CAS 2024/A/10388 World Anti-Doping Agency (WADA) v. Union Internationale de Pentathlon Moderne (UIPM) & Ilia Frolov

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Ms. Marianne Saroli, Attorney-at-Law in Montreal, Canada
Arbitrators: Prof. Luigi Fumagalli, Attorney-at-Law in Milan, Italy
Mr. Rui Botica Santos, Attorney-at-Law in Lisbon, Portugal

in the arbitration between

World Anti-Doping Agency (WADA), Canada

Represented by Mr. Nicolas Zbinden and Mr. Michael Kottmann, Attorneys-at-Law with Kellerhals Carrard in Lausanne, Switzerland

Appellant

and

Union Internationale de Pentathlon Moderne (UIPM), Monaco

Represented by Mr. Decio Mattei, Attorney-at-Law with Gianni & Origoni in Rome, Italy

First Respondent

and

Ilia Frolov, Russia

Represented by Mr. Sergei Lisin, Attorney-at-Law with Lisin Mishin & Partners in Moscow, Russia

Second Respondent

I. PARTIES

1. The World Anti-Doping Agency (the "Appellant" or "WADA") is a private law foundation constituted under Swiss law in 1999 to promote and coordinate at international level the fight against doping in sport. WADA has its registered seat in Lausanne, Switzerland, and its headquarters in Montreal, Canada.

2. The Union Internationale de Pentathlon Moderne (the "First Respondent" or "UIPM") is the world governing body for the sport of modern pentathlon. It is an association governed by Monegasque law and formed under Law 1355 of 23 December 2009.

3. Mr. Ilia Frolov (the "Second Respondent" or the "Athlete" or "Mr. Frolov") is a retired Russian modern pentathlon athlete, born on 4 April 1984. During his career, he was affiliated with the Russian Modern Pentathlon Federation, a National Federation member of the UIPM.

4. The UIPM and Mr. Frolov are collectively referred to as the "Respondents".

5. WADA and the Respondents are collectively referred to as the "Parties".

II. FACTUAL BACKGROUND

6. Below is a summary of the relevant facts and allegations based on the Parties' written submissions, pleadings and evidence adduced at the in-person hearing held in Lausanne on 14 October 2024. Additional facts and allegations found in the Parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the 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.

A. Introduction

7. This appeal is filed by WADA against the Respondents following the decision of the UIPM Doping Review Panel (the "UIPM Panel") dated 22 January 2024, which acquitted the Athlete on the grounds that *"no sufficient evidence has been provided* […] *regarding the specific charges related to the alleged ADRV in this case."* Specifically, this appeal relates to a sample collected from the Athlete out-of-competition on 9 August 2014, set against the backdrop of the investigation into Russia's state-sponsored doping scheme.

B. Background facts

8. In December 2014, a German broadcaster aired a documentary featuring allegations from whistleblowers, claiming that Russian track and field athletes were systematically doped and that subsequent positive doping tests were covered up. In response, WADA established an independent commission to expand on these allegations.

9. On 9 November 2015, the independent commission issued a report detailing its findings

and recommendations. Based on such report, WADA suspended the accreditation of the Moscow Anti-Doping Centre ("Moscow Laboratory") and declared the Russian Anti-Doping Agency ("RUSADA") non-compliant with the World Anti-Doping Code ("WADC") on 18 November 2015. This also led to the International Association of Athletics Federation (today known as World Athletics) suspending the Russian Athletics Federation.

10. On 12 May 2016, the New York Times published allegations from Dr. Grigory Rodchenkov, the former director of the Moscow Laboratory. Dr. Rodchenkov claimed that the Russian Ministry of Sport had orchestrated a state-sponsored doping scheme between 2011 and 2015 to enhance the performance of Russian athletes. He further alleged that this scheme involved concealing evidence of doping by failing to follow up on or report presumptive adverse analytical findings ("PAAFs") from samples of protected Russian athletes, known as the *"Disappearing Positives Methodology"* (the "DPM") and/or by swapping samples after collection but before analysis.

11. On 19 May 2016, WADA announced the appointment of Prof. Richard McLaren to conduct an independent investigation into these allegations and review the evidence provided by Dr. Rodchenkov, which included thousands of Excel sheets, emails, PDFs and other documents from the Moscow Laboratory. This investigation culminated in two reports issued by Prof. McLaren on 16 July 2016 (the "First McLaren Report") and 9 December 2016 (the "Second McLaren Report") (collectively, the "McLaren Reports"). The First McLaren Report found that there was enough corroborated evidence to support the allegations of the DPM and the existence of a protective system for Russian athletes, a finding that was further expanded upon in the Second McLaren Report. In addition to his McLaren Reports, Prof. McLaren published *"Evidence Disclosure Packages"* ("EDP"), which included evidence collected during his investigation relating to athletes from both summer and winter sports whom he believed were involved in or benefited from the doping scheme.

12. Between the publication of the First and Second McLaren Reports, on 19 July 2016, the International Olympic Committee ("IOC") appointed a disciplinary commission chaired by Mr. Samuel Schmid, former President of the Swiss Confederation, to investigate on the alleged Russian doping manipulations at the 2014 Sochi Olympic Games (the "Schmid Commission").

13. On 2 December 2017, the Schmid Commission issued its report (the "Schmid Report") to the IOC Executive Board ("IOC EB"), finding the existence of *"systemic manipulation of the anti-doping rules and system in Russia"*.

14. On 5 December 2017, the IOC EB suspended the Russian Olympic Committee ("ROC") with immediate effect.

15. On 13 September 2018, the Russian Ministry of Sport, Mr. Pavel Kolobkov, *"fully accepted the decision of the of the IOC of 5 December 2017, which was based on the based on the findings of the Schmid Report"*.

16. On 30 October 2017, WADA's Intelligence and Investigations Department ("WADA I&I") secured from a whistleblower a copy of the Moscow Laboratory's laboratory

information management system ("LIMS") database relating to samples obtained from 2012 to 2015 ("2015 LIMS"). In general terms, a LIMS consists of a system that enables a laboratory to manage samples throughout the analytical process and track the resulting analytical data.

17. In January 2019, WADA I&I gained access to the Moscow Laboratory and took forensic copies of the LIMS database (the "2019 LIMS"), along with the underlying raw data files for the analyses recorded in the LIMS during the relevant years, as well as the corresponding analytical PDF files (the "2019 Files").

C. The charge

18. On 11 May 2022, the UIPM sent the Athlete a *"Notification of the Assertion of Anti-Doping Rule Violations"* (the "Notification"), informing him that an investigation had been conducted by the UIPM and WADA concerning a sample with reference number 2946034 (the "Sample"), which was allegedly provided by him during an out-of-competition control on 9 August 2014. This control was conducted under the RUSADA's testing authority and the Moscow Laboratory's sample collection authority.

19. The Notification stated that the Athlete may have committed an anti-doping rule violation ("ADRV") for the use of prohibited substances, arising out of, *inter alia*, the McLaren Reports, the EDP, the LIMS data from the Moscow Laboratory, and the underlying investigations carried out by the WADA I&I. The specific allegations made by the UIPM in the Notification about the Sample were as follows:

"The analysis of sample number 2946034 (Laboratory Code 10392) conducted by Moscow Laboratory revealed the presumptive presence of Trenbolone, Metenolone and Oxandrolone. The Moscow Laboratory did not report the Adverse Analytical Finding (AAF) and falsely reported the sample "negative" to ADAMS in an attempt to protect you. […]

In 2014, an operative and effective general doping and cover-up scheme1 existed in Russia for Select 'protected' Russian athletes. Such scheme involved a very high number of Russian athletes Up to the point that its existence was admitted by the Russian Minister of Sport in 2018. More specifically, on 9 August 2014, you provided the Sample which was analysed by the Moscow Laboratory.

Following the Initial Testing Procedure (ITP) analysis, in adherence with the Athlete's 'protected' status, the Moscow Laboratory did not conduct the mandated Confirmation Procedure and falsely reported the Sample as 'negative' to ADAMS.

Notably, two of the three detected anabolic steroids, namely oxandrolone and trenbolone, were at concentrations higher than the Minimum required performance level (MRPL). Protection of the Athlete also extended to the targeted and selective manipulation of the Moscow Data and the 2019 Database – to the betterment of the Athlete – prior to its release to WADA by Russian authorities on 17 January 2019.In other words, analytical evidence that the Athlete was using Prohibited Substances was intentionally destroyed and evidence that the Sample was 'negative' was falsely and purposely created. […]*"*

20. The Athlete was further informed of his rights, including the right to request a hearing, and was invited to provide a written explanation of the alleged ADRV.

21. Pursuant to Article 7.7.1 of the 2013 UIPM Disciplinary Rules ("2013 DR"), the Athlete was imposed a provisional suspension with effect from 11 May 2022.

22. On 22 June 2022, the UIPM issued a *"Notice of Charge"* (the "Notice") to the Athlete, informing him that he was being charged with the use or attempted use of a prohibited substance or method, which could constitute an ADRV under Article 1.2.3 of the 2013 UIPM Medical Rules ("2013 MR"). The Notice also outlined the potential consequences, including a two-year period of ineligibility, if the Athlete admitted to or was found to have committed the ADRV.

D. The Proceedings before the UIPM Panel

23. Following repeated postponements of the hearing date due to the impediments of the parties involved, the Athlete submitted a written explanation through his counsel on 17 May 2023. In this explanation, he contested the allegations made against him and the proposed consequences, while requesting to *"(a) dismiss the UIPM charge of ADRV against Mr. Frolov. (b) declare that Mr. Frolov is not guilty of any anti-doping rule violation under the 2013 ADR. (c) declare that no period of ineligibility is imposed on Mr. Frolov. (d) declare that none of Mr. Frolov's results are disqualified".* Along with his explanation, the Athlete submitted, *inter alia*, an expert report from Dr. Doewe De Boer, as well as other documentary evidence.

24. In response, the UIPM submitted as evidence, together with copies of the Notification and the Notice, a joint statement dated 15 April 2021 produced by Mr. Aaron Walker and Dr. Julian Broséus of the WADA I&I (together the "WADA Investigators") and relating annexes (the "Initial W&B Statement").

25. On 11 January 2024, a hearing was held by videoconference before the UIPM Panel.

26. On 24 January 2024, the UIPM Panel notified WADA and RUSADA of its decision to dismiss the charges against the Athlete and lift the provisional suspension. No period of ineligibility or disqualification of results was imposed on the Athlete (the "Appealed Decision").

27. The operative part of the Appealed Decision reads, in its relevant parts, as follows:

"In the light of the above, the UIPM Doping Review Panel decides as follows:

6.1. The charges of the ADRV against the Athlete are dismissed.

6.2. The provisional suspension of the Athlete is lifted.

6.3. No period of ineligibility is imposed on the Athlete.

6.4. No competitive results obtained by the athlete are disqualified."

28. On 7 February 2024, WADA requested the UIPM to provide the complete file related to the Appealed Decision.

29. On 8 February 2024, WADA received documents related to the Appealed Decision.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

30. On 28 February 2024, WADA filed an appeal with the Court of Arbitration for Sport ("CAS") against the Respondents in relation to the Appealed Decision, pursuant to Articles 47 and 48 of the CAS Code of Sports-related Arbitration (the "CAS Code"). In its Statement of Appeal, WADA requested the appointment of a sole arbitrator.

31. On 11 March 2024, the Athlete objected to submitting this appeal to a sole arbitrator and instead requested a three-member panel. The UIPM did not provide its position on the composition of the arbitral panel.

32. On 15 March 2024, the CAS Court Office noted the UIPM's failure to state its position on the composition of the arbitral panel within the deadline. As a result, the President of the CAS Appeals Arbitration Division, pursuant to Article R50 para. 1 of the CAS Code, decided to refer the matter to a three-member panel. WADA was subsequently invited to nominate an arbitrator from the relevant CAS list within three days, in accordance with Article R50 para. 2 of the CAS Code.

33. On that same date, WADA nominated Prof. Luigi Fumagalli as arbitrator.

34. On 18 March 2024, the Respondents were requested to jointly nominate an arbitrator from the relevant CAS list of arbitrators within ten days as per Article R53 of the CAS Code, failing which the President of the CAS Appeals Arbitration Division, or her Deputy, would proceed with the appointment *in lieu* of the Respondents.

35. On 26 March 2024, the Athlete informed the CAS Court Office that the Respondents jointly nominated Mr. Rui Botica Santos as arbitrator.

36. On that same date, the CAS Court Office requested the UIPM to confirm the Respondents' joint nomination of Mr. Rui Botica Santos as arbitrator.

37. On 28 March 2024, the UIPM confirmed the Respondents' joint nomination of Mr. Rui Botica Santos as arbitrator.

38. On 12 April 2024, within the granted extension of the time limit, WADA submitted its Appeal Brief in accordance with Article R51 of the CAS Code.

39. On 15 April 2024, the CAS Court Office acknowledged receipt of WADA's Appeal Brief and invited the Respondents to submit their respective Answers within 20 days of receiving this notification under Article R55 of the CAS Code.

40. On 2 May 2024, Mr. Decio Mattei informed the CAS Court Office that he had been granted power of attorney to represent the UIPM in this matter. He also requested *"that the deadline for filing responses be extended by at least 25 days"* as follows:

> *"*[…] *However, the arguments raised by the Appellant in the appellate brief and the number of relevant documents submitted by the Appellant with the appellate brief may necessitate a request for an extension of the time limit for filing our response. In*

addition, the Appellant was granted an extension of time to file the appeal brief until April 12, 2024.

The Second Respondent (copied) also agrees with the request for extension.

In light of the above, and with respect to the right of defense, the UIPM respectfully requests that the deadline for filing responses be extended by at least 25 days.

Out of an abundance of caution, the UIPM also requests that the above deadline be suspended during the consideration of the extension request. […]*"*

41. On the same date, the CAS Court Office, pursuant to Article R30 of the CAS Code, acknowledged receipt of Mr. Mattei's email and asked the UIPM to confirm within five days whether Mr. Mattei was its authorized representative. WADA was also invited to comment on the requested 25-day extension within the same timeframe. In the interim, the UIPM's deadline to file its Answer was suspended until further notice.

42. Later on 2 May 2024, the UIPM confirmed that Mr. Mattei was acting as its counsel in the matter.

43. On 7 May 2024, WADA requested an extension of its deadline to comment on the UIPM's request and queried the CAS Court Office to seek clarification from the Athlete regarding his intention to participate in the Paris Olympic Games. WADA stated that if the Athlete did not intend to participate, it would not object to the UIPM's request for a 25-day extension.

44. On 8 May 2024, the CAS Court Office acknowledged WADA's query and asked the Athlete to confirm his intentions for the 2024 Paris Olympics ("Paris Olympics") within three days. The deadlines for the UIPM to file its Answer and for WADA to comment on the UIPM's request for an extension were suspended until further notice.

45. On 10 May 2024, the Athlete confirmed he would not seek to qualify for or participate in the Paris Olympics.

46. On 22 May 2024, the CAS Court Office acknowledged the Athlete's confirmation and noted that WADA had no objection to the UIPM's request. Consequently, the 25-day extension was granted, and the UIPM's deadline to file its Answer resumed. Additionally, the CAS Court Office noted the Athlete's failure to submit his Answer by the deadline set in its letter dated 15 April 2024.

47. Also, on 22 May 2024, the Athlete's counsel, Mr. Lisin, emailed the CAS Court Office, highlighting that the UIPM's request on 2 May 2023 specifically stated: *"the UIPM respectfully requests that the deadline for filing responses be extended by at least 25 days."* Mr. Lisin provided further explanation regarding such request:

"[…] ***Since the request uses the plural in the word "responses" it clearly and explicitly refers to the responses from both Respondents. This request has been coordinated with the Second Respondent,*** *as indicated in the body of the request. Accordingly, the Second Respondent considers that the request was also for a deadline for its response, and the granting of the request should extend to the Second Respondent as well."*

(Emphasis added)

48. On 24 May 2024, WADA emailed the CAS Court Office, stating the following:

"[…] *WADA agrees with the position of the CAS Court Office that the Athlete's deadline to file an Answer has now expired.*

As a matter of fact, it is correct that the Athlete never requested an extension of his time limit for filing an answer. The UIPM indicates that its extension request included an extension of the Athlete's deadline (because it referred to "responses"), but the UIPM does not have the power to act on behalf of the Athlete.

Furthermore, it was clear from the subsequent correspondence from the CAS Court Office that only the UIPM's time limit was suspended and then subsequently extended. This understanding is further corroborated by WADA's email of 7 May 2024, which confirmed that WADA would not object to "the First Respondent's extension request" subject to a specific clarification.

Therefore, even if the Athlete misinterpreted the letter of the UIPM dated 2 May 2024, all further correspondence between the CAS Court Office and other parties related exclusively to the UIPM's request, and the Athlete never reacted to any of this correspondence (to clarify that it also requested an extension).

In these circumstances, WADA sees no reason for the Athlete's deadline to file an Answer to be reinstated. […]*"*

49. On the same date, the UIPM sent the following email to the CAS Court Office:

"[…] *we noted your letter of 22 May 2024, by which the Tribunal* ***(i)*** *granted our request to extend by 25 days our term for filing the Answer and* ***(ii)*** *noted that "the Second Respondent has not filed an Answer," and we would like to have some further information about that.*

First of all, considering that the deadline to file our Answer should have expired on 5 May 2024, and that with the CAS communication of 2 May 2024, the Tribunal stated that "in the meantime, the First Respondent's time limit to file its Answer in this matter is suspended until further notice," and that with your communication of 22 May 2024, the CAS decided that "the First Respondent's deadline to file its Answer in this matter is no longer suspended and resumes with immediate effect," we would like your confirmation about that our term to file the Answer will expire on 18 June 2024. In fact, we add to the 25-day extension granted with your email of 22 May 2024 the three days (3, 4, and 5 May) while the term was suspended.

With reference, on the other hand, to the request made to the parties - contained in the second communication sent on May 22, 2024 - to rule on the extension of the term for the Second Respondent as well, ***we would also like to point out that in our communication dated May 2, 2024, we copied the Second Respondent and - after clarifying that the Second Respondent also agreed with the request for extension - expressly made a request for an extension of time for "filing responses" (using the***

plural) and thus for both respondents. We therefore believe that the extension should also be granted to the Second Respondent

In any case we believe that the extension should be granted for both respondents to avoid any kind of violation of the principle of due process."

(Emphasis added)

50. Later that day, WADA informed the CAS Court Office that the UIPM lacked authority to act on behalf of the Athlete on 2 May 2024 and argued that the Athlete's deadline to file an Answer should not be reinstated.

51. On 27 May 2024, the CAS Court Office acknowledged: (i) the UIPM's assertion that its 2 May 2024 request for an extension applied to both itself and the Athlete; and (ii) WADA's argument that the UIPM lacked authority to represent the Athlete. The CAS Court Office requested, for the avoidance of doubt, the UIPM to provide confirmation that it was authorized to act on behalf of the Athlete on 2 May 2024, within three days.

52. On 30 May 2024, the Athlete informed the CAS Court Office that *"[h]ereby I confirm that I authorized the First Respondent counsel to write also in the Second Respondent interest requesting the extension."*

53. On the same date, the UIPM submitted the following email to the CAS Court Office:

"[…] *Reference is made to your request dated May 27 and, with reference to the points raised therein, we would like to reply as follows:*

1. preliminarily, I hereby confirm that (i) our request for extension has been delivered following consultation with the Second Respondent's counsel, in agreement with them; (ii) in consideration of the confirmation provided by the counsel, we agreed that the request for an extension would have been delivered in the interests of both Respondents;

2. the above is clearly documented in our requests, considering that (i) it is expressly stated therein that "the Second Respondent (copied) also agrees with the request for extension" and (ii) the extension was "for the filing of responses", i.e., for both Respondents;

3. the Second Respondents' counsel was also copied to our communication and no objection has been raised in such respect;

4. on the contrary (i) the Athlete's counsel has already confirmed that he instructed me to request the extension in his interest as well, and (ii) WADA had also acknowledged that the extension was requested in the interest of both Respondents, as it is clearly evidenced by the fact that their positive opinion was conditional upon the Athlete's declaration not to participate in the Olympic Games.

In addition to the above, we see no grounds to promote any objection in respect of the conducts of the two Respondents, considering that it is consistent with previous (and unobjected) conduct of the parties in the course of the proceeding.

Indeed, the appointment of the Respondents' arbitrator was also made by delivering a single communication in the interest of both Respondents on the basis of the declaration made by the athlete's counsel; in such a case, the only request for clarification came from CAS, that asked UIPM (not the athlete) to confirm the appointment. In such a case, UIPM did not "represent" the Athlete, but we merely sent an email, also on behalf of the Athlete's counsel.

The same happened in this case, as no special authority was required to send that email, just as no special authority was required to appoint the arbitrator.

In light of the above, we do not understand why WADA should raise any formal or procedural complaint in respect of our request of extension (also considering that, as described above, its contents have been already acknowledged by the latter).

Put in the context of the current cooperation of the parties in the context of the present proceeding, we respectfully point out that, also in consideration of our previous consent to their request of extend their procedural deadline, WADA enjoyed a considerable time to prepare its appeal.

Instead, we observe that WADA's conduct seems to determine the undue frustration of the rights of the Respondents to defend themselves, by limiting the available time to file their briefs on the basis of unsubstantiated procedural complaints.

In such respect, we also notice that, when WADA requested an extension of its deadline, no conditionality was provided and the issue of the participation of the athlete had not been raised. In practice, the issue has been overcome in light of the intention of the Athlete not to participate, but we stress that the latest initiative of WADA would have led to an unfair advantage, as they would have had a considerable time to file the appeal while the right of the defence of the Respondants would have been compressed.

We believe this conduct to be unfair as the circumstance that the Athlete might have participated to the Olympic Games was known well in advance to WADA.

*** *** ***

In sum, based on the above, we are of the opinion that WADA's exception that UIPM does not have the power to represent the athlete is ungrounded and should be in any case dismissed.

We call upon WADA to waive this objection that will have the sole effect to limit the defendants' rights of defence and allow the arbitration proceedings to proceed properly. […]*"*

54. On 30 May 2024, the CAS Court Office acknowledged receipt of the UIPM's email, stating that it was duly authorized to request an extension on behalf of the Athlete. It also referenced a power of attorney dated 7 March 2024 submitted by the Athlete in the

present matter, which explicitly indicated: *"[t]his Power of Attorney is issued for a period of 1 (one) year without the right of any of the Representative to appoint a substitute or delegate otherwise the powers contained herein to any third person."* The CAS Court Office asked the Athlete's counsel to clarify, by 3 June 2024, the legal basis for authorizing the UIPM's counsel to act on his behalf. The Respondents were also required to provide evidence supporting the Athlete's authorization of the UIPM's 2 May 2024 request.

55. On 3 June 2024, Mr. Lisin informed the CAS Court Office as follows:

"Thus, Counsel for the Second Respondent:

1. Informed his client of the need for authorization prior to communicating with the First Respondent.

2. Informed his client of the nature of the actions First Respondent's Counsel would take that could affect Second Respondent.

3. Obtained authorization from his client to communicate with and delegate authority to the First Respondent's Counsel to request an extension of time on behalf of, among others, the Second Respondent."

56. With this, Mr. Lisin provided three supporting documents:

(i) A statement dated 3 May 2024 signed by the Athlete, which reads as follows:

"I, Ilya Frolov, can confirm the following:

On the evening of 30 April 2024, my Counsel called me and informed me that UIPM would now be represented by the external Counsel, and he would like to request an extension of time to prepare the our Replies.

My Counsel said that he needed my consent to communicate with UIPM's Counsel regarding the case and right to authorize UIPM's Counsel to make statements before CAS, including on my behalf, if necessary. Specifically, he requested my authorization for UIPM's Counsel to request an extension of the deadlines for providing Replies for both UIPM and me by sending a letter to CAS on behalf the UIPM.

I confirmed that I gave my authorization to do the above."

(ii) A Gmail confirmation that Mr. Lisin received the Athlete's signed statement directly from him.

(iii) An email dated 30 April 2024 sent by Mr. Lisin to Ms. Fulvia Lucantonio of the UIPM, with Mr. Mattei and Ms. Radka Zapletalova of the UIPM copied:

"Dear Ms Lucantonio,

I am in Cyprus now, so no problems with holidays, we have a working day today.

I have no objection re additional time request for the both Respondents.

Yours sincerely,

Sergei Lisin"

57. On 4 June 2024, the CAS Court Office acknowledged receipt of Mr. Lisin's email dated 3 June 2024 and supporting documents. It also noted that the UIPM had failed to respond to its 30 May 2024 letter requesting evidence of the Athlete's authorization for the 2 May 2024 request. To safeguard procedural rights, the CAS Court Office referred the question of the UIPM's authority to request the extension on behalf of the Athlete to the Panel, once constituted. Pending the Panel's decision, the Parties were informed that the CAS Court Office would treat the UIPM as duly representing the Athlete on 2 May 2024. As a result, WADA was asked to comment on the Athlete's request for an extension, as submitted by the UIPM in its email of 2 May 2024, within three days, whereas the Athlete's deadline to submit his Answer was suspended until further notice. In addition, the Athlete was asked to confirm within three days whether both Mr. Mattei and Mr. Lisin represented him in this matter, given his 3 May 2024 statement authorizing the *"UIPM's Counsel to make statements before CAS, including on my behalf, if necessary."*

58. On 8 June 2024, Mr. Lisin informed the CAS Court Office as follows:

"[…] *As stated in previous correspondence, Mr. Mattei and I represented the Second Respondent in extending the deadlines for filing the Second Respondent's Answer and determining the exact date of the new deadlines, as well as anything related to the resulting discussion.*

In the event that Mr. Mattei represents the Second Respondent in any other matters relevant to this case, this will be communicated further, in clear terms. In any other cases I'm the person who represent Mr. Frolov and in contact with him."

59. On 7 June 2024, WADA emailed the CAS Court Office the following:

"[…] *For the record, WADA maintains its position that no extension request was made by the Athlete, per its email of 24 May 2024.*

The above said, even assuming that the Athlete did request a 25-day extension to his deadline to file the Answer on 2 May 2024, the extended deadline would have now elapsed. Indeed, WADA recalls that on 15 April 2024, the CAS Court Office forwarded WADA's Appeal Brief to the respondents and granted them a 20-day time limit to file their answers, i.e. until 4 May 2024. This means that, even if the extension request were to be granted, the Athlete's extended deadline was until 29 May 2024, as this deadline was never suspended and no further extension request was made by the Athlete. Therefore, WADA submits that the matter is moot."

60. On 10 June 2024, the CAS Court Office noted that WADA considered the Athlete's extension request moot, as the deadline for filing his Answer had never been suspended. The CAS Court Office clarified that the Athlete's deadline had been effectively suspended since 2 May 2024 due to the ongoing issue of his representation by the UIPM. WADA was invited to comment on the Athlete's extension request within three days.

61. On 13 June 2024, WADA notified the CAS Court Office of its objection to the Athlete's request for an extension, stating:

> *"*[…] *WADA can only reiterate its position that no extension request was made by the Athlete, and even if one was considered to have been made on 2 May 2024, the (extended) deadline has now elapsed (as it is uncontroversial that the Athlete's deadline was never suspended by the CAS). It is all the more disappointing that the Athlete, who has been aware of the CAS position in relation to his extension request since 22 May 2024, has not even sought to file his answer within the (allegedly extended) deadline* […]*"*

62. On 14 June 2024, the CAS Court Office noted WADA's objection and informed the Parties that it would be referred to the President of the CAS Appeals Arbitration Division, or her Deputy, for a decision in accordance with Article R32 para. 2 of the CAS Code.

63. On 17 June 2024, the CAS Court Office informed the Parties that the Deputy President of the CAS Appeals Arbitration Division had granted the Athlete's request for an extension. It was noted that this decision was without prejudice to the Panel's ruling on the Athlete's representation by the UIPM on 2 May 2024 as well as the admissibility of his Answer. As a result, the Athlete's deadline to file his Answer resumed with immediate effect.

64. On 18 June 2024, the UIPM filed its Answer in accordance with Article R55 of the CAS Code.

65. On 12 July 2024, the Athlete filed his Answer within the meaning of Article R55 of the CAS Code.

66. On 15 July 2024, the CAS Court Office reminded the Parties that the issue of the Athlete's representation by the UIPM would be referred to the Panel. The Parties were also informed, pursuant to Article R56 para. 1 of the CAS Code, that once the Appeal Brief and Answers were submitted, they could not supplement, amend their requests, introduce new arguments, or submit additional evidence, unless agreed by the Parties or ordered by the President of the Panel due to exceptional circumstances. The Parties were further asked to notify the CAS Court Office by 19 July 2024 of their preference for a hearing or a decision based on written submissions. Additionally, under Article R54 of the CAS Code, the Parties were informed of the composition of the Panel appointed to decide the case as follows:

President:	Ms. Marianne Saroli, Attorney-at-Law in Montreal, Canada
Arbitrators:	Prof. Luigi Fumagalli, Attorney-at-Law in Milan, Italy
	Mr. Rui Botica Santos, Attorney-at-Law in Lisbon, Portugal

67. On 19 July 2024, the Athlete expressed a preference for a hearing to be held in this matter, while the UIPM preferred that the Panel issue an award based solely on the Parties' written submissions.

68. On 31 July 2024, WADA requested a hearing to be held in this matter.

69. On 2 August 2024, the CAS Court Office informed the Parties that, pursuant to Article R57 of the CAS Code, the Panel had decided to hold a hearing in this matter in Lausanne, Switzerland.

70. On 11 September 2024, the CAS Court Office notified the Parties of the Panel's decision regarding the issue of the Athlete's representation by the UIPM: (i) the UIPM's extension request submitted on 2 May 2024 was made on behalf of both itself and the Athlete and (ii) both Answers were timely filed in the present matter and were therefore admissible. The Panel's decision was based on its determination that the Respondents had provided sufficient evidence to support their claim that the UIPM's 25-day extension request, submitted on 2 May 2024, was made on behalf of both the UIPM and the Athlete.

71. On 12 September 2024, WADA and the Athlete signed and returned the Order of Procedure in this appeal.

72. On 13 September 2024, the UIPM signed and returned the Order of Procedure in this appeal.

73. On 14 October 2024, a hearing was held in person. The Panel was assisted by Dr. Björn Hessert, CAS Counsel, and joined by the following:

For WADA

- Mr. Nicolas Zbinden, Counsel
- Mr. Cyril Troussard, Associate Director, WADA Legal department
- Prof. Christiane Ayotte, Expert witness (via video-conference)

For UIPM

- Mr. Decio Nicola Mattei, Counsel
- Mr. Amedeo Palumbo, Counsel
- Mr. Gianluca Santoro Counsel
- Mr. Gabriele Picardo, Counsel
- Ms. Fulvia Lucantonio, Counsel

For the Athlete

- Mr. Sergei Lisin, Counsel
- Mr. Ilia Frolov, Athlete (via video-conference)

74. At the outset of the hearing, the Parties confirmed that they had no objection to the constitution of the Panel and the way the proceedings had been conducted thus far. At the conclusion of the hearing, the Parties confirmed that their right to be heard had been fully respected.

IV. SUBMISSIONS OF THE PARTIES

75. 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. WADA

76. WADA's submissions, in essence, may be summarized as follows:

- The Appealed Decision is incorrect, as the evidence provided by WADA clearly demonstrate that the Athlete violated Article 1.2.3 of the 2013 MR by using anabolic steroids. Consequently, a period of ineligibility of up to four years should have been imposed.

a. The evidence put forth by WADA is sufficient to establish the ADRV

- The ADRV against the Athlete is supported by evidence derived from investigations into the Russian doping scheme carried out by Prof. McLaren and WADA I&I, among others. This encompasses evidence obtained through the EDP, as well as information from the LIMS recovered during these investigations. The details of this evidence are outlined as follows:

i. McLaren Reports

- Firstly, WADA relies on the key findings of the McLaren Reports, which detailed, *inter alia*, the primary counter-detection methodologies used by the Moscow Laboratory from 2012 to 2015, summarized as follows:

  - **The DPM**: Pursuant to the DPM, when the initial testing procedure ("ITP") of a sample revealed the presence of a prohibited substance in an athlete's body, the Moscow Laboratory would typically report a PAAF to the Russian Ministry of Sport instead of proceeding with the required confirmation procedure ("CP") to verify the PAAF. The PAAF was normally communicated via email from the Moscow Laboratory to designated liaison persons, who would then instruct whether to protect the athlete or not. If an athlete was to be protected, the email included the word *"Save"*. Conversely, if an athlete was not to be protected, the term *"Quarantined"* was used. For athletes marked as *"Saved"*, the Moscow Laboratory would usually report the sample as negative in ADAMS and make the necessary manipulations in the LIMS.

  - **The *"Pre-Departure Testing"***: This was the unofficial testing of samples from select Russian athletes before international competitions to ensure their use of prohibited substances was undetected.

  - **The *"Sample Swapping Methodology"***: The Sochi Laboratory operated this methodology, whereby any *"dirty"* urine would be replaced with *"clean"* urine. Through this methodology, a *"clean urine bank"*, which compiled unofficial samples provided from certain athletes, was created at the Moscow Laboratory. The unofficial samples were then analyzed, stored, and recorded in *"clean urine bank schedules"* at the Moscow Laboratory.

  - **The *"Washout Testing"***: This methodology, primarily used before certain major events, was introduced around 2012 when Dr. Rodchenkov developed the *"Duchess*

Cocktail", composed mainly of the prohibited substances: oxandrolone, metenolone and trenbolone. The *"Duchess Cocktail"* had a short detection period to determine whether athletes on doping programs were likely to test positive at a competition, thereby reducing the risk of detection.

ii. EDP evidence

- Secondly, WADA relies on the EDP provided along with the Second McLaren Report, which consists of a collection of documents gathered by Prof. McLaren during his investigations. The EDP, which was allegedly retrieved from the hard drive of Dr. Rodchenkov, include email exchanges between liaison persons and the Moscow Laboratory regarding several samples analyzed between 2012 and 2015 ("EDP Emails").

- WADA asserts that the EDP Emails contain specific details about the Athlete's Sample analyzed at the Moscow Laboratory, which is pertinent to the ADRV with which he is being charged.

- The reliability of the EDP in establishing ADRVs has been consistently recognized by CAS panels.

iii. LIMS data

- Thirdly, for the purposes of this proceeding, WADA relies on the 2015 LIMS as well as the 2019 LIMS and 2019 Files.

- On 30 October 2017, a whistleblower provided WADA I&I with a first version of the LIMS: the 2015 LIMS. The data from the 2015 LIMS included entries related to the Sample, specifically entries indicating the presumptive presence of the *"Duchess Cocktail"* in the Sample.

- Following claims by Russian authorities that the 2015 LIMS had been manipulated by Dr. Rodchenkov as part of a private extortion scheme, WADA I&I verified its validity through external sources and concluded that it was an accurate copy of the original LIMS. This conclusion was further supported in December 2017 by the Schmid Commission, which found the 2015 LIMS to be *"independent and impartial evidence"* corroborating *"the existence of the Disappearing Positives Methodology as well as a tampering methodology,* […] *as described in the Final Report by Prof. Richard McLaren"*.

- On 20 September 2018, WADA's Executive Committee ("ExCo") reinstated RUSADA as a WADC-compliant signatory, contingent upon RUSADA handing over the authentic LIMS data from the Moscow Laboratory for 2012 to 2015.

- Against this backdrop, WADA I&I accessed the Moscow Laboratory in January 2019, retrieving the 2019 Files and a second copy of the 2019 LIMS covering the relevant years. Following this recovery, WADA I&I launched their investigation and, by 15 May 2019, had uncovered significant discrepancies between the 2015 LIMS and the 2019 LIMS, including notable irregularities related to the Athlete's Sample.

- On 26 June 2019, WADA's Compliance Review Committee ("CRC") instructed WADA I&I, with support from independent experts at University of Lausanne (the "Independent Experts") to investigate further. This culminated in the *"Digital Forensic Examination Report"* dated 15 August 2019 (the "2019 Forensic Report"), which concluded that the 2019 LIMS and the 2019 Files had been deliberately altered after RUSADA's reinstatement on 20 September 2018 but before submission to WADA I&I on 17 January 2019. The 2019 Forensic Report was then sent to Russian authorities and presented to the CRC on 6 September 2019.

- On 8 October 2019, Russian authorities disputed the 2019 Forensic Report, asserting that the 2019 LIMS and 2019 Files were authentic, but that the LIMS itself was an outdated, malfunctioning system contaminated by results falsified due to an alleged extortion scheme by Dr. Rodchenkov and Dr. Timofey Sobolevsky, the former head of the Moscow Laboratory's Chromatographic-Mass Spectrometry Analyses Department. Russian authorities also claimed to have additional evidence (the "New Data") to support their position, which they promised to provide.

- WADA I&I received the New Data on 23 October 2019 and analyzed it. On 15 November 2019, WADA I&I reported to the CRC that the New Data was unreliable and forged, reaffirming its original findings. The CRC endorsed this conclusion and recommended a non-compliance notice for RUSADA, which the ExCo approved on 9 December 2019. RUSADA contested the non-compliance notice on 27 December 2019, prompting WADA to refer the matter to CAS on 9 January 2020 (CAS 2020/O/6689 WADA v. RUSADA). On 17 December 2020, CAS ruled RUSADA non-compliant with the WADC and found that the 2019 LIMS had been manipulated.

- In view of the foregoing, WADA refers to the joint statement dated 15 March 2024 produced by the WADA Investigators and relating annexes (the "W&B Statement"), which states as follows: *"*[…] *the 2015 LIMS Copy is an accurate copy of the original LIMS created contemporaneously as part of the Moscow Laboratory's analytical procedure and its contents can be relied upon as being accurate and forensically valid information, particularly the forensic validity of the detected Prohibited Substances. In other words, the 2015 LIMS Copy accurately records the true analysis results of samples analyzed by the Moscow Laboratory."*

- Additionally, WADA highlights that CAS has consistently found the 2015 LIMS to be accurate, authentic, and contemporaneous, reflecting its reliability.

iv. The specific evidence against the Athlete is sufficient to establish the ADRV

- Between 2012 and 2019, a state-sponsored doping scheme existed and operated in Russia for select, protected Russian athletes.

- WADA asserts that both the LIMS and the EDP point to the Athlete as one of the protected athletes who was involved in, or benefitted from, the doping practices identified by Prof. McLaren.

(i) Collection and analysis of the Sample

- On 9 August 2014, the Sample was collected from the Athlete by RUSADA.

- According to the 2015 LIMS, the Sample was delivered to the Moscow Laboratory for analysis on 11 August 2014 and assigned the internal laboratory code 10392:

code_int	code_ext	code_ext_B	gender	ph	sg	volume_a	volume_b	seal	bag	coll_date
10392	2946034	#N/A	m	0	0	90	50	#N/A	1707	8-9-2014 0:00:00

- The 2015 LIMS indicate that the Sample underwent several ITP analyses on 12 August 2014, including:

  - P1.004: analysis for anabolic steroids using the gas chromatography – tandem mass spectrometry ("GC-MS-MS");

  - P1.005: analysis for diuretics, stimulants and beta-blockers using the liquid chromatography – tandem mass spectrometry ("LC-MS-MS");

  - P1.006: analysis for miscellaneous conjugated compounds using the LC-MS-MS analytical method conjugated fractions.

- Pertinent to the present case is the P1.004 analysis performed on the Sample to detect anabolic steroids. The 2015 LIMS show that following the completion of the P1.004 analysis, a raw data file named *"a_10392.raw"* was created by the analytical instrument (the GC-MS-MS), which then generated a PDF file named *"a_10392_R110b_1407905404.pdf"*. The existence of these files was documented in the 2015 LIMS, where the Moscow Laboratory assigned code names for analytical instruments, like "*adam"* for GC-MS-MS:

id_pdf	code_int	code_ext	name	instr	patch	date	pages
56679	10392	2946034	10392	mars	/mnt/pdf/2014/mars/n_10392_CFN_v4_1407880204.pdf	8-13-2014 12:47:22	3
56779	10392	2946034	10392	adam	/mnt/pdf/2014/adam/a_10392_R110b_1407905404.pdf	8-13-2014 8:44:45	8
56867	10392	2946034	10392	nibbler	/mnt/pdf/2014/nibbler/d_10392_diuretics_v6_1407907804.pdf	8-13-2014 9:22:24	3
56964	10392	2946034	10392	mars	/mnt/pdf/2014/mars/p_10392_CFP_v7_1407925804.pdf	8-14-2014 1:24:15	6

- The 2015 LIMS reveal that on 13 August 2014, the Moscow Laboratory detected the presence of metenolone (and two of its metabolites), oxandrolone (and three of its metabolites), and a metabolite of trenbolone in the Sample. These substances are anabolic steroids prohibited under S1.1.a of the 2014 WADA Prohibited List and are collectively referred to as the *"Duchess Cocktail"*. The Moscow Laboratory contemporaneously recorded these results in the LIMS on 13 August 2014.

id	code_int	code_ext	id_substance	id_met	scr_conc	DT_scr	scrin	id_user_scr	do
2406	10392	2946034	trenbolone	epitrenbolone	8	8-13-2014 12:06:12	4	grigory.dudko	0
2407	10392	2946034	metenolone	16a-hydroxy-1-methyl-5a-androst-1-ene-3,17-dione	0,8	8-13-2014 12:06:32	4	grigory.dudko	0
2408	10392	2946034	metenolone	1-methylene-5a-androstane-3a-ol-17-one	2,3	8-13-2014 12:07:04	4	grigory.dudko	0
2409	10392	2946034	metenolone	#N/A	1,6	8-13-2014 12:07:33	4	grigory.dudko	0
2410	10392	2946034	oxandrolone	epioxandrolone	6,2	8-13-2014 12:10:40	4	grigory.dudko	0
2411	10392	2946034	oxandrolone	#N/A	16	8-13-2014 12:11:08	4	grigory.dudko	0
2412	10392	2946034	oxandrolone	18-nor-17a-hydroxymethyl-17b-methyl-2-oxo-5a-androst-13-en-3-one	2	8-13-2014 12:11:23	4	grigory.dudko	0
2413	10392	2946034	oxandrolone	18-nor-17b-hydroxymethyl-17a-methyl-2-oxo-5a-androst-13-en-3-one	3	8-13-2014 12:11:38	4	grigory.dudko	0

- Furthermore, evidence from the EDP indicates that upon identifying the presence of the *"Duchess Cocktail"* in the Sample, the Moscow Laboratory exchanged several EDP Emails with liaison persons, specifically:

- On 13 August 2014, Dr. Sobolevsky emailed Dr. Rodchenkov and Mr. Aleksey Velikodny, the liaison person, the following (EDP0480):

  "2920035, M, modern pentathlon, training camp | 3495/14, RU Novogorsk, collection 2014-08-09, pre-departure
  trenbolone, methenolone, oxandrolone

  2946034, M, modern pentathlon, training camp | 3495/14, RU Novogorsk, collection 2014-08-09, pre-departure. trenbolone, methenolone, oxandrolone*"*

  (emphasis added)

- Still on 13 August 2014, Mr. Velikodny responded as follows (EDP0481):

  "SAVE

  2920035, Kustov, modern pentathlon, training camp | 3495/14, RU Novogorsk, collection 2014-08-09, pre-departure
  trenbolone, methenolone, oxandrolone

  SAVE

  2946034, Frolov, modern pentathlon, training camp | 3495/14, RU Novogorsk, collection 2014-08-09, pre-departure
  trenbolone, methenolone, oxandrolone*"*

  (emphasis added)

- Subsequently, Dr. Rodchenkov, Dr. Sobolevsky and Mr. Velikodny engaged in further email correspondence, as follows (EDP0482, EDP0483, EDP0484):

  Dr. Rodchenkov: *"But how are they planning to depart".*

  Dr. Sobolevsky: *"maybe IIR has everything under control?..."*

  Mr. Velikodny: *"I have no idea why they have it as an 'away' sample, World Championship [WC] commences on the 1 September in Warsaw"*

  Dr. Sobolevsky: *"RUSADA marked it as urgent, usually it means pre-departure..."*

  Dr. Rodchenkov: *"It was IIR, she orchestrated all this"*

- Despite the presence of the *"Duchess Cocktail"* in the Sample indicated by the ITP analysis, the Moscow Laboratory, acting under a *"Save"* directive from the Russian Ministry of Sport, failed to perform the required CP analysis. Instead, the Sample was falsely reported as negative in ADAMS on 14 August 2014. This allowed the Athlete to compete at the 2014 World Modern Pentathlon Championships in Warsaw, Poland, from 1 and 7 September 2014 (the "2014 World Championships"),

where he secured 10th place.

- WADA asserts that this evidence clearly demonstrates the Athlete was protected as part of Russia's systematic doping scheme. As a result of this protection, the Athlete's alleged use of the *"Duchess Cocktail"* went undetected, enabling his participation in the 2014 World Championships. This further aligns with the Moscow Laboratory's classification of the Sample as *"pre-departure"* in the EDP Emails.

(ii) Manipulation of the data related to the Sample

- WADA relies on the expert opinion of Prof. Christiane Ayotte, Head of the Doping Control Laboratory at the Armand-Frappier Santé Biotechnologie Research Centre in Montreal, Canada, who examined the analytical data of the Sample recovered in 2019, compared to its data recorded in the 2015 LIMS.

- In particular, Prof. Ayotte's expert report dated 24 February 2024 presented the following key observations:

  - The recorded entries for the Sample in the 2015 LIMS *"are consistent with a recent administration of three AAS, trenbolone, metenolone and oxandrolone. The pattern of metabolites is scientifically sound, the ion-transitions selected for their detection by the GC-MS/MS analysis of their TMS-derivatives are correct."*

  - However, upon regenerating the corresponding chromatograms from the raw data file retrieved in 2019 using the Thermo instrument software *"Trace Finder"*, she found that its content, as well as that of the corresponding PDF file, did not align with the data reported in the 2015 LIMS. All results were negative, whereas at such concentrations, significant and distinct peaks should have been observed.

  - She also underlines that the Moscow Laboratory, which implemented a valid analytical method for the detection of the *"Duchess Cocktail"* substances, had no justification to not conduct the CP on the Sample.

- Prof. Ayotte's opinion aligns with the findings of WADA Investigators, as detailed in their W&B Statement, which addressed the discrepancies between the LIMS data provided by a whistleblower in 2017 and the LIMS data retrieved from the Moscow Laboratory in 2019.

- In this respect, the W&B Statement indicated that from June 2016 to 2019, the Moscow Laboratory modified or deleted entries in the LIMS for specific Russian athletes. For the Athlete, these actions included:

  - Deleting the values for his Sample in the *"Found"* table (the presumptive presence of the *"Duchess Cocktail"*) in the 2019 LIMS.

  - Altering the ITP raw data file *"a_10392.raw"* to change his results from positive to negative.

  - Deleting the original PDF file *"a_10392_R110b_1407905404.pdf"* generated from the unaltered ITP raw data file.

- Manipulating and then deleting a version of the PDF file *"a_10392_R110b_1407905404.pdf"*, replacing chromatograms to falsely indicate no prohibited substances were detected in his Sample.

- WADA further asserts that the Sample was subjected to targeted searches within the LIMS by the Moscow Laboratory years after its initial analysis on 13 August 2014. Beginning in January 2016, these searches were conducted in response to increasing awareness of WADA's eventual access to the Moscow Laboratory. They formed part of a coordinated effort to identify and manipulate key entries — such as LIMS entries, PDF files, and raw data files — to conceal evidence of doping before WADA I&I recovered the 2019 LIMS and 2019 Files.

v. Comparison with Mr. Maksim Kustov's case

- WADA asserts that the Athlete's alleged ADRV did not occur in isolation, emphasizing that critical context arises from the established ADRV of fellow pentathlete Mr. Maksim Kustov. On 17 June 2023, the UIPM Panel found Mr. Kustov guilty of using the *"Duchess Cocktail"* under circumstances closely resembling those of the Athlete.

- WADA contends that the parallels between Mr. Kustov's case and the Athlete's are so striking that they preclude any reasonable inference of coincidence.

- Both athletes submitted *"pre-departure"* samples on the same day at the same Training Camp, and their respective samples contained the same prohibited substances.

- Additionally, both athletes' names and corresponding sample codes were explicitly referenced in the same EDP Emails, notably in EDP0480 and EDP0481.

- Furthermore, the LIMS data and underlying analytical records associated with Mr. Kustov's sample exhibit the same manipulative actions as those applied to the Athlete's Sample, highlighting the presence of a coordinated doping program within the Russian Pentathlon team. Similarly, Mr. Kustov's sample was subject to targeted searches on almost all the same days as the Athlete's Sample, reinforcing the systematic and synchronized nature of the doping scheme.

b. Sanction

- WADA argues for a four-year period of ineligibility due to aggravating factors, including the Athlete's participation in a sophisticated doping scheme, use of multiple prohibited substances, and the timing of the doping in relation to the 2014 World Championships.

- WADA requests the disqualification of all competitive results obtained by the Athlete from 9 August 2014 until the commencement of the period of ineligibility, with all resulting consequences.

c. WADA's prayers for relief

- In its Appeal Brief, WADA sought the following relief:

"16. WADA respectfully requests the CAS to rule as follows:

1. The appeal of WADA is admissible.

2. The decision dated 22 January 2024 rendered by UIPM in the matter of Ilia Frolov is set aside.

3. Ilia Frolov is found to have committed an anti-doping rule violation pursuant to Article 1.2.3 of the 2013 UIPM Medical Rules.

4. Ilia Frolov is sanctioned with a four-year period of ineligibility, or in the alternative a period of ineligibility between two and four years, starting on the date on which the CAS award enters into force. Any period of provisional suspension effectively served by Ilia Frolov before the entry into force of the CAS award shall be credited against the total period of ineligibility to be served.

5. All competitive results obtained by Ilia Frolov from and including 9 August 2014 until the date on which the CAS award enters into force are disqualified, with all resulting consequences (including forfeiture of medals, points and prizes).

6. The arbitration costs (if any) shall be borne by UIPM.

7. WADA is granted a significant contribution to its legal and other costs."

B. The UIPM

77. The UIPM's submissions, in essence, may be summarized as follows:

- The Appealed Decision is correct, as the evidence submitted by WADA is neither conclusive nor sufficient to establish the use of prohibited substances by the Athlete pursuant to Article 1.2.3 of the 2013 MR.

a. The evidence put forth by WADA is unreliable and insufficient to establish the ADRV

- At the outset, the UIPM emphasizes that the burden of proof to establish that an ADRV has occurred rests with WADA and that the applicable standard of proof is that of comfortable satisfaction. However, where the burden of proof is placed upon the Athlete to rebut a presumption or to establish specified facts or circumstances, the standard of proof is on a balance of probability.

- *In casu*, the burden of proof required to demonstrate an ADRV has not been met by WADA for the following reasons:

- The reconstruction of facts presented by WADA relies heavily on a logical process based on mere *"indicia"*, presumptions, and inferences. These conclusions, unsupported by concrete evidence, ultimately reinforce the reasoning behind the Appealed Decision.

- WADA has essentially reiterated the same facts and circumstances previously submitted

to the UIPM Panel. While expert opinions have been introduced as additional evidence, no new facts have been presented by WADA in this appeal.

- The UIPM maintains that the circumstances highlighted by WADA are insufficient, on their own, to establish that the Athlete committed an ADRV. While the existence of a state-sponsored doping scheme in Russia during the relevant period is acknowledged, it cannot automatically be inferred to the Panel's comfortable satisfaction that all Russian athletes were aware of or complicit in the scheme, let alone that they used prohibited substances. The mere existence of a doping scheme does not necessarily imply that all Russian athletes were involved in doping.

- Similarly, the presence of a *"Save"* directive does not automatically indicate an athlete's participation in the doping scheme. To assert otherwise would imply that all athletes impacted by the existence of a systemic doping scheme are guilty by default. Such approach would deny athletes any meaningful opportunity to defend themselves, as WADA has failed to provide evidence of the Athlete's actual involvement in such scheme.

- The UIPM asserts, consistent with the Appealed Decision, that the Athlete's right to defend himself cannot be undermined by an arbitrary evaluation of circumstances, as seen in the evidence provided by WADA in this case. This position aligns with CAS jurisprudence, which has consistently held that *"it is incumbent on the sports body to adduce particularly cogent evidence of the athlete's deliberate personal involvement in that wrongdoing"* (CAS 2017/A/5379).

- Moreover, the UIPM contends that the time elapsed since the Sample collection, combined with numerous variables, has likely compromised the reliability of WADA's alleged evidence against the Athlete. WADA's investigations, conducted years later, lack the certainty required to impose sanctions based on hypothetical scenarios. The significant amount of time that has elapsed since the Sample was collected also precludes the possibility of retesting.

- In fact, WADA's comparison of the Athlete's case with that of Mr. Kustov further illustrates this point. Unlike the present case, Mr. Kustov did not contest the charges and admitted to the ADRV. Consequently, the UIPM Panel found Mr. Kustov guilty and imposed a two-year period of ineligibility. Here, no such admission exists from the Athlete, and WADA has failed to provide sufficient evidence to reach the same conclusion.

- Furthermore, WADA's claim that the concentration values of prohibited substances in the Athlete's Sample and Mr. Kustov's sample are *"very similar"* is not fully accurate. According to the LIMS data, the Athlete's Sample contained two prohibited substances with concentrations above the 2014 minimum required performance level ("MRPL"), while Mr. Kustov's sample contained only one such substance. This discrepancy underscores the uncertainty surrounding the evidence and suggests that contamination or data degradation over time may have affected the integrity of the evidence adduced by WADA.

- The UIPM emphasizes that the lack of a CP was central to the Appealed Decision. Under

the International Standard for Laboratories ("ISL"), when a PAAF is identified — such as in the Athlete's case — the sample should undergo a CP to confirm the presence of a prohibited substance or metabolite. In the present case, no evidence that a CP was conducted on the Athlete's Sample has been provided.

- While it is undisputed that proof of *"use"* can be established by any reliable means, the lack of specific evidence in this present case renders it excessive to conclude that an ADRV occurred. In this respect, CAS precedents in similar LIMS and EDP-related cases have consistently found Athletes guilty only when at least one sample had undergone a CP (CAS 2021/ADD/23; CAS 2021/ADD/14).

- Additionally, the assessment by Prof. Ayotte, conducted outside official procedures and at a significant temporal distance from the facts, cannot substitute for a CP that was never performed. If this assessment is considered, equal weight must be given to the report of the independent expert, Dr. De Boer, presented by the Athlete during the first instance proceedings. Dr. De Boer's conclusions diverged significantly from those of Prof. Ayotte, questioning the reliability of the LIMS data and highlighting the poor quality of the tests conducted at the Moscow Laboratory. These findings cast further doubt on the evidence of the Athlete's alleged use of prohibited substances.

- In conclusion, the UIPM contends that WADA's evidence relies on *"alleged"* use of prohibited substances, while the only certainty is that the Athlete's Sample was recorded as negative in ADAMS. The Appealed Decision, therefore, should be upheld.

b. The UIPM's prayers for relief

78. In its Answer, the UIPM sought the following relief:

> *"(84) From all of the above, far from taking a position in defence of the Athlete in this proceeding, this Respondent considers the Panel decision of 22 January 2024, by which it acquitted the Athlete Ilia Frolov by concluding that "no sufficient evidence has been provided to this Panel in relation to the specific charges relating to the relevant ADRV in this case, and therefore the burden of proof has not been met", correct.*
>
> *(85) Accordingly, it seeks the full upholding of that decision and the dismissal of WADA's appeal.*
>
> *(86) Consequently, it requests that there be no order to pay the costs of the present proceedings to its detriment and indeed requests that this excellent Court should grant the present Respondent an adequate contribution to the costs of the litigation to be borne by the Applicant WADA."*

B. The Athlete

79. The Athlete's submissions, in essence, may be summarized as follows:

- The Appealed Decision is correct, as the evidence provided by WADA is unreliable and insufficient to demonstrate that the Athlete violated Article 1.2.3 of the 2013 UIPM MR.

a. Burden and standard of proof

- WADA bears the burden of proof to establish that an ADRV has occurred, with the applicable standard being *"comfortable satisfaction"*. Conversely, when the burden shifts to the Athlete to rebut a presumption or establish specific facts, the standard of proof is *"balance of probabilities"*.

- With this, the burden lies with the Athlete to establish, by a balance of probabilities, a departure by the Moscow Laboratory from the ISL, that could reasonably have caused a PAAF in his Sample. Once the Athlete satisfies this burden, his burden on causation is reduced to the lower standard of *"could reasonably have caused"*. At that point, the burden shifts back to WADA to demonstrate, to the comfortable satisfaction of the Panel, that the departure did not cause the PAAF.

b. The evidence put forth by WADA is unreliable

- The Athlete challenges the reliability of the evidence presented by WADA, arguing the following:

i. The LIMS data

- The Athlete contends that the Moscow Laboratory's LIMS was an outdated MySQL database lacking modern safeguards for data integrity and security, such as regulatory compliance and cybersecurity measures.

- At the time, the ISL did not require accredited laboratories to use computerized systems, and paper records held legal primacy over LIMS data in anti-doping cases. The Athlete emphasizes that the reliability of the LIMS depended on the Moscow Laboratory's internal protocols, which were flawed. Moreover, internal EDP Emails reveal frequent errors by staff in recording and maintaining data, further undermining the LIMS's credibility.

- In light of these limitations, the Athlete argues that the LIMS data, including the 2015 and 2019 LIMS, should be given minimal weight unless corroborated by reliable evidence, such as witness statements, forensic-standard digital data, or physical records.

(i) 2015 LIMS

- The Athlete asserts that the 2015 LIMS, a database *"dump"* provided to WADA by a whistleblower on 31 October 2017, is deeply unreliable.

- According to the Athlete, the 2015 LIMS is, at best, actionable intelligence that needs to be corroborated by other reliable evidence for the following reasons:

  - Its origins and content remain unclear as it is unknown who performed the *"dump"*, how it was obtained, or whether it included critical supporting data such as raw data files or PDF files;

  - The chain of custody was interrupted between its creation in 2015 and WADA's acquisition in 2017, creating opportunities for manipulation;

- Additionally, the covert and unauthorized nature of the *"dump"* further undermines its reliability;

- Both WADA and Russian authorities acknowledge that former employees accessed the LIMS data after their employment, compounding concerns about its authenticity.

(ii) 2019 LIMS

- According to the Athlete, the 2019 LIMS, which represents a forensic image of the Moscow Laboratory's LIMS retrieved by WADA in January 2019, is similarly unreliable.

- In this respect, WADA contends that the data was manipulated to protect the Athlete by deleting incriminating records.

- The Athlete argues, however, that issues surrounding the authenticity and reliability of the 2019 LIMS are beyond the scope of these proceedings, as this Panel should focus solely on the evidence of the PAAF in the Sample.

ii. Raw data files and PDF files

- The Athlete emphasizes that the raw data files and PDF files, generated directly by instruments with minimal human intervention, hold greater evidentiary value than LIMS records. Nonetheless, the Athlete notes that some PDF files from the Moscow Laboratory were manipulated, a fact acknowledged by both WADA and Russian authorities.

- While WADA also claims that the raw data files were altered to produce fabricated PDF files, the Athlete notes that such a claim is not only disputed by the Russian authorities but also appears to be based solely on circumstantial evidence and logical reasoning, rather than concrete evidence.

iii. The Athlete's data package

- The Athlete's data package, which comprises the LIMS records, carved LIMS files, raw data files, and PDF files related to the Sample, was submitted along with the W&B Statements.

- However, the Athlete argues that no independent forensic opinion has been provided to confirm the uninterrupted chain of custody of this data from the time WADA I&I obtained the 2015 LIMS until the moment the data package was extracted, translated, and assembled. As such, the evidentiary value of the 2015 LIMS is further undermined by chain of custody defects.

- Moreover, WADA has not demonstrated that all relevant data associated with the Athlete's Sample was extracted from the 2015 LIMS. The Athlete contends that this extraction process should have been certified by an independent third party with access to the full SQL version of the 2015 LIMS database, which is unavailable in this case.

c. The Moscow Laboratory was analytically unreliable

- The Athlete argues that the Moscow Laboratory itself was neither ISL-compliant nor analytically reliable. Accredited in 2009, the Moscow Laboratory faced significant compliance issues under the ISL.

- These issues are underscored by evidence of illegal practices, including the implementation of the DPM, which constitutes the most severe violation of the ISL. Further, the McLaren Reports confirmed that the Moscow Laboratory engaged in undercover testing, while Dr. Rodchenkov developed the *"Duchess Cocktail"* to rapidly clear steroids from athletes' systems before competition. Such practices highlight fundamental flaws in the Moscow Laboratory's operations.

- The Athlete further notes that official and unofficial urine samples were analyzed on the same instruments, creating a heightened risk of contamination and analytical errors. Additionally, the Moscow Laboratory's focus on testing for performance-enhancing drugs exacerbated the potential for inaccuracies. These systemic issues increased the likelihood of both human and technical errors, compromising the reliability of the analytical results.

- Moreover, the Athlete recalls that in 2013, following an audit of the Moscow Laboratory, WADA's Health, Medical, and Research Committee identified significant deficiencies and noted that several corrective actions remained incomplete. In November 2013, WADA's Disciplinary Committee warned that the accreditation would be suspended for six months unless these actions were completed by 1 December 2013 and 1 April 2014. This indicates that WADA was already aware of substantial deficiencies. There are also EDP Emails from June 2015 that reveal widespread sample contamination and resulting analytical errors, underscoring the unreliability of the Moscow Laboratory's results during this period.

- Finally, the Athlete disputes WADA's assumption that the Moscow Laboratory could not distinguish double-blind from the *"External Quality Assessment Scheme"* ("EQAS") samples from routine samples. According to the Athlete, this is contradicted by evidence, including internal EDP Emails and Dr. Rodchenkov's book, "*The Rodchenkov Affair"*.

- In summary, the Athlete contends that the Moscow Laboratory's lack of ISL compliance, coupled with its engagement in illegal practices and flawed analytical methods, renders its analytical results unreliable. When viewed in conjunction with the chain of custody defects and the lack of corroborating evidence, the Athlete submits that the evidence presented by WADA should be given little to no weight.

d. The specific evidence against the Athlete is insufficient to establish an ADRV

- The Athlete asserts that the evidence against him is insufficient to establish an ADRV. Specifically, WADA claims that the 2015 LIMS indicate his Sample tested positive for three anabolic steroids. However, the Athlete contends that the LIMS reflects only a PAAF in his Sample, which required a CP for validation. Without a CP, the PAAF in his Sample is inconclusive under the ISL, and his Sample could not have been confirmed

or reported positive in ADAMS.

- In this respect, Dr. De Boer concluded as follows:

  "Firstly, it can be concluded that by not performing the Confirmation Procedure for the sample coded 2946034 under these specific conditions as applicable in the Moscow laboratory, it could never have been prevented that the athlete was incorrectly linked to positive results for metabolites of TRENBOLONE, METENOLONE and OXANDROLONE;

  Secondly, it can also be concluded that by not performing the evaluation of the analytical results according to TD2010IDCR and given the facts assumed, it cannot be justified in a reasonable way that the identification of at least one metabolite of TRENBOLONE, METENOLONE or OXANDROLONE was not correct;

  Finally, it should be remarked, that as the way of performing analyses under the conditions in the Moscow laboratory never could have been prevented that the athlete was incorrectly linked to positive results for metabolites of TRENBOLONE, METENOLONE and OXANDROLONE, it might be argued that the subject of manipulation of the data in LIMS becomes irrelevant as it cannot be excluded that the result should be linked to an unidentified athlete."

- The Athlete also challenges WADA's reliance on alleged data manipulation of the raw data files and PDF files related to his Sample to argue that he was protected. He notes that WADA's assertion is speculative, based on a theory of observed data manipulation patterns, and unsupported by factual or expert testimony. Indeed, the W&B Statement indicates that the PDF files and raw data files related to his Sample recovered in 2019 were examined by the WADA Investigators with the assistance of an *"Independent Laboratory Expert"* without even disclosing the identity of such *"Independent Laboratory Expert"*. Moreover, no copy of or an extract from a report by this *"Independent Laboratory Expert"* has been provided to the Athlete.

- The W&B Statement also acknowledged that the manipulation assessment was for investigative purposes only and recommended that the "*applicable Results Management Authority should obtain separate and independent assessment of the analytical data related to the Sample prior to pursuing an ADRV*." However, the Athlete submits that no such independent assessment was provided to the Athlete by the UIPM during the first instance hearing.

- WADA asserts that the Athlete was part of a protection scheme, citing the absence of a CP for his Sample and his name appearing in EDP Emails and LIMS records. However, there is no evidence to demonstrate the Athlete's involvement in or consent to such a scheme. Furthermore, no witness has testified to observing the Athlete using prohibited substances. As established in CAS precedents, allegations of this severity require particularly compelling evidence, which is notably absent in this case.

- Considering the above, the Athlete contends that WADA has failed to meet its burden of proving, to the Panel's comfortable satisfaction, that he committed an ADRV. Subsidiarily, the Athlete further argues that WADA has failed to substantiate any

aggravating circumstances warranting a sanction exceeding two years.

- Moreover, the Athlete provides plausible alternative explanations for the incriminating evidence. If the 2015 LIMS data concerning his Sample are deemed accurate, they could reasonably be attributed to analytical errors or contamination, as highlighted in Dr. De Boer's expert report and corroborated by documented cases of frequent contamination in the EDP Emails.

- Another plausible explanation involves a contamination scenario, given that the Athlete's Sample was analyzed concurrently with and under the same ITPs as Mr. Kustov's sample. The close timing and proximity of their analysis create a credible risk of cross-contamination, an issue that was prevalent in the Moscow Laboratory. Specifically:

  - Mr. Kustov's sample was analyzed on 13 August 2014 at 6:11:49 AM (Tray Lot 1:37).
  - The Athlete's Sample was analyzed shortly after, at 7:03:47 AM (Tray Lot 1:39).

- Given the known history of sample contamination in the Moscow Laboratory, the Athlete argues this could explain the PAAF in his Sample.

- This said, the Athlete argues that Mr. Kustov's ADRV case has no bearing on the Athlete's case, as Mr. Kustov did not respond to any UIPM communications, including the notice of charge, and the decision against him was the result of silence.

e. The Athlete's prayers for relief

80. In his Answer, the Athlete sought the following relief:

" a. dismiss the WADA appeal

b. uphold UIPM Doping Review Panel Decision

c. order WADA to bear the costs of the arbitration in these appeal proceedings,

d. order WADA to compensate Mr. Frolov for the legal fees and other expenses incurred in these appeal proceedings, and

e. order any other relief that the Panel deems just and appropriate".

V. JURISDICTION

81. Article R47 para. 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."

82. Article 13.1.3 of the 2021 UIPM Anti-Doping Rules (the "2021 ADR") states the following:

"13.1.3 WADA Not Required to Exhaust Internal Remedies

Where WADA has a right to appeal under Article 13 and no other party has appealed a final decision within UIPM's process, WADA may appeal such decision directly to CAS without having to exhaust other remedies in UIPM's process."

83. On 24 January 2024, WADA and RUSADA received notification of the Appealed Decision.

84. Per Article 13.1.3 of the 2021 UIPM ADR, it is undisputed that no other party, specifically RUSADA, has appealed the Appealed Decision within the UIPM's process.

85. Moreover, all Parties expressly confirmed CAS's jurisdiction by signing the Order of Procedure, and they fully participated in these proceedings without objection.

86. Therefore, the Panel confirms that CAS has jurisdiction to decide this dispute.

VI. ADMISSIBILITY

87. Article R49 of the CAS Code provides, in its relevant parts, 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."

88. Article 13.1.3 of the 2021 UIPM ADR provides the following:

"13.1.3 WADA Not Required to Exhaust Internal Remedies

Where WADA has a right to appeal under Article 13 and no other party has appealed a final decision within UIPM's process, WADA may appeal such decision directly to CAS without having to exhaust other remedies in UIPM's process."

89. Article 13.6.1 of the 2021 UIPM ADR states that *"*[…] *the filing deadline for an appeal filed by WADA shall be the later of: (a) Twenty-one (21) days after the last day on which any other party having a right to appeal could have appealed, or (b) Twenty-one (21) days after WADA's receipt of the complete file relating to the decision."*

90. On 24 January 2024, the UIPM notified WADA and RUSADA of the Appealed Decision.

91. On 7 February 2024, WADA requested the UIPM to provide the complete file related to the Appealed Decision.

92. On 8 February 2024, WADA received documents related to the Appealed Decision.

93. Under Articles 13.1.3 and 13.6.1(a) of the 2021 UIPM ADR, RUSADA, which had a right to appeal within 21 days, was notified of the Appealed Decision on 24 January 2024, setting its appeal deadline as 14 February 2024. Consequently, WADA's deadline to appeal under Article 13.6.1 (a) was 6 March 2024.

94. Alternatively, under Article 13.6.1(b) of the 2021 UIPM ADR, if based on WADA's receipt of documents on 8 February 2024, the 21-day appeal deadline would have been 29 February 2024.

95. WADA filed its Statement of Appeal on 28 February 2024, meeting the deadlines specified under Article 13.6.1 of the UIPM ADR.

96. Accordingly, the Panel confirms that this Appeal is admissible.

VII. APPLICABLE LAW

97. 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."*

98. Since the alleged ADRV occurred on 9 August 2014, the applicable regulations in force at that time shall govern the case. In this respect, the Panel notes that the Appealed Decision was rendered under the 2013 MR and 2013 DR.

99. Moreover, following the principle "*tempus regit actum"*, the procedural aspects of this case are governed by the 2021 UIPM ADR, as these were in force at the time the Appealed Decision was issued.

100. Additionally, the laws of Monaco are to be applied subsidiarily, it being the country in which the UIPM is domiciled.

101. In conclusion, the Panel determines that, for the purposes of Article R58 of the CAS Code, the 2013 MR and 2013 DR govern the substantive issues, while the 2021 ADR govern procedural issues in these proceedings. Subsidiarily, the laws of Monaco apply.

102. This determination is further supported by the fact that all Parties expressly referenced and did not dispute the application of the 2013 MR, the 2013 DR, and the 2021 ADR in their respective submissions.

VIII. SCOPE OF THE PANEL'S REVIEW

103. According to Article R57 of the CAS Code:

"The Panel has full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance. […] *"*

IX. MERITS

A. Issues before the Panel

104. Before examining the merits of the Parties' factual and legal arguments, it is essential to first identify the relevant provisions that define the specific elements of the alleged ADRV committed by the Athlete. These provisions also establish the framework within which the Panel must assess whether the ADRV has been proven.

105. *In casu*, the key provision is Article 1.2.3 of the 2013 MR, which provides as follows:

"1.2.3. The Use or Attempted Use by an athlete of a Prohibited Substance or a Prohibited Method.

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

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

106. The Panel must therefore assess whether a *"use"* ADRV within the meaning of Article 1.2.3 of the 2013 MR has occurred, which may be established by any reliable means, including admissions, credible testimony of third persons, reliable documentary evidence, analytical data, or conclusions drawn from the profile of a series of the athlete's blood or urine samples (Article 3.2 of the 2013 MR and Comment to Article 3.2 of the 2009 WADC).

107. Additionally, the Panel observes that Article 3.1 of the 2013 MR defines the burden and standard of proof required to establish an ADRV as follows:

"3.1 The UIPM and its National Federations bear the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether the UIPM/National Federation has established an anti-doping rule violation to the comfortable satisfaction of the UIPM Executive Board/National Federation hearing panel bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt. Where these Rules place the burden of proof upon the athlete or other person alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, the standard of proof is by a balance of probability, except where the athlete must satisfy a higher burden of proof under the UIPM Disciplinary Rules."

108. Thus, WADA bears the burden of proving that the Athlete committed the alleged ADRV, with the applicable standard of proof being whether WADA has established the occurrence of such ADRV to the Panel's comfortable satisfaction. In this regard, Article 3.1 of the 2013 MR specifies that this standard is higher than a mere balance of probabilities but lower than proof beyond a reasonable doubt, bearing in mind the seriousness of the allegation which is made.

109. Considering the above, the main issues to be resolved by the Panel are as follows:

a. Did the Athlete use prohibited substances in violation of Article 1.2.3 of the 2013 MR?

b. If so, what sanctions shall be imposed on the Athlete?

a. Did the Athlete use prohibited substances in violation of Article 1.2.3 of the 2013 MR?

110. The Panel is presented with two strongly opposed positions, with little, if any, common ground between them.

111. WADA contends that the Appealed Decision is wrong and must be set aside as its evidence — including LIMS and EDP — is both reliable and conclusive. This evidence establishes that, on or about 9 August 2014, the Athlete used a combination of metenolone, oxandrolone, and trenbolone, which together constituted the infamous *"Duchess cocktail"* widely used by Russian athletes as part of the state-sponsored doping scheme. Despite this, the Sample was falsely reported as negative in ADAMS by the Moscow Laboratory, which had received illicit instructions to halt analysis — allowing the Athlete to use prohibited substances while remaining eligible for the 2014 World Championships. Hence, the ADRV under Article 1.2.3 of the 2013 MR is clearly established and warrants a four-year period of ineligibility given the presence of aggravating circumstances.

112. Conversely, the Respondents argue that the Appealed Decision is correct and should be upheld, as WADA's evidence is unreliable and insufficient to prove an ADRV of Article 1.2.3 of the 2013 MR. They claim that, without valid analytical confirmation, the Sample results cannot be trusted, particularly since no CP followed the detection of the PAAF. The lack of a CP, they argue, renders the testing incomplete and inconclusive, justifying the Sample's negative report in ADAMS. As such, no ADRV occurred, and no period of ineligibility should be imposed. Even if an ADRV were proven (*quod non*), no aggravating circumstances would warrant an increased sanction.

113. With the above in mind, the Panel reiterates that it is for WADA to prove that the Athlete committed an ADRV to its comfortable satisfaction. Accordingly, in determining whether the Athlete used prohibited substances on or about 9 August 2014, in violation of Article 1.2.3 of the 2013 MR, the Panel must first assess the reliability of the evidence put forth by WADA. If the evidence is deemed reliable, the Panel must then determine whether it is sufficient to establish the ADRV to its comfortable satisfaction. Each of these questions will be addressed in turn.

i. Is the evidence put forth by WADA reliable?

114. In support of its claims, WADA primarily counts on the McLaren Reports, EDP Emails, and 2015 LIMS, asserting that such evidence is credible and reliable. In contrast, the Respondents dispute its reliability, arguing that it is flawed and unsubstantiated.

(a) McLaren Reports

115. First, WADA's appeal is based on the findings of the McLaren Reports, specifically the DPM and the *"Duchess Cocktail"*.

116. When evaluating the reliability of the McLaren Reports, the Panel emphasizes that the First McLaren Report determined *"beyond a reasonable doubt"* that the Russian Ministry of Sport, the Centre of Sports Preparation of the National Teams of Russia, the Federal Security Service, and the Moscow Laboratory had *"operated for the protection of doped Russian athletes"* within a *"state-directed failsafe system, described in the report as the Disappearing Positive Methodology"*. Moreover, Prof. McLaren even goes so far as to write in his First McLaren Report that he *"only made Findings in this Report that meet the standard of beyond a reasonable doubt"*.

117. The Panel's determination is further supported by the fact that the *"IP* [Prof. McLaren] *investigative team has reviewed and date-validated hundreds of email communications; digital media communications, along with forensic analytical findings and experiments and can demonstrate the existence of this system* [DPM] *beyond a reasonable doubt."* For the Panel, the review and date-validation of hundreds of emails by Prof. McLaren's investigative team adds credibility to the McLaren Reports' findings regarding the DPM. And, again, no meaningful challenge was mounted by any Party to change the Panel's view in this respect.

118. Further credibility of the McLaren Reports is strengthened by the fact that the systemic nature of the Russian doping scheme, as detailed within, has been confirmed by Russian authorities themselves. In 2018, Russia's Minister of Sport, Mr. Kolobkov, and the President of the ROC, Mr. Aleksander Zhukov, publicly acknowledged the existence of a state-sponsored doping program. Additionally, the findings of the McLaren Reports, established under a high standard of proof, have been corroborated by independent investigations, including the Schmid Commission, and have been roundly confirmed by various CAS panels as credible and reliable, (CAS 2018/O/5666, CAS 2018/O/5672, CAS 2018/O/5704, CAS 2018/O/5712, CAS 2017/O/5039). These acknowledgements serve to reinforce the widespread and institutionalized nature of doping in Russia during the relevant period, further validating the conclusions reached in the McLaren Reports.

119. Additionally, as noted above, the Panel observes that the Respondents have not directly contested the findings of the McLaren Reports, or the existence of the overarching doping scheme described therein. In fact, the Athlete even relies on the counter-detection methodologies outlined in the McLaren Reports to argue that the Moscow Laboratory was neither ISL-compliant nor analytically reliable during this period due to the alleged *"illegal practices"*.

120. Accordingly, the Panel finds that the McLaren Reports provide a reliable and comprehensive account of the DPM and the broader state-orchestrated doping scheme in Russia. Moreover, no evidence was presented to this Panel which would lead it to a different determination.

(b) EDP

121. Next, WADA relies on the EDP evidence, which primarily originates from the McLaren Reports.

122. The Panel understands that WADA I&I conducted a forensic examination to verify the reliability of the EDP evidence. According to the Initial W&B Statement, this process involved analyzing email properties to confirm the exact sending date and authenticity of the EDP Emails. The forensic analysis focused on the metadata within these emails. As explained, an email header contains critical details about a message, including its sender, recipient, date, subject, timestamps, and delivery route. These details can be accessed via the *"Properties"* tab of an email and provide a record of the dates and times at which the message was transmitted. By examining this metadata, WADA I&I asserts it was able to verify the authenticity of the EDP Emails, confirming that the exchanges between Dr. Sobolevsky, Dr. Rodchenkov, and Mr. Velikodny occurred on 13 August 2014.

123. This said, during the hearing, an inconsistency was noted between the original Russian version of EDP0480 and its English translation. The email, sent by Dr. Sobolevsky to Dr. Rodchenkov and Mr. Velikodny on 13 August 2014, showed different timestamps: 10:27 AM in the Russian version and 9:27 AM in the English translation — a one-hour discrepancy. When questioned, WADA suggested this could be a clerical translation error and referred the Panel to the email properties, which showed an internet header timestamp of 08:26:40+0000 (UTC). At the relevant date, Moscow was operating on UTC+4 due to daylight saving time. Therefore, the corresponding local time of the email's transmission would have been 12:26:40 PM (Moscow time). This inference is further supported by EDP0481, the response email, which appears to reference the original email's time and date, aligning with this adjusted timestamp:

"СОХРАНИТЬ

2920035, Кустов, современное пятиборье, УТС | 3495/14, RU Новогорск, отбор

2014-08-09, предвыездной

тренболон, метенолон, оксандролон

СОХРАНИТЬ

2946034, Фролов, современное пятиборье, УТС | 3495/14, RU Новогорск, отбор

2014-08-09, предвыездной

тренболон, метенолон, оксандролон

13 августа 2014 г., ***12:26*** *пользователь Tim*

Sobolevsky <[...]> написал:

2920035, М, современное пятиборье, УТС | 3495/14, RU Новогорск, отбор 2014-08-09, предвыездной

тренболон, метенолон, оксандролон

2946034, M, современное пятиборье, УТС | 3495/14, RU Новогорск, отбор 2014-08-09, предвыездной

тренболон, метенолон, оксандролон"

Translation

"SAVE

2920035, Kustov, modern pentathlon, training camp | 3495/14, RU Novogorsk, collection 2014-08-09, pre-departure

trenbolone, methenolone, oxandrolone

SAVE

2946034, Frolov, modern pentathlon, training camp | 3495/14, RU Novogorsk, collection 2014-08-09, pre-departure

trenbolone, methenolone, oxandrolone

13 August 2014, ***12:26*** *user Tim Sobolevsky <[…]> wrote:*

2920035, M, modern pentathlon, training camp | 3495/14, RU Novogorsk, collection 2014-08-09, pre-departure

trenbolone, methenolone, oxandrolone

2946034, M, modern pentathlon, training camp | 3495/14, RU Novogorsk, collection 2014-08-09, pre-departure

trenbolone, methenolone, oxandrolone"

(emphasis added)

124. Given the above, the Panel accepts this explanation, noting that the 10:27 AM timestamp in the email header, as opposed to the email properties, likely reflects the local time zone of the device used to view or save the email. Therefore, any discrepancy was most likely due to system adjustments when the email was archived as an exhibit for these proceedings.

125. Further supporting the reliability of the EDP evidence, the First McLaren Report stated that Prof. McLaren's investigative team "*reviewed and date-validated hundreds of email communications."* For the Panel, this suggests that a substantial number of EDP Emails linked to the DPM were contemporaneous and verifiable, reinforcing their authenticity.

126. However, beyond references in the W&B Statements, the Panel is mindful that it has

not received a specific forensic report or expert opinion confirming that the EDP evidence recovery process adhered to best practices for preserving integrity and authenticity. Despite this, it notes that the issue has not been formally contested, nor have the Respondents provided a counter-expert analysis or otherwise challenged the explanations set forth in the W&B Statements. Moreover, the Respondents have not alleged that the EDP evidence was falsified, manipulated, or fabricated. No evidence of tampering has been presented, nor have the Respondents suggested otherwise. On the contrary, the Panel notes that the Athlete himself has relied on certain EDP Emails to support his claim of *"massive samples' contamination and resulting analytical mistakes"*.

127. Finally, the Panel takes judicial notice of the conclusions in previous CAS cases (CAS 2018/O/5667, CAS 2018/O/5668, CAS 2018/O/5671, CAS 2018/O/5712, CAS 2018/O/5713), all of which affirmed the general reliability of the EDP evidence.

128. Considering all of the above, the general reliability and contemporaneous nature of the EDP evidence appear to be accepted by all Parties. Accordingly, the Panel accepts the W&B Statement's assertion that the EDP Emails related to the Sample were created on the recorded date, contemporaneous with the events, particularly in August 2014.

129. On this basis, the Panel is comfortably satisfied that the EDP evidence presented by WADA is both authentic and contemporaneous. Nonetheless, the Panel recognizes that a single piece of EDP evidence alone may not necessarily be sufficient to establish the ADRV.

(c) LIMS Data

130. Next, WADA relies on the LIMS database, which allegedly records the results of thousands of athlete samples, to support its specific claims against the Athlete.

131. For context, the Panel is reminded that the 2015 LIMS — the first copy of the LIMS data — was provided to WADA in October 2017 by a whistleblower. Later, in January 2019, during a mission to Russia, WADA I&I retrieved the 2019 LIMS — the second copy of the LIMS data — along with the 2019 Files from the Moscow Laboratory.

132. Regarding the reliability of the LIMS, WADA refers to the Initial W&B Statement, which states as follows:

"Reliable Evidence

27. Upon receipt of the 2015 LIMS Copy, we conducted investigations and established via observable digital evidence, ***that the 2015 LIMS Copy was an accurate copy of the original LIMS created contemporaneously as part of the Moscow Laboratory's analytical procedures and its contents can be relied upon as being accurate and forensically valid information.[25] In other words, it is reliable evidence****.*

28. In authenticating and validating the 2015 LIMS Copy we conducted a range of investigations including a comparative analysis in which data from the 2015 LIMS Copy was compared to external, independent, and original sources of information such as

ADAMS, evidence recovered by the Independent Person (McLaren) investigation, AAFs reported by the Moscow Laboratory,[26] and the results of WADA's "EQAS" assessment of the Moscow Laboratory.[27]

29. Moreover, the Moscow Data contained digital evidence which confirmed that the data of the 2015 LIMS Copy once existed in the Moscow Laboratory's LIMS but was intentionally deleted from that system by an unknown person from within the Moscow Laboratory prior to its release to WADA on 17 January 2019.

[…]

"56. Following recovery from the Moscow Laboratory, the 2019 Database was compared to the 2015 Database. This analysis involved a global, sample-by-sample comparison of the Data Sources. In other words, every record of every sample in the 2015 Database was compared with every record of every sample in the 2019 Database.

57. In depth content-based analysis using key anti-doping analytical data, revealed a very high degree of matching between the Data Sources. However, from the original prospective pool of 63,279 "unique" samples, there were 245[73] LIMS. Moreover, there are 328[74]. samples (and their associated data) present in the 2015 Database but absent from the Moscow samples and 22 "Bags" present in both Data Sources that contain discrepancies (differences) in their respective data values.

The Samples

58. The Sample was one of the 245 samples where discrepancies existed between the Data Sources. More specifically, the data for the Sample that is recorded in the "Bags", "Samples", "Screenings", "MS-data", "PDFs" and "Confirmation" tables matched completely between the Data Sources. However, critical differences were observed in the "Found" and "log_do" tables for the Sample. More specifically, all Presumptive AAFs reported in the "Found" table of the 2015 Database were deleted from the associated "Found" table of the 2019 Database.

59. The question as to which version of the LIMS database is authentic was resolved by reliance upon observable digital evidence and the work of the Independent Experts. More specifically, the Moscow Data contains observable digital evidence that records from the "Found" and "Log_do" tables of the 2015 Database for the Sample – that are missing from the 2019 Database – previously existed in the Moscow LIMS but were intentionally deleted from that database prior to its release to WADA by Russian authorities on 17 January 2019".

(emphasis added)

133. From this, it follows that WADA considers the 2015 LIMS to be analytically reliable, while questioning the authenticity of the 2019 LIMS and 2019 Files. This is because, through a comparative analysis of the 2015 and 2019 LIMS data, WADA Investigators identified digital evidence showing that records present in the 2015 LIMS were either missing or altered in the 2019 LIMS. Specifically, it is alleged that these records had previously existed in the 2019 LIMS but were intentionally deleted or modified, including notably the ITP (*"Found"* table) records for the Sample.

134. For starters, it seems generally accepted by the Parties that the 2019 LIMS should not be relied upon by the Panel in its assessment, although for different reasons.

135. On the one hand, WADA argues that the 2019 LIMS is unreliable as it was deliberately manipulated to conceal incriminating evidence of doping.

136. On the other hand, the Athlete does not explicitly dispute the occurrence of manipulations in the 2019 LIMS but asserts that the authenticity of the 2019 LIMS is outside the scope of these proceedings. Moreover, the Athlete cannot overlook the fact that WADA dismisses the 2019 LIMS when it suggests that the *"Duchess Cocktail"* was not detected in the Sample, yet relies on that same 2019 LIMS to support its argument that the Athlete was protected.

137. In view of this, the Panel appreciates that the mere fact that the integrity of the 2019 LIMS is in question fits within the broader context of the cover-ups and interference described in various investigations in Russia. Further, the Panel acknowledges that the large-scale manipulation of the 2019 LIMS by Russian authorities, as part of the institutionalized doping scheme, has been confirmed in previous CAS cases, most notably in CAS 2020/O/6689 in which the CAS panel held as follows:

> *"614. The Panel finds that, prior to the Moscow Data being retrieved by WADA in January 2019, and during its retrieval, it was subjected to deliberate, sophisticated and brazen alterations, amendments and deletions. Those alterations, amendments and deletions were intentionally carried out in order to remove or obfuscate evidence of improper activities carried out by the Moscow Laboratory as identified in the McLaren Reports or to interfere with WADA's analysis of the Moscow Data.*
>
> *[...]*
> *674. For the reasons given above, the Panel finds that RUSADA failed to procure an authentic copy of the Moscow Data and therefore failed to comply with the Post-Reinstatement Data Requirement. The steps taken to manipulate the Moscow Data and deceive WADA could hardly be more serious.*
>
> *675. Accordingly, the Panel finds that WADA has established that RUSADA is non-compliant with the 2018 WADC.*

138. Based on the foregoing, the Panel accepts that the 2019 LIMS was subject to manipulation. However, as the Athlete stated during the hearing, the Panel agrees that *"this case is about a "use" ADRV, not about a scheme"*. That being said, the Panel acknowledges that this information can be relevant for assessing indirect circumstantial evidence and aggravating circumstances.

139. With this in mind, the Panel now turns to the question of the reliability of the 2015 LIMS.

140. Most relevant to the present case, the Panel recalls that the 2015 LIMS — described by WADA Investigators as an *"accurate copy of the original LIMS created contemporaneously as part of the Moscow Laboratory's analytical procedure"* — indicate that metenolone, oxandrolone, and trenbolone, all anabolic steroids found in the *"Duchess Cocktail"*, were detected in the Sample upon the ITP analysis.

141. The Respondents, however, dispute the reliability of the 2015 LIMS. In particular, the Athlete argues that it cannot be relied upon, citing the Moscow Laboratory's lack of security features at the relevant times to ensure data integrity and prevent unauthorized access. The Panel acknowledges these concerns but notes that the absence of security measures does not automatically render the 2015 LIMS unreliable. WADA Investigators verified its integrity, and no evidence of manipulation or tampering has been presented. Furthermore, the Athlete has provided no independent expert report or concrete proof supporting his claim that the 2015 LIMS data is unreliable. The Panel also recognizes that, as stated in the W&B Statement, there was no formal requirement for laboratories to maintain a dedicated LIMS prior to 2020. Consequently, the ISL did not regulate how a laboratory implemented or secured its LIMS. While security concerns exist, they were not unique to the Moscow Laboratory and do not inherently discredit the 2015 LIMS data.

142. The Athlete further contends that the 2015 LIMS may have been manipulated before being provided to WADA in October 2017, citing uncertainty around its retrieval process. The Panel acknowledges that little is known about how and by whom the 2015 LIMS *"dump"* was performed. However, the lack of details does not, in itself, constitute proof of manipulation. The Athlete provides no concrete evidence that the 2015 LIMS data was altered before WADA received it. Speculation alone is insufficient to undermine its reliability.

143. The Athlete argues that the Moscow Laboratory was neither ISL-compliant nor analytically reliable in 2014, which, in his view, casts doubt on any data recorded in the 2015 LIMS, including the PAAF for the *"Duchess Cocktail"* detected in the Sample. However, the Panel notes that at the time of the Sample analysis in 2014, the Moscow Laboratory was accredited, which provides context supporting the validity of its analytical results. While the Moscow Laboratory's accreditation was revoked in 2016, this was primarily due to unethical practices and its involvement in a broader doping scheme, rather than its inability to perform accurate testing. As Prof. Ayotte said at the hearing, *"you can be a cheater, but still be a good scientist"*. In fact, the existence of the doping scheme itself required it to conduct accurate analyses before selectively falsifying results. Additionally, Prof. Ayotte's expert assessment described the Moscow Laboratory's analytical methods as *"correct"* and the metabolic pattern reported as *"scientifically sound"*, further reinforcing the reliability of its testing procedures at that time.

144. Regarding the Athlete's concerns about contamination impacting the analytical reliability of the Moscow Laboratory, the Panel takes note of Dr. de Boer's remarks on this matter:

> *"It can be argued, when a urine sample is suspected for the presumed presence of metabolites of a three Anabolic Androgenic Steroids, namely TRENBOLONE, METENOLONE and OXANDROLONE, that it is uncommon under normal conditions. However, the conditions were that a "general protection scheme undertaken by the Moscow Laboratory" existed in 2013. Moreover, such scheme was designed to protect athletes and "not falsely implicate them". Within this scheme the abuse of the combination of TRENBOLONE, METENOLONE and OXANDROLONE, was developed by former Moscow Laboratory Director, Doctor Grigory Rodchenkov, as*

part of his responsibility to improve Russian sport performance and conceal evidence of doping. Accordingly, a significant number of Russian athletes must have produced urine samples with metabolites of those three Anabolic Androgenic Steroids to be analysed by the Moscow laboratory. Consequently, the likelihood of a possible identity exchange with a urine sample with metabolites of TRENBOLONE, METENOLONE and OXANDROLONE is by definition not unlikely."

145. While the Panel acknowledges that contamination can occur in any laboratory, such claims must be substantiated with specific, case-relevant evidence. Moreover, the EDP Emails cited by the Athlete in his submissions reference contamination concerns from June 2015 but do not indicate contamination in the Moscow Laboratory in 2014, nor do they specifically relate to the Sample.

146. As for the alternative explanations presented by the Athlete, particularly the claim that contamination from Mr. Kustov's sample may have been the source, the Panel carefully considered this argument. During the hearing, Prof. Ayotte was questioned about the feasibility of such contamination. She explained that when comparing the concentrations of the prohibited substances detected in both samples, the Athlete's Sample displayed — for the most part — significantly higher levels than Mr. Kustov's. Most notably, the concentration of oxandrolone in the Athlete's Sample was 16 ng/mL, whereas Mr. Kustov's sample contained 2.6 ng/mL. Given this disparity, Prof. Ayotte expressed serious doubt that contamination could account for the results, as it is difficult to conceive how a sample with a markedly higher concentration could have been contaminated by one with a much lower concentration. That said, the mere theoretical possibility of contamination does not provide a basis for concluding that it likely occurred, nor does it undermine the general reliability of the Moscow Laboratory's analytical results.

147. Therefore, the Panel assigns minimal weight to these contamination claims.

148. This notwithstanding, the Athlete concedes that the 2015 LIMS could be *"at best, actionable intelligence that needs to be corroborated by other reliable evidence for the purposes of any anti-doping proceedings."*

149. Considering the above, the Panel deems the 2015 LIMS to be credible, authentic, and reliable evidence. In reaching this conclusion, the Panel takes into account prior CAS rulings, including CAS 2021/A/7839 and CAS 2021/A/7840, which affirmed its reliability. However, the Panel remains mindful that, on its own, the 2015 LIMS may not necessarily suffice to establish an ADRV without corroborating evidence.

(d) Conclusion on the reliability of the evidence put forth by WADA

150. Regarding the overall reliability of the evidence, the Panel notes that it has not received witness statements or testimony from Dr. Rodchenkov or Prof. McLaren. However, given that the ADRV allegations primarily rely on the EDP Emails and the 2015 LIMS data, the Panel finds that their testimonies would have provided only limited additional value. This is particularly true considering that their findings have been extensively documented and consistently upheld in multiple CAS cases. While their testimonies could have further reinforced the case, their absence does not weaken its foundation.

151. Based on the above, the Panel is comfortably satisfied that the evidence presented by WADA is reliable.

ii. Is the evidence sufficient to establish an ADRV?

(i) Initial remarks

152. As a preliminary matter, the Panel wishes to clarify that the alleged ADRV brought against the Athlete relates to the "*Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method"* as set forth under Article 1.2.3 of the 2013 MR.

153. Notably, there is no requirement to demonstrate "*mens rea*" under Article 1.2.3 i) of the 2013 MR. The mere objective fact of the use of a prohibited substance is sufficient to establish an ADRV:

"It is each Athlete's personal duty to ensure that no Prohibited Substance enters his or her 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."

154. Moreover, Article 3.2 of the 2013 MR clearly states that a panel may rely on any evidence reliable in reaching its conclusion. The CAS jurisprudence supports this application. For example, in CAS 2004/O/645, a *"use"* violation was upheld based solely on an athlete's admission to a third party, and this was deemed sufficient evidence. Similarly, in CAS 2016/O/4481, the panel concluded that an athlete had used a prohibited substance based on their admission, demonstrating that admissions alone can establish a *"use"* violation.

155. In the present case, the alleged ADRV against the Athlete primarily relies on the 2015 LIMS, the EDP evidence, and expert reports. The Panel notes that WADA's case is centered on specific individual references to the Athlete, either by name or through sample numbers.

156. While each individual piece of evidence might carry limited probative weight on its own, the Panel emphasizes that the strength of evidence lies in its cumulative impact. In this respect, the CAS jurisprudence has consistently recognized the value of the cumulative assessment of circumstantial evidence. For instance, in CAS 2018/O/5713, the sole arbitrator explained:

"61. In the judgment of the Sole Arbitrator, the Athlete's violations are clearly established, despite her very extensive challenge to each and every separate element of proof against her. Looking at the totality of the matter, there might be some analogy with the logic and common sense of English law, which has recognised for at least 150 years that ***"Circumstantial evidence might be compared to a rope comprised of several cords: one strand of the cord might be insufficient to sustain the weight, but three stranded together may be quite of sufficient strength****".*

(emphasis added)

157. Similarly, in CAS 2018/O/5667, the CAS panel reaffirmed:

"85. The CAS panel confirmed in CAS 2015/A/4059 (paras. 107-108) that a panel is allowed to consider the cumulative effect of circumstantial evidence. Therefore, even if single items of evidence may each be inadequate to establish a violation to the comfortable satisfaction of a hearing panel, considered together they may suffice."

158. Guided by these principles, the Panel must assess the combined weight of the EDP evidence, the 2015 LIMS, and other circumstantial elements. Even if there are plausible innocent explanations for individual elements, the Panel must consider the broader evidentiary context.

159. In this regard, the Panel notes the significant evidence of systemic doping practices in Russia, including:

- Multiple investigations, such as the Independent WADA Commission, the Schmid Commission, and Prof. McLaren's independent investigation, all confirmed the existence of systemic doping practices in Russia.
- The McLaren Reports specifically found that Russia operated a widespread doping system throughout the 2010s.
- The Schmid Report endorsed the findings of the McLaren Reports.
- The then-Russian Minister of Sport formally acknowledged the findings of both the Schmid and McLaren Reports in a letter to the WADA President on 13 September 2018.
- The President of the ROC also accepted the existence of the doping scheme.
- Several CAS cases have accepted the evidence of systemic doping in Russia.

160. While the Panel accepts that there was an overarching doping scheme in Russia, it must be reinforced that the existence of such scheme does not inevitably mean that the Athlete committed the alleged ADRV. The allegations asserted against the Athlete are serious and it is not sufficient for WADA to simply establish the existence of a doping scheme. WADA has the burden of proving to the comfortable satisfaction standard that the Athlete himself committed an ADRV by using prohibited substances. In doing so, WADA does not need to establish that the Athlete knowingly engaged in a doping scheme for the sake of an ADRV under Article 1.2.3 of the 2013 MR. Whether the Athlete was part of a doping scheme may nonetheless be used as indirect circumstantial evidence to establish the *"use"* violation or as an aggravating factor to increase the period of ineligibility under Article 4.9 of the 2013 DR.

161. As it was recognized by the CAS panel in CAS 2018/O/5667, *"the different types of facts and conclusions provided by the IP Reports and the Schmid Report, together with the supporting documents submitted to the Sole Arbitrator, are circumstantial evidence that may be used in assessing whether the Athlete has committed an ADRV* […] *The Sole Arbitrator underlines that whether there is sufficient evidence to establish an ADRV must be considered separately in each individual matter"* .

162. Therefore, the Panel must assess whether there is sufficient evidence in the present matter to conclude to its comfortable satisfaction that the Athlete himself infringed Article 1.2.3 of the 2013 MR.

(ii) Does the evidence provided by WADA suffice to establish an ADRV to the

Panel's comfortable satisfaction?

163. The Second McLaren Report reminds the Panel that "*different types of evidence provided with respect to any individual athlete are like strands in a cable"* must be assessed to determine *"whether the provided strands of evidence, standing alone or together build a sufficiently strong cable to support an ADRV in an individual case."* With this in mind, the Panel turns to the key elements of WADA's appeal.

164. As a starting point, WADA relies on the RUSADA doping control form ("DCF"), which confirms that the Athlete's Sample was collected on 9 August 2014 during an out-of-competition doping control, with reference number 2946034. WADA explains that the Sample was subsequently transferred to the Moscow Laboratory for analysis, where it was registered under internal code 10392. According to the 2015 LIMS, the ITP analysis detected the presumptive presence of trenbolone, metenolone, and oxandrolone. However, despite these findings, the Moscow Laboratory did not conduct the required CP analysis and instead reported the Sample as negative in ADAMS.

165. WADA argues that this aligns with the broader Russian doping cover-up scheme, which systematically concealed positive tests and protected athletes from sanctions. It contends that the Athlete benefited from this protection, ensuring that his use of these three prohibited substances remained undetected. This, WADA asserts, allowed him to compete at the 2014 World Championships in Warsaw, Poland from 1 to 7 September 2014 without the risk of an adverse analytical finding ("AAF"). Notably, just a month before the Sample collection on 9 August 2014, the Athlete had secured gold and silver medals at the European Modern Pentathlon Championships in Hungary between 10 and 15 July 2014. In a nutshell, WADA claims the Athlete benefited from the DPM.

166. For the purpose of properly assessing the DPM, and although it has already been detailed above, the Panel finds it helpful to reiterate the steps outlined in the McLaren Reports below:

> *"**3.2.1 The Steps in the Disappearing Positive Methodology***
>
> *When a Russian athlete's sample was analyzed by the Moscow Laboratory the following occurred.*
>
> *An initial analytical screen would be conducted. If the first analytical screen revealed a likely Adverse Analytical Finding ("AAF") on the athlete's A sample, the bench work in the laboratory was halted. The sample bottle number, the date of collection, the sex of the athlete, the sport discipline and event were recorded (the "Athlete Profile").*
>
> *The initial Athlete Profile was communicated to a Liaison person. The communication by laboratory personnel to the Liaison Person is by email, telephone, orally in person or by other digital media communication methods. At this point the laboratory does not know the identity of the athlete that it reported to the Liaison person.*
>
> *The IP investigation identified 3 participants who have acted as a Liaison person in this scheme as early as 2012. Natalia Zhelanova, the current advisor to Russian Minister of Sport Vitaly Mutko ("Minister Mutko") on all matters related to anti-doping, was the Liaison person from approximately 2012-2013 and Alexey Velikodniy[3], employed by the*

CSP from 2013 through to 2015 until the loss of accreditation of the Moscow Laboratory. For a brief period in late 2013 a third Liaison person, Dr. Avak Abalyan, currently the Deputy Director of the Department of Education and Science fulfilled this role.

The IP investigative staff has analysed and confirmed that communication from these individuals originated from private email accounts. The IP is aware of at least 2 occasions where Zhelanova used her official MofS @minsport.gov.ru email account to communicate information related to a urine sample to and from the Laboratory.

According to Dr. Rodchenkov, the Liaison process was endorsed by the Russian Deputy Minister of Sport Yury Nagornykh ("Deputy Minister Nagornykh") after he took office. The Deputy Minister gave instructions to Dr. Rodchenkov to convey all positive screen results to Zhelanova and she would then report to Deputy Minister Nagornykh.

Once the Liaison person received the Athlete Profile, he or she proceeded to obtain the identity of the athlete through contacting RUSADA and by providing the bottle number of the identified urine sample. RUSADA obtained the identity of the athlete through the athlete's DCF and communicated the information to the Liaison person.

The Liaison person then transmitted the full Athlete Profile to Deputy Minister Nagornykh. After making inquiries to the sports authorities and coaches regarding the specific athlete, Deputy Minister Nagornykh would issue an order for that sample. His order was either one of 2 code words: SAVE or QUARANTINE.[4] The SAVE or QUARANTINE order attached to the full Athlete Profile, which now included the athlete's identity, was funneled back to the Moscow Laboratory through the Liaison Person.

The Laboratory would then process the sample depending on the order given. If the order was SAVE, the Laboratory took no further steps in the analytical bench work process of that sample. The sample was subsequently reported as negative in ADAMS. The Laboratory personnel would manipulate the Laboratory's non auditable version of their Laboratory Information Management System (LIMS) so that it reflected a negative analysis. After the manipulation of the system, anyone reviewing the LIMS or ADAMS systems would not know it was a false entry.

If the order was QUARANTINE, the Laboratory would proceed to complete the analytical bench work in accordance with the procedure governed by the International Standard for Laboratories ("ISL").

[…]*".*

167. With the above in mind, the Panel first notes that the Athlete has not explicitly denied undergoing a doping control on 9 August 2014. Nor has he formally contested that the Sample referenced in the UIPM and WADA records belongs to him. The DCF, which bears his name, date of birth (04.04.1984), Sample code number (2946034), and collection date (09.08.2014), is also signed by him. When read alongside the 2015 LIMS, these records create an unequivocal link between the Sample and the Athlete. Accordingly, the Panel is comfortably satisfied that the Athlete provided Sample 2946034 on 9 August 2014 and that the data recorded in the 2015 LIMS pertains

directly to this Sample.

168. The Panel further notes that it is undisputed that the Sample underwent the ITP analysis, which detected three distinct anabolic steroids – trenbolone, metenolone, and oxandrolone – at concentrations exceeding the threshold that mandates CP analysis under WADA-accredited laboratory protocols. Nevertheless, the Moscow Laboratory failed to conduct the CP and reported the Sample as negative in ADAMS. For the Panel, the presence of not one but three anabolic steroids strongly suggests doping.

169. However, the Respondents contend that the Moscow Laboratory's failure to perform a CP undermines the reliability of the findings. While such a failure is — of course — a concern, the Panel cannot overlook the broader context: the allegations against the Athlete are linked to an extensive state-sponsored doping scheme, which led to RUSADA being declared non-compliant in 2015 and the Moscow Laboratory losing its accreditation in 2016. On that premise, the ADAMS entries by the Moscow Laboratory cannot *"enjoy unreserved reliability"* (CAS 2018/O/5668).

170. Referring back to the DPM steps outlined in the McLaren Reports, the Panel cannot ignore the striking parallels between the Sample's collection and analysis and the first step of the DPM. As mentioned above, when an initial analytical screen (i.e., the ITP) indicated a likely AAF for an athlete's A sample, all further benchwork was halted and key details, i.e., the *"Athlete Profile"* were recorded at that point.

171. Given this background, the Panel notes the Appealed Decision's conclusion that *"the mere existence of a general cover-up scheme is not sufficient, per se, to evidence a specific violation relating to use, lacking appropriate evidence of complete testing processes being performed and also lacking specific evidence of the administration of Prohibited Substances."* With this, the Panel observes the Respondents' contention that the absence of CP analysis negates any inference of wrongdoing.

172. The Panel agrees that the existence of a cover-up scheme alone cannot automatically prove an ADRV for *"use"*. This said, the Panel is of the view that it is an important piece of circumstantial evidence that cannot be dismissed. The Panel does not view the failure to complete the testing process here as an accident or an administrative oversight or a result of incompetence. For the Panel, the absence of a completed CP is not merely a gap in evidence but a probable consequence of the cover-up and a good indicator of the DPM in action.

173. So, while the Panel agrees with the Respondents that an incomplete testing process cannot, *per se*, be considered as sufficient evidence of an ADRV, the Panel must keep in mind the full picture. And given the systematic doping program in place at the time, the Panel believes the incomplete testing process cannot be considered a neutral factor in determining whether a *"use"* ADRV occurred.

174. Along those same lines, the Respondents also assert that the Sample's negative status in ADAMS should be accepted at face value. However, the Panel notes that the CAS jurisprudence has consistently upheld the assertion that positive findings, which should have been recorded as such in ADAMS, were systematically reported as negative. To date, this assertion has not been proven wrong. In this regard, the Panel aligns with the observations of the sole arbitrator in CAS 2018/O/5668:

"[…] *a negative analysis result shall be considered an indication that an athlete has been "clean" at the time of sample collection. This is also the clear starting point of the global anti-doping regime. However, when assessing the significance of a negative analysis result, a number of important reservations and limitations must be kept in mind.*

148. First, the integrity, independence, reliability, and quality of the laboratory and its personnel are indispensable preconditions for any conclusions based on an analytical result. Indeed, it is commonly known that a number of WADA-accredited laboratories have not been compliant with the relevant stipulations and therefore, have been suspended by WADA. Further, with regard to the Moscow Laboratory in particular, it was suspended by WADA due to its participation in the Russian doping scheme."

175. Regarding the Moscow Laboratory analysis results of the Athlete's Sample, the 2015 LIMS show the presence of three anabolic steroids and/or their metabolites, with their respective concentrations listed in the *"scr_conc"* column in ng/mL. These results indicate, *inter alia*, the following:

- Oxandrolone - 16 ng/mL
- Epioxandrolone (oxandrolone metabolite) - 6.2 ng/mL
- Epitrenbolone (trenbolone metabolite) - 8 ng/mL

176. The Panel notes that these concentrations exceed the 2014 MRPL, which was set at 5 ng/mL for anabolic steroids. The concentration of oxandrolone at 16ng/mL, alone, was more than three times the MRPL, providing a strong indication of doping. Noting that Prof. Ayotte also opined that the high concentration of oxandrolone found in the Athlete's Sample was consistent with a recent use.

177. Moreover, WADA asserts that Dr. Rodchenkov and other whistleblower sources informed it that certain Russian athletes were designated for *"special treatment"*, meaning their names were pre-registered with the Moscow Laboratory before sample collection to guarantee protection. As part of this system, the names of these protected athletes were illicitly recorded in the *"General Comments"* field of the LIMS database, which WADA highlights, is a direct violation of the anonymity requirements set forth under the International Standard for Testing and Investigations ("ISTI") and a laboratory should not know the identity of the athlete who provided the sample subject of analysis.

178. *In casu*, the Athlete's name (Фролов) appears in the *"General Comments"* field of the 2015 LIMS for the Sample. WADA emphasizes that this is highly irregular, and for the Panel, this serves as additional evidence that the Athlete was among those receiving protection, further reinforcing the conclusion that the Sample was protected from proper anti-doping procedures.

179. Next, the Panel notes that the Sample was referenced in various EDP Emails. Specifically, it first appeared in the EDP0480 email dated 13 August 2014 with the subject line *": results"*. In this email, Dr. Sobolevsky sent a message to Dr. Rodchenkov and the liaison person, Mr. Velikodny, stating: *"2946034, M, modern pentathlon, training camp | 3495/14, RU Novogorsk, collection 2014-08-09, pre-departure. trenbolone, methenolone, oxandrolone"*.

180. From that point, there is a clear reference to the Sample code number, along with the gender (M), sport (modern pentathlon), date of collection (2014-08-09) and mention of a training camp. In this respect, the Panel observes that the information in EDP0480 coincides with one of the DPM steps described by the Mclaren Reports. Specifically, when an ITP detected a likely AAF in an athlete's A sample, identifiers, such as the *"sample bottle number, the date of collection, the sex of the athlete, the sport discipline and event were recorded (the 'Athlete Profile')"*. This *"Athlete Profile"* was then communicated through various means, including emails, to a liaison person by laboratory personnel, who at this stage did *"not know the identity of the athlete that it reported to the Liaison person.* […]*"*.

181. *In casu*, the Sample underwent ITPs on 13 August 2014, which revealed a PAAF and as a result, all the identifiers constituting the *"Athlete Profile"*, as outlined in EDP0480 were communicated to liaison person, Mr. Velikodny. In addition to this, the Panel emphasizes that the Athlete's name is absent from EDP0480, reinforcing the fact that, at this juncture, the laboratory did *"not know the identity of the athlete that it reported to the Liaison person."*

182. Turning to the references to *"3495/14"* and *"Novogorsk"* in EDP0480, the Panel cannot but notice that these correlate with the *"Testing Order"* number and doping control *"City"* recorded for the Sample in ADAMS by Dr. Sobolevsky on 14 August 2014. This serves as yet another link between the Athlete and the Sample. Furthermore, the Panel finds it quite telling that EDP0480 explicitly refers to the same three prohibited substances recorded in the 2015 LIMS for the Sample, next to the notation "*pre-departure."*.

183. Indeed, from WADA's submissions and the McLaren Reports, the Panel understands that the term "*pre-departure*" typically means a sample collected in the lead-up to a competition. The Panel finds it compelling that the doping control took place on 9 August 2014, during an out-of-competition period, and that the Athlete subsequently competed in the 2014 World Championships a month later.

184. Then, further scrutiny of EDP0480 reveals that upon receipt of the *"Athlete Profile"*, liaison person Mr. Velikodny, responded via email to Dr. Sobolevsky and Dr. Rodchenkov — both laboratory personnel — with the message: "*SAVE. 2946034, Frolov, modern pentathlon, training camp | 3495/14, RU Novogorsk, collection 2014-08-09, pre-departure. trenbolone, methenolone, oxandrolone*."

185. The Panel notes that while all the details from EDP0480 remained unchanged in EDP0481, two critical additions appear: a *"Save"* instruction and the Athlete's name. This is significant because, according to the McLaren Reports, the next DPM step unfolds as follows:

> *"The Liaison person then transmitted the full Athlete Profile to Deputy Minister Nagornykh. After making inquiries to the sports authorities and coaches regarding the specific athlete, Deputy Minister Nagornykh would issue an order for that sample. His order was either one of 2 code words: SAVE or QUARANTINE.[4] The SAVE or QUARANTINE order attached to the full Athlete Profile, which now included the athlete's identity, was funneled back to the Moscow Laboratory through the Liaison Person."*

186. Given this framework, the Panel finds EDP0481 to be a seamless continuation of this process. Additionally, the Panel emphasizes that Mr. Velikodny's email was sent on 13 August 2014, preceding the commencement of the 2014 World Championships on 1 September 2014. For the Panel, this appears consistent with a *"pre-departure"* narrative, which in turn reinforces suspicions surrounding the Sample's handling.

187. Then, turning its attention to subsequent communications found in EDP0482, EDP0483 and EDP0484, the Panel notes an ongoing exchange between Dr. Rodchenkov, Dr. Sobolevsky and Mr. Velikodny concerning the classification of the Sample as *"pre-departure"*. Specifically, there appears to be a discussion regarding the time gap between sample collection and the 2014 World Championships:

[Dr. Rodchenkov: *"But how are they planning to depart"* ; Mr. Velikodny: *"I have no idea why they have it as an 'away' sample, World Championship [WC] commences on the 1 September in Warsaw"*; Dr. Sobolevsky: *"RUSADA marked it as urgent, usually it means pre-departure..."*; Dr. Rodchenkov: *"It was IIR, she orchestrated all this".*]

188. According to WADA's submissions, when Dr. Rodchenkov asserted that the testing and protection of the Athlete had been *"orchestrated"* by *"IIR"*, this was a reference to Ms. Irina Rodionova, the then Deputy Director of the Center of Sports Preparation of National Teams of Russia, a subordinate organization of the Russian Ministry of Sport.

189. In view of the above, the Panel finds that these EDP Emails explicitly reference the three prohibited substances recorded in the 2015 LIMS for the Sample. The fact that these EDP Emails also cite the precise Sample code (2946034), the precise collection date (9 August 2014), and corresponding details from the DCF and ADAMS cannot be dismissed as mere coincidence. Instead, the repeated, corroborative references to the Sample across at least three EDP Emails, further eliminate possible misidentification or clerical error.

190. Lastly, the Panel acknowledges WADA's argument that the present case is further strengthened by the fact that a sample from the Athlete's teammate, Mr. Kustov, collected on the same day, also tested positive for the same prohibited substances. At the outset, the Panel remarks that Mr. Kustov did not contest his use of prohibited substances and was found guilty *"by default"* of committing an ADRV — or as the Athlete described it, through *"silence but not dispute."* While the Panel recognizes this coincidence, it remains cautious in drawing automatic inferences about the Athlete based solely on one teammate's ADRV. Each case must be assessed on its own merits, based on specific evidence for each athlete. So, while it may be tempting to draw conclusions based on one teammate's ADRV, the Panel is bound to uphold principles of fairness and due process and must examine each case individually and only determine sanctions where sufficient evidence exists to find personal implication of an ADRV.

iii. Conclusion

191. The evidence in this case varies in credibility and relevance, and the Panel assesses each strand of evidence not only on an individual basis, but also as a collective whole.

192. For the Panel, the 2015 LIMS stands as the most compelling evidence in this case, having been determined as the authentic underlying data from the former Moscow

Laboratory. As such, it represents the original testing data from the analyses performed by the Moscow Laboratory, which — reasonably — includes the original positive results and corresponding sample code numbers of the athletes tested during the relevant period.

193. While the names of athletes should — in principle — not be recorded in the LIMS, as analyses are meant to remain anonymous under the ISTI, this does not prevent the identification of a specific sample through other supporting evidence. Here, the EDP Emails and the DCF provide sufficient contextual evidence to support what is in the 2015 LIMS and more specifically to link the relevant Sample to the Athlete. And in this case, there is an even clearer indication, as the name (in Russian) of the Athlete was recorded in the *"General Comments"* field of the 2015 LIMS, which although breaches the anonymity requirements stipulated under the ISTI, reinforces the indication that he was protected.

194. Prof. Ayotte further confirmed that the Athlete's data in the 2015 LIMS was consistent with the recent administration of three anabolic steroids: trenbolone, metenolone, and oxandrolone.

195. The Athlete's response to that, both in his written submissions and during the hearing, consisted mainly of strong but unsupported denials. As established in CAS 2019/O/6156, such bare denials *"cannot much load the scales against the* [WADA's] *specific, positive evidence against him"*.

196. Although the Panel is conscious that the Sample from the Athlete was reported as negative in ADAMS, this is consistent with the extent to which the Athlete was protected. According to the findings of the McLaren Reports, false values into ADAMS were reported by the Moscow Laboratory to avoid raising any suspicions.

197. Additionally, the Panel notes that whenever EDP evidence is available, it is consistently corroborated by the DCF, which in turn aligns with the data recorded in the 2015 LIMS for the Sample. Notably, at least three EDP Emails contain substantial material that matches the information in both the 2015 LIMS and the DCF. This consistency across multiple sources significantly strengthens the reliability of the evidence, reinforcing the link between the Athlete, the Sample, and the prohibited substances detected.

198. Considering the aforesaid, the Panel has reviewed the evidence before it, taken as a whole, and determines that it is reliable and authentic. It has carefully evaluated the Athlete's submissions and found no credible basis to challenge the validity of the 2015 LIMS data, EDP Emails, or expert reports. The Panel considers that WADA's *"many strands of evidence are mutually supportive"* (see CAS 2019/O/6156).

199. Indeed, the evidence before the Panel, when viewed as a whole, strongly supports the conclusion that the Athlete's Sample contained prohibited substances and that the lack of CP analysis was not an innocent omission, but rather a deliberate attempt to *"halt further benchwork"*. This aligns with the broader findings of the McLaren Reports and prior CAS cases addressing the Russian doping scheme. With this, the Panel highlights that EDP0481 includes the term *"Save"*, indicating a direct instruction to protect the Athlete by ensuring the Sample was not processed through the mandatory CP analysis. Instead of confirming the PAAF, the Moscow Laboratory falsely reported the Sample

as negative in ADAMS on 14 August 2014. Hence, the Athlete was able to compete in the 2014 World Championships and secured 10th place, a result that would have been jeopardized had the positive result been properly reported.

200. The evidence of a *"use"* ADRV in this case is therefore compelling. There are multiples strands, i.e. there is the 2015 LIMS that shows that the Sample was analyzed in the Moscow Laboratory and then the contextual evidence that demonstrates the context of the various documents submitted and ultimately linking said Sample to the Athlete. In addition to that, there are three prohibited substances, described by Prof. Ayotte as *"potent"* anabolic steroids, and the wider context of a doping scheme in action. As a result, the Panel is comfortably satisfied that the Sample was indeed provided by the Athlete and analyzed by the Moscow Laboratory whereas the relevant prohibited substances referred to in the 2015 LIMS and the EDP Emails were in fact detected. Furthermore, Prof. Ayotte emphasized that the concentrations of anabolic steroids, particularly oxandrolone, were exceptionally high, making them easy to detect and screen.

201. Moreover, while the Panel does not intend to dwell on this point, it notes that following the exposure of the Russian doping scheme, further attempts were made to manipulate or erase evidence related to the Sample in the 2019 LIMS and 2019 Files. Prof. Ayotte illustrated this manipulation, stating: *"For all three AAS, the reconstructed chromatograms and the pdf files retrieved are all negative and totally inconsistent with the LIMS records since there are no traces of trenbolone, metenolone, and oxandrolone, respectively, while the peaks should have been intense and clear at such concentrations."* For the Panel, this further demonstrates that the Athlete was once again protected.

202. Hence, the Panel is comfortably satisfied that the ADRV against the Athlete has been established by reliable evidence and inferences therefrom, and ultimately that the Athlete has breached Article 1.2.3 of the 2013 UIPM MR by using the anabolic steroids found in the *"Duchess Cocktail"* on or about the 9 August 2014 in the lead of the 2014 World Championships.

b. What sanctions shall be imposed on the Athlete?

203. Having concluded that the Athlete has committed an ADRV, the Panel now turns to the sanction applicable to the Athlete, in particular (i) the period of ineligibility; (ii) the start date of the period of ineligibility and (iii) any applicable disqualification of the results.

i. Period of ineligibility

204. According to Article 7.8.1 of the 2013 DR, a first-time ADRV of Article 1.2.3 of the 2013 MR for *"Use or attempted use of a Prohibited Substance or Prohibited Method"* is subject to a two-year period of ineligibility unless the conditions for eliminating or reducing the period of ineligibility under Chapter IV of the 2013 DR are met.

> *"7.8.1 A ban of two years will be imposed on athletes who are found having violated Articles 1.2.2 (Presence of a Prohibited Substance or its Metabolites or Markers), 1.2.3 (Use or attempted use of a Prohibited Substance or Prohibited Method), 1.2.4 (Refusing or failing to submit to Sample collection), 1.2.6 (Tampering with*

Doping Control) or 1.2.7 (Possession of Prohibited Substances and Methods) of the UIPM Medical Rules, in or out of competition. Athletes who are found having been doped in such a way a second time shall be banned from 8 years to lifetime from UIPM competitions, in case of aggravated circumstances for lifetime. A third time will result in a lifetime ban from UIPM competitions, unless already so banned before. (see arts 10.2 and 10.7.1 WADC)"

205. In this regard, the Panel sees no need to further elaborate on whether the conditions for reducing the standard two-year period of ineligibility apply. Under Article 1.2.3 of the 2013 MR, liability is a matter of strict liability and an ADRV is established regardless of intent, fault, negligence, or knowledge on the part of the Athlete.

206. However, while liability is strict, an Athlete's level of knowledge can be relevant when determining sanctions. In this case, the Athlete categorically denies using any prohibited substances. Yet, despite the Panel's findings on his liability, the Athlete has provided no evidence to explain why his name or Sample number appear in the EDP Emails. Instead, he offers only a blanket denial, insisting he did not use prohibited substances and was not involved in the doping scheme. Moreover, as previously noted, the prohibited substances in question, most notably anabolic steroids, are highly potent performance enhancers.

207. Given these factors, the Panel finds no grounds for reducing the otherwise applicable two-year period of ineligibility.

ii. Are there aggravating circumstances?

208. The Panel must next consider whether there is a basis for an increase in the sanction.

209. Article 4.9 of the 2013 DR states that:

"4.9 If the UIPM Executive Board establishes in an individual case involving an anti-doping rule violation other than violations under articles 1.2.8 (Trafficking or Attempted Trafficking) and 1.2.9 (Administration or Attempted Administration) that aggravated circumstances are present which justify the imposition of a ban period greater than the standard sanction, then the ban period otherwise applicable shall be increased up to a maximum of four years unless the athlete or other person can prove to the comfortable satisfaction to the UIPM Executive Board that they did not knowingly commit the anti-doping rule violation. An athlete or other person can avoid the application of this article by admitting the anti-doping rule violation as asserted promptly after being confronted with the anti-doping rule violation by the UIPM. (see art 10.6 WADC)".

210. In this regard, and within the meaning of Article 10.6 of the 2009 WADC, the two-year period of ineligibility may be increased to a maximum of four years if aggravating circumstances are present.

211. The Comment to Article 10.6 provides a non-exhaustive list of examples of aggravating circumstances such as:

"the Athlete tested positive for a substance which appears on the Prohibited List under class S.1 "Anabolic agents" (the intake of anabolic agents, which are widely spread in the sport of weightlifting, have long term effects and justify increased sanctions); the Athlete or other Person committed the anti-doping rule violation as part of a doping plan or scheme, either individually or involving a conspiracy or common enterprise to commit anti-doping 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 the performance-enhancing effects of the anti-doping rule violation(s) beyond the otherwise applicable period of Ineligibility; the Athlete or Person engaged in deceptive or obstructing conduct to avoid the detection or adjudication of an antidoping rule violation."

212. In determining the appropriate period of ineligibility, the Panel must assess the sanction within the range of two to four years, taking into account any aggravating circumstances. However, the mere presence of aggravating factors does not automatically warrant the maximum four-year period of ineligibility.

213. The Panel draws on established CAS jurisprudence to determine whether an aggravated period of ineligibility is justified. For instance:

- CAS 2012/A/2773: An athlete received a four-year period of ineligibility for systematically using prohibited substances between 2006 and 2009 and again in 2011.

- CAS 2017/O/4980: A four-year period of ineligibility was imposed due to the athlete's involvement in a doping scheme spanning five years.

- CAS 2019/O/6156: An athlete received a four-year period of ineligibility based on the following aggravating factors:

  "the Athlete committed the anti-doping rule violations (a) as part of a highly sophisticated and resourced doping scheme; (b) to enjoy performance-enhancing effects at the world's most important competitions; and (c) engaging with other persons in flagrantly deceptive and obstructing conduct to avoid detection."

- CAS 2018/O/5667: The athlete was sanctioned with a four-year period of ineligibility after committing ADRVs in July 2012, June 2013, and July 2013 as part of a structured doping scheme. The violations were linked to major events, including the 2012 London Olympic Games and the Moscow World Championships.

- CAS 2021/ADD/37: A four-year period of ineligibility was imposed on an athlete who used DHCMT, an anabolic agent, on at least three occasions between 2012 and 2014, with all three samples testing positive.

214. However, the Panel also acknowledges that in other CAS cases, sanctions of less than four years have been imposed despite aggravating circumstances. For example:

- CAS 2013/A/3080: An athlete who used prohibited substances over several months

was sanctioned with a two-year and nine-month period of ineligibility.

- CAS 2014/A/3614: A three-year period of ineligibility was imposed for doping violations linked to two samples, correlated with the timing of major athletics events.

- CAS 2012/A/2959: An athlete tested positive for three prohibited substances in a single sample and received a two-year period of ineligibility.

- CAS 2013/A/3050: An athlete tested positive for two non-specified stimulants and received a two-year period of ineligibility, having neither challenged the AAF nor requested B-sample analysis.

- CAS 2013/A/3373: A three-year period of ineligibility was imposed, deemed *"just and proportionate"* considering the athlete's use of two prohibited substances over six months, as well as her involvement in blood doping for approximately seven months.

- CAS 2021/A/7840: An athlete received a two-year period of ineligibility for a single sample that tested positive for furosemide. The analytical PDF file confirmed its presence at 0.2µg/mL, and the results were consistent across different testing methods.

215. In the present case, WADA argues that the Athlete's ADRV justifies the imposition of a four-year period of ineligibility. WADA highlights that the Athlete used multiple potent anabolic steroids, including metenolone, oxandrolone, and trenbolone — components of the infamous *"Duchess Cocktail"* central to the Russian doping scheme. Additionally, these substances were used in the lead-up to the 2014 World Championships, a premier event in modern pentathlon. Given the broader context of the state-sponsored doping operation, WADA maintains that a four-year ban is warranted.

216. Conversely, the Athlete has made no specific submissions regarding the length of the period of ineligibility, aside from his broad request to avoid ineligibility and disqualification. However, at the hearing, he argued that no aggravating circumstances exist and that any period of ineligibility should not exceed two years.

217. Considering the foregoing, the Panel struggles to conclude that aggravating circumstances are present to the extent seen in other CAS cases involving LIMS and EDP evidence linked to the Russia's state-sponsored doping scheme. Many of those cases stemmed from repeated doping violations over multiple years and across multiple samples. That is not the case here. Based on the evidence before the Panel, the Athlete's use of three prohibited substances (anabolic steroids), though serious, occurred on only one single occasion.

218. In this respect, the Panel takes note of CAS 2019/A/6168, in which an athlete received a two-year and nine-month period of ineligibility for using a prohibited substance on at least two separate occasions. The reasoning in that case is particularly relevant:

"Whereas the Panel is comfortably satisfied that the Athlete used prohibited substances, it is not known precisely when and how the prohibited substances were used. Without any evidence as to the state of knowledge of the Athlete at the time of ADRVs, the Panel cannot be satisfied to the required standard that he was aware that he was part of a wider 'doping plan or scheme' orchestrated by Dr. Rodchenkov, his colleagues and collaborators. The Panel finds that although such a doping plan or scheme did exist in Russia at the relevant time, it has not been established that the Athlete was a knowing participant. It may be argued that due of the nature prohibited substances in this case (anabolic agents), the Athlete must have known of their use. However, there is no evidence before the Panel to demonstrate that the Athlete knew that he was part of a wider doping plan or scheme, either individually or involving a conspiracy or common enterprise. In these circumstances, where it cannot be shown that the Athlete was aware of the existence of a wider doping plan or scheme at the time the prohibited substances were used, the Panel considers that the mere existence of a plan or scheme does not, of itself, amount to an aggravating circumstance under Rule 40.6(a) of the 2012 IAAF Rules. This flows from the language of Rule 40.6(a): where such a scheme exists, but it 'as part' of that scheme 'either individually or involving a conspiracy or common enterprise.'"

219. The same reasoning applies here. While the Athlete's use of prohibited substances is established, there is no evidence that he knowingly participated in a structured doping scheme. Moreover, WADA has not alleged that the Athlete engaged in sample-swapping or direct manipulation of results.

220. During the hearing, the Athlete denied any knowledge of the doping scheme in 2014, stating that he was unaware of its existence, and no one had first-hand knowledge of any ADRV he committed. The Panel acknowledges that national pride or media narratives may have influenced the Athlete's perspective, which is understandable. Taking the Athlete's statements at face value, the Panel finds no compelling evidence that he was aware of the full extent or inner workings of the doping scheme.

221. Therefore, on balance, the Panel will not increase the period of ineligibility beyond two years. Given the specific circumstances of this case, a two-year period of ineligibility is a proportionate sanction.

iii. Start date for period of ineligibility

222. In principle, the period of ineligibility shall start *"on the day when the ban has been imposed"*, in accordance with Article 7.8.7 of the 2013 DR. However, in certain circumstances, the Panel may opt to start the period of ineligibility at an earlier date:

"7.8.7 The ban shall begin on the day when the ban has been imposed. Any period of provisional suspension shall be credited against the total ban period imposed. Where there have been substantial delays in the hearing process or other aspects of doping control not attributable to the athlete, the UIPM Executive Board may start the ban period at an earlier date commencing as early as the date of Sample collection or the date on which another anti-doping rule violation last occurred. Where the athlete promptly, i.e. before competing again, admits the anti-doping rule violation after being confronted with it by the UIPM, the ban period may start as early as the date of Sample collection or the date on which another anti-doping rule violation last occurred. In each

such case of earlier start because of the athlete's admission, the athlete shall serve at least one-half of the ban period going forward from the date of the UIPM Executive Board's ban decision or the date the sanction is otherwise imposed, The ban will include all official UIPM competitions and the Olympic Games which might take place during the period of sanction as well as all competitions of a signatory to the World Anti-Doping Code, a signatory's member organisation or a club or other member organisation of a signatory's member organisation or competitions authorized or organised by any professional league or any international- or national-level Event organisation. In case of any ban other than based on Article 7.8.2 above the athlete will lose all sport-related financial support or other sport-related benefits from the UIPM and the respective Member Federation. An athlete banned for a period longer than four years may, after completing four years of the period of ban, participate in local sports events in a sport other than sports subject to the jurisdictions of the UIPM and its Member Federations, but only as long as the local sport competition is not at a level that could otherwise qualify such person directly or indirectly to compete in or accumulate points towards a national championship or international competition. An athlete subject to a ban period shall remain subject to testing. (see art 10.9 WADC)"

223. Notwithstanding, the Athlete has not claimed that there has been a substantial delay in the hearing process that would warrant disregarding Article 7.8.7 of the 2013 DR. Consequently, the period of ineligibility shall commence from the date of the notification of this Award.

224. Separately, Article 7.8.7 of the 2013 DR specifies that *"Any period of provisional suspension shall be credited against the total ban period imposed."*

225. In this respect, the Panel notes that the Athlete was provisionally suspended by the UIPM from 11 May 2022 up to the date of the Appealed Decision on 22 January 2024 (i.e., 1 year, 8 months, and 11 days). There is no indication that the Athlete breached that provisional suspension. With Article 7.8.7 of the 2013 DR in mind, the Panel finds that the provisional suspension served by the Athlete shall be further credited from the two-year period of ineligibility.

iv. Disqualification of the results

226. According to Article 7.4.1 of the 2013 DR, all competitive results obtained by the Athlete since the collection of the positive Sample, i.e., from 9 August 2014 onward, must be disqualified. However, Article 10.8 of the 2009 WADC provides that the disqualification period may be modified if fairness requires an exception in the specific circumstances of the case.

227. The Panel is conscious that *"when assessing whether a sanction is excessive, a judge must review the type and scope of the proved rule-violation, the individual circumstances of the case, and the overall effect of the sanction on the offender"* (see CAS 2018/O/5704 and CAS 2017/O/5039) and that "*the question of fairness and proportionality in relation to the length of the disqualification period vis-à-vis the time which may be established as the last time that the Athlete objectively committed a doping offence can be taken into consideration"* (see CAS 2018/O/5704 and CAS 2016/O/4682).

228. Based on fairness, the Panel does not believe the circumstances of this case support a disqualification of results for a period of approximately eight years as well.

229. The Panel notes that trenbolone, metenolone, oxandrolone were found in one sample from the Athlete in 2014. The CAS jurisprudence has accepted that the main effects of anabolic steroids can include an increase of strength and muscle mass growth and that athletes can gain advantage even after the date of ingestion.

230. The Panel considers that it would not be fair on the other athletes who have competed against the Athlete if his results after August 2014 remained intact as the ingestion of these prohibited substances most likely positively impacted his performance after this period.

231. Given that the Athlete's Sample tested positive for prohibited substances on at least one occasion (i.e., 9 August 2014), the Panel aligns with the approach adopted by the sole arbitrator in CAS 2018/O/5667 and applies it to the present case. Accordingly, the disqualification period from 9 August 2014 to 8 August 2016 reflects the period of ineligibility that would likely have been imposed had the ADRV been adjudicated at that time. In light of these considerations, the Panel finds it just and appropriate to disqualify the Athlete's results through 8 August 2016.

X. COSTS

(…)

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 28 February 2024 by the World Anti-Doping Agency (WADA) against the decision rendered on 22 January 2022 by the Doping Review Panel of the Union Internationale de Pentathlon Moderne (UIPM) is partially upheld.

2. The decision rendered on 22 January 2022 by the Doping Review Panel of the Union Internationale de Pentathlon Moderne (UIPM) is set aside.

3. Ilia Frolov is sanctioned with a period of ineligibility of two (2) years starting from the date of this Award.

4. Credit shall be given to the period of provisional suspension served by Ilia Frolov from 11 May 2022 up to 22 January 2024.

5. All competitive results achieved by Ilia Frolov from 9 August 2014 through 8 August 2016 are disqualified with all of the resulting consequences, including the forfeiture of any titles, awards, medals, points and prize and appearance money.

6. (…).

7. (…).

8. All other motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland
Date: 4 July 2025

THE COURT OF ARBITRATION FOR SPORT

Marianne Saroli
President of the Panel

Luigi Fumagalli
Arbitrator

Rui Botica Santos
Arbitrator