of a sanction which should properly come under the ambit of the WADC.
40. However, Rule 22.1(a) trespasses on and alters the effect of the mandatory provisions of the WADC:
 - a. The Claimant Athletes are punished for the violations of others and for being “tainted by the Russian system”. Such guilt by association is akin to and expands on the bounds of Article 2.10 of the WADC.
 - b. The Claimant Athletes are presumed to be tainted and bear the burden of rebutting that presumption. By virtue of Rule 22.1A the Claimant Athletes have to rebut the presumption to the standard of comfortable satisfaction. Thus, the burden and standard of proof mandated by Article 3.1 of the WADC have been turned on their heads.
 - c. The period of ineligibility imposed on the Claimant Athletes for a suspected or presumed violation is self-evidently inconsistent with Article 10 of the WADC.
41. As a result, the application of Rule 22.1(a) is invalid and unenforceable (CAS 2012/A/3055 *Riis Cycling A/S v the Licence Commission of the UCI* at 8.36). If the IAAF wished to make amendments to the WADC, it would have to do so in accordance with Article 23.7 of the WADC.

Estoppel

42. Representatives of the IAAF were complicit in the failures for which ARAF and its athletes were suspended. Therefore the IAAF must be estopped from imposing Article 22.1(a) on the Claimant Athletes.

Lack of legal certainty

43. The application of the Contested Rules, in the circumstances of this case, must be declared invalid and unenforceable on the basis that it violates the principle of legal certainty (CAS 94/129 *Quigley v UIT*).
44. Rules must clearly distinguish between what is prohibited and what is not. To the extent that they do not, the lack of clarity must be resolved in favour of the athlete. The Contested Rules are unclear. The period of ineligibility to which the athletes are

¹ These defined phrases are taken from the Claimants’ submissions.

subject is indeterminate and therefore lacks legal certainty and there is no clear connection between the incriminated behaviour and the sanction because the Claimant Athletes are being punished as a result of the actions of others. Further, the criteria to be met under Rule 22.1A are vague. They also impose retroactive requirements, such as an athlete needing to prove that he has lived outside Russia.

Proportionality

45. The Claimants accept that there have been some serious failings within Russian athletics. However, the decision of the IAAF to exclude all Russian athletes from all International Competitions is disproportionate.
46. In particular, it is wrong to punish an athlete on the basis:
 - a. of acts committed by administrators of the sport and not related in any way to the athlete's own behaviour;
 - b. the presumption of guilt based on nationality.
47. If the IAAF's aim is to combat doping, there is no need to apply the Contested Rules because that aim is already exhaustively pursued by the WADC.

The Right to Equal Treatment

48. The application of Rules 22.1(a) and 22.1A(b) is discriminatory and, therefore, unlawful.
49. To comply with Rule 22.1A(b) a Russian athlete would need to live outside Russia. The implication is that the mere fact of living in Russia means that an athlete is doping.
50. Article 3.4 of the IAAF Constitution provides that one of the IAAF's Objects is to prevent unfair discrimination. That object is violated if the IAAF adopts a rule which requires an athlete to live outside the country of their birth. It would also be a violation of the *Olympic Charter* (see the Fundamental Principles of Olympism), which binds the IAAF since it is a member of the Olympic Movement. Moreover, Article 3.11 of its Constitution requires the IAAF to "*play a leading role in the achievement of the aims of the Olympic Movement*".
51. Rule 22.1A(b) is discriminatory regardless of whether it is recognised as a sanction or considered to be a mere eligibility rule.

Legitimate expectations

52. The application of Rule 22.1(a) is contrary to the Claimants' legitimate expectations and the terms of Rule 22.1A are too restrictive and contrary to the legitimate expectations of all Russian athletes.
53. As to Rule 22.1(a), the Claimant Athletes had a legitimate expectation that:
 - a. They would not be punished for the conduct of others.

- b. Sanctions for doping-related conduct were limited to those in the WADC and Chapter 3 of the IAAF Competition Rules. They did not expect a new type of violation – presumed doping – based on nationality.
54. Accordingly Rule 22.1(a) is invalid and unenforceable.
55. As to Rule 22.1A, the Claimant Athletes had a legitimate expectation that in order to have the opportunity to return to International Competition they needed only to fulfil the November 2015 Eligibility Criteria proposed by the IAAF. Yet on 17 June 2016, the IAAF proposed totally new criteria under Rule 22.1A. On 23 June 2016, the IAAF published the Guidelines for applications made under Rule 22.1A. The Guidelines provide opaque criteria.
56. Rule 22.1A, coupled with the Guidelines, are impenetrable for any prospective applicant. They are not measurable and lack any legal certainty.
57. It is unfair and contrary to the legitimate expectations of all clean Russian athletes to be given just two weeks to meet an entirely new set of conditions, most of which are impossible for them to meet. By way of example:
 - a. Only one of the Claimant Athletes happens to live outside of Russia. The other 67 cannot fulfil that condition.
 - b. No athlete, no matter from where in the world they come, has any control over who conducts their doping control tests.
58. Accordingly, the application of Rule 22.1(a) is invalid and/or unenforceable. Alternatively, Rule 22.1A is invalid and/or unenforceable and any Russian athlete who submitted themselves to the reinstatement terms set out at Section 5 of the Verification Criteria published on 11 December 2015 should have the opportunity to participate at the Olympic Games.

The ROC's right and duty to nominate athletes for the Olympic Games

59. There are no provisions in the *Olympic Charter* which prevent the ROC from entering Russian athletes to compete at the 2016 Olympic Games. The Olympic Charter (see Rule 40) governs the admissions process over and above the IAAF Rules.
60. The IAAF set the qualification criteria, RusAF selects and recommends athletes to the ROC for entry, the ROC reviews and approves RusAF's recommendations, the ROC then submits the list of athletes to OCOG, and the IOC accepts or refuses the ROC's entries.
61. The IAAF's role in setting the qualification criteria refers to the technical sporting eligibility criteria prescribed in the IAAF Documents – "Rio 2016 Qualification System" and "Rio 2016 Qualification System and Entry Standards" ("the IAAF Qualification Standards").²
62. The IAAF Qualification Standards prescribe, for example, the numbers of qualifying

² This is the Claimants' definition.

athletes each National Olympic Committee (“NOC”) can enter per event. They are an exhaustive system for the selection of athletes to participate in the Olympic Games.

63. The IAAF is unable simply to add further qualifying criteria which are not limited to technical sporting eligibility. By selecting only those athletes who (i) meet the standards expressly set out in the IAAF Qualification System and (ii) have been recommended by RusAF, the ROC would be acting in full compliance with the *Olympic Charter* entry process.
64. As to its duty, the ROC is bound (see Rule 44(4) of the *Olympic Charter*) to enter those competitors that have been recommended by RusAF, subject only to those athletes meeting the standards expressly set out in the IAAF Qualification Standards.
65. The ROC and the IOC are obliged to act in accordance with the *Olympic Charter*. So, even if the IAAF persuaded the CAS Panel that Rule 22.1A constituted “*qualification criteria*” within the meaning and scope of the *Olympic Charter*, the ROC and IOC would be required to disregard it because it does not comply with the WADC (see submissions above) and it is discriminatory (see submissions above).
66. Therefore, the ROC is required to enter those competitors that have been recommended by RusAF subject only to those athletes meeting the standards expressly set out in the IAAF Qualification Standards. Further, the ROC and IOC are obliged to disregard the application of any rule which is contrary to the *Olympic Charter*, the WADC or any fundamental principle of law and which, as a consequence of its application, would result in the non-selection of an athlete otherwise eligible to participate at the Olympic Games.

Russian Athletes are entitled – and bound – to participate as Russian Athletes

67. In the event the CAS Panel finds the Contested Rules are valid and enforceable, it is nevertheless the case that the Claimant Athletes must compete as representatives of Russia and not as a Neutral Athlete as suggested by Rule 22.1A.
68. The IOC has the sole authority to determine the nationality of competitors. Rule 41(3) of the *Olympic Charter* provides that competitors must have a nationality, which is deemed to be that of the NOC which enters the competitor.
69. The IAAF’s attempt to determine competitors’ nationalities is *ultra vires*, because its role is limited to setting the rules for participation and qualification (see Rule 26 and Bye-Law 1 to Rule 40 of the *Olympic Charter*).
70. The ROC has exclusive authority to represent its country at the Olympic Games (Rule 27(3) of the *Olympic Charter*), not RusAF. Any Russian athletes eligible under the IAAF Qualification Standards must compete as a representative of the ROC and, consequently, Russia.
71. Further, Rule 22.1A has no application at the Olympic Games (see Bye-law 9 to Rule 44 of the *Olympic Charter*). An entry of a Russian athlete is only valid if entered as a representative of the ROC. Any process the IAAF purports to establish in order to grant eligibility to an athlete as a “Neutral Athlete” has no application to the Olympic

Games.

72. Accordingly, any Russian athletes competing at the Olympic Games can only do so as representatives of the ROC and, consequently, as representatives of Russia. There is no mechanism in the *Olympic Charter* which would allow for the application of the IAAF's rules regarding "Neutral Athletes".

The Claimants claims

73. In light of the foregoing, the Claimants requested the Panel to order as follows:

- “(a) IAAF Competition Rule 22.1(a) is invalid and unenforceable in the circumstances of the present;*
- (b) IAAF Competition Rule 22.1A is invalid and unenforceable in the circumstances of the present;*
- (c) Any Russian athlete who is not currently the subject of any period of ineligibility for the commission of an anti-doping rule violation may participate at the 2016 Olympic Games (subject to meeting the qualification standards for his or her event);*
- (d) No Russian athlete shall be excluded from participation at the 2016 Olympic Games on the basis of where they live or on the basis of their nationality;*
- (e) Without prejudice to the requests for relief above, no Russian athletes shall be excluded from participation at the 2016 Olympic Games if they have submitted themselves to the conditions set out at Section 5 of the IAAF's Verification Criteria published on 11 December 2015;*
- (f) The ROC is entitled to nominate and the IOC is entitled to accept the entry of Russian track and field athletes to compete at the Rio Olympic Games, even if they are not eligible to participate under IAAF Competition Rule 22.1(a) and 22.1A;*
- (g) If any Russian athlete is entitled to compete at the 2016 Olympic Games further to the application of IAAF Competition 22.1A, they can do so as representatives of Russia;*
- (h) The IAAF to:*
 - (i) reimburse the Claimants' legal costs;*
 - (ii) bear the costs of the arbitration”.*

B. The IAAF's response

74. The IAAF's response to these submissions can be summarised as follows (for ease of reference, the same headings are used as were used when summarising the Claimants' submissions but, clearly, they do not form part of the IAAF's response):

IAAF Competition Rules 22.1(a) and 22.1A are inconsistent with the WADC

75. The Claimant Athletes are not excluded from International Competitions as a punishment for their own doping conduct; their exclusion is a necessary consequence

of the fact that their national federation has failed to subject them to an anti-doping system that meets the mandatory requirements of the WADC and the IAAF Anti-Doping Rules. The pyramid system of governance and regulation of sport requires that they share the fate of their domestic federation, and bear the consequences of the actions and omissions, achievements and failures of that federation's management.

76. As to the alleged inconsistency between the Contested Rules and the WADC, the Claimants have conflated and confused:
- a. Rule 22.1(a) which states that athletes affiliated to a suspended national federation are ineligible to participate in International Competitions; and
 - b. Rule 22.1A which creates an exception to Rule 22.1(a), whereby an athlete affiliated to a suspended national federation may be deemed eligible to compete in International Competitions if he brings himself within one of three exceptions.
77. Rule 22.1(a) is simply a necessary consequence of the sanction imposed on the national federation for failure to live up to its obligations. The sanction is that the federation loses its membership privileges, which include the right to enter its athletes in International Competitions. Rule 22.1(a) merely confirms this point and gives it effect.
78. Rule 22.1A, on the other hand, does not impose ineligibility on anyone, but in fact provides a route to eligibility for an athlete affiliated to a suspended federation.
79. Rule 22.1(a) had existed since 2000, whereas Rule 22.1A had been brought in only in 2016.
80. The instant case can be distinguished from precedents relied on by the Claimants by virtue of the fact that Rule 22.1 sanctions the misconduct of the federation, not the athlete. The sanction must be ineligibility, otherwise the federation will not be incentivised to reform.
81. Such a sanction is not inconsistent with the WADC (see Articles 12 and 20.3.2 and also Rule 12.3 of WADA's Model Rules for International Federations).
82. This kind of sanction has also been upheld by a CAS Panel in *Bulgarian Weightlifting Federation v International Weightlifting Federation*, CAS 2015/A/4319.

Estoppel

83. First, the doctrine of estoppel has no place in doping cases since the implantation of the WADC. Secondly, if the doctrine of estoppel has any applicability at all in doping cases, it is only in the most exceptional of cases.
84. The IAAF accepts that former IAAF officials colluded with ARAF officials to delay results management of certain ABP cases until after the 2012 Olympic Games. But it is not correct to say that IAAF officials were involved in the conduct which resulted in ARAF's suspension on 13 November 2015. There is not even any allegation that IAAF officials were involved in the systemic doping set out in the first WADA IC

Report on which ARAF's suspension was based. The cover up of the APB cases in 2011 did not cause the corruption but was incidental to it.

85. Further, the delaying of results management was apparently unknown to the Claimant Athletes, so none of them can say that it led them to change their behaviour or to believe that ARAF would not be held to its anti-doping obligations. They cannot point to any word or deed upon which they relied to guarantee their right to participate in International Competitions despite their national federation's misconduct.
86. In fact, any concept of estoppel of misconduct applies against the Claimants for failing to bring their challenge seven months ago, when ARAF was first suspended and they were first excluded from International Competitions.

Lack of legal certainty

87. The rules are clear. The complaint that Rule 22.1(a) lacks legal certainty because the length of exclusion is indeterminate is without merit. The rule is clear that exclusion is a consequence of suspension of the national federation. Once the federation is reinstated to membership, the athletes can compete once more in International Competitions. Therefore the rule is clear and has legal certainty.
88. The argument that Rule 22.1A offends against legal certainty by introducing a retrospective requirement is merely a repeat of the legitimate expectation argument (see below).
89. The argument that the Rule 22.1A criteria are vague has no merit. First, it is not a rule involving a sanction. Instead it provides an exclusion to a sanction. Secondly, the rule needs to be framed flexibly to operate properly. Whilst it was true that it did not operate mechanically, it could not do so.

Proportionality

90. It is clearly rational for the IAAF to take the view that Rule 22.1 is essential to the fight against doping in sport. The IAAF has a significant "margin of appreciation" in deciding which restrictions to implement. The IAAF's objective of making all athletes subject to WADC-compliant anti-doping rules can only be achieved by requiring each national federation to enforce those rules as a condition of membership. There need to be significant sanctions in the event of breach for the sake of public confidence and in order to incentivise change in federations and other institutions.
91. In order to mitigate the effects of Rule 22.1(a) as much as possible, the IAAF has added Rule 22.1A. Thus the IAAF has applied and fully respected the principle of proportionality.
92. The effect on innocent athletes, which is unfortunate, is outweighed by the benefits of retaining public confidence in the integrity of international competition and preventing other athletes from being cheated out of the medals, prize money and glory they deserve.

The Right to Equal Treatment

93. There is no discrimination on grounds of nationality in Rule 22.1A. The rules discriminate on grounds of non-compliance with the anti-doping responsibilities of a member, which is not only legitimate discrimination but necessary. They apply to any member, not just RusAF.
94. The Claimant Athletes' applications for exceptional eligibility have failed not because they are Russian, or because they live in Russia, but because the Russian authorities have frustrated and corrupted all attempts to operate a drug-testing programme that can deliver any sort of objective assurance of integrity.

Legitimate expectation

95. Again, the Claimants' arguments depend upon a mischaracterisation of Rule 22.1(a). The athletes are not punished for "presumed doping". It is a necessary consequence of their federation breaching a condition of membership. Those membership rules have always been clear that suspension of membership leads to the exclusion of the member's athletes from international competition.
96. As to what is said about the Verification Criteria, they are clear that they only become relevant if and when the Reinstatement Conditions have been met and RusAF has been reinstated to membership of the IAAF (see 5.1 and 5.3 of the Verification Criteria).
97. Rule 22.1A did not move the goalposts adversely to the Russian athletes. Rather, it created another goal for them to shoot at. Their opportunities to compete were enhanced, not restricted. Previously, the athletes, to compete, had to rely on RusAF being reinstated. Rule 22.1A provides a way for them to compete without RusAF being reinstated.

The ROC's right and duty to nominate athletes for the Olympic Games

98. It is the international federations which have the sole right to set their sports' eligibility rules for the Olympic Games (see Rules, 25, 26, 40 and 44 of the *Olympic Charter*). An NOC cannot enter an athlete who is not eligible to participate under an international federation's rules. This has been recognised by, for example, the IOC in its "Declaration of the Olympic Summit" on 21 June 2016.
99. Accordingly, the ROC has no right to enter athletes for the Olympic Games who are not eligible under the Contested Rules.

Russian Athletes are entitled – and bound – to participate as Russian Athletes

100. The IOC can invite and has invited athletes to participate in the Olympic Games as independent Olympic athletes both when there is no NOC for a particular country and when there is one.
101. Otherwise, the IAAF agrees that only an NOC can enter athletes for the Olympic Games. But that does not mean that they compete as representatives of the NOC's

country (see Rule 6.1 of the *Olympic Charter*).

102. The IAAF's role is not limited to technical matters. It has the right to take decisions on eligibility, including the right to decide that an athlete affiliated to a national federation which has been suspended for integrity reasons who has secured exceptional eligibility may not represent that nation in the competition but rather must compete in an individual capacity. This is because the national federation has forfeited its right to participate in international competitions. If its athletes could nevertheless represent it in international competitions, that consequence would lose its bite.

103. Whilst it is correct that only an NOC can enter athletes to compete in its team in the Olympic Games, it must do so in accordance with the IAAF's eligibility rules, which include that an athlete qualifying as eligible under Rule 22.1A must compete in an individual capacity.

The Respondent's claims

104. On the basis of the foregoing, the Respondent requested the Panel:

- “(a) *to dismiss all of the Claimants' claims;*
- (b) *to declare that, as a result of RusAF's continuing (and unchallenged) suspension from membership of the IAAF, IAAF Competition Rule 22.1(a) applies, and therefore the ROC may not enter any athletes for the athletics programme in the 2016 Olympic Games (or nor may any athletes affiliated to RusAF compete in any other International Competition, as defined in IAAF Competition Rule 1.1) unless they have been granted exceptional eligibility under IAAF Competition Rule 22.1A;*
- (c) *to declare that there is no good basis to disturb the decisions of the IAAF's Doping Review Board to reject the Claimant Athletes' applications to be granted exceptional eligibility under IAAF Competition Rule 22.1A;*
- (d) *to declare that any athlete who is granted exceptional eligibility under IAAF Competition Rule 22.1A to participate in International Competitions and who is invited to compete in an International Competition (including the Olympic Games) by the organiser of that competition may only participate therein in an individual capacity, and may not be entered, and may not participate, in a representative capacity; and*
- (e) *further to its powers under CAS Code Article 64.5, to order the Claimants to pay all of the CAS arbitration costs of these proceedings and a contribution to the costs that the IAAF has incurred in these proceedings.*

V. JURISDICTION

105. Jurisdiction has been granted to the CAS Panel by virtue of the Arbitration Agreement on an *ad hoc* basis, in accordance with CAS Code R27.

106. Under the Arbitration Agreement, the Panel has jurisdiction to resolve the dispute that has arisen between the parties thereto. Conversely, the Panel was not granted (and could not be granted) jurisdiction with respect to entities not bound by the Arbitration

Agreement or issues outside of the scope of the Arbitration Agreement: the contractual nature of arbitration means that arbitration tribunals can perform the jurisdictional function only with respect to those who consented to it and on the issues on which they granted consent.

107. The Panel notes that the IOC was not a party to the Arbitration Agreement and decided not to participate as a party in these arbitration proceedings (though it was invited to do so and declined). This Panel, therefore, has no jurisdiction to make any finding with respect to the IOC's rights and duties under the *Olympic Charter* or any other rule with respect to the issues disputed between the parties.

VI. OTHER PROCEDURAL ISSUES

108. The parties were content that the Appeal should be subject to a different award than the Claim.

109. The IAAF sought to rely on a report prepared by Professor Richard McLaren (the "McLaren Report"). The McLaren Report was circulated to the IAAF on 18 July 2016, which in turn circulated it to the Claimants' representatives and the Panel on the same day. The Claimants did not deny the admissibility of this document, noting that the IAAF had itself received it at a late stage. However, they did query its relevance. The Panel did not consider the McLaren Report to be relevant in determining the issues before it and therefore gave it no weight.

110. The Panel was also provided with an email dated 18 July 2016 which had been sent by Mr Mathieu Holz of WADA to the IAAF's legal representatives, and an attachment to that email. In the email, Mr Holz said that he was sending the attachment on behalf of Professor McLaren. The attachment comprised a table of athletes (made up of some of the Claimants, except for one who was not a Claimant). It sought to show whom of the Claimants Professor McLaren had intelligence on which indicated some involvement in doping. The attachment stated that an athlete's absence from the list meant only that Professor McLaren had no information about that athlete, not that the athlete was clean. The Panel did not find this document to be relevant in determining the issues before it and therefore gave it no weight.

VII. APPLICABLE LAW

111. Article R45 of the Code provides the following:

"The Panel shall decide the dispute according to the rules of law chosen by the parties or, in the absence of such a choice, according to Swiss law. The parties may authorize the Panel to decide ex aequo et bono".

112. By the Arbitration Agreement, the parties have agreed that the governing law of the arbitration shall be the general principles of law common to civil law and common law systems as referenced at paragraph 156 of *AEK Athens & SK Slavia Prague v UEFA*, CAS 98/200, award dated 20 August 1999. In accordance with Article R45 of the Code, therefore, such general principles shall apply.

VIII. MERITS

113. As a result of the Arbitration Agreement, the Panel has to decide on a number of issues, as therein described. In essence, they regard the legality of the application in the present circumstances of the Contested Rules, and their consequences with respect to the 2016 Olympic Games.

114. Those issues have been identified separately in the Arbitration Agreement: for instance, the legality of Competition Rule 22.1(a) and of Competition Rule 22.1A are the object of distinct points. Those issues, also as presented by the parties, share however many common aspects. Therefore, those common aspects will be jointly examined, if and when necessary.

Issue 1: *Is IAAF Competition Rule 22.1(a) valid and enforceable in the circumstances of the present dispute?*

Introductory observations

115. As made clear at the hearing, the Claimants do not take issue with Rule 22.1(a) itself, but rather with its application in the present circumstances. They want an exception to the rule for doping cases, so that the ineligibility for the athletes affiliated to a suspended national federation, a member of the IAAF, would not apply if the suspension is imposed for the federation's failure to ensure an effective doping control system.

116. The Panel has three observations in that regard.

117. The first is that this Panel's duty is not that of rewriting a federation's rules. The rule-making power, and the balance to be struck in its exercise between the competing interests involved, is conferred on the competent bodies of the sport entity, which shall exercise it taking into account also the overall legislative framework. The duty of this Panel is to ensure that such an exercise does not conflict with the rules that govern it and not to alter the content (whether by way of interpretation or other form of "manipulation") of existing rules transforming them into something different.

118. The second is that the suspension of the Russian track and field federation is not disputed in this arbitration. In fact, ARAF (as it then was) had the opportunity to challenge the suspension under the IAAF Constitution, and exercise its right to be heard, also on behalf of its affiliated athletes. ARAF decided not to exercise that right and actually expressly accepted and did not challenge the IAAF suspension. As a result, the dispute heard by the Panel regards only the consequences for the athletes affiliated to the Russian federation of the suspension imposed on their federation and not the reasons for the suspension.

119. The third is that in this Panel's view Rule 22.1(a) is not, in its substance, a doping sanction for the athletes concerned. It is a rule which affects the eligibility of athletes to enter into International Competitions and is a consequence of the organizational structure of international sport; national federations are members of international federations, and have the duty to respect the obligations deriving from such membership; athletes participate in organized sport, as controlled by an international

federation, only on the basis of their registration with a national federation, which is a member of the international federation in question. In that regard, as the IAAF correctly noted, it is important to consider Rule 22.1(a) separately from Rule 22.1A. The fact that the consequences of Rule 22.1(a) may be escaped by an athlete satisfying criteria found in Rule 22.1A (which apply in the event the suspension of the member federation is due to the federation's doping related failures) does not mean that the effect produced by Rule 22.1(a) is in substance a doping sanction: the consequence contemplated by Rule 22.1(a) is in fact suitable to apply irrespective of the reason triggering the suspension of the national federation. In other words, Rule 22.1(a) is a rule of general application, not specific to doping cases, and would apply equally to athletes who are members of federations that fail to pay their membership dues as to athletes who are members of federations that engage in other breaches of federation obligations to the IAAF as a member thereof.

120. In this regard, the Claimants sought to rely on the fact that the IAAF had apparently drafted Rule 22.1A in order to strengthen its legal position with regard to Rule 22.1(a), by providing a mechanism by which some athletes could regain eligibility. The Claimants said that this showed that the Contested Rules formed a package and should be considered together. The Panel does not agree. Rule 22.1(a) is not part of a new package of rules. It has existed since at least 2000, whereas Rule 22.1A is a recent amendment. Further, Rule 22.1A is an inclusionary, not exclusionary, rule, as discussed further below.

121. Rule 22.1(a) is a necessary consequence of the sanction imposed on RusAF. The Claimants said that, unlike *BWF v IWF* CAS 2015/A/4319 where the ban had nothing to do with the athletes' conduct, in this case the athletes' conduct was central to the ban. The conduct in question in this case, said the Claimants, was the athletes' inability to prove they were not doping. The Panel disagrees. The athletes are ineligible because RusAF has been sanctioned, and accepted that sanction, not because of what the athletes have done.

Is Rule 22.1(a) inconsistent with the WADC?

122. The Claimants contend that Rule 22.1(a) is inconsistent with the WADC. The Panel agrees with the IAAF that it is not. First, for the reasons given above, it is not a sanction. Further, Rule 22.1(a) is consistent with:

- a. Article 20.3.2 of the WADC which mandates an international federation to “*require as a condition of membership that the policies, rules and programs of their National Federations and other members are in compliance with the Code*”. The expectation is that if a national federation maintains a system which is not compliant with the Code, its membership may be suspended or revoked;
- b. Article 12 of the WADC which provides that “*Nothing in the Code precludes any Signatory or government accepting the Code from enforcing its own rules for the purpose of imposing sanctions on another sporting body over which the Signatory or a member of the Signatory or government has authority*”;
- c. Article 12.3 of the Model Rules for International Federations, Version 3.0 (based upon the 2015 WADC), drafted by WADA to help International

Federations to implement the WADC in connection with their respective sports, as an essential part of International Federations' mission in the fight against doping which states that the “[IF] may elect to take additional disciplinary action against National Federations with respect to recognition, the eligibility of its officials and Athletes to participate in International Events ...”.

123. As a result, even if Rule 22.1(a) or its application in these circumstances did constitute a sanction, which is not the Panel's view, it is one which is consistent with the WADC.
124. In addition, it is a fundamental principle of the law of associations in all applicable jurisdictions that members of associations have an obligation to satisfy the requirements for membership in the association and if they fail to do so those members may have their association membership adversely affected. In many ways, this is the contract for being part of an association and the rules upon which all association members are expected to conduct themselves. The Panel will not disturb these well-accepted principles here.

Estoppel

125. The parties disagreed as to whether or not the principle of estoppel applied as part of the *lex sportiva*. The Panel does not find it necessary to decide this issue in this case, and expressly declines to do so, because the Claimants' arguments based on estoppel fail on the facts.
126. First, the Panel agrees with the IAAF that the conduct of RusAF, not the IAAF, led to the exclusion of the Claimant Athletes. This is because the conduct of some of the IAAF's officers, admitted to be reprehensible by the IAAF, was not a cause of the issues within RusAF but rather an incident of them. The first WADA IC Report, published on 9 November 2015, referred to allegations of corruption in the IAAF but delayed publication of that material “until decisions are taken by the competent authorities regarding potential criminal prosecutions”. RusAF was suspended on the basis of the first WADA IC Report. The second WADA IC Report, which set out the IC's findings in respect of corruption between IAAF officials and ARAF was not published until 14 January 2016. There is no suggestion that the IAAF officials were involved in the systemic doping of Russian athletes. There is only evidence that IAAF officials were involved in a cover up of four cases in 2011, and perhaps in other forms of corruption. But even with regard to those four cases, and the other forms of corruption, it is not said that the IAAF officials caused the doping; their actions were a further incidental aspect of the wrongdoing.
127. Further, none of the Claimant Athletes has argued that they knew about the IAAF's wrongdoing and relied on it to their detriment, or that they believed that RusAF would not be suspended in the event of misconduct. Basic principles of estoppel and “unclean hands” require some relationship between the wrongdoing and the case at hand.

Lack of legal certainty

128. The Panel does not agree that Rule 22.1(a) is uncertain. Its terms are clear. As to the argument that the length of ineligibility is indeterminate, that is a simple consequence of the fact that it is contingent on the National Federation (“NF”) being reinstated. That does not make it uncertain. It is certain that once the NF is reinstated the athlete will no longer be ruled ineligible by Rule 22.1(a).

Proportionality

129. Because Rule 22.1(a) is not a sanction, it does not have to pass any test of proportionality. In any event, the Panel agrees with the IAAF that Rule 22.1(a) is a proportionate means of encouraging NFs to comply with the IAAF’s rules.

130. The principle of proportionality implies that there must be a reasonable balance between the nature of the misconduct and the sanction. In order to be respected, the principle of proportionality requires that (i) the measure taken by the governing body is capable of achieving the envisaged goal, (ii) the measure taken by the governing body is necessary to reach the envisaged goal, and (iii) the constraints which the affected person will suffer as a consequence of the measure are justified by the overall interest to achieve the envisaged goal. In other words, to be proportionate a measure must not exceed what is reasonably required in the search of the justifiable aim (CAS 2005/C/976&986, §§ 139-140, citing CAS precedents, legal doctrine and Swiss jurisprudence).

131. The Panel finds that the effect (ineligibility to compete at International Competitions) on the athletes registered with a national federation suspended by IAAF is a proportionate consequence of the national federation’s suspension for its failure to put in place an adequate system to protect and promote clean athletes, fair play and integrity of sport. In fact, in the Panel’s opinion, eradication of doping in sport, protection and promotion of clean athletes, fair play and integrity are undeniably legitimate objectives of extreme importance for the viability of sport at any level, and

- i. the measure taken by IAAF, and the effect it produces, is capable of achieving those objectives, as it prevents athletes under the jurisdiction of the suspended national federation (for having failed to promote a doping-free environment) from competing with athletes registered with federations that have not been the subject of an exclusion;
- ii. the measure taken by IAAF is necessary to reach the envisaged goal: if the IAAF could not take a step having the mentioned effect, the suspension of the Russian federation would have no meaningful impact; and
- iii. the constraints which the affected athletes, including the Claimant Athletes, will suffer as a consequence of the measure are justified by the overall interest to achieve the envisaged goal, which outweighs them, and do not go beyond what is necessary to achieve it.

132. In that last regard, the Panel notes, in addition, the role played by Rule 22.1A of the Competition Rules. Indeed, under such rule, athletes of a suspended national federation would be able to regain eligibility if they could prove that they were not

“tainted” by the “loose” approach of their national federation to doping issues. Such provision, not in itself a condition for the proportionality of Rule 22.1(a), shows however that the effect produced by the suspension of a national federation (in force since at least 2000) was recently made more flexible, to take into account individual cases, in a way consistent with the sought purpose of eradication of doping, protection and promotion of clean athletes, fair play and integrity.

The Right to Equal Treatment

133. The Panel agrees with the IAAF that there is no discrimination on the grounds of nationality. Rule 22.1(a), on its face and in its application here, applies to any NF, not just RusAF. The Panel notes that RusAF had an opportunity to challenge the IAAF decision and did not, instead expressly accepting the results.

Legitimate expectations

134. The Claimants say that the application of Rule 22.1(a) is contrary to their legitimate expectations. The Panel disagrees because:

- a. Rule 22.1(a) has been existence since at least 2000. It clearly provides that the athletes of a country whose member has been suspended cannot participate in International Competition.
- b. The consequence triggered by the suspension was clear from November 2015 when RusAF decided not to challenge it, even in the interest of the Claimant Athletes.

135. As a result, the Claimants cannot have legitimately expected that Rule 22.1(a) would have been applied in any different way to the way in which it was applied.

Conclusion

136. In light of the foregoing, it is the Panel’s opinion that IAAF Competition Rule 22.1(a) is valid and enforceable in the circumstances of the present dispute.

Issue 2: *Is IAAF Competition Rule 22.1A valid and enforceable in the circumstances of the present dispute? In particular (but without limitation), can IAAF Competition Rule 22.1A validly and/or lawfully exclude Russian track and field athletes from International Competition (as that term is defined in IAAF Competition Rule 1.1):*

- i. who are not currently subject to any period of ineligibility for the commission of an anti-doping rule violation?; and/or*
- ii. who are part of the IAAF Registered Testing Pool?; and/or*
- iii. on the basis that they have not lived or do not live outside of Russia?*

Preliminary Remark

137. A preliminary point has to be underlined with respect to the Claimants’ challenge to Rule 22.1A of the Competition Rules. The Panel in fact may wonder what interest the

Claimants would have in seeing it set aside, given that it is a rule which allows athletes to be included, not excluded. The Panel notes that if it struck down Rule 22.1A, the only consequence for the Claimants would be that any athlete who made him/herself eligible pursuant to Rule 22.1A would still be ineligible: the Claimant Athletes, on the other hand, would not regain the eligibility denied by Rule 22.1(a).

138. The Panel notes in such regard that in the Claimants' opinion Rule 22.1A should be read in conjunction with Rule 22.1(a), being a condition for the legality of the effect produced for the Claimant Athletes of the suspension of the Russian federation. As a result, should Rule 22.1A be considered unlawful, the effect produced by Rule 22.1(a) would also be unlawful, and no Russian athlete could be considered ineligible notwithstanding the suspension of the Russian federation.
139. In addition, the Panel notes that the Claimants submit that in the event Rule 22.1A is set aside and/or declared inapplicable to their case, the conditions for the Russian athletes to regain eligibility would be found in the Verification Criteria published on 11 December 2015, and more specifically at their Section 5.3, that they say the Claimant Athletes satisfy,³ because they have been in the IAAF's Registered Testing Pool for at least the six months immediately preceding the 2016 Olympic Games and during that period they have undergone at least three no notice out-of-competition tests; and those who compete in a middle distance, long distance, or combined events, or race walking discipline have undergone at least three Athlete Biological Passport tests.
140. The Panel however notes that (i) the legality of Rule 22.1(a) and its applicability in the present circumstances has already been confirmed, as per the considerations above, (ii) the Claimants' submissions as to the legality of Rule 22.1A have no merit, as the following will show, and (iii) Section 5.3 of the Verification Criteria explicitly makes the possibility for the Russian athletes to compete at international events dependent not only on the satisfaction of the mentioned individual criteria, but also on the lifting to the suspension of the Russian federation ("*If ARAF is reinstated to IAAF membership during 2016 ...*") – *i.e.*, to a condition that in the case at hand is clearly not satisfied.

Is Rule 22.1A inconsistent with the WADC?

141. As to Rule 22.1A, the Panel is of the view that this is a permissive rule: it does not impose ineligibility; it allows eligibility to be regained, if specific conditions are satisfied. As a result, it cannot be construed as a sanction. It cannot, therefore, be considered inconsistent with the WADC.

³ Under that Section "*If ARAF is reinstated to IAAF membership during 2016 such that it (and/or the Russian Olympic Committee, as applicable) is permitted to enter athletes to represent Russia in international events, nevertheless a Russian athlete may not participate in an international event unless he or she has been in the IAAF's Registered Testing Pool ... for at least the six months immediately preceding the event and during that period he or she has undergone at least three no notice out-of-competition tests and (if he or she competes in a middle distance, long distance combined events, or race walking discipline) at least three Athlete Biological Passport tests (blood and urine)*".

Estoppel

142. The Claimants do not raise this argument in relation to Rule 22.1A.

Lack of legal certainty

143. In the Panel's opinion an issue could arise with regard to Rule 22.1A(b), as its terms may appear vague and retroactive in nature. For instance, Rule 22.1A(b) offers little help with defining what is a "*sufficiently long period*" for an athlete to be subject to an "*adequate system*" in order to regain eligibility.

144. The Panel remarks that the elusiveness of the reference to a "*sufficiently long period*" is indirectly confirmed by Section 7.5 of the Guidelines, which requires the Doping Review Board to consider:

“What, in all of the circumstances of the case, including the nature and timing of the International Competition(s) for which eligibility is sought, is a ‘sufficiently long period’ for the athlete to have been subject to other (fully adequate) anti-doping systems outside of the country of his/her National Federation for purposes of Rule 22.1A(b) (the ‘Relevant Period’).”

145. In the event, the Doping Review Board decided that the Relevant Period was the period starting on 1 January 2014. That meant that the Claimant Athletes had to pass a retrospective test, the extent of which period the Guidelines did not make clear and the benefit of which no Claimant Athlete could avail themselves of since the period had already passed at the time of the pronouncement of this new rule.

146. However, no matter how concerning it may be for the Panel that the vague terms of Rule 22.1A(b) allow for retroactive application, this does not help the Claimants in having the application of this rule set aside in the given case. The Panel wishes to note, however, that retroactive criteria in general are to be avoided as unfair and contrary to fundamental notions of due process and good sportsmanship, though the application of such criteria here has been found to not be dispositive.

147. As already mentioned, in fact, Rule 22.1A is an inclusionary rule, and only created an opportunity, not a bar, for the Claimant Athletes. It would not assist the Claimants for the rule not to be applied, since they would not, in any case, regain eligibility. It would only have the effect of harming any other Russian athlete who satisfied Rule 22.1A(b).

Proportionality

148. Because Rule 22.1A is not a sanction (or even an exclusionary rule), it does not have to pass any proportionality test.

The Right to Equal Treatment

149. The Panel does not consider any right to equal treatment to have been breached. Rule 22.1A applies, on the bases set forth in its terms, to any athlete of any suspended federation, not only to those who are Russian, or who live in Russia. Therefore, the rule itself does not infringe any right to equal treatment.

150. Further, the Claimants have been unable to show that Rule 22.1A has been applied in a different way in cases in which it should have been applied as it had been to them. Therefore the Claimants have been unable to show they have been unequally treated.

Legitimate expectations

151. Insofar as the Claimant Athletes had a legitimate expectation that they would be eligible if they met the Verification Criteria (which is not proved), they would have also known that RusAF would have to be reinstated before they became eligible (§ 140 above). Because RusAF has not been reinstated, no legitimate expectation of the Claimant Athletes can have been breached.

152. Rule 22.1A did not change the way in which the Claimant Athletes could make themselves eligible. Instead, it provided another route to eligibility, one which could be pursued even though RusAF had not been reinstated in accordance with the Reinstatement Conditions.

153. As a result, the Claimants cannot say that their legitimate expectations have been breached by Rule 22.1A.

Conclusion

154. In light of the foregoing, it is the Panel's opinion that IAAF Competition Rule 22.1A is valid and enforceable in the circumstances of the present dispute.

Issue 3: *Under the Olympic Charter, is the ROC entitled to nominate and is the IOC entitled to accept the entry of Russian track and field athletes to compete at the Rio Olympic Games even if they are not eligible to participate under IAAF Competition Rule 22.1(a) and 22.1A?*

155. The CAS Panel finds that, under the *Olympic Charter*, the ROC is not entitled to nominate athletes who are not eligible under IAAF Competition Rules 22.1(a) and 22.1A.

156. The CAS Panel notes that Rule 27.3 of the *Olympic Charter* provides that the NOCs have the exclusive authority for the representation of their respective countries at the Olympic Games. Rule 27.7.2 provides that the NOCs have the right to send competitors, team officials and other team personnel to the Olympic Games in compliance with the *Olympic Charter*. The last sentence of Rule 40 of the *Olympic Charter*, dealing with participation in the Olympic Games, then, confirms that “*the competitor ... must be entered by his NOC*”.

157. However, the same Rule 40 of the *Olympic Charter* restricts participation in the Olympic Games to those who comply with the *Olympic Charter* and the WADC, including the conditions of participation established by the IOC, “*as well as the rules of the relevant IF as approved by the IOC*”. This latter sentence is important insofar as it makes mandatory compliance with IF rules. Of note, this provision does not mention NOCs or their status or requirements, though later in Bye-law 2 to Rule 40 it provides that, “*The application of the criteria lies with the IF's, their affiliated national federations, and the NOCs in the fields of their respective responsibilities.*”

158. In addition, the *Olympic Charter* makes it clear that an NOC shall only enter competitors upon the recommendations for entries given by national federations (Rule 44.4), and that as a condition precedent to participation in the Olympic Games every competitor has to comply not only with the provisions of the *Olympic Charter*, but also with “*the rules of the IF governing his sport*” (Bye-law 4 to Rule 44). Under Rule 44.4, NOCs, however, “*must investigate the validity of the entries proposed by the national federations ...*”.
159. Therefore, the NOCs can only exercise their right to send personnel to the Olympic Games if they comply with the rules of the relevant International Federation (“IF”) because *otherwise* they would be contravening Rule 40 of the *Olympic Charter*.
160. The Claimants relied on Bye-law 1 to Rule 40 to suggest that the rules of the IF which had to be complied with were limited only to technical qualification criteria. However, it is clear that that is not the case. First, Rule 40 does not restrict itself to qualification criteria but refers to “*the rules of the relevant IF*”. Secondly, Bye-law 1 to Rule 40 refers to the IF’s rules for participation “*including qualification criteria*”. The use of the word “*including*” suggests that the relevant rules are not limited to qualification criteria.
161. As a result, ROC cannot enter into the 2016 Olympic Games athletes who do not comply with the IAAF’s rules, including those athletes who are not eligible under Competition Rules 22.1(a) and 22.1A.
162. Further, as mentioned, under Rule 44.4 the ROC can exercise its authority to designate athletes for the 2016 Olympic Games only “*upon the recommendations for entries given by national federations*”: assuming that RusAF (even though suspended) still exists for the purposes of the *Olympic Charter*, it cannot recommend ineligible athletes under the IAAF rules, and the ROC cannot enter them into the 2016 Olympic Games.
163. If, on the other hand, RusAF does not exist for the purposes of the *Olympic Charter*, Bye-law 5 to Rule 44 would apply. That Bye-law says:
- “*Should there be no national federation for a particular sport in a country which has a recognised NOC, the latter may enter competitors individually in such sport in the Olympic Games subject to the approval of the IOC Executive Board and the IF governing such sport*”.
164. In this situation, the ROC would need the IAAF’s, and IOC Executive Board’s, approval to send competitors. Plainly, the IAAF does not, and would not, approve the designation of those athletes who are ineligible by virtue of Rule 22.1(a) and are not made eligible by Rule 22.1A.
165. Therefore, whether RusAF exists or not for the purposes of the *Olympic Charter*, the ROC cannot enter athletes who are ineligible pursuant to the IAAF’s rules.
166. In the absence of the IOC, the Panel has no jurisdiction to determine whether the IOC is entitled to accept or refuse the entry of Russian track and field athletes to compete at the Rio Olympic Games if they are not eligible to participate under IAAF Competition Rule 22.1(a) and 22.1A.

Issue 4: *Under the Olympic Charter, if any Russian track and field athletes are eligible to compete at the Rio Olympic Games under IAAF Competition Rule 22.1A, is the ROC entitled to have them compete as representatives of Russia, or may they only participate in an individual capacity, not representing any country?*

167. The Panel finds that, under the *Olympic Charter*, if there are any Russian track and field athletes who are eligible to compete at the 2016 Olympic Games under IAAF Competition Rule 22.1A, the ROC is entitled to enter them to compete as representatives of Russia.
168. In support of this finding, the Panel notes that under the *Olympic Charter* it is not for an IF to determine whether an athlete, eligible for entry to the Olympic Games, has to compete as a “neutral” athlete, or as an athlete representing the NOC that entered him or her.
169. The Panel, in fact, notes that
- i. Rule 27.3 of the *Olympic Charter* provides that:

“*The NOCs have the exclusive authority for the representation of their respective countries at the Olympic Games and at the regional, continental or world multi-sports competitions patronised by the IOC. In addition, each NOC is obliged to participate in the Games of the Olympiad by sending athletes*”;
 - ii. Rule 27.7.2 of the *Olympic Charter* gives the NOCs the right to:

“*send competitors, team officials and other team personnel to the Olympic Games in compliance with the Olympic Charter*”;
 - iii. pursuant to Rule 40 of the *Olympic Charter*:

“*the competitor ... must be entered by his NOC*”.
170. These rules show that the athletes which are sent to the Olympic Games are not entered as neutrals, but are sent by an NOC, in this case the ROC. In the context of the *Olympic Charter*, and for such purposes, the fact that a national federation is suspended is irrelevant: an athlete does not represent his/her national federation; the federation’s suspension does not prevent an athlete from being entered into the Olympic Games as a representative of his/her NOC.
171. The Panel underlines however that the finding that the ROC is entitled, under the *Olympic Charter*, to enter into the Olympic Games as representatives of Russia any Russian track and field athletes who are eligible to compete under IAAF Competition Rule 22.1A does not mean that the IOC is bound to accept such designation as athletes representing Russia. As noted, in fact, the IOC declined to participate in this arbitration. Therefore, the Panel has no jurisdiction to determine whether the IOC is entitled to accept or refuse the entry as representatives of Russia or in an individual capacity any Russian track and field athletes who are eligible to compete at the Rio Olympic Games under IAAF Competition Rule 22.1A.

IX. COSTS

172. Article R64.4 of the Code reads as follows:

“At the end of the proceedings, the CAS Court Office shall determine the final amount of the cost of arbitration, which shall include:

- the CAS Court Office fee,*
- the administrative costs of the CAS calculated in accordance with the CAS scale,*
- the costs and fees of the arbitrators,*
- the fees of the ad hoc clerk, if any, calculated in accordance with the CAS fee scale,*
- a contribution towards the expenses of the CAS, and*
- the costs of witnesses, experts and interpreters.*

The final account of the arbitration costs may either be included in the award or communicated separately to the parties”.

173. Article R64.5 of the Code provides:

“In the arbitral award, the Panel shall determine which party shall bear the arbitration costs or in which proportion the parties shall share them. As a general rule, the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such contribution, the Panel shall take into account the outcome of the proceedings, as well as the conduct and the financial resources of the parties.”

174. In the light of the complexity of the case, the costs of the arbitration, to be determined and communicated separately by the CAS Court Office, shall be borne as follows: 50% jointly and severally by the ROC and the Claimant Athletes; 50% by the IAAF.

175. Each party shall bear her/his/its legal costs and expenses incurred in connection with the present proceedings.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. IAAF Competition Rule 22.1(a) is valid and enforceable in the circumstances of the present dispute.
2. IAAF Competition Rule 22.1A is valid and enforceable in the circumstances of the present dispute.
3. Under the Olympic Charter, the ROC is not entitled to nominate the entry of Russian track and field athletes to compete at the 2016 Olympic Games in Rio if they are not eligible to participate under IAAF Competition Rules 22.1(a) and 22.1A.
4. As the International Olympic Committee is not a party to the present procedure, the CAS Panel has no jurisdiction to determine whether the International Olympic Committee is entitled to accept or refuse the entry of Russian track and field athletes to compete at the 2016 Olympic Games in Rio if they are not eligible to participate under IAAF Competition Rules 22.1(a) and 22.1A.
5. Under the Olympic Charter, if there are any Russian track and field athletes who are eligible to compete at the 2016 Olympic Games in Rio under IAAF Competition Rule 22.1A, the ROC is entitled to enter them to compete as representatives of the Russian Federation.
6. As the International Olympic Committee is not a party to the present procedure, the CAS Panel has no jurisdiction to determine whether the International Olympic Committee is entitled to accept or refuse the entry as representatives of the Russian Federation or as “neutral athletes” of any Russian track and field athletes who are eligible or not eligible to compete at the 2016 Olympic Games in Rio under IAAF Competition Rule 22.1A.
7. The costs of the arbitration, to be determined and communicated separately by the CAS Court Office, shall be borne as follows: 50% jointly and severally by the ROC, Lyukman Adams, Kseniya Aksyonova, Tatyana Arkhipova, Victor Butenko, Timofey Chalyy, Elena Cherniaeva (Kozlova), Dmitriy Chizhikov, Artem Denmukhametov, Gulshat Fazlitdinova, Aleksey Fedorov, Ekaterina Galitskaia, Georgy Gorokhov, Elena Isinbaeva, Pavel Ivashko, Darya Klishina, Oxana Kondratyeva, Ekaterina Koneva, Vasiliy Kopeikin, Elena Korobkina, Ilya Krasnov, Vladimir Krasnov, Antonina Krivoshapka, Maria Kuchina, Denis Kudryavtsev, Anna Kukushkina, Alla Kuliatina, Alexandr Lesnoi, Sergej Litvinov, Danil Lysenko, Yuliya Maltseva, Alena Mamima, Nikolay Markov, Aleksandr Menkov, Anna Misochenko, Olga Mullina, Marina Pandakova, Elena (Yuelena) Panova, Marina Panteleyeva, Yulia Pidluzhnaya, Evgeniya Polyakova, Sergey Polyanskiy, Mariya Ponomareva, Alina Prokopeva, Vera Rebrik (Rebryk), Ekaterina Renzhina, Aleksey Reunkov, Vera Rudakova, Ilgizar Safiullin, Ivan Shablyuev (Shablyuyev), Sergey Sharypov, Anna Shchagina, Ilya Shkurenev, Sergey Shubenkov, Maksim Sidorov, Anzhelika Sidorova, Kristina Sivkova, Aleksei Sokirskii, Ekaterina Sokolenko, Ekaterina Strokova, Dmitri Tarabin, Irina Tarasova,

Pavel Trenikhin, Sardana Trofimova, Daniil Tysplakov, Ivan Ukhov, Roman Yevstifeyev, Svetlana Vasilyeva and Natalia Vlasova; 50% by the IAAF.

8. Each party shall bear her/his/its legal costs and expenses incurred in connection with the present proceedings.
9. All further claims and prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Operative part of the award issued on 21 July 2016

Full award issued on 10 October 2016

Luigi Fumagalli
President of the Panel

Jeffrey Benz
Arbitrator

James Robert Reid QC
Arbitrator

Tom Asquith
Ad hoc Clerk