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

CAS 2024/A/10535 Ekaterina Guliyev v. World Athletics

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition

President: Mr James Drake KC, Barrister, London, United Kingdom

Arbitrators: Mr Efraim Barak, Attorney-at-Law, Tel Aviv, Israel
Mr Ulrich Haas, Professor in Zurich, Switzerland and Attorney-at-Law, Hamburg, Germany

between

Ekaterina Guliyev, Türkiye

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

Appellant

and

World Athletics, Monaco

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

Respondent

I. THE PARTIES

1. Ms Ekaterina Guliyev (the "**Appellant**" or the "**Athlete**") is a Turkish international-level athlete who represented Russia until 2021, *inter alia,* at the 2012 London Olympic Games, where she won the silver medal in the 800 meters competition. She was formerly known as Ekaterina Poistogova.

2. World Athletics (the "**Respondent**" or "**World Athletics**") is the international federation governing the sport of athletics, with its registered seat and headquarters in Monaco. It was formerly known as the Independent Amateur Athletics Federation or "**IAAF**". It is a signatory to the World Anti-Doping Agency's ("**WADA**") World Anti-Doping Code (the "**WADA Code**") and, pursuant thereto, has from time to time promulgated its own anti-doping rules. The relevant rules for the purposes of this appeal are (a) substantively, the IAAF Competition Rules 2012-2013 (the "**2012 Rules**") and (b) procedurally, the World Athletics Anti-Doping Rules 2024 (the "**2024 Rules**").

3. The Athlete and World Athletics shall be referred to collectively as the "**Parties**".

II. OUTLINE OF THE APPEAL

4. The Athlete appeals against the decision of the Court of Arbitration for Sport (the "**CAS**") issued on 28 March 2024 (the "**Appealed Decision**") by which (*inter alia*) the Sole Arbitrator found that the Athlete had committed an anti-doping rule violation ("**ADRV**") pursuant to Rule 32.2(b) of the 2012 Rules and imposed a period of ineligibility on the Athlete of four years.

5. The two bases of challenge are: (a) pursuant to the doctrine of *res judicata*, World Athletics is precluded from bringing this proceeding because the matters at issue have already been decided in an earlier decision by CAS in CAS 2016/A/4486 between World Athletics and the Athlete; and (b) World Athletics has not discharged its burden of proving the alleged ADRV.

III. FACTUAL BACKGROUND

6. Set out below is a summary of the relevant facts based on the Parties' written submissions, pleadings and evidence adduced in these proceedings and from matters of public knowledge. Whilst the Panel has considered all matters put forward by the Parties, reference is made in this Award only to those matters necessary to explain the Panel's decision and reasoning.

A. The Russian Doping Scheme

7. This appeal takes place against the backdrop of what has become known as the 'Russian doping scheme', the nature, extent, and results of which have been described in various CAS awards and do not require elaborate repetition here: see, for example, CAS 2021/A/7838 & 7839. It is enough for present purposes to note the following.

8. In December 2014, a German television channel broadcast a documentary concerning the existence of sophisticated systemic doping practices in Russian athletics. Implicated in the documentary were (*inter alios*) Russian athletes and coaches, the All-Russia Athletics Federation, the governing body for athletics in Russia ("**ARAF**", now known as the Russian Athletics Federation or "**RUSAF**"), the IAAF, the Russian Anti-Doping Agency ("**RUSADA**"), and the WADA-accredited laboratory based in Moscow (the "**Moscow Laboratory**").

9. On 16 December 2014, following the broadcast of those allegations, WADA announced the appointment of an independent commission (the "**Independent Commission**") to investigate the allegations as a matter of urgency. The three members of the Independent Commission appointed by WADA were Mr Richard Pound QC, former President of WADA; Professor Richard McLaren, Professor of Law at Western University in Ontario, Canada ("**Prof. McLaren**"); and Mr Günter Younger, Head of the Cybercrime Department at Bavarian Landeskriminalamt in Munich, Germany.

10. On 9 November 2015, the Independent Commission submitted its final report to WADA. In the report, the Independent Commission: (a) identified systemic failures within the IAAF and Russia that prevent or diminish the possibility of an effective anti-doping program, to the extent that neither ARAF, RUSADA, nor Russia can be considered to be acting in compliance with the WADA Code; and (b) confirmed the existence of widespread cheating through the use of doping substances and methods to ensure, or enhance the likelihood of, victory for athletes and teams. The Independent Commission also recommended, among other things, that RUSADA be declared non-compliant with the WADA Code and that the WADA accreditation of the Moscow Laboratory be revoked, both of which steps were implemented by WADA on 18 November 2015.

11. On 12 May 2016, the New York Times published a story called "*Russian Insider Says State-Run Doping Fueled Olympic Gold*". The so-called 'Russian insider' was Dr Grigory Rodchenkov ("**Dr Rodchenkov**"), at that time the director of the Moscow Laboratory.

12. On 19 May 2016, WADA announced the appointment of Prof. McLaren to conduct an independent investigation into the matters reported on by the New York Times (and the allegations made by Dr Rodchenkov).

13. On 18 July 2016, Prof. McLaren issued his report (the "**First McLaren Report**"), in which he concluded that a systemic cover-up and manipulation of the doping control process existed in Russia.

14. On 9 December 2016, Prof. McLaren issued a second report (the "**Second McLaren Report**"), in which he identified a number of athletes who appeared to have been involved in or benefited from the systematic and centralised cover-up and manipulation of the doping control process. As explained by Prof. McLaren, his mandate did not involve any authority to bring ADRV cases against individual athletes, but he did identify athletes who might have benefited from manipulations of the doping control process. Accordingly, he did not assess the sufficiency of the evidence to prove an ADRV by any individual athlete. Rather, for each individual Russian athlete, where

relevant evidence had been uncovered in the investigation, Prof. McLaren identified that evidence and provided it to WADA, in the expectation that it would then be forwarded to the appropriate international federation for their action.

15. Accompanying the Second McLaren Report was a cache of non-confidential documents examined during the investigation. This was called the 'Evidence Disclosure Package' or "**EDP**".

16. One of the key elements of the scheme was the "**Washout Testing Program**" in place in advance of the 2012 London Olympic Games and the 2013 IAAF World Championships in Moscow, which was conducted in the following way.

    a. The historic position in Russia was that doping of athletes was undertaken on an *ad hoc*, decentralised basis where coaches and officials working with elite athletes "in the field" provided those athletes with an array of performance-enhancing drugs (or "**PED**s"). The difficulty with this approach was that it could not keep abreast of the developments in doping control, including in particular the introduction of the Athlete Biological Passport (the "**ABP**") so that the athletes were at risk of being caught. In response, the Russian Ministry of Sport sought to 'centralise' the doping effort, and bring it under the control of the Moscow Laboratory. An essential part of this centralisation was the development by Dr Rodchenkov in or about 2012 of the so-called "**Duchess Cocktail**", a cocktail of PEDs comprised of oxandrolone, methenolone and trenbolone, which cocktail had a very short detection period thereby reducing the risk of detection. The objective was to shift all of the athletes who were participating in the in the field programs onto this Duchess Cocktail and under the supervision of the Moscow Laboratory (and Dr Rodchenkov).

    b. Part and parcel of this new program was a program of 'washout testing' by the Moscow Laboratory. This was a means by which the Moscow Laboratory could discern whether, in advance of a particular competition, an athlete who was participating in the doping program could nevertheless compete at the event and, if tested, test clean, i.e., that the PEDs taken by the athlete had 'washed out' of the athlete's system in time for the event.

    c. This washout testing started in 2012 in advance of the 2012 London Olympic Games and was also deployed for later competitions including in particular the 2013 IAAF World Championships in Moscow. According to the Second McLaren Report (speaking in relation to the 2012 London Olympic Games):

       "*Every country, through its Olympic Committee, wants to ensure that its Olympic athletes provide clean doping control samples at the Games. Therefore, testing before the competition is normal. In that testing, if an athlete tests positive it will result in discipline for an ADRV and non-attendance at the Olympics. The difference in the case of potential Russian Olympians was that the MofS directed pre-competition testing not to catch doping athletes, but rather to ensure that they would be able to compete at the Games without being detected by doping control analysis. If they became clean, they went. This process of pre*

competition testing to monitor if a dirty athlete would test "clean" at an upcoming competition is known as washout testing."

d. The Washout Testing Program consisted of collecting samples from athletes who were doping (whether in the field or under the supervision of the Moscow Laboratory and hence doping with the Duchess Cocktail) at regular intervals and testing those samples to determine the presence of the PEDs and the rate at which their concentrations were declining (or 'washing out') in order to determine whether the athlete would test clean in competition. If this washout testing determined that the athlete would not test clean at competition, then he or she was not sent. If the washout testing showed that the PEDs had washed out of the athlete's system then he or she would be sent to the competition and would be able to compete with his or her doping going undetected.

e. In order to keep track of the athletes who were participating in this Washout Testing Program, and the results of the testing, the Moscow Laboratory maintained "washout schedules". These washout schedules were updated regularly by the Moscow Laboratory when new washout samples were sent by the athletes to the Moscow Laboratory for testing. In case of a positive initial test procedure showing the presence of prohibited substances, the Moscow Laboratory would record it on the Washout Schedules but would report the samples as negative in WADA's Anti-Doping Administration & Management Systems ("**ADAMS**"), the web-based database management system for use by WADA's stakeholders. The schedules maintained by the Moscow Laboratory in respect of the 2012 London Olympic Games were known as the "**London Washout Schedules**" and those maintained for 2013 IAAF World Championships in Moscow as the "**Moscow Washout Schedules**" (together the "**Washout Schedules**"). The Washout Schedules were created by Dr Sobolevsky, the former Deputy Director of the Moscow Laboratory under Dr Rodchenkov.

f. The Washout Schedules showed the progress of the Washout Testing Program for each of the athletes listed therein. That is to say that, as and when the analysis of a sample showed that the athlete would no longer test positive for a prohibited substance, then the sample was marked "*parallel representation*", and the athlete was sent to RUSADA for an official out-of-competition test, thereby clearing the way for the athlete to compete.

g. Dr Rodchenkov discussed the Washout Testing Program with the Russian Ministry of Sport, taking copies of the Washout Schedules with him to meetings with Deputy Minister Nagornykh at which Dr Rodchenkov provided a status update.

17. On 30 October 2017, WADA I&I received from a whistleblower a copy of the Moscow Laboratory's Laboratory Information Management System ("**LIMS**") data for the years 2011 to August 2015 (the "**2015 LIMS**"). The LIMS is a system that allows a laboratory to manage a sample through the analytical process and the resultant analytical data. The 2015 LIMS was found to include presumptive adverse analytical findings ("**PAAF**") on

the initial testing of samples which had not been reported in ADAMS or followed up with confirmation testing.

18. Subsequent to the McLaren Reports:

    a. On 2 December 2017, the International Olympic Committee ("**IOC**") Disciplinary Commission issued a report (the "**Schmid Report**") confirming the existence of "*systemic manipulation of the anti-doping rules and system in Russia*".

    b. On 5 December 2017, the IOC suspended the Russian Olympic Committee with immediate effect.

    c. On 13 September 2018, the Russian Ministry of Sport "*fully accepted the decision of the IOC Executive Board of December 5, 2017 that was made based on the findings of the Schmid Report*".

19. Subsequently, as part of the reinstatement process of the Russian Anti-Doping Agency ("**RUSADA**"), WADA required that, *inter alia*, authentic analytical data from the Moscow Laboratory for the years 2012 to 2015 be provided. In January 2019, access to the Moscow Laboratory was given to a team from the WADA Intelligence & Investigations department ("**WADA I&I**"), which team was allowed to remove data from the Moscow Laboratory, including another copy of the LIMS data for the relevant years (the "**2019 LIMS**") as well as the underlying analytical PDFs and raw data of the analyses reported in the LIMS (the "**Moscow Analytical Data"**). The analytical PDFs are automatically generated from the instruments and contain the chromatograms, which demonstrate whether a substance is present or not in a given sample.

20. Further investigations were conducted by WADA I&I in collaboration with forensic experts from the University of Lausanne on the data retrieved from the Moscow Laboratory and evidence of manipulation of the 2019 LIMS was uncovered, in particular to remove positive findings contained in the LIMS. On that basis, WADA I&I concluded that the 2015 LIMS was reliable and that the 2019 LIMS was not. WADA I&I thus identified evidence of deletions/alterations of the Moscow Analytical Data to remove evidence of positive findings prior to WADA's retrieval mission in January 2019.

B. The 2016 Proceedings against the Athlete

21. On 8 August 2015, World Athletics (then the IAAF) issued to the Athlete a "Charge Letter" stating that there was evidence that the Athlete had committed an ADRV by using prohibited substances – namely the use of oxandrolone in 2014, peptides in 2013 and EPO in 2012.

22. On 8 March 2016, World Athletics commenced an arbitration against the Athlete in respect of such ADRV and the case was registered under reference *CAS 2016/A/4486*.

23. Amongst the evidence relied upon by World Athletics in that arbitration,

World Athletics adduced an affidavit of Prof. McLaren dated 19 September 2016 (the "**McLaren Affidavit**"). World Athletics sought leave to adduce the McLaren Affidavit, on the eve of the hearing, in the following way:

"The Independent Person [i.e., Prof. McLaren] *has now uncovered evidence that positive samples were also covered up through "washout testing schedules" in advance of major international competitions.* […]

As set out by the Independent Person in his Affidavit, Ms. Poistogova was part of the washout testing schedule for the London Olympic Games. Three of her samples – from 17 July 2012, 25 July 2012 and 31 July 2012 – feature on internal spreadsheets of the Moscow Laboratory.

Indeed, Ms. Poistogova's sample from 17 July 2012 is reported as contained three prohibited substances viz. dehydroepiandrosterone, androstenedione (500ng/ml) and boldenone (20 ng/ml). […]

The IAAF submits that the Affidavit of Professor McLaren is further evidence that Ms. Poistogova used prohibited substances. […] *The McLaren Affidavit is therefore directly relevant to the anti-doping rule violation which Ms. Poistogova has been charged and which is being tried by CAS as a first and sole instance.* […]

In view of the fact that the hearing is scheduled to take place this Thursday (22 September 2016), the IAAF would not object if Ms. Poistogova were to seek a postponement of the hearing."

24. The Athlete objected both to the introduction of the McLaren Affidavit and the postponement of the hearing. The panel nevertheless admitted the McLaren Affidavit and granted to the Athlete the opportunity to submit a post hearing brief on such new evidence if she saw fit.

25. In relevant part, the McLaren Affidavit contained a précis of his investigation into the Russian doping scheme and went on to say the following with respect to the Athlete:

"[…] *In this Affidavit I have been asked to focus on the evidence as it related to* [the Athlete]*, and available to date in our ongoing investigation, which establishes that* [the Athlete] *was included in the State-directed cover-up program. …*

In the case of [the Athlete]*, the … investigation team … has received electronic documents relating to the cover up of positive samples through wash-out testing schedules. …*

As relevant to the [Moscow] *Laboratory's analysis of* [the Athlete's] *samples, Dr Rodchenkov explained to the … investigative team that EPO was used in micro doses until two weeks before the London games to reduce the possibility of detection by the Athlete Blood Passport Program.*

Details of the pre-testing for the London Games has been found in electronic data Excel

spreadsheets produced by the Moscow Laboratory for the period from 17 June to 31 July 2012. The metadata has been verified on these spreadsheets to confirm they were produced contemporaneously …

There are three samples from [the Athlete] *found on the spreadsheets … The sample numbers are 2727526, 2727501 and 2729116. The relevant extract from the spreadsheets appear* [sic].

Extracted from an Excel spreadsheet created 27 July 2012. The columns from left to right indicate: internal Laboratory number, sample number, sex, location, date of sample and finally the substance found or comment.

8971	*2727526*	*F*	*Moscow*	*17/07/2012*	*dehydroepiandrosterone, androstenedione (500 ng/ml), boldenone (20ng/ml)*
9253	*2727501*	*F*	*Moscow*	*25/07/2012*	*Maybe dehydroepiandrosterone; EPO is ordered, but not yet ready*

Extracted from an Excel spreadsheet created 31 July 2012. The columns from left to right indicate: internal Laboratory number, sample number, sex, type of test, specific gravity, location, date of sample and finally the substance found or comment.

9467	*2729116*	*F*	*EPO*	*1.02*	*Novogorsk*	*31/07/2012*	*tomorrow*

The Investigative team has used her [i.e., the Athlete's] *ADAMS account number to check what was in the ADAMS account and confirmed that each sample number has been entered as a negative finding. […]*".

26. The reader will note that two of the three samples identified by Prof. McLaren – namely 2727526 and 2727501 – are Sample 1 and Sample 2 respectively in these current proceedings.

27. On 7 April 2017, the CAS panel in that case rendered its award in which the Athlete was found to have committed an ADRV by using Oxandrolone in 2014. The panel was not comfortably satisfied that the allegations against the Athlete of use of Peptides in 2013 and EPO in 2012 had been made out. The Athlete was sanctioned with a two-year period of ineligibility, starting from 24 August 2015, and all her competitive results obtained from 21 October 2014 through the commencement of her suspension on 24 August 2015 were disqualified.

28. In reaching its decision, the CAS panel said this about the evidence (paras. 116 et seq.)

on which it relied:

"The Panel is comfortably satisfied that the Athlete is guilty of using Prohibited Substances. In particular, the Panel is comfortably satisfied that the Athlete used Oxandrolone during her autumn 2014 preparation.

The Panel considers that it follows from the testimony of Ms Stepanova, supplemented by the recording of the conversation between her and the Athlete of 21 October 2014, that the Athlete was fully aware of her personal doping regime and was preparing for the then upcoming events using, around the time of such conversation, a course of 10 pills of Oxandrolone.

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

29. The CAS panel also said this about the McLaren Affidavit (para. 111):

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

C. The Alleged ADRV

30. This appeal concerns two doping samples that were collected from the Athlete out-of-competition on 17 July 2012 (sample no. 2727526) ("**Sample 1**") and on 25 July 2012 (sample no. 2727501 ("**Sample 2**") (together, the "**Samples**"). At the time, the Samples were reported as negative ADAMS.

31. Sample 1: On 17 July 2012, the Athlete was subject to an out-of-competition urine doping control and provided Sample 1. It is alleged by World Athletics that, pursuant to the 2015 LIMS, both boldenone and androsta-1,4,6-triene-3, 17-dione ("**ATD**") were found. World Athletics further alleges that Sample 1 was recorded in one of the London Washout Schedules and linked not only to boldenone and ATD but also to

dehydroepiandrosterone ("**DHEA**").

32. Sample 2: On 25 July 2012, the Athlete was subject to an out-of-competition urine doping control. It is alleged by World Athletics that, pursuant to an entry in one of the London Washout Schedules, DHEA was "*possibly*" found in that sample.

33. By letter of 12 July 2022, the AIU notified the Athlete of a potential ADRV based on the 2012 Samples. The Athlete was invited to provide a full and detailed explanation with respect to the potential ADRVs.

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

35. On 16 November 2022, the AIU informed the Athlete that it maintained its assertion that she had committed one or more ADRVs. The Athlete was granted a deadline until 30 November 2022 to state whether she wanted a hearing, failing which a decision would be rendered. In the event that she requested a hearing, the Athlete was asked to confirm whether she requested the matter to proceed by way of a first instance CAS hearing before a Sole Arbitrator with a right of appeal to the CAS or directly to a three-member CAS Panel.

36. On 29 November 2022, the Athlete requested the latter.

37. On 13 February 2023, World Athletics informed the Athlete that WADA did not agree to such a course and asked the Athlete to confirm whether she wished to have a first instance hearing before a Sole Arbitrator at CAS, or whether she was prepared to forego a hearing, by 20 February 2023.

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

D. The CAS First Instance Proceedings against the Athlete (CAS 2023/O/9505)

39. On 21 November 2023, a remote hearing was held before a Sole Arbitrator in procedure CAS 2023/O/9505. Both the Athlete and World Athletics were represented by counsel.

40. On 28 March 2024, the CAS issued the Award in CAS 2023/O/9505 in which the Sole Arbitrator rendered (*inter alia*) the following rulings:

    a. The Athlete was found guilty of an ADRV under Rule 32.2(b) of the 2012 Rules.

    b. The Athlete was sanctioned with a period of ineligibility of four years, with credit to be given for the two -year period of ineligibility imposed on the Athlete in CAS 2016/A/4486, which had already been served.

    c. All of the Athlete's competitive results from 17 July 2012 until 20 October 2014

were disqualified, with all the resulting consequences, including the forfeiture of any titles, awards, medals, points and prize and appearance money.

41. This is the Appealed Decision.

IV. PROCEEDINGS BEFORE THE CAS – ON APPEAL

42. On 26 April 2024, the Athlete filed her Statement of Appeal with the CAS against the Respondent with respect to the Appealed Decision in accordance with Articles R47 and R48 of the CAS Code of Sports-related Arbitration (the "**CAS Code**"). In her Statement of Appeal, the Athlete nominated Mr Efraim Barak as arbitrator.

43. On 21 May 2024, World Athletics nominated Prof. Ulrich Haas as arbitrator.

44. On 1 July 2024, in accordance with Article R51 of the CAS Code the Athlete filed her Appeal Brief in this matter.

45. On 17 September 2024, in accordance with Article R55 of the CAS Code World Athletics filed its Answer.

46. On 18 September 2024, the CAS Court Office asked the Parties whether they wished to have a hearing in this matter or were content for the matter to be decided based on the Parties' written submissions alone.

47. On 24 September 2024, the Athlete informed the CAS Court Office that she would prefer not to hold a hearing and for the Panel to proceed on the papers.

48. On the same date, the Respondent referred in an email to the CAS to its statement in the Answer (para. 55), where it stated that "*it has no objection to the present matter being decided on the papers*".

49. On 25 September 2024, the CAS Court Office informed the Parties that the appeal would be decided by Mr Efraim Barak, Prof. Ulrich Haas, and Mr James Drake KC (sitting as president). The Parties made no objection to the composition of the Panel.

50. On 12 December 2024, the Parties signed and returned the Order of Procedure in this matter. Amongst other things, by signing the Order of Procedure the Parties confirmed the following things:

    a. The Athlete relies on Rule 13.2.1 of the 2024 Rules as conferring jurisdiction on CAS.

    b. World Athletics does not contest jurisdiction.

    c. The Panel is to decide the matter based on the Parties' written submissions.

    d. Article R65 of the CAS Code shall apply to these proceedings (in respect of

costs); and the Appellant has paid the CAS Court Office fee of CHF 1,000.

V. THE SUBMISSIONS OF THE PARTIES

51. The Panel has carefully considered all of the Parties' submissions and sets out below the essential nature of the principal submissions advanced by the Parties.

A. The Athlete's Submissions

Res Judicata

52. In 2016, World Athletics initiated results management for a possible ADRV by the Athlete based on information provided by a whistleblower regarding the use by the Athlete of some prohibited substances including Oxandrolone in 2014, Peptides in 2013 and EPO in 2012. Two days before the hearing in that matter, World Athletics provided "*further evidence*" of possible ADRVs committed by the Athlete in the form of the McLaren Affidavit in which Prof. McLaren gave evidence of three allegedly positive samples, numbered 2727526 (Sample 1), 2727501 (Sample 2) and 2729116.

53. In seeking to introduce the McLaren Affidavit, World Athletics said this:

"5. As set out by [Prof. Richard McLaren] in his Affidavit, Ms Poistogova was part of the Washout testing schedule for the London Olympic Games. Three of her samples – from 17 July 2012, 25 July 2012 and 31 July 2012 – feature on internal spreadsheets of the Moscow Laboratory.

6. Indeed, Ms Poistogova's sample from 17 July 2012 is reported as containing three prohibited substances viz. dehydroepiandrosterone, androstenedione (500ng/ml) and boldenone (20 ng/ml). All three samples were reported as negative in ADAMS [...].

7. The IAAF submits that the Affidavit of Professor McLaren is further evidence that Ms Poistogova used prohibited substances. The conversation between Ms Poistogova and Ms Stepanova from 21 October 2014 [...] includes a discussion between the athletes about the use of prohibited substances in preparation for the London Olympic Games. The McLaren Affidavit is therefore directly relevant to the anti-doping rule violation with which Ms Poistogova has been charged and which is being tried by CAS as a first and sole instance."

54. It is therefore evident that World Athletics was then seeking to disqualify the Athlete's results based on the McLaren Affidavit and the Moscow Laboratory spreadsheets. No further evidence was provided by World Athletics, who apparently considered that the McLaren Affidavit and the spreadsheets to be sufficient to establish the alleged ADRV. "*For instance, the IAAF failed to try to reach Prof. McLaren or Dr Rodchenkov in order to call them as witnesses to be cross-examined before the CAS Panel in the 4486 matter, or to get any more detailed information on the* [Samples]."

55. The CAS panel in *CAS 2016/A/4486* disagreed with World Athletics. It considered that the evidence provided by World Athletics was insufficient to rule on the Athlete's ADRV in 2012-2013.

56. It is disappointing to see that World Athletics wishes to re-litigate the case against the Athlete with respect to the Samples. World Athletics adopts the very same arguments and allegations now as it did in *CAS 2016/A/4486*. The CAS panel in *CAS 2016/A/4486* dismissed World Athletics' claims with respect to the Samples saying that it "*did not find the evidence contained* [in the McLaren Affidavit] *as particularly strong as it relates to the allegations brought in this procedure*" and that it was "*not comfortably satisfied that the evidence presented confirms that the Athlete used other Prohibited Substances at other times during her career*".

57. The principle of *res judicata* is well known. In English law "*it is supported by the famous decision*" in Henderson v Henderson (1843) 3 Hare 100, 67 ER 313, which sets out the public policy rule that prevents a party from advancing matters that should have been addressed in earlier proceedings. The same is true for Swiss law in that once a cause of action has been litigated, it may not be re-litigated. This legal principle is well recognised by CAS jurisprudence: see CAS 2019/A/6483; CAS 2019/A/6636; CAS 2020/A6912; and CAS 2015/A/4026-4033.

58. The award in *CAS 2016/A/4486* was undoubtedly a former binding and final decision, which became final and binding when no party having a right to appeal exercised that right. There is identity of the parties in that the Athlete and World Athletics are parties to both proceedings. There is also identity of the object and cause. The very same allegations with respect to the Samples have already been brought by World Athletics against the Athlete and were adjudicated by the CAS panel in *CAS 2016/A/4486*. World Athletics sought the very same result in that case: to strip the Athlete of her medal in the London Olympic Games.

59. A party to a CAS proceeding should not be allowed to re-open a case in order to file evidence which the party renounced to collect and file in the previous proceedings. It would be contrary to the principle of good faith to do so. Nor is it open to World Athletics to seek to revise the award in CAS 2016/A/4486. As a matter of CAS jurisprudence (CAS 2008/A/1557) it is only open to parties to revise an award if the request is made to the arbitral tribunal directly. In that situation, the requesting party must show that new, relevant facts or evidence have arisen which the party was unable to produce at the time, through no fault of their own.

60. For this proceeding, World Athletics adduces: the LIMS documents, the very same documents attached to the McLaren Affidavit; the statement from WADA I&I but it contains nothing new; Dr Rodchenkov's statement, which provides no specific details with respect to the alleged ADRV; and Prof. Ayotte's report. None of this material is new.

61. World Athletics "*could easily*" have called Dr Ayotte and Dr Rodchenkov as witnesses in the previous proceedings, but failed to do so. The Athlete suspects that World Athletics did not do so because, upon re-testing the Samples no traces of any prohibited substances were found.

62. The CAS panel in CAS 2016/A/4486 "*confirmed unanimously*" that they were not satisfied that the Athlete committed any ADRV in July 2012; they said they were "*not comfortably satisfied that the evidence presented confirms that the Athlete used other Prohibited Substances at other times during her career*". The CAS panel could not have been clearer, and its findings of facts and law are final and binding on World Athletics.

63. For all these reasons, the Sole Arbitrator was wrong when she dismissed the Athlete's arguments on *res judicata* in the Appealed Decision. It is "*absolutely clear*" that World Athletics' claims in this matter and in CAS 2016/A/4486 are identical and should be "*dismissed due to res judicata*",

The ADRV

64. Should the charges not be dismissed as *res judicata*, the Athlete submits that, nevertheless, World Athletics has not discharged its burden of proving that, to the comfortable satisfaction of the Panel, the Athlete committed the alleged ADRV. The Athlete's submissions in this respect may be summarised as follows:

a. No information in respect of the Samples has ever been included in ADAMS.

b. The "*cornerstone*" of any ADRV involving a positive doping control sample is to prove that the athlete "*actually provided the sample in question*". Otherwise the sample carries no weight since it could belong to anyone, and the analytical results of any such sample are not reliable evidence.

c. The only reliable document that links a sample to a specific athlete is a doping control form ("**DCF**") signed by the athlete. Here, there is no DCF, and no evidence that the Samples, if they existed, belonged to the Athlete.

d. Even if the content of the reports prepared by WADA I&I were acted as "*genuine and truthful*", there is no indication in the documents that the Samples contained any prohibited substance. A PAAF is only a preliminary result of an analysis of a sample and only when a confirmation procedure is carried out on the sample can a tribunal consider whether the sample contains any prohibited substance or not. This was confirmed by Prof. Ayotte. In this case the PAAFs were never confirmed and World Athletics has failed to provide "*any reliable and/or underlying evidence in support of its allegations against the Athlete*".

e. The fact that the data from the 2015 LIMS and the 2019 LIMS are not consistent "*and some unauthorised changes have been made by some unknown persons*" to the former does not amount to "*real and effective*" confirmation that the Samples did contain prohibited substances and that they were linked to the Athlete.

f. The washout schedules have been proven in some individual cases to "*contain wrong information*" (see CAS 2021/O/8160).

g. The charge should therefore be "*dropped*".

Relief

65. The Athlete, by her Appeal Brief, sought the following relief:

"123. The Appellant (the Athlete) hereby respectfully requests the Panel to rule as follows:

i. This appeal of Ms. Ekaterina Guliyev is admissible.

ii. The appeal of Ms. Ekaterina Guliyev is upheld.

iii. The CAS award in CAS 2023/O/9505 is set aside.

iv. The World Athletics' Request for arbitration against Ms. Ekaterina Guliyev be dismissed in its entirety.

v. The arbitration costs shall be borne by World Athletics.

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

B. World Athletics' Submissions

Res Judicata

66. World Athletics submits that the Athlete's argument on *res judicata* is "*meritless*" and that it was rightly rejected by the Sole Arbitrator. The submissions of World Athletics in this respect may be summarised as follows.

a. In order for *res judicata* to apply, the claims in dispute in two different proceedings must be identical which requires a so-called "*triple identity*": identity of the parties, identity of the object of the claim, and identity of the facts on which the claim is based: see CAS 2016/A/4408 (para. 81) and CAS 2019/A/6636 (para.120).

b. There can be no *res judicata* for matters that a panel decided not to address in its decision, even if such matters were brought before the panel: see CAS 2019/A/6483 (para. 123).

c. It is important to recall the content and history of the previous charge: as was set forth in the Charge Letter the object and underlying facts of the charge related to the use oxandrolone in 2014, peptides in 2013 and EPO in 2012; and the charge was based on a secretly produced recording of the Athlete's oral admissions in this respect. It was this charge that was the subject of the earlier proceedings.

d. Shortly before the oral hearing in CAS 2016/A/4486, World Athletics submitted further evidence that the Athlete had used prohibited substances, namely the McLaren Affidavit.

e. The CAS panel in CAS 2016/A/4486 decided to admit the McLaren Affidavit but attributed "*very little weight to it*"; and the panel concluded that it was

comfortably satisfied that the Athlete had used oxandrolone in 2014 but was not so comfortably satisfied with respect to the use of peptides in 2013 and EPO in 2012. In so deciding, the panel did not mention the use of the prohibited substances that are the subject of the present charge, namely boldenone, ATF and DHEA.

f. World Athletics made clear at the time that it adduced the McLaren Affidavit in the earlier proceeding in order to provide additional evidence to support the allegation that the Athlete used prohibited substances. World Athletics did not amend the charge that was subject of the earlier proceedings.

g. The Sole Arbitrator was therefore correct to find that the Samples were used only to corroborate the Athlete's involvement in illegal doping practices and were not pursued as independent ADRVs.

h. The charge that is the subject of the current proceedings is based on the following evidence: (a) the EDP evidence; (b) a copy of the 2015 LIMS (which was only received by World Athletics in December 2017) and the Moscow data (which was made available to World Athletics in January 2019). None of this evidence was available at the time of the 2016 proceedings.

i. World Athletics cannot be prevented from prosecuting a case based on such substantial compelling evidence which was only made available to World Athletics at a later stage.

j. The Athlete's arguments are unattractive and opportunistic.

The ADRV

67. The ADRV arises in the context of the Russian doping scheme (now described above).

68. The evidence against the Athlete in respect of the charge in this appeal is as follows.

69. Sample 1:

a. On 17 July 2012, the Athlete was subject to an out-of-competition urine doping control, as recorded in the DCF of the same date.

b. The 2015 LIMS indicates that boldenone and ATD were found in the sample and a T/E ratio of 4.5 was also recorded.

c. Sample 1 was recorded in the London Washout Schedules as follows:

8971	*2727526*	*F*	*17/07/2012*	*dehydroepiandrosterone, androstenedione (500 ng/ml), boldenone (20ng/ml)*

d. DHEA is endogenous anabolic steroid prohibited under S1.1.b of the 2012 WADA Prohibited List. ATD belongs to the Hormone and Metabolic Modulators prohibited under S4.1 of the 2012 WADA Prohibited List. Boldenone is an exogenous anabolic steroid prohibited under S1.1.a of the 2012 WADA Prohibited List.

e. Sample 1 was reported as negative in ADAMS by the Moscow Laboratory.

70. Sample 2:

a. On 25 July 2012, the Athlete was subject to an out-of-competition urine doping control, as recorded in the DCF of the same date.

b. Sample 2 was recorded in the London Washout Schedules as follows:

9253	*2727501*	*F*	*Moscow*	*25/07/2012*	*possibly dehydroepiandrosterone; the order was for EPO but it's not ready yet*

c. DHEA is endogenous anabolic steroid prohibited under S1.1.b of the 2012 WADA

d. Sample 2 was reported as negative in ADAMS by the Moscow Laboratory.

71. The Athlete's name also appears on the Moscow Washout Schedules as from July-August 2013 including as follows:

Poistogova 17/07		*T/E 0.9 prohormones*
Poistogova 25/07	*parallel representation*	*T/E 0.5 clear*

72. Rule 32.2(b) of the 2012 Rules forbids the "*Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method*". Use may be established by any reliable means, per Rule 33.3 of the 2012 Rules.

73. In this case, the evidence of use is compelling:

a. The London Washout Schedules record that DHEA, ATD, and boldenone were detected in the Athlete's sample taken on 17 July 2012. The 2015 LIMS also record ATD and boldenone; and note a high T/E ratio of 4.5. This sample was "*falsely recorded*" as negative in ADAMS.

b. The evidence of Prof. Ayotte is that this is consistent with the use of ATD, which metabolises into boldenone, and that it is not surprising that DHEA was found given that DHEA is often contained in ATD supplements. Prof. Ayotte also explains that the use of DHEA explains the high T/E ratio found in the Samples, which are outside the range of normal values for female athletes.

c. It is significant that the detection of ATD and boldenone comes from two different analytical procedures, on two different instruments, by two different analysts.

d. The positive results appear in the London Washout Schedules which related to athletes whose doping was monitored prior to the London Olympic Games in an attempt to avoid a positive test during the event.

e. Dr Rodchenkov has a specific recollection of discussions on doping protocols with the Athlete's coach, Mr Telyatnikov, in 2012 and 2013; he also says that he conducted unofficial analyses of urine samples provided by Mr Telyatnikov. In addition, a number of athletes coached by Mr Telyatnikov have been found guilty of doping.

f. It bears recalling the lengths to which the Russian authorities went to cover-up the Athlete's doping:

   i. The Athlete was part of the washout program for the London Olympic Games. Her samples were automatically recorded in ADAMS as negative. A T/E ratio of 3.5 was also recorded in ADAMS instead of the 4.5 that was recorded in LIMS, which would have required further analysis.

   ii. As part of the cover-up, the Athlete's data was deleted from the 2015 LIMS and the Athlete's chromatograms were manipulated to make them appear negative, and then deleted.

   iii. The Athlete was part of the washout program for the 2013 IAAF Moscow World Championships as shown by the fact that her name appears on the Moscow Washout Schedules on three occasions and her name was found on two raw data files maintained by the Moscow Laboratory, which files had been deleted. This demonstrates that the Athlete provided unofficial urine samples and that the Moscow Laboratory was aware of the athlete who provided the samples, which is highly irregular.

   iv. The Athlete's name was included in the LIMS in relation to a sample collected on 15 June 2014. This is evidence of protection.

Relief

74. World Athletics, by its Answer, sought the following relief:

"57. WA respectfully requests the CAS to rule as follows:

1. The appeal filed by Ms Ekaterina Guliyev is dismissed.

2. The decision in CAS 2023/O/9505 World Athletics v. Russian Athletic Federation & Ekaterina Guliyev dated 28 March 2024 is confirmed.

3. The arbitration costs shall be borne by Ms Ekaterina Guliyev.

4. World Athletics is granted a significant contribution to its legal and other costs."

VI. JURISDICTION

75. Article R47(1) of the CAS Code provides as follows:

"An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body".

76. In this case, Article 13.2.1 of the 2024 Rules provides as follows: "*In cases involving International-Level Athletes or arising from Persons participating in an International Competition, the decision may be appealed exclusively to CAS.*"

77. The Parties do not dispute the jurisdiction of the CAS and, as noted above, confirmed it by signing the Order of Procedure.

78. It follows that the CAS has jurisdiction to decide the appeal, and the Panel so confirms.

79. It is not clear whether the objection of *res judicata* pertains to jurisdiction or to the admissibility of a claim. The Swiss legal literature is of the view that the "*distinction between jurisdiction and admissibility is complex*" (STACHER, Jurisdiction and Admissibility under Swiss Arbitration Law – the Relevance of the Distinction and a New Hope, Bull-ASA 2020, 55 ff.). As a rule of thumb, the questions of whether the competence to decide a dispute in a binding way was transferred from the state-court system to arbitration and whether the matter before the arbitral tribunal is within the scope of the arbitration agreement are issues of jurisdiction, whereas all procedural issues that are non-jurisdictional issues and that may for procedural reason cause the end of the arbitration are admissibility issues.

80. The Panel also notes that the jurisprudence of the Swiss Federal Tribunal ("**SFT**") on this matter is far from clear. In its decision of 14 May 2001, the SFT qualified the issue of *res judicata* as a matter of jurisdiction (*"compétence"* in French) (SFT 127 III 279, 283). The decision states in its relevant parts as follows:

"Quant à l'autorité de chose jugée, ce principe interdit au juge de connaître d'une cause qui a déjà été définitivement tranchée; ce mécanisme exclut définitivement la compétence du second juge"

Free translation: With regard to *res judicata*, this principle precludes a judge from entertaining a case that has already been finally decided; such mechanism definitively excludes the jurisdiction of the second judge.

81. In SFT 136 III 345 (consid. 2.1), the SFT qualified the plea of *res judicata* as a procedural issue and – in the context of an appeal against an arbitral award – examined the matter in light of the public-policy exception in Article 190(2) lit. e of the Swiss Private International Law Act – "**PILA**") only. The SFT stated as follows:

"Das Schiedsgericht verletzt den verfahrensrechtlichen Ordre public, wenn es bei seinem Entscheid die materielle Rechtskraft eines früheren Entscheids unbeachtet lässt oder wenn es in seinem Endentscheid von der Auffassung abweicht, die es in einem Vorentscheid hinsichtlich einer materiellen Vorfrage geäussert hat."

Free translation: The arbitral tribunal violates procedural public policy if, in its decision, it disregards the substantive legal force of an earlier decision or if, in its final decision, it deviates from the opinion it expressed in a preliminary decision with respect to a substantive preliminary issue

82. For the purposes of this appeal, the Panel can leave the above question open. It is clear that this Panel must address the question of *res judicata* be it under the heading "jurisdiction" or "admissibility". The distinction whether a matter pertains to jurisdiction or admissibility is only important when an appeal is filed against an award according to Article 190(2) of the PILA. Here, the party appealing and the SFT must decide which of the limited grounds in Article 190(2) of the PILA they wish to apply. The SFT has stated that not all matters related to admissibility can be revisited under Article 190(2) lit. b of the PILA (lack of jurisdiction) and that lack of jurisdiction is only one of the elements defining the mandate of a panel. Other elements delimiting the mandate of a court or a panel should therefore not be read into Article 190(2) lit. b of the PILA and can only be taken into account in the context of other subsections of Article 190 of the PILA:

"Sur un plan plus général, il ne faut pas perdre de vue que la compétence à raison de la matière et du lieu du tribunal saisi ne constitue qu'une condition de recevabilité parmi d'autres, comme l'existence d'un intérêt digne de protection, la capacité d'être partie et d'ester en justice ou encore l'absence de litispendance et de force de chose jugée (cf. l'art. 59 al. 2 CPC, qui énumère, à titre exemplatif, six conditions de recevabilité, dont la compétence du tribunal [let. b], que l'on désigne communément, sous l'angle négatif, par le terme de fins de non-recevoir). Si une ou des conditions de recevabilité ne sont pas remplies, le tribunal n'entrera pas en matière sur le fond mais prononcera un jugement d'irrecevabilité (HOHL, op. cit., n. 585).

On veillera donc à ne pas assimiler toutes les conditions de recevabilité à l'une d'entre elles - en l'occurrence, la compétence -, sauf à vouloir étendre indûment le pouvoir d'examen de l'autorité de recours dans l'hypothèse, qui se vérifie en droit suisse de l'arbitrage international, où la loi énonce limitativement les griefs susceptibles d'être invoqués dans un recours en matière civile visant une sentence et ne prévoit qu'un seul motif de recours tiré d'une fin de non-recevoir, à savoir le fait pour le tribunal arbitral

de s'être déclaré à tort compétent ou incompétent (art. 190 al. 2 let. b LDIP)." (SFT 4A_394/2017, consid. 4.2.4)

Free translation : On a more general level, it should be borne in mind that jurisdiction by reason of the subject-matter and the place of the court seised is only one condition for admissibility among others, such as the existence of an interest worthy of protection, capacity to be a party and to institute proceedings, or the absence of *lis pendens* and *res judicata* (cf. art. 59 para. 2 CPC, which lists, by way of example, six conditions of admissibility, including the court's jurisdiction [subpara. b], which are commonly referred to, in negative terms, as 'grounds for dismissal'). If one or more of the conditions for admissibility are not met, the court will not enter into the merits of the case but will rule that the claim is inadmissible (HOHL, op. cit., n. 585).

Care must therefore be taken not to assimilate all the conditions of admissibility to one of them - in this case, jurisdiction -, without wishing to unduly extend the review authority's power of review in the event, as is the case in Swiss international arbitration law, where the law sets out an exhaustive list of the complaints that may be raised in an appeal in civil matters against an award and provides for only one ground of appeal based on a plea of inadmissibility, namely the fact that the arbitral tribunal has wrongly declared itself competent or incompetent (Art. 190 al. 2 let. b PILA).

83. In view of the above, this Panel will address the issue of *res judicata* not under the heading jurisdiction but in the context of admissibility.

VII. ADMISSIBILITY

A. Res Judicata

84. As noted above, one of the Athlete's principal contentions is that this claim should be dismissed on the basis that, pursuant to the legal principle of *res judicata*, the charges now brought against the Athlete were the subject of and were determined by the award delivered by the panel in the CAS 2016/A/4486 proceedings.

85. *Res judicata* may be defined in this way: A *res judicata* is a decision, pronounced by a tribunal having jurisdiction over the cause and the parties, that disposes once and for all the matter(s) so decided, such that, except on appeal, it cannot be relitigated between the same parties (or their privies). It has been said that it is a portmanteau term used to describe a number of different legal principles with different origins.

1. Applicable Law

86. Different legal systems treat the principle of *res judicata* in different ways but, as a matter of Swiss law, *res judicata* is regarded as a procedural public policy issue (see Article 59(II)(e) of the Swiss Code of Civil Procedure; SFT 121 III 474 of 3 November 1995, consid. 2); and see SFT 127 III 279 of 14 May 2001, reason 2b); SFT 136 III 345 of 13 April 2010, consid. 2.1). In addition, it is the long-standing practice of the SFT that the issue of *res judicata* is to be determined by the law of the forum (SFT 140 III

278, consid. 3.2; Girsberger/Voser, International Arbitration, 5th ed. 2024, no. 1452), i.e. Swiss law.

2. Scope of res judicata

87. As to the scope of the *res judicata* effects, the SFT follows the doctrine of "*limitierte Wirkungserstreckung*" or "*effect exécutoire controlee*" (GIRSBERGER/VOSER, International Arbitration, 5th ed. 2024, no. 1456). According to this doctrine the effects of the award in question must – in a first step – be determined according to the law governing the award. In case the latter is a foreign law, the SFT limits the effects of the decision to the effects had the decision been issued by a Swiss court. Since the award in the matter CAS 2016/A/4486 is an award governed by the PILA, this takes the Panel to Swiss law.

3. Identity

88. As a matter of Swiss law and practice, in order for the principle to apply the dispute brought before a Swiss arbitral tribunal (or court for that matter) must be identical to one that has already been decided in earlier proceedings. This requirement of identity is fulfilled if the so-called "triple identity test" is satisfied: that is, if the same parties submit the same claim(s) based in the same facts in both proceedings, see SFT 140 III 278 of 27 May 2014, consid. 3.3.

89. As to these identities (see GIRSBERGER/VOSER, International Arbitration, 5th ed, 2025, at paras. 1470 et seq; CAS 2016/A/4408 at para. 81; CAS 2019/A/6636 at para. 120):

a. As to parties: The principle only extends to individuals and legal entities (or their successors in law) that have been parties in the earlier proceedings.

b. As to claims: The subject matter of the two claims must be identical, i.e., the claim (or counterclaim) advanced by the parties must be the same from an objective and subjective point of view (when regarded as a matter of substance and not form).

c. As to facts: The principle will prevent a party from challenging the outcome of an award / court decision based on any facts that existed at the time of the earlier award. This is so regardless of whether the parties were aware of those facts, whether such facts were put forward in the earlier matter, or whether the first tribunal considered them as proven. The principle will ***not*** however apply where the later claim is based on circumstances that have changed after the moment in time when it was no longer open to the parties to allege new facts or adduce new evidence in the earlier matter.

4. Application of the above principles to the case a hand

90. In this appeal, the task therefore for the Panel is to form an assessment of the presence, or not, of these three identities.

91. The first is straightforward: It is common ground that the Parties were parties in the earlier proceeding and it matters not whether they were claimant or appellant or respondent. The identity of parties is therefore satisfied.

92. The next question the Panel needs to assess is whether the claims are identical.

93. The matter in dispute / 'claim' in the earlier proceeding, i.e., CAS 2016/A/4486, was a charge dated 8 August 2015 by World Athletics (then called IAAF) that the Athlete (then called Ms Poistogova) had committed ADRVs by the use (or attempted use) of certain prohibited substances – namely oxandrolone in 2014, peptides in 2013 and EPO in 2012. This was the claim as articulated in the Charge Letter dated 8 August 2015 and in the formal "Request for Arbitration of the IAAF" dated 8 March 2016. This was the 'claim' that was heard and determined by the CAS panel in the arbitration proceedings CAS 2016/A/4486.

94. In order to determine the scope of *res judicata* of CAS 2016/A/4486, it is not decisive what matter in dispute / 'claim' has been submitted to the panel / court, but what said panel / court has actually decided. Thus, even if the panel took a wrong decision and decided beyond the matter in dispute, the *res judicata* effects would cover the full decision. By a majority, the Panel finds that the arbitral tribunal in CAS 2016/A/4486 only decided on the 'claim' submitted to it by World Athletics (then called IAAF) and did not decide *ultra petita*. It is true that World Athletics submitted in the proceedings CAS 2016/A/4486 the McLaren Affidavit that (also) referred to the two samples forming the matter in dispute in these proceedings. It is also true that the arbitral tribunal in CAS 2016/A/4486 accepted the McLaren Affidavit on file. However, by admitting the McLaren Affidavit into evidence, it neither explicitly nor implicitly changed the matter in dispute before it. This clearly follows from para. 111 of the award in CAS 2016/A/4486, in which the panel questioned the relevance of the McLaren Affidavit for the 'claim' before it. The Panel is not prepared to interpret the conclusions of the panel in CAS 2016/A/4486 in any different way.

95. It is true that the CAS panel in CAS 2016/A/4486 at para. 118 said that *"The Panel is, in contrast, not comfortably satisfied that the evidence presented confirms that the Athlete used other Prohibited Substances at other times during her career (i.e. EPO in 2012 and Peptides in 2013)."* However, for the majority of the Panel it clearly follows from the words in the brackets that this determination is limited to the charges brought forward in those proceedings against her and not to anything else.

96. By a majority, the Panel takes the view that, in this appeal, the 'claim' is that the Athlete committed an ADRV by using prohibited substances – namely boldenone, ATD and DHEA on (or about) 17 and 25 July 2012. It is obvious therefore that the claim advanced in the present appeal is not identical to that advanced by World Athletics, and defended by the Athlete, in the earlier proceedings. The two 'claims' in the two proceedings are separate and distinct such that there is no identity of claims – and therefore no room for the application of the principle of *res judicata*.

97. For the majority of the Panel, it is therefore unnecessary to consider the question further and to ask whether the facts are identical. Nevertheless, even bearing the breadth of what is said above in relation to what will be regarded as identical facts for this purpose,

it is immediately apparent that a number of the factual matters on which World Athletics relies in this proceeding were not existing facts at the time of the earlier proceedings, even if undiscovered. A ready, and rather important, example is that on 30 October 2017 WADA I&I received from a whistleblower a copy of the 2015 LIMS and in January 2019 the 2019 LIMS was made available to WADA by RUSADA. It was only on the review of these two data sources was WADA able to understand the fact that the 2015 LIMS had been manipulated and that the 2019 LIMS was a fraudulent attempt to deceive the doping authorities, WADA included.

98. In the result, therefore, the Panel (by a majority) concludes there is no identity between the earlier CAS 2016/A/4486 proceedings and the present appeal so that there is no scope for the application of the principle of *res judicata*. That being so, the claim advanced by World Athletics in these proceedings (albeit as Respondent to this appeal) is not rendered inadmissible.

B. Deadline to Appeal

99. Article R49 of the CAS Code provides in relevant part as follows:

"In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against."

100. According to Article 13.6.1 of the 2024 Rules:

"13.6.1 Appeals to CAS

(a) The time to file an appeal to the CAS will be thirty (30) days from the date of receipt of the reasoned decision by the appealing party. Where the appellant is a party other than World Athletics or WADA, to be a valid filing under this Rule 13.6.1, a copy of the appeal must be filed on the same day with World Athletics."

101. The Appealed Decision was issued and notified to the Athlete on 28 March 2024.

102. The Athlete lodged her Statement of Appeal with CAS on 26 April 2024 such that it was submitted before the close of the 30-day deadline. The appeal therefore complied with the requirements of Article R49 of the CAS Code. There is, in any event, no objection by World Athletics with respect to the admissibility of the appeal.

103. In the circumstances, the Panel confirms that the appeal is not time-barred and is admissible

VIII. APPLICABLE LAW

104. Article R58 of the CAS 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 the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".

105. It is common ground that the applicable regulations in these appeals are: (a) substantively, the 2012 Rules; and (b) procedurally 2024 Rules.

106. The Panel will therefore apply those rules primarily, and the laws of Monaco shall be applied subsidiarily, it being the country in which World Athletics is domiciled.

IX. THE MERITS

107. As to the merits, two questions arise: (a) did the Athlete commit and ADRV as alleged?; and (b) if so, what are the consequences?

A. The Legal Framework

108. The Athlete has been charged with an ADRV under Rule 32.2(b) of the 2012 Rules. Rule 32.2(b) of the 2012 Rules provides as follows:

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

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

(ii) the success or failure of the use or Attempted use of a Prohibited Substance or Prohibited Method is not material. It is sufficient that the Prohibited Substance or Prohibited Method was used, or Attempted to be used, for an antidoping rule violation to be committed."

109. "Use" is defined in the 2012 Rules as: *"the utilisation, application, ingestion, injection or consumption by any means whatsoever of any Prohibited Substance or Prohibited Method"*.

110. Those are the substantive matters in respect of the alleged ADRV.

111. As to the related matters, such as burden and standard and means of proof, these are stipulated in the 2024 Rules (albeit without material change from the language in the 2012 Rules) as follows:

"Burdens and Standards of Proof

The Integrity Unit or other Anti-Doping Organisation will have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof will be whether the Integrity Unit or other Anti-Doping Organisation has established an

anti-doping rule violation to the comfortable satisfaction of the hearing panel, bearing in mind the seriousness of the allegation that has been made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt. Where these Anti-Doping Rules place the burden of proof upon the Athlete or other Person alleged to have committed an antidoping rule violation to rebut a presumption or establish specified facts or circumstances, except as provided in Rules 3.2.3 and 3.2.4, the standard of proof will be by a balance of probability."

112. It is therefore clear that World Athletics bears the burden of establishing that an ADRV has occurred and must do so to the comfortable satisfaction of the Panel, bearing in mind the seriousness of the allegation.

113. As to the methods of establishing the facts said to support the alleged ADRV, Rule 3.2 of the 2024 Rules is in the following terms:

"Methods of establishing Facts and Presumptions

Facts related to anti-doping rule violations may be established by any reliable means, including admissions.

[Comment to Rule 3.2: For example, the Integrity Unit may establish an anti-doping rule violation under Rule 2.2 (Use of a Prohibited Substance or Prohibited Method) based on the Athlete's admissions, the credible testimony of third Persons, reliable documentary evidence, reliable analytical data from either an A or B Sample as provided in the comments to Rule 2.2, or conclusions drawn from the profile of a series of the Athlete's blood or urine Samples, such as data from the Athlete's Biological Passport.]"

114. The import of this language was explained in CAS 2021/A/8012 at para. 129 as follows:

"It is important to understand what this rule means. It is not, as was submitted by the Parties, a requirement that the evidence adduced be 'reliable evidence' (whatever that might mean). Rather, it is a rule as to the method or manner or form in which the facts that are necessary to sustain an allegation of an ADRV may be established -- and the rule provides (in a non-exhaustive list) a number of examples of means of establishing facts which are characterised as 'reliable'. In the great majority of cases the parties will deploy only reliable means in that, in the great majority of cases, the parties will seek to establish the facts by one or other of reliable means set forth in the rule itself and only by those means."

B. Liability

115. World Athletics has charged the Athlete with Use of a Prohibited Substance. The charge arises out of the Russian doping scandal, which has been described above. In this regard, consistent with various other CAS decisions (see, e.g., CAS 2021/A/7840 at para. 107) and with the course taken by the Sole Arbitrator in the Appealed Decision, the Panel proceeds on the basis that the McLaren Reports represent a fair and accurate account of the Russian doping scheme and its constituent elements, including Washout Testing Program, which have been described in some detail above and do not require repeating

here. This is all the more-so because, as the Appealed Decision rightly noted, there was no suggestion on the part of the Athlete that there was no such Russian doping scheme.

116. World Athletics relies upon the following specific evidence in support of the alleged ADRV: (a) the 2015 LIMS; (b) the London Washout Schedules; (c) the Moscow Washout Schedules; (d) the report of WADA I&I; (e) the testimony of Dr Rodchenkov; and (f) the expert opinion of Prof. Ayotte.

117. Each of these is, in the Panel's view, a reliable *means* of evidence, being reliable documentary evidence and/or credible testimony from third persons. It is a matter therefore for the Panel to assess this evidence and form a view as to whether or not it establishes the alleged ADRV to the comfortable satisfaction of the Panel.

118. In this case, there is no direct evidence of use by the Athlete – all the evidence is circumstantial. The Panel must therefore have regard to what is sometimes called "the cumulative weight" of the evidence (as described in CAS 2015/A/4059 as follows: *"It is in the nature of circumstantial evidence that single items of evidence may each be capable of an innocent explanation but, taken together, establish guilt beyond reasonable doubt."* See also CAS 2018/O/5713: *"One strand of the cord might be insufficient to sustain the weight, but three stranded together may be quite of sufficient strength. Thus it may be in circumstantial evidence - there may be a combination of circumstances, no one of which would raise a reasonable conviction, or more than a mere suspicion: but the whole taken together, may create a strong conclusion of guilt, that is, with as much certainty as human affairs can require or admit of."*

119. The Panel agrees with and adopts that same approach here. It is important to assess the cumulative weight of the evidence adduced in order to decide whether or not, to its comfortable satisfaction, there has been a violation of Article 32.2 of the 2012 Rules in respect of each of the Samples.

120. Sample 1

121. On 17 July 2012, the Athlete was subject to an out-of-competition urine doping control, as recorded in the DCF of the same date.

122. Sample 1 was recorded in the 2015 LIMS and was noted as being positive for boldenone and ATD. (It was also noted that there was a T/E ratio of 4.5. (A T/E ratio is the ratio, in a sample of urine, of testosterone and epitestosterone (the natural isomer of testosterone).)

123. The only challenge to the 2015 LIMS by the Athlete was the suggestion that, because the data from the 2015 LIMS and the 2019 LIMS are not consistent and that "*unauthorised changes*" had been made to the LIMS by *"unknown persons*", there is no "*real and effective*" confirmation that the Samples did contain prohibited substances and that they were linked to the Athlete.

124. But there is no reason, in the Panel's view, not to accept this evidence at its face value. It shows that the Athlete, as at the date of the sample, was using boldenone and ATD, each a prohibited substance. Nor is there any reason to think that the sample was not

that of the Athlete. The DCF records the taking of Sample 1, ascribes a sample number of 2727526, and bears the signature of the Athlete, and the 20015 LIMS records the analytical findings for that same sample. Moreover, there was no suggestion by the Athlete that she did not provide this sample.

125. True it is that the Moscow Laboratory did not undertake a confirmation procedure or record the PAAF in ADAMS at the time but that was a feature of the Russian doping scheme. So was the deletion, or attempted deletion, of the analytical PDFs in respect of the sample but, as explained by WADA I&I, forensic experts recovered a version of these PDFs which showed that the original chromatograms which had confirmed the presence of ATD had been removed and replaced ("*cut and paste*") in an effort to convert the positive indication to a negative one. All of this explained, with some care, in the WADA I&I report and by Mr Walker at the hearing before the Sole Arbitrator in procedure *CAS 2023/O/9505*, and supported by the expert evidence of Prof. Ayotte.

126. The evidence of use in the 2015 LIMS is corroborated by the London Washout Schedules deployed in advance of the 2012 London Olympic Games (as described above). Sample 1 was recorded in the London Washout Schedules (see above) with its sample number 2727526, with a note that the sample was provided by a female athlete on 17 July 2012, and that ATD and boldenone were found (together with DHEA, also a prohibited substance). This shows that the Athlete participated in the Washout Testing Program ahead of the 2012 London Olympics in an effort to assess the elimination profile of the prohibited substances she was using at the time in an attempt to dope undetected. This is, of course, against the backdrop of the Russian doping scheme as described above.

127. It is common ground that ATD belongs to the Hormone and Metabolic Modulators prohibited under S4.1 of the 2012 WADA Prohibited List; and that boldenone is an exogenous anabolic steroid prohibited under S1.1.a of the 2012 WADA Prohibited List.

128. With respect to Sample 1, therefore, the Panel is comfortably satisfied that the evidence relied upon establishes the alleged ADRV.

129. <u>Sample 2</u>

130. On 25 July 2012, the Athlete was subject to an out-of-competition urine doping control, as recorded in the DCF of the same date.

131. Sample 2 was not recorded in the 2015 LIMS or ADAMS but was recorded in the London Washout Schedules and the Moscow Washout Schedules, each of which corroborates use.

132. As to the former, the London Washout Schedules recorded the sample number, that the sample was provided by a female athlete, that the sample was taken on 25 July 2012 and that it "*possibly contained*" DHEA. As to the latter, the Moscow Washout Schedules record, with respect to Sample 2, that the Athlete underwent a test on 25 July 2012, that there was "*parallel representation*" and that her T/E ratio was 0.5 and "*clear*". As explained by the WADA I&I, the reference to parallel representation denotes that the Athlete was then participating in the Washout Testing Program by providing both

unofficial and official samples for the Moscow Laboratory to analyse and that the view was taken by the laboratory that, given the results of her unofficial sample, she was unlikely to test positive and so was sent off to RUSADA to undergo an official test.

133. The immediate difficulty with these entries is that they do not, of themselves, establish use of the DHEA: the uncertain analysis recorded in the London Washout Schedules that the sample "*possibly contained*" DHEA is not enough to sustain with the necessary burden of proof (comfortable satisfaction) the allegation of use with respect to this sample, and the entry in the Washout Schedules goes to show only that the Athlete participated in the Washout Testing Program at that time.

134. In this respect, in the Appealed Decision the Sole Arbitrator took the view that such use was corroborated by other matters and that she was comfortably satisfied that the allegation of use of DHEA was established. The corroborating evidence relied upon by World Athletics and accepted by the Sole Arbitrator is as follows.

a. The London Washout Schedules recorded Sample 1 as containing DHEA. This sample was taken eight days prior to the taking of Sample 2 (i.e., 17 July and 25 July 2012, respectively).

b. The 2015 LIMS recorded an abnormally high level of testosterone (at 58 ng/mL), albeit lower than the level recorded for Sample 1 (108 ng/mL). This decrease in concentration is explicable by degradation in the interim period between the two samples.

c. These elevated levels far outweigh the levels found in other samples from the Athlete, which ranged from 8 ng/mL to 28 ng/mL.

d. According to Prof. Ayotte, the explanation for this is that DHEA has been shown to increase, transiently, the excretion of testosterone and its ration to epitestosterone in females "*which could explain the higher T concentration*".

e. There is no other explanation by the Athlete for the sharp increase in testosterone in Sample 2.

f. Given that DHEA was found in Sample 1, and the short interval of eight days between Sample 1 and Sample 2, it is probable that the DHEA that was "possibly" identified in Sample 2 was the cause for the elevated testosterone in Sample 2.

135. With great respect to the Sole Arbitrator, the Panel disagrees. The Panel accepts that the matters relied upon by the Sole Arbitrator do provide some measure of corroboration for the use by the Athlete of DHEA on or about 25 July 2012. In the Panel's view, however, the corroboration does not go far enough. The starting position is that the analysis of the sample is altogether uncertain – the sample may have possibly contained DHEA, and the entry in the Moscow Washout Schedules takes matters no further. In the Panel's view, this uncertainty is not alleviated by the matters relied upon to bolster the determination of use; in particular, putting Prof. Ayotte's evidence at its highest, the presence of DHEA in both samples "*could explain*" the elevated testosterone found in

both samples, that tentative conclusion reached by her in reliance upon what appears to be an uncited scientific paper correlating DHEA and elevated testosterone. In the Panel's view that is not enough to meet the raised standard of comfortable satisfaction; there is too much uncertainty as to both the presence and use by the Athlete of the DHEA as alleged. It is right to say that it is a possibility that the DHEA and the elevated testosterone are related but the Panel is unable to say that there is a causal relation between the two and/or that latter is only to be explained on this basis in this appeal.

136. Nor are matters improved when the evidence of Dr Rodchenkov is taken into consideration (in the form of a witness statement dated 18 April 2023 and his oral testimony before the Sole Arbitrator in procedure *CAS 2023/O/9505*, the transcript of which the Panel has read). The difficulty with this evidence is that there is little if anything from Dr Rodchenkov in relation to the specific allegations of use advanced by World Athletics against the Athlete. He gave a generalised account of the Russian doping scheme with an eye towards the 2012 London Olympic Games and the 2013 IAAF World Championships but did not, in the main, condescend to any detail in relation to the Athlete.

137. With respect to Sample 2, therefore, the Panel is not comfortably satisfied that the evidence relied upon establishes the alleged ADRV.

138. Conclusion

139. In the result, the Panel is of the clear view that World Athletics has established, to the Panel's comfortable satisfaction, that the Athlete committed a violation of Rule 32.2 of the 2012 Rules by using the prohibited substances, ATD and boldenone.

C. The Consequences

140. What consequences follow?

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

"*The period of Ineligibility imposed for a violation of Rules […] 32.2(b) (Use or Attempted Use of a Prohibited Substances or Prohibited Method) […], unless the conditions for eliminating or reducing the period of Ineligibility as provided in Rules 40.4 and 40.5, or the conditions for increasing the period of Ineligibility as provided in Rule 40.6 are met, shall be as follows:*

First Violation: Two (2) years' Ineligibility."

142. Rule 40.6 of the 2012 Rules, which addresses aggravating circumstances, is in the following terms:

*"**Aggravating Circumstances which may increase the Period of Ineligibility***

6. If it is established in an individual case involving an anti-doping rule violation other than violations under Rule 32.2(g) (Trafficking or Attempted Trafficking) and Rule

32.2(h) (Administration or Attempted Administration) that aggravating circumstances are present which justify the imposition of a period of Ineligibility greater than the standard sanction, then the period of Ineligibility otherwise applicable shall be increased up to a maximum of four (4) years unless the Athlete or other Person can prove to the comfortable satisfaction of the hearing panel that he did not knowingly commit the anti-doping rule violation.

(a) Examples of aggravating circumstances which may justify the imposition of a period of Ineligibility greater than the standard sanction are: the Athlete or other Person committed the antidoping rule violation as part of a doping plan or scheme, either individually or involving a conspiracy or common enterprise to commit anti-doping rule violations; the Athlete or other Person used or possessed multiple Prohibited Substances or Prohibited Methods or used or possessed a Prohibited Substance or Prohibited Method on multiple occasions; a normal individual would be likely to enjoy performance-enhancing effects of the anti-doping rule violation(s) beyond the otherwise applicable period of Ineligibility; the Athlete or other Person engaged in deceptive or obstructing conduct to avoid the detection or adjudication of an anti-doping rule violation. For the avoidance of doubt, the examples of aggravating circumstances referred to above are not exclusive and other aggravating factors may also justify the imposition of a longer period of Ineligibility. […]".

143. As noted above, the Panel is here concerned with one ADRV, that of use of a prohibited substance with respect to Sample 1. In this respect, it was accepted (indeed, advanced) by World Athletics that the ADRV in this appeal and the ADRV committed in 2014 (i.e., the subject of the CAS 2016/A/4486 proceedings) should be considered together as one single first violation under the 2012 Rules and that the period of ineligibility imposed in those earlier proceedings should be credited against any period of ineligibility imposed by the Panel in this appeal.

144. Before the Sole Arbitrator in CAS 2023/O/9505, World Athletics submitted that there were a number of aggravating factors to be taken into account and whilst World Athletics does not make the same submissions in the appeal it does seek confirmation of the Sole Arbitrator's award in all respects. It follows that it is necessary for the Panel to consider whether there are aggravating circumstances here and whether, if so, the period of ineligibility is to be increased to a maximum of four (4) years.

145. The matters relied upon by World Athletics as aggravating circumstances were (and are) as follows:

a. The Athlete was part of a sophisticated doping scheme, namely the Washout Testing Program. This washout testing was carried out in the run up to the most important event in international athletics. Its aim was to ensure that the athletes sent to the competition would not test positive.

b. The Athlete's protection was heavy and lasted a number of years, as her participation in washout programs in 2012, 2013 and 2014 shows.

c. A number of prohibited substances were recorded in the LIMS and London Washout Schedules in relation to samples of the Athlete.

d. The Athlete committed the 2014 ADRV is in itself an additional aggravating factor per Rule 40.7(d)(i) of the 2012 Rules.

146. In the Appealed Decision, the Sole Arbitrator accepted that these circumstances were "aggravating circumstances" in the sense of Rule 40.6 of the 2012 Rules, and the Panel agrees. The Panel also agrees that, in light of the severity and multiplicity of these aggravating circumstances, it is appropriate to impose a period of ineligibility of four (4) years.

147. Rule 40.10 of the 2012 Rules regarding the commencement of the Ineligibility Period stipulates as follows:

*"**Commencement of Period of Ineligibility***

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

(a) Timely Admission: where the Athlete promptly admits the antidoping rule violation in writing after being confronted (which means no later than the date of the deadline given to provide a written explanation in accordance with Rule 37.4(c) and, in all events, before the Athlete competes again), the period of Ineligibility may start as early as the date of Sample collection or the date on which another anti-doping rule violation last occurred. In each case, however, where this Rule is applied, the Athlete or other Person shall serve at least one-half of the period of Ineligibility going forward from the date the Athlete or other Person accepted the imposition of a sanction, the date of a hearing decision imposing a sanction or the date the sanction is otherwise imposed.

(b) If a Provisional Suspension is imposed and respected by the Athlete, then the Athlete shall receive a credit for such period of Provisional Suspension against any period of Ineligibility which may ultimately be imposed.

(c) If an Athlete voluntarily accepts a Provisional Suspension in writing (pursuant to Rule 38.2) and thereafter refrains from competing, the Athlete shall receive credit for such period of voluntary Provisional Suspension against any period of Ineligibility which may ultimately be imposed. In accordance with Rule 38.3, a voluntary suspension is effective upon the date of its receipt by the IAAF.

(d) No credit against a period of Ineligibility shall be given for any time period before the effective date of the Provisional Suspension or voluntary Provisional Suspension regardless of whether the Athlete elected not to compete or was not selected to

compete."

148. For the Panel (by a majority), it follows therefore that the Athlete's period of ineligibility is to start on the date of the Award in the Appealed Decision CAS 2023/O/9505 (i.e., on 28 March 2024) and that, consistent with how World Athletics put its case, the ADRV committed in 2014 (i.e., the subject of the CAS 2016/A/4486 proceedings) should be considered together as one single first violation under the 2012 Rules and that the period of ineligibility imposed in those proceedings should be credited against any period of ineligibility imposed by the Panel in this appeal. The majority of the Panel also notes that the Athlete did not ask for the period of ineligibility to start at any other point in time than 28 March 2024.

149. In relation to the disqualification of results, Rule 40.8 of the 2012 Rules provides as follows:

*"**Disqualification of Results in Competitions Subsequent to Sample Collection or Commission of an Anti-Doping Rule Violation***

8. 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."

150. World Athletics submits that the Athlete's results as from 17 July 2012 (the date of Sample 1) should be disqualified. Two things are immediately apparent. The first is that the literal application of the rule in these circumstances would mean that the Athlete faced disqualification of her results over a period of more than 12 years. The second is that, unlike many anti-doping rules, this rule does not contain an express so-called "fairness exception" by which the strictness of the rule is to be alleviated by an express requirement of fairness.

151. In this respect, the Sole Arbitrator proceeded on the basis that the rule is subject to an over-arching "*general principle of fairness*" consistent with the decisions in a number of CAS awards to that effect, see, e.g., CAS 2016/O/4481, para. 195; CAS 2018/O/5713, para. 71; CAS 2019/A/6167 para. 243 et seq. The Panel has no particular quarrel with that approach but notes that the "fairness exception" does form part of the equivalent rule in the 2024 Rules by the inclusion of the words "*unless fairness requires otherwise*". On an application of the *lex mitior* principle, that language should be applied here to the benefit of the Athlete.

152. As noted by the Sole Arbitrator in the Appealed Decision, a CAS panel enjoys a wide discretion in this respect and may take account of a range of factors in exercising that discretion. The decision is not to rest on any particular factor, but an overall evaluation

of the evidence in support of fairness, including delays in results management, the athlete's degree of fault, sporting results unaffected by the administration of the prohibited substance, significant (financial or sporting) consequences and, in the case of an ADRV based on non-analytical evidence, a long period of time between the commission of the ADRV and the athlete's suspension.

153. In the present case, five days shy of ten years passed between the Athlete's ADRV on 17 July 2012 and World Athletics' notification to the Athlete of a potential ADRV on 12 July 2022. This is plainly a very long time. The delay is, of course, not the fault of World Athletics but nor can it be said to be due to the Athlete -- and the considerable period of time it took for World Athletics (and others) to uncover, investigate, and prosecute ADRVs that were part of the Russian doping scheme cannot weigh in the balance against the Athlete when deciding on the fair period of disqualification.

154. Taking all of these factors into account, and exercising the Panel's broad discretion, the Panel agrees with the position taken by the Sole Arbitrator in the Appealed Decision and takes the view that it is fair to disqualify the Athlete's results from the date of Sample 1, 17 July 2012, until 20 October 2014, that being the day before the disqualification of further results was imposed by the CAS panel in CAS 2016/A/4486. Accordingly, any results obtained by the Athlete between the ADRV found to have been proved in this case and the ADRV that was established in CAS 2016/A/4486 are invalidated.

X. COSTS

(…)

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The Appeal filed on 26 April 2024 by Ekaterina Guliyev against World Athletics is dismissed.

2. The CAS award issued on 28 March 2024 in the procedure CAS 2023/O/9505 is upheld.

3. (…).

4. (…).

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

Seat of arbitration: Lausanne, Switzerland
Award dated: 23 May 2025

James Drake
President of the Panel

Efraim Barak
Arbitrator

Ulrich Haas
Arbitrator