CAS 2022/A/9128 Association Russian Anti-Doping Agency (RUSADA) v. Tatiana Kashirina
CAS 2022/A/9217 World Anti-Doping Agency (WADA) v. Association Russian Anti-Doping Agency (RUSADA) & Tatiana Kashirina

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition

President: Ms Annett Rombach, Attorney-at-Law in Frankfurt am Main, Germany
Arbitrators: Prof. Luigi Fumagalli, Professor, Attorney-at-Law, Milan, Italy
Dr. Siarhei Ilyich, Lawyer, Minsk, Belarus

between

World Anti-Doping Agency (WADA)

Represented by Mr Nicolas Zbinden and Mr Adam Taylor, Attorneys-at-Law, Kellerhals Carrard in Lausanne, Switzerland, and Mr Ross Wenzel, General Counsel, World Anti-Doping Agency

Appellant in CAS 2022/A/9128

and

Association Russian Anti-Doping Agency (RUSADA)
Represented by Mr Graham Arthur of GM Arthur, Attorney-at-Law, Liverpool, United Kingdom

Appellant in CAS 2022/A/9217 and First Respondent in CAS 2022/A/9128

and

Ms Tatiana Kashirina
Represented by Prof. Sergei Alekseev, Doctor of Law, Moscow, Russia

Respondent in CAS 2022/A/9128 and Second Respondent in CAS 2022/A/9217

I. THE PARTIES

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

2. The Association Russian Anti-Doping Agency ("RUSADA") is the National Anti-Doping Organisation in Russia and, as a signatory to the World Anti-Doping Code ("WADC"), has the responsibility for the implementation of the Anti-Doping Rules of the Russian Federation (the "ADR"). Its registered office is in Moscow, Russia.

3. Ms Tatiana Kashirina (the "Athlete") is a Russian international-level weightlifter. She has been World Champion on five occasions and a silver medallist at the London 2012 Olympic Games.

4. WADA, RUSADA and the Athlete are collectively referred to as the "Parties".

II. FACTUAL BACKGROUND

5. Below is a summary of the main relevant facts and allegations based on the Parties' written submissions, oral pleadings and evidence adduced during these proceedings. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. Although the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in this Award only to the submissions and evidence it considers necessary to explain its reasoning.

6. The present case concerns an appeal against a decision of the RUSADA Disciplinary Anti-Doping Committee of 30 June 2022 ("the DADC"), which held that an anti-doping rule violation had not been established against the Athlete.

7. The Athlete had previously been subject to a period of Ineligibility of two years from 2006 to 2008, following a positive test for Mesterolone (an anabolic steroid) during the Junior World Championships, according to a decision of the International Weightlifting Federation.

8. The two relevant samples in this case were collected from the Athlete out-of-competition on 1 April 2013 (sample no. 2783092, hereinafter the "1/4/2013 Sample") and 20 June 2013 (sample no. 2811132, hereinafter the "20/6/2013 Sample", and, together with the 1/4/2013 Sample, the "2013 Samples"). The 2013 Samples were reported as negative in WADA's Anti-Doping Administration & Management Systems ("ADAMS"), a web-based database management system for use by WADA's stakeholders. As will be further elaborated on below, WADA and RUSADA, in these proceedings, contend that the respective ADAMS reportings were false and that the 2013 Samples contained Oral Turinabol (DHCMT), a prohibited substance listed in the WADA Prohibited List.

9. Following a German television documentary in December 2014, WADA investigated the existence of sophisticated systemic doping practices within the All-Russia Athletics Federation, the governing body for athletics in Russia. WADA, *inter alia*, established an independent commission to investigate the allegations made in the broadcast.

10. In November 2015, WADA declared RUSADA non-compliant with the WADA Code and imposed a suspension on RUSADA.

11. In May 2016, an American television channel and the New York Times published allegations made by the former director of the Moscow Laboratory, Dr Grigory Rodchenkov, regarding the alleged existence of a sophisticated state-sponsored doping program in Russian sport.

12. That same month, WADA appointed Prof. Richard McLaren, who had been a member of the Independent Commission, to investigate Dr Rodchenkov's allegations.

13. On 18 July 2016, Prof. McLaren delivered his first report (the "First McLaren Report"). The three "key findings" of the First McLaren Report were as follows:

> *"1. The Moscow Laboratory operated, for the protection of doped Russian athletes, within a State-dictated failsafe system, described in the report as the Disappearing Positive Methodology.*
>
> *2. The Sochi Laboratory operated a unique sample swapping methodology to enable doped Russian athletes to compete at the Games.*
>
> *3. The Ministry of Sport directed, controlled and oversaw the manipulation of athlete's analytical results or sample swapping, with the active participation and assistance of the FSB* [the Federal Security Service of the Russian Federation], *CSP* [the Center of Sports Preparation of National Teams of Russia], *and both Moscow and Sochi Laboratories."*

14. The "disappearing positive methodology" was described in Chapter 3 of the First McLaren Report. Relevantly, the Moscow Laboratory would conduct an initial analytical screening of samples collected from Russian athletes. If that screening revealed a likely Adverse Analytical Finding, a liaison person would obtain the identity of the athlete from RUSADA (by providing the bottle number of the sample). The athlete's identity would be provided to the Russian Deputy Minister for Sport, Mr. Nagornykh, who would then issue an order that the sample be "saved" or "quarantined". Where a "save" order was given, the Moscow Laboratory would take no further steps in the analysis of the sample and it would be reported as negative in ADAMS. Personnel of the Moscow Laboratory would then falsify the result in the laboratory's own Laboratory Information Management System ("LIMS") (the database used by the Moscow Laboratory to store results of testing of samples) to show a negative result.

15. The "sample swapping methodology" was described in Chapter 5 of the First McLaren Report. In short, this methodology, which was used at the 2014 Sochi Olympic Games, involved opening Russian athletes' sample bottles and swapping out dirty urine with clean urine. This was made possible by drilling a "mouse hole" between the aliquoting room in the secure area of the laboratory used at the Sochi Games and an adjacent "operations" room. Sample bottles were passed through the "mouse hole" overnight and the urine samples would be replaced.

16. On 9 December 2016, Prof. McLaren delivered his second report (the "Second McLaren Report"). In the Second McLaren Report, Prof. McLaren affirmed that *"[t]he key findings of the 1st Report remain unchanged"* and that:

> *"An institutional conspiracy existed across summer and winter sports athletes who participated with Russian officials within the Ministry of Sport and its infrastructure, such as the RUSADA, and the Moscow Laboratory, along with the FSB* [the Russian Federal Security Service]. *The summer and winter sports athletes were not acting individually but within an organised infrastructure as reported on in the 1st Report."*

17. Together with the Second McLaren Report, Prof. McLaren published Evidence Disclosure Packages ("EDPs") containing evidence relating to athletes he considered were involved in or benefitted from the above schemes.

18. As explained at paragraph 7 of the joint witness statement of Mr Aaron Walker and Dr Julian Broséus of WADA Intelligence & Investigations ("WADA I&I") (the "WADA Statement"), on 30 October 2017, WADA I&I secured from a whistleblower a copy of the Laboratory Information Management System ("LIMS") data of the Moscow Laboratory for the years 2011 to August 2015 (the "2015 LIMS"). The 2015 LIMS was found to include presumptive adverse analytical findings made on the initial testing of samples which had not been reported in ADAMS or followed up with confirmation testing. The Athlete's 2013 Samples were identified in the 2015 LIMS as containing DHCMT, a non-Specified substance prohibited at all times pursuant to Section 1.1 (Anabolic Androgenic Steroids) of the WADA Prohibited List.

19. The LIMS is a system that allows a laboratory to manage a sample through the analytical process and the resultant analytical data. Conceptually, the LIMS is a warehouse of multiple databases organized by year. The most relevant anti-doping data within the LIMS are those related to sample reception, analysis, and the actions of users within the system. This pertinent data is housed in key tables including: "bags", "samples", "screening", "found" (or "scr_results" prior to 2013), "confirmation", "MS_data" (or "Pro_4" prior to 2013) and "pdf".

20. Subsequently, as part of the reinstatement process of RUSADA, WADA required that, *inter alia*, authentic analytical data from the Moscow Laboratory for the years 2012 to 2015 be provided.

21. In its report of 2 December 2017, the IOC Disciplinary Commission chaired by Samuel Schmid, Member of the IOC Ethics Commission, (the "Schmid Commission") also agreed that there was a "*systemic manipulation of the anti-doping rules and system in Russia, through the Disappearing Positive Methodology and during the Olympic Winter Games Sochi 2014*" (the "Schmid Report"). The findings of the Schmid Report were expressly accepted by the Russian Ministry of Sport on 13 September 2018.

22. In January 2019, access to the Moscow Laboratory was given to a team of WADA-selected experts, which were allowed to remove data from the Moscow Laboratory, including another copy of the LIMS data for the relevant years (the "2019 LIMS") as well as the underlying analytical PDFs and raw data of the analyses reported in the LIMS (the "Analytical Data"). The analytical PDFs are automatically generated from the instruments and contain the chromatograms, which demonstrate whether a substance is present or not in a given sample.

23. Further investigations were conducted by WADA I&I in collaboration with forensic experts from the University of Lausanne on the data retrieved from the Moscow Laboratory and evidence of manipulation of the 2019 LIMS was uncovered, in particular to remove positive findings contained in the LIMS. On that basis, WADA I&I concluded that the 2015 LIMS was reliable (and the 2019 LIMS was not), as explained at paragraphs 12 and 13 of the WADA Statement as follows [footnotes omitted]:

> *"12. Upon receipt of the 2015 LIMS Copy, we conducted investigations, codenamed Operation LIMS, which established 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. More specifically, we have investigated the reliability and the authenticity of*

the 2015 LIMS copy, the 2019 LIMS Copy and the Moscow Data to ultimately determine that, the 2015 LIMS Copy data is the authentic LIMS data, and the 2019 LIMS Copy is not.

13. In other words, the 2015 LIMS Copy is 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 analytically valid information. Moreover, the Moscow Data contained observable digital evidence (viz the Carved LIMS) which confirms that the data of the 2015 LIMS Copy once existed in the Moscow Laboratory's LIMS but was intentionally deleted from that system prior to its release to WADA on 17 January 2019, but most likely the deletion occurred on or about 8 January 2019."

24. WADA I&I also identified evidence of deletions/alterations of Analytical Data to remove evidence of positive findings prior to WADA's retrieval mission in January 2019.

25. On 9 November 2020, WADA I&I wrote to RUSADA, enclosing its findings into the possible anti-doping rule violation(s) committed by the Athlete, and notifying RUSADA that it expected an investigation to be commenced and (if appropriate) a prosecution to be pursued.

26. The Athlete was provisionally suspended by RUSADA on 13 November 2020.

27. On 1 June 2021, the Athlete provided written explanations in which she denied the charges against her. The Athlete provided a general denial of doping and suggested that all her official ADAMS tests were reported as negative.

28. On 30 June 2022, an in-person hearing took place before the DADC.

29. Also on 30 June 2022, the four-person DADC handed down its decision ("the Appealed Decision"). It found that the Athlete had not committed an anti-doping rule violation, due to its opinion that, in order to establish an anti-doping rule violation, more convincing evidence was required of the swapping of the results of the analyses of the Athlete, of her personal involvement in said swapping, and of use of prohibited substances by the Athlete. In relevant part, the Appealed Decision provides as follows:

"It means that evidentiary value of both the conclusions of NAMPU expert opinion and LIMS is limited. The contradiction between LIMS and the conclusion of NAMPU Expert Opinion can be explained in two ways: either the results of NAMPU Expert Opinion are not reliable enough or LIMS database contains data which are insufficiently reliable. It is not possible to resolve this contradiction.

Thus, the conclusions contained in NAMPU Expert Opinion, in the absence of additional evidence, they do not provide sufficient support for the argument by RUSADA and WADA about Anti-Doping Rules Violation by the Athlete, and they cannot be recognized as evidence that would enable us to come to an unambiguous conclusion about Anti-Doping Rules Violation by the Athlete.

[…]

Thus, the Committee, based on the assumptions about existence of the general scheme of concealing positive samples and data, provided as a result of R. McLaren Investigation, and, as there are no direct evidence of commitment of the Anti-Doping Rules Violation by the Athlete, is unable to establish with certainty that the Athlete committed multiple violations of the All-Russian Anti-Doping Rules via multiple use of prohibited substance.

The Committee believes that, taking into account the gravity of the violation charged with, RUSADA did not establish violation by the Athlete of Art. 2.2 of the All-Russian Anti-Doping Rules (the versions of 2011 and 2012) at the level acceptable for the experts performing the hearing procedure.

The Anti-Doping Rules violation imputed on the Athlete, and the sanction sought by RUSADA for this violation (ineligibility for the period of ten years with disqualification of all the results obtained since April 2, 2012) require more convincing evidence of swapping the results of analyses of the Athlete, the Athlete's personal involvement in such swapping, and more convincing scenario of use of prohibited substances by the Athlete, based on sufficient evidence and being independent of unpredictable results of the confirmation procedure.

Based on the above, The Committee rendered a decision to acknowledge Athlete Tatiana Kashirina as not having violated the All-Russian Anti-Doping Rules."

III. THE PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

30. On 5 September 2022, RUSADA filed a Statement of Appeal against the Appealed Decision with the Court of Arbitration for Sport (the "CAS") in accordance with Articles R47 et seq. of the CAS Code of Sports-related Arbitration (the "CAS Code"). RUSADA requested the appointment of a Sole Arbitrator and chose English as the language of the proceedings.

31. On 21 September 2022, the CAS Court Office acknowledged receipt of the Statement of Appeal filed by RUSADA and its request to extend the time limit to submit the Appeal Brief until 14 October 2022. The CAS Court Office registered RUSADA's appeal under case reference *CAS 2022/A/9128 Association Russian Anti-Doping Agency (RUSADA) v. Tatiana Kashirina* (the "9128 Appeal").

32. On 25 September 2022, the Athlete transmitted to the CAS Court Office her request that the 9128 Appeal be submitted to a Panel of three arbitrators and that the proceedings be conducted in Russian.

33. On 28 September 2022, the CAS Court Office informed the Parties that the Athlete's request for the 9128 Appeal to be conducted in Russian had been rejected, due to the fact that Russian is not one of the CAS's working languages.

34. On 13 October 2022, RUSADA requested a further extension of the time limit for filing its Appeal Brief until 28 October 2022. On the same day, the CAS Court Office invited the Athlete to comment on RUSADA's extension request.

35. On 14 October 2022, WADA also filed a Statement of Appeal against the Appealed Decision with the CAS in accordance with Articles R47 et seq. of the CAS Code (the "9217 Appeal"). WADA's appeal was directed against both RUSADA and the Athlete. WADA requested the consolidation of the 9217 Appeal with the 9128 Appeal.

36. On 16 October 2022, the Athlete agreed to the extension of the time limit for RUSADA to file its Appeal Brief in the 9128 Appeal until 28 October 2022.

37. On 19 October 2022, the CAS Court Office acknowledged receipt of the 9217 Appeal, including WADA's choice to proceed with the appeal in the English language and its request to submit the case to a Sole Arbitrator.

38. On 23 October 2022, the Athlete informed the CAS Court Office that she agreed to the consolidation of the 9128 and 9217 Appeals, and that she requested that the consolidated proceedings be submitted to a Panel of three arbitrators.

39. On 24 October 2022, RUSADA informed the CAS Court Office about its consent to the proposed consolidation of the 9128 and 9217 Appeals, the appointment of a Sole Arbitrator and the language of the proceedings to be English. On the same day, WADA requested an extension of 20 days for the filing of its Appeal Brief.

40. On 25 October 2022, RUSADA declared its consent to the extension of the time limit for WADA to file its Appeal Brief.

41. On 26 October 2022, RUSADA requested a further extension of the time limit for filing its Appeal Brief until 1 November 2022. On the same day, WADA agreed to the extension of the time limit for RUSADA to file its Appeal Brief until 1 November 2022.

42. On 30 October 2022, RUSADA informed the CAS Court Office that the Parties had agreed on a filing schedule, according to which the Appeal Briefs were to be submitted until 18 November 2022 and the Athlete's Answer was to be filed by 23 December 2022. Absent any objections, the CAS Court Office confirmed the proposed timetable by correspondence to the Parties dated 7 November 2022.

43. On 14 November 2022, the CAS Court Office informed the Parties about the decision of the President of the CAS Appeals Arbitration Division (i) to consolidate the 9128 and the 9217 Appeals and (ii) to submit the proceeding to a Panel of three arbitrators pursuant to Article R50 of the CAS Code. The CAS Court Office invited the Parties to nominate their arbitrators.

44. On 18 November 2022, RUSADA and WADA filed their respective Appeal Briefs.

45. On 30 December 2022, the CAS Court Office invited the Parties once again to appoint their arbitrators and noted that the Athlete's time limit for filing her Answer had expired on 23 December 2022 and that no Answer had been received by the CAS Court Office.

46. On 31 December 2022, the Athlete informed the CAS Court Office that the Answer had been sent to the CAS Court Office and the Parties via e-mail on 23 November 2022, and re-attached the Answer to that correspondence. The Athlete also submitted that she could not access the CAS e-Filing platform and was therefore unable to upload the Answer onto that platform.

47. On 3 January 2023, the CAS Court Office acknowledged receipt of the Athlete's Answer dated 22 December 2022, sent to the CAS Court Office via e-mail on 31 December 2022. Because the CAS Court Office had not received the Athlete's Answer within the set time limit, WADA and RUSADA were invited to comment on the admissibility of the Answer.

48. On 10 January 2023, WADA expressed its consent to admit the Athlete's Answer to the case file. RUSADA did not comment on the admissibility of the Athlete's Answer within the time-limit granted.

49. On 13 January 2023, WADA and RUSADA jointly nominated Prof. Luigi Fumagalli as arbitrator.

50. On 23 January 2023, the Athlete nominated Dr. Siarhei Ilyich as arbitrator.

51. On 23 February 2023, on behalf of the President of the CAS Appeals Arbitration Division and pursuant to Article R54 of the CAS Code, the CAS Court Office informed the Parties that the Panel appointed to decide the present matter was constituted as follows:

President:	Ms Annett Rombach, Attorney-at-Law, Frankfurt am Main, Germany
Arbitrators:	Prof. Luigi Fumagalli, Professor, Attorney-at-Law, Milan, Italy
	Dr. Siarhei Ilyich, Lawyer, Association Belarus Football Federation, Minsk, Belarus.

52. On 3 March 2023, the CAS Court Office informed the Parties that the Panel had decided to admit the Athlete's Answer to the file. Furthermore, the Parties were invited to indicate to the CAS Court Office whether they preferred for a hearing to be held in this matter.

53. On 10 March 2023, 31 March 2023 and 11 April 2023, WADA, the Athlete and RUSADA, respectively, informed the CAS Court Office that they would leave the decision of whether a hearing was required to the discretion of the Panel.

54. On 27 April 2023, the CAS Court Office informed the Parties of the Panel's decision not to hold a hearing, and to decide on the consolidated Appeals solely on the basis of the Parties' written submissions.

55. On 28 April 2023, the Athlete addressed the CAS Court Office as follows:

> "*We didn't insist for a hearing solely on issues related to the fallacy of findings of a delay in our position on the case, which we submitted by the due date of December 23, 2022, evidence of which we submitted on March 9, 2023 to the CAS.*
>
> *Regarding the consideration of our case as a whole (CAS 2022/A/9128 Association Russian Anti-Doping Agency (RUSADA) v. Tatiana Kashirina CAS 2022/A/9217 World Anti-Doping Agency (WADA) v. Russian Anti-Doping Agency (RUSADA) & Tatiana Kashirina), given the complexity of the case, we ask the CAS to hold a hearing on this case.*"

56. On 2 May 2023, the CAS Court Office informed the Parties of the Panel's readiness to follow the Athlete's express request for a hearing.

57. On 31 May 2023, further to the Parties' submissions on their respective availabilities and on behalf of the Panel, the CAS Court Office informed the Parties that the hearing would be held on 21 June 2023, via video-conference.

58. On 7 June 2023, the Parties returned to the CAS Court Office duly signed copies of the Order of Procedure issued on behalf of the President of the Panel on 27 April 2023.

59. On 21 June 2023, a hearing was held by video-conference. Shortly before the beginning of the hearing, the Athlete submitted to the CAS Court Office its written closing statement, which she explained would be read out during the hearing.

60. In addition to the members of the Panel and Ms Carolin Fischer, Counsel to the CAS, the following persons attended the video hearing:

For WADA	:	Mr Adam Taylor, Counsel Mr Nicolas Zbinden, Counsel Mr Ross Wenzel, General Counsel, WADA Ms Lou Levadoux, Legal Affairs, WADA Mr Cyril Troussard, WADA Associate Director, Results Management
For RUSADA:		Mr. Graham Arthur, Counsel
For the Athlete:		Ms Tatyana Kashirina, Athlete Prof. Sergey Alekseev, Counsel
		Ms Elena Petrova, Interpreter
Witnesses		Prof. Christiane Ayotte, Director of the Doping Control Laboratory for the WADA-accredited INRS Centre Armand Frappier Health Biotechnology, called by WADA
		Dr. Julian Broseus, WADA I&I, called by WADA
		Mr Aaron Walker, WADA I&I, called by WADA
		Ms Yvette Dehnes, NAPMU member, called by WADA
		Mr Vladimir Krasnov, Athlete's coach, called by the Athlete

61. The hearing began at 1 pm and ended at 6:30 pm without any technical interruption or difficulty. At the outset, the admissibility of the Athlete's written statement delivered shortly before the hearing was discussed. WADA and RUSADA objected to its admissibility. After having heard the Parties, the Panel decided not to admit the written statement to the record, and confirmed that the Athlete would be allowed to read that statement as a part of its closing submission. Afterwards, the Parties were given the opportunity to present their cases, to make their submissions and arguments and to answer questions posed by the Panel. The witnesses were questioned by the Parties and the Panel. After the Parties' final and closing submissions, the hearing was closed and the Panel reserved its detailed decision for this written award.

62. At the end of the hearing, the Parties expressly confirmed that they had no objections in relation to their respective rights to be heard and that they had been treated equally in these arbitration proceedings.

63. In reaching the present decision, the Panel has carefully taken into account all the evidence and the arguments presented by the Parties, even if they have not been summarised in the present Award.

IV. THE POSITIONS OF THE PARTIES

64. The following outline of the Parties' positions is illustrative only and does not necessarily comprise every submission advanced by the Parties. The Panel confirms, however, that it has carefully considered all the submissions made by the Parties, whether or not there is specific reference to them in the following summary.

A. WADA's Position

65. WADA submits the following in substance:

- The decision of the DADC is wrong. Substantial evidence demonstrates that the Athlete committed Article 2.2 (Use) anti-doping rule violations primarily in that she used, *inter alia*, Oral Turinabol (DHCMT) in 2013. WADA clarified that while there had been some evidence of the use by the Athlete of other prohibited substances, in the present proceedings it was only basing its claims on the use by the Athlete of DHCMT.
- The violation primarily relates to the two samples collected from the Athlete on 1 April and 20 June 2013. Both samples were identified in the ADAMS system as negative. However, the 2015 LIMS indicated the presence of DHCMT in these samples. The use of such prohibited substance is supported by the expert opinion of Prof. Ayotte, Director of the Doping Control Laboratory for the WADA-accredited INRS Centre Armand Frappier Health Biotechnology, in Montreal, who considered the analytical data relating to the samples, and by the expert opinion of the Nordic Athlete Passport Management Unit ("NAPMU").
- The Athlete's use of DHCMT is further supported by: (i) evidence of her protected status within the state-sponsored Russian doping regime; (ii) a reference to DHCMT being found within a urine sample that the Athlete supplied in 2014 to a clean urine; and (iii) the "doping context", whereby evidence exists linking the Athlete to the use of other prohibited substances in the same time period.
- The LIMS and related evidence was comprehensive and met the standard of proof required. In particular, Prof. Ayotte provided a clear and unchallenged expert report in which she considered the underlying PDF data of the samples and found that a Confirmation Procedure would have been successful. However, the DADC entirely ignored Prof. Ayotte's expert report (as well as her oral evidence), and it also seems to have applied an erroneously high standard of proof. Furthermore, the DADC's identification of apparent evidential flaws was misguided; it was artificially built around one particular comment by the NAPMU that was (a) merely a cautious and "obiter dicta" expression at the limits of the mandate of the report, rather than a fixed view, and (b) overtaken by the totality of the other evidence.
- In the present case, it is not appropriate to maintain the Athlete's results on the basis of fairness, because the Athlete's doping was severe, repeated and sophisticated. Hence, the disqualification of all of the Athlete's results from 1 April 2013 onwards is justified under the circumstances.

66. WADA requests the following relief:

> *"1. The Appeal of WADA is admissible.*
>
> *2. The decision dated 30 June 2022 rendered by the RUSADA Disciplinary Anti-Doping Committee in the matter of Ms Tatiana Kashirina is set aside.*
>
> *3. Ms Tatiana Kashirina is found to have committed an anti-doping rule violation pursuant to Article 2.2 of the 2011 and/or 2012 All-Russian Anti-Doping Rules.*
>
> *4. Ms Tatiana Kashirina is sanctioned with a period of Ineligibility between 8 years and a life ban, starting on the date on which the CAS Appeals Division award enters into force. Any period of provisional suspension and/or ineligibility effectively served by Ms Tatiana Kashirina, in respect of the second anti-doping rule violation that is*

the subject of the present appeal, before the entry into force of the CAS Appeals Division award, shall be credited against the total period of ineligibility to be served for that violation.

5. *All competitive results obtained by Ms Tatiana Kashirina from and including 1 April 2013 until the date on which the CAS Appeals Division award enters into force are disqualified, with all resulting consequences (including forfeiture of medals, points and prizes).*

6. *The First Respondent, alternatively the Respondents jointly and severally, are ordered to bear the arbitration costs of these proceedings.*

7. *The First Respondent, alternatively the Respondents jointly and severally, are ordered to make a substantial contribution to WADA's legal and other costs in connection with these proceedings."*

B. RUSADA's Position

67. RUSADA essentially adopts the arguments introduced by WADA. Beyond WADA's arguments and statements, RUSADA submits the following in substance:

- The evidence strongly suggests that the 2013 Samples contained a prohibited substance; the evidence suggesting that the Athlete was part of a "Urine Bank" scheme designed to help doping athletes avoid detection; and the evidence suggesting that the Athlete was a "protected athlete", combine to create a compelling case against the Athlete. Such evidence falls squarely within the terminology of "reliable means".
- With regards to the NAPMU Report, the foundational evidence was provided to NAPMU which based its opinion on, *inter alia*, the raw data files and PDF files originally created by the Moscow Laboratory at the time of sample analysis. This information was provided to the Athlete by WADA (via RUSADA) and submitted to DADC. The WADA Statement highlights the value of the evidence regarding the raw files and PDF files created during the original sample analysis.
- With regards to the Athlete's involvement in the state protection scheme, the presence of indirect evidence is the essence of circumstantial evidence and not an inherent flaw to the case brought against her. As to the absence of the source material relied upon in relation to the 'Urine Bank' conclusions, whilst this might be considered to be a factor in weighing the strength or otherwise of evidence, in relation to this evidence (not least given its source, context and veracity), any such weighting can only be of a very minor nature.
- With regards to the raw data, it is a strand of circumstantial evidence that in combination with the other strands establishes the case against the Athlete. Information relating to the Athlete's protected status is a significant matter.

68. RUSADA requests the following relief:

"*[77.]1. The Decision be set aside.*

[77.]2. Ms Kashirina be found to have committed an Article 2.2 anti-doping rule violation contrary to the 2011 ADR and/or the 2012 ADR, with the appropriate sanction being an eight-year period of Ineligibility, with credit being applied in respect of the provisional suspension.

[77.]3. The conditions applicable to the period of Ineligibility should be those as specified in the 2011 ADR and/or the 2012 ADR.

[77.]4. The costs of the arbitration and a contribution to legal costs be awarded to RUSADA in accordance with Rule 64.4 and Rule 64.5."

C. The Athlete's Position

69. The Athlete submits the following in substance:

- The Athlete does not dispute that she provided the two relevant samples, but she rejects that they contained any prohibited substances.
- The relevant samples, as well as all other samples she provided, are reported as negative in the ADAMS database, which is the only official and reliable system containing results of athletes' testing.
- The Athlete has not violated the ADR. She has always been open for testing, she has not missed a single test and has never taken any prohibited substances. All the charges brought against her are based on dubious, unofficial, inconsistent or probabilistic data that are not true and based on unfounded and unreliable conclusions that contradict the official negative laboratory studies made in WADA-accredited anti-doping laboratories, officially requested by the Athlete and obtained from RUSADA.
- Apart from the fact that all the samples imputed upon the Athlete were reported as negative, within 5-10 days before or after they were taken the Athlete passed other doping tests (including those taken at foreign laboratories, in particular the tests of 15 April 2012, 5 August 2012, and 12 April 2014) and they were all negative, too. The clearance time for the substances imputed upon the Athlete is much longer. This also proves the inconsistency of the accusations against the Athlete.
- Concerning the LIMS data used as the basis for the charges, the Athlete submits that these are not true; besides, the system did not comply with the WADC and the International Standards of WADA, and such data may not serve as official and reliable evidence in the case. Further, whereas the LIMS 2015 were provided unlawfully, the LIMS 2019 are inconsistent and contradictory resulting in the unreliability of the evidence. This is confirmed in CAS 2021/O/8160 Fédération Internationale de Natation (FINA) v. Veronika Andrusenko & Aleksandr Kudashev. Also, the LIMS database and its copies could have been forged, and the involvement of Mr Rodchenkov must be taken into account.
- The accusations in the Schmid Report are neither proven nor realistic. Russia did not agree with them. Also, Russia does not agree with the contents of the McLaren Reports. Irrespective, the conclusions in these reports have no direct convincing and reliable evidentiary value and are based on speculation. Further, they do not directly refer to the Athlete.
- The conclusions by Prof. Ayotte and the NAPMU Report may not be regarded as appropriate, consistent and reliable evidence in this case, especially since they contain only probabilistic statements. The NAPMU Report is not reliable. It does not contain the source data. It is only based on speculation and it concedes that the prediction of the outcome of a confirmation procedure is impossible. Further, a number of additional samples studied by NAPMU were listed as negative in the LIMS. From the same it follows that the evidentiary value of the conclusions contained both in the NAPMU

Report and in the LIMS is limited. The contradiction between the LIMS and the conclusions of the NAPMU Report may be explained in two ways: either the results of the NAPMU Report are not reliable enough or the LIMS database contains insufficiently reliable data. It does not appear possible to resolve this contradiction.

- With regards to the EDP evidence, mere allegations about the Athlete being included in the number of "protected athletes", made on the basis of a number of dubious written sources cannot sufficiently conclusively point to the use of prohibited substances by the Athlete. The evidentiary value of the data is limited, as it does not appear possible to establish their original source. The primary documents are not provided. Further evidence is also not provided. The argument of WADA and RUSADA is based on indirect information and is, therefore, probabilistic.
- The Athlete's rights to a fair and just hearing are impaired. The original material is not available anymore. Neither an analysis of sample B nor a confirmation of the results of the Athlete's samples listed in the LIMS is possible. The Athlete is not able to initiate a procedure to refute the allegations against her.
- There is a number of similar cases where CAS decided in favour of the athlete.

70. The Athlete requests the following relief:

> *"(i) to uphold the decision of the Disciplinary Anti-Doping Committee of 30.06.2022 and to dismiss the appeals lodged by RUSADA and WADA;*
>
> *(ii) to oblige the appellants, jointly or each separately, to bear the arbitration costs and expenses related to these proceedings;*
>
> *(iii) to oblige the appellants, jointly or each separately, to make a significant contribution to cover the Athlete's legal and other costs in connection to these proceedings. Including taking into consideration that the Athlete finds herself in a difficult material position since the start of her temporary suspension."*

V. JURISDICTION

71. 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."*

72. The 2021 version of the ADR (the "2021 ADR"), which apply *rationae temporis* to the procedural issues of the present case, provide for the jurisdiction of the CAS on WADA's and RUSADA's Appeals. In its relevant part, Article 15.2 of the 2021 ADR provides as follows:

> *"15.2. Appeal from Decisions Regarding Violations of the Rules, Consequences, Provisional Suspension, Implementation of Decisions and Jurisdiction*
>
> *The decisions specified below may be appealed exclusively pursuant to the procedure stipulated by Clause 15.2 hereof:* […]
>
> - *A decision that the Rules' violation was not committed.* […]

15.2.1. Appeals of decisions involving International-Level Athletes or International Events

If a violation occurred during an International Event or International-Level Athletes are involved, the decision made may be appealed exclusively to CAS. […]

15.2.3. Persons entitled to appeal

15.2.3.1. In cases stipulated by Clauses 15.2.1 and 15.2.2 hereof, the following parties shall have the right to appeal: […]

d) RUSADA or the National Anti-Doping Organization of the country of residence of that Person or the country whose citizen he/she is or the country which issued a license […]

f) WADA.

73. The Athlete is undisputedly an international-level athlete within the meaning of Article 15.2.1 of the 2021 ADR. The Appealed Decision is a decision concluding that the Athlete did not commit an anti-doping rule violation. The Panel, consequently, has jurisdiction to decide on the Appeals filed against the Appealed Decision.

74. The Parties further confirmed that CAS has jurisdiction by the execution of the Order of Procedure.

VI. ADMISSIBILITY

75. Article R49 of the CAS Code provides – in its pertinent 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. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document."

76. Articles 15.2.3.3 and 15.2.3.4 of the 2021 ADR provide:

"*15.2.3.3. Timing for filling* [sic] *appeals by the parties*

The time to file an appeal is twenty-one (21) days from the date on which the decision is received by an appealing party. A party which did not take part in a case but is entitled to appeal the decision may:

a) Within fifteen (15) days from the date on which the decision was received, request that RUSADA provide a full case file for the case

b) If such request was made within fifteen (15) days, that party may file an appeal to CAS within twenty-one (21) days from the date on which a complete case file was received.

15.2.3.4. Term for appeal by WADA

The time to file an appeal by WADA shall be the later of:

a) Twenty-one (21) days from the expiry of the time for filing an appeal by other parties

b) Twenty-one (21) days after WADA's receipt of a complete file relating to the decision."

77. RUSADA was notified of the Appealed Decision on 15 August 2022 and filed its Statement of Appeal on 5 September 2022, *i.e.* within 21 days from its notification.

78. Pursuant to Article 15.2.3.4 of the 2021 ADR, WADA had a deadline of 21 days from receipt of the complete file relating to the Appealed Decision. WADA received documents from RUSADA relating to the case file on 23 September 2022. Hence, WADA's deadline to appeal expired on 14 October 2022. The Appeal filed on 14 October 2022 was, therefore, submitted timely.

79. The Statements of Appeal also complied with the requirements of Article R48 of the CAS Code. Furthermore, the admissibility of the Appeals is not challenged by any Party.

80. As a result, RUSADA's and WADA's respective Appeals are admissible.

VII. APPLICABLE LAW

81. Article R58 of the CAS Code regarding the law applicable to the merits provides the following:

> *"The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision."*

82. It is common ground that: (a) the regulations applicable to the substantive issues in these proceedings are the versions of the ADR that were in place at the time of the alleged anti-doping rule violations, namely the 2011 ADR ("2011 ADR"); (b) the regulations applicable to the procedural issues in these proceedings are the 2021 ADR; and (c) the laws of Russia are to be applied subsidiarily, it being the country in which RUSADA is domiciled.

83. The Panel shall therefore decide this dispute according to these regulations and, subsidiarily, according to Russian law, should the need arise to fill a possible gap in the abovementioned rules.

VIII. SCOPE OF REVIEW

84. According to Article R57 para. 1 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. ...*".

85. The unlimited scope of review is also confirmed by Article 15.1.1 of the 2021 ADR, which provides – in its pertinent parts – as follows:

> "*The scope of the review on appeal shall include all matters relevant to the case and shall not be limited to the issues or scope of review before the initial decision maker. Any party to the appeal may submit evidence, legal arguments and claims that were not raised in the first instance hearing, so long as they arise from the same cause of action or same general facts or circumstances raised or addressed in the first instance hearing.*"

86. Against this background, the Panel finds that its power to review the facts and the law of the present case is not limited.

IX. MERITS

87. Considering all Parties' submissions, and after the oral hearing, the main issues to be resolved by the Panel are the following:

A. Did the Athlete commit an anti-doping rule violation?

B. In case the question under A. is answered in the affirmative, what is the appropriate sanction to be imposed on the Athlete?

A. Did the Athlete Commit an Anti-Doping Rule Violation?

88. Before addressing the merits of the Parties' factual and legal arguments, the Panel finds it necessary to identify the relevant provisions which define (1) the anti-doping rule violations allegedly committed, (2) the burdens and standards of proof, as well as (3) the means of proof in their respect. On such basis, the Panel will then determine (4) whether the Athlete committed the alleged anti-doping rule violation(s).

1. Use of a Prohibited Substance

89. Article 2.2 of the 2011 ADR reads as follows:

> *"2.2. Use or attempted use by an Athlete of a prohibited substance or a prohibited method.*
>
> *2.2.1. 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 antidoping rule violation for use of a prohibited substance or a prohibited method.*
>
> *2.2.2. 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."*

90. *"Use"* is defined in Article 17 of the 2011 ADR as

> *"*[t]*he utilization, application, ingestion, injection or consumption by any means whatsoever of any Prohibited Substance or Prohibited Method."*

91. As the above quotes demonstrate, the application of Article 2.2 of the 2011 ADR does not presume that an athlete used a prohibited substance knowingly.

92. DHCMT is a Non-specified Substance prohibited at all times pursuant to Section 1.1 (Anabolic Androgenic Steroids) of the relevant WADA Prohibited Lists.

2. Burdens and Standards of Proof

93. Article 5.1 of the 2021 ADR (which is in line with Article 3.1 of the WADC) provides the following:

"5.1. Burdens and Standards of Proof

RUSADA shall have the burden of establishing that violation of the Rules has occurred. The standard of proof shall be whether RUSADA has established violation of the Rules to the comfortable satisfaction of the 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 the Rules place the burden of proof upon the Athlete or other Person alleged to have committed violation of the Rules to rebut a presumption or establish specified facts or circumstances, except as provided in Clauses 5.2.2 and 5.2.3 hereof, the standard of proof shall be a balance of probability."

94. In accordance with this provision, the burden of proof is firmly on WADA and RUSADA to prove the alleged anti-doping rule violations. The applicable standard of proof is that of comfortable satisfaction.

95. CAS jurisprudence has established the meaning and application of the "*comfortable satisfaction*" standard of proof. The test of comfortable satisfaction "*must take into account the circumstances of the case*" (CAS 2013/A/3258 para. 122). Those circumstances include "[t]*he paramount importance of fighting corruption of any kind in sport and also considering the nature and restricted powers of the investigation authorities of the governing bodies of sport as compared to national formal interrogation authorities*" (CAS 2009/A/1920; CAS 2013/A/3258).

96. CAS awards have also confirmed repeatedly that a panel is allowed to consider the cumulative effect of circumstantial evidence (see, e.g., CAS 2018/O/5667 para. 85; CAS 2021/A/7839, para. 106). Therefore, even if single items of evidence may each be inadequate to establish a violation to the comfortable satisfaction of a hearing panel, taking their cumulative weight together, they may suffice. As described in CAS 2021/A/7839, No. 4 [guiding principle]:

"In case there is no direct but only circumstantial evidence, the adjudicatory body must assess the evidence separately and together and must have regard to what is sometimes called "the cumulative weight" of the evidence. It is in the nature of circumstantial evidence that single items of evidence may each be capable of an innocent explanation but, taken together, establish guilt beyond reasonable doubt. There may be a combination of circumstances, no one of which would raise a reasonable conviction, or more than a mere suspicion, but the whole taken together, may create a strong conclusion of guilt."

97. The gravity of the particular alleged wrongdoing is also relevant to the application of the comfortable satisfaction standard. In CAS 2014/A/3625 (para. 132), the panel stated that the comfortable satisfaction standard is

"… a kind of sliding scale, based on the allegations at stake: the more serious the allegation and its consequences, the higher certainty (level of proof) the Panel would require to be 'comfortably satisfied'".

3. Means of Proof

98. Pursuant to Article 5.2 of the 2021 ADR, and in line with constant CAS jurisprudence, WADA and RUSADA may resort to any reliable means to prove the alleged anti-doping rule violations. See, e.g., CAS 2021/A/7839 No. 3 [guiding principle]:

"As a general rule, facts relating to anti-doping rule violations (ADRV) may (i.e., it is

permissible) be established by "any reliable means". This rule gives greater leeway to anti-doping organisations to prove violations, so long as they can comfortably satisfy a tribunal that the means of proof is reliable. As a result, it is not even necessary that a violation be proven by a scientific test itself. Instead, a violation may be proved through admissions, testimony of witnesses, or other documentation evidencing a violation. This rule is not a requirement that the evidence adduced be "reliable evidence". Rather, it is a rule as to the method or manner or form in which the facts that are necessary to sustain an allegation of an ADRV may be established, and the rule provides (in a nonexhaustive list) a number of examples of means of establishing facts which are characterised as "reliable"."

99. Such "reliable means" include circumstantial evidence, including but not limited to the LIMS data and EDP evidence (see also CAS 2019/A/6168, para. 215), as will be discussed further below.

4. Violation of Article 2.2 of the 2011 ADR

100. It is undisputed that the Athlete's 2013 Samples were reported as negative in the ADAMS system. As a result, no anti-doping rule violation based on the "presence" of a prohibited substance (Article 2.1 of the 2011 ADR) can be found. However, the absence of a sample reported as positive in the ADAMS system does not necessarily disprove an anti-doping rule violation under Article 2.2 of the 2011 ADR. The *prima facie* evidentiary value of the reporting in ADAMS can be overturned by evidence demonstrating that the reporting was false. The crucial question is whether the evidence submitted by WADA and RUSADA is sufficient to allow for the conclusion that the samples were indeed positive, and that the Athlete had actually used a prohibited substance.

a. The Russian Doping Scheme

101. As a starting point, the Panel considers that there was a systemic cover-up and manipulation of the doping control process within Russia in the manner described by Prof. McLaren in the McLaren Reports, commonly referred to as the Russian doping scheme during the 2010s (including during the period in which the 2013 Samples were collected from the Athlete). According to the First McLaren Report, *"the Ministry of Sport directed, controlled and oversaw the manipulation of athletes' analytical results or sample swapping, with the active participation and assistance of the FSB, CSP, and both the Moscow and Sochi laboratories."* The Second McLaren Report confirmed the key findings of the First McLaren Report. In particular, the McLaren Reports uncovered and described a number of counter-detection methodologies including the Disappearing Positives Methodology and Washout Testing. Together with the Second McLaren Report, Prof. McLaren published the EDP containing evidence relating to athletes he considered were involved in or benefitted from the above schemes.

102. The Athlete does not expressly deny the existence of a doping scheme in Russia during the relevant period. Essentially, she submits that Russia does not agree with the contents of the McLaren Reports and the Schmid Report. She also submits, albeit in rather vague terms, that the conclusions in these reports have no direct convincing and reliable evidence and are based on speculation. What is more, they do not directly refer to her.

103. The general evidential reliability of the McLaren Reports has been confirmed by previous CAS Panels. For example, in CAS 2021/A/7840, para. 107,

"... the Panel accepts the McLaren Reports as a fair account of the Russian doping scheme and, in particular, accepts that the account of the Disappearing Positives Methodology set forth in the McLaren Reports is an accurate and compelling account of what took place in this regard. To be clear, on the basis of the McLaren Reports the Panel makes findings of fact as follows.

a. The historic position in Russia was that doping of athletes was undertaken on an ad hoc, decentralised basis where coaches and officials working with elite athletes "in the field" provided those athletes with an array of performance-enhancing drugs (or "PEDs"). The difficulty with this approach was that it could not keep abreast of the developments in doping control, including in particular the introduction of the Athlete Biological Passport ("ABP") so that the athletes were at risk of being caught.

b. In response, in or about 2012, the Russian Ministry of Sport sought to 'centralise' the doping effort and bring it under the control of the Moscow Laboratory. […].

c. *Part and parcel of this new program was the Disappearing Positives Methodology deployed by the Moscow Laboratory. Samples were provided by the athletes and sent to the Moscow Laboratory for testing and analysis. The Moscow Laboratory conducted an ITP. Where the ITP revealed a potential AAF, the Moscow Laboratory would (through a liaison person) inform the Russian Ministry of Sport which would then decide either to "SAVE" or to "QUARANTINE" the athlete in question, and communicate that decision to the Moscow Laboratory. If the decision was made to "SAVE" the athlete, the Moscow Laboratory would report the sample as negative in ADAMS and, conversely, if the athlete was to be "QUARANTINED", the analytical bench work would continue and the AAF would be reported in the ordinary manner."*

104. The existence of a general doping scheme has also been acknowledged (to some extent) by the Russian Ministry of Sport in its letter to WADA of 13 September 2018 (see also CAS 2019/A/6168, para. 197).

105. On that basis, the Panel has no doubt about the existence of a general doping scheme in Russia, and remarks that the Athlete has not introduced any evidence which would cast doubt on the reliability of the proven existence of that doping scheme. Such a scheme could only succeed, to the extent that it did, with the benefit of falsified results being recorded in ADAMS. Hence, due to the extensive doping practices in the Russian sport in the 2010s (including in 2013, the year in which the 2013 Samples were collected) and the partially corrupted Russian anti-doping regime in place during that time, the ADAMS entries by the Moscow Laboratory cannot enjoy unreserved reliability.

106. As a result, the Panel is not prepared to follow the Athlete's logic that the reporting of her 2013 Samples as "negative" in the ADAMS system irrefutably suggests that those samples were clean. Similarly, while the Panel concurs that the mere existence of a doping scheme does not suffice for the purposes of establishing an anti-doping rule violation in individual cases, the existence of such a scheme is a relevant fact to be taken into account in the evaluation of specific evidence available for individual athletes (see also CAS 2019/A/6168, para. 197).

b. The specific evidence against the Athlete

107. WADA and RUSADA have based their claims regarding the Athlete's anti-doping rule violation primarily on the 1/4/2013 and the 20/6/2013 Samples. There is no evidence as to the

particulars of the alleged anti-doping rule violation: It is not known precisely when and how the prohibited substances were allegedly administered by the Athlete. It is not known who allegedly administered the substances. And it is not known whether the Athlete was aware of the alleged doping, or even of the existence of a general doping scheme.

108. The Athlete strongly denies any such knowledge. However, the Panel notes that, as clearly stated in Article 2.2.1 of the 2011 ADR, 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 rule violation for use of a prohibited substance. In addition, the success or failure of the use or attempted use of a prohibited substance is not material: it is sufficient that the prohibited substance was used or attempted to be used for an anti-doping rule violation to be committed (Article 2.2.2 of the 2011 ADR).

109. In support of the alleged use of a prohibited substance by the Athlete, WADA and RUSADA rely on the following analytical and contextual evidence, to be assessed by the Panel separately and together (see also CAS 2019/A/6168, para. 212):

- the 2015 LIMS, which identifies the 2013 Samples as positive for DHCMT;
- the expert opinion of Prof. Ayotte, who considered the analytical data relating to the samples;
- the expert opinion of the NAPMU;
- evidence of the Athlete's protected status within the state-sponsored Russian doping regime;
- the fact that DHCMT was found within a urine sample that the Athlete supplied in 2014 while the sample was nevertheless reported as clean;
- the "doping context", whereby evidence exists linking the Athlete to the use of other prohibited substances in the same time period.

110. The primary evidence against the Athlete are the 1/4/2013 Sample and the 20/6/2013 Sample. The Athlete did not dispute the collection of these samples. The samples were recorded in the 2015 LIMS and identified as positive for DHCMT. Further, there are underlying analytical PDF and raw data of the analyses reported in the 2015 LIMS. The Moscow Laboratory maintained raw data files in respect of each sample assessed by it and prepared analytical PDFs for each sample and such PDFs were stored on the Moscow Laboratory server and the name and location were recorded in the 2015 LIMS.

111. The LIMS data were obtained subsequent to the McLaren Reports (in October 2017 from a whistleblower and in January 2019 from the Moscow Laboratory). WADA also obtained the underlying analytical PDFs and raw data of the analyses reported in the LIMS. In line with previous CAS case law (e.g. CAS 2021/A/7840 paras. 110 *et seqq.*), the Panel accepts that, upon forensic examination, the 2015 LIMS is an accurate, authentic, and contemporaneous account of the original data and its contents can be relied upon as accurate and valid. The WADA Statement addresses and confirms the history, presentation and reliability of the 2015 LIMS data, in particular at paragraphs 12 to 14. As pointed out by WADA, the LIMS data can *per se* provide evidence for an anti-doping rule violation.

112. The Athlete's objections to the use of the LIMS data do not rebut the suitability and reliability of the evidence. The Athlete's submissions regarding the origins and provision of the LIMS

data are vague and unspecific. The potential unreliability of the 2019 LIMS does not rule out the consistency and reliability of the 2015 LIMS. Potential legal violations in the context of the production and/or transfer of the 2015 LIMS do not question their content-related reliability. If any, such violations may (only) result in a prohibition to exploit the evidence. However, the Panel does not identify any legal basis for such a prohibition; even under the assumption of an unlawful production and/or transfer of the 2015 LIMS, such infringement does not violate or undermine the Athlete's rights. Lastly, the Athlete's statements regarding the potential fabrication of the LIMS data and the involvement of Dr. Rodchenkov only consist of general and vague allegations. As pointed out in previous CAS cases, the 2015 LIMS is an authentic, contemporaneous document which can provide an authentic, contemporaneous account of the analysis of the relevant samples (for example, CAS 2021/A/7840, para. 112).

113. The LIMS data evidence is corroborated by Prof. Ayotte's review of the raw data and the underlying PDF documents. According to Prof. Ayotte's analysis of the underlying PDF, a Confirmation Procedure would have been successful if one had been conducted on each of the samples:

> "*To conclude, the detection of DHCMT metabolite in two different samples collected from the athlete on 1 April 2013 and 20 June 2013 is strong evidence of the administration of the anabolic steroid (or a related black-market steroid) in 2012 or early 2013. Although the results were not confirmed, the identification criteria were met after the initial testing procedure, which suggests that the confirmation would have been successful. Since detected in two different samples, the weight of these two ITP results is increased."*

114. Similar analyses by Prof. Ayotte have been accepted as reliable evidence in previous CAS cases (e.g. CAS 2021/A/7840, para. 113 *et seqq.*; CAS 2019/A/6168, para. 155 *et seqq.*). The Panel notes that there is no reason here to deviate from this case law. There was no serious challenge to the expertise of Prof. Ayotte or to her expert evidence in relation to the material, and no contrary expert view was put before the Panel. Prof. Ayotte confirmed her key findings during her examination at the hearing. Such testimony remained unchallenged. In these circumstances, the Panel readily accepts this evidence, which provides analytical support of the 2015 LIMS data.

115. The Athlete's argument that other samples collected from her around the time of the 2013 Samples were negative does not invalidate the substance and reliability of the LIMS evidence and Prof. Ayotte's conclusions. First, the samples the Athlete primarily refers to were taken in 2012 and 2014, whereas the 2013 Samples were collected in spring and summer 2013. The only other relevant sample is no. 2811779, which was collected on 1 July 2013 (*i.e.* three months after the 1/4/2013 Sample and 11 days after the 20/6/2013 Sample) and reported as negative. The Athlete, however, has not presented any substantial explanation why the collection of a negative sample 11 days or three months after the collection of the 1/4/2013 Sample and the 20/6/2013 Sample would make a finding of use of a prohibited substance based on the 1/4/2013 Sample and the 20/6/2013 Sample impossible. The mere reference to the collection, date and outcome of the sample no. 2811779 is not sufficient. In addition, even if the Athlete had presented substantial submissions regarding the relation between the 20/6/2013 Sample and the negative sample collected 11 days later, an anti-doping rule violation would still not be excluded as the reliability of the 1/4/2013 Sample as per the 2015 LIMS data would still stand.

116. Moreover, during the oral hearing, Prof. Ayotte testified that there are several reasonable explanations for a sample to test negative even as soon as 11 days after collection of a sample

that tested positive for DHCMT. One relates to a possibly decreased specific gravity of the subsequent sample. Another one refers to a potential decrease of the peak intensity of the prohibited substance to a level where it can no longer be detected. Based on Prof. Ayotte's explanations, which the Athlete did not challenge, the Panel is comfortably satisfied that a negative sample collected a few days after a positive sample is no proof for the invalidity or unreliability of the positive sample.

117. Furthermore, WADA relies on an email from Dr Sobolevsky (of the Moscow laboratory) to Mr Velikodny (the liaison to the Deputy Minister for Sport) of 5 April 2013, which forms part of the EDP evidence. That email was sent only four days after the collection of the 1/4/2013 Sample. Attached to the email was a list of results from the testing of samples collected at the weightlifting training camp in Ruza. In particular, the Athlete's 1/4/20213 Sample is recorded as positive for DHCMT.

118. This indicates that, in general, the Athlete enjoyed protected status within the Russian state-sponsored doping scheme and that, in particular, the 1/4/20213 Sample was falsely reported as negative in ADAMS due to respective protective measures.

119. WADA submitted another email from Mr Sobolevsky to Mr Velikodny of 20 February 2015. Attached to this email was an excel spreadsheet created on 3 June 2014. In this spreadsheet, the Athlete was named with 11 urine samples. In particular, one of the samples, GG5097, was reported to contain very low traces of DHCMT. This finding indicates that the Athlete had a track record for the use of DHCMT in the relevant time period.

120. Also in line with previous CAS jurisprudence (e.g. CAS 2021/A/7840, paras. 116 *et seqq.*), the Panel sees no reason not to accept these emails at face value and to take account of what is said in the emails and by whom.

121. In the Panel's view, the email by Dr. Sobolevsky of 5 April 2013 relates, on its face, to the 1/4/2013 Sample and it shows that (i) the Athlete provided a sample at the weightlifting training camp in Ruza on 1 April 2013, (ii) the sample was analysed by the Moscow Laboratory and was positive for DHCMT and (iii) the Moscow Laboratory, by Dr Sobolevsky, informed Mr Velikodniy at the CSP of the results. The LIMS data related to the 1/4/2013 Sample (no. 2783092) explicitly fell within the scope of Prof. Ayotte's report.

122. Further, in the Panel's view, the email of 20 February 2015 relates to other samples collected from the Athlete. It corroborates the Athlete's protected status as it indicates that she had clean (i.e. not containing Prohibited Substances) urine samples that were used by the Moscow Laboratory to replace official samples that had been found to contain Prohibited Substances. In other words: The email indicates that the Athlete provided clean urine samples for the purposes of Sample Swapping. In CAS 2021/A/7838, para. 122, the CAS considered clean urine bank schedules as part of the EDP evidence and held that:

> *"On the strength of this evidence, therefore, the Panel finds that, as a matter of fact, the Athlete participated in the 'Sample Swapping Methodology' by providing from time to time samples of clean urine to be used to swap for dirty urine."*

123. The Panel has carefully considered each and every entry in the EDP documents relating specifically to the Athlete. These documents were created, edited and communicated contemporaneously by persons heavily implicated in the general doping scheme in Russia and by those responsible for overseeing athletes' physical conditions. There is no evidence that

these documents were fabricated or manipulated for the purpose of wrongfully implicating the Athlete. Again, the Athlete's objections to the EDP evidence are vague and unspecific. She did not provide any specific and substantial indications as to a potential fabrication, manipulation or general unreliability of the EDP. As pointed out by WADA, its reliability has been carefully scrutinised by different CAS arbitrators in the context of many prior cases. The CAS has repeatedly held that the EDP documents were reliable evidence for the purposes of establishing an anti-doping rule violation under the relevant rules (e.g. CAS 2018/O/5666-5668, 5672-5676, 5704 and 5712-5713 and CAS 2017/O/5039). Taking into account the Athlete's submissions, the Panel notes that it sees no reason to deviate from the previous CAS jurisprudence.

124. The concrete evidence against the Athlete fits into the general scheme described in the McLaren Reports which specifically refer to the EDP evidence collected by Prof. McLaren during his investigations. In particular, the email correspondence between Mr Sobolevsky and Mr Velikodny (see paras. 117 et seq.) matches with the Disappearing Positives Methodology described in the McLaren Reports and the sample swapping.

125. Contrary to what the Appealed Decision suggests, the NAPMU Report does not call into question the circumstantial evidence against the Athlete, but rather confirms it.

126. In the Appealed Decision, the DADC invokes the NAPMU Report in the Athlete's favour. It stated that the doping scenario in the NAPMU Report is (only) based on the assumption that the presumed adverse analytical findings of the Athlete were confirmed. Further, a number of additional samples researched by NAPMU are indicated in LIMS as negative. The DADC inferred that either the results of the NAPMU reports or the LIMS data are not sufficiently reliable.

127. The Panel notes that the DADC decision is a misinterpretation of the LIMS data as well as of the NAPMU report and its scope. As explained above, the LIMS data can provide evidence in relation to an anti-doping rule violation. The scope of the NAPMU report was, in particular, to check LIMS and chromatographic data related to the Athlete, comment whether the findings were suspicious or not and elaborate on a doping scenario (LIMS data), check the data consistency and if the samples should have gone through the confirmation procedure after the initial testing procedure and what the chances of a successful confirmation were (chromatographic data). NAPMU concluded, *inter alia*, that:

> *"Several of the athlete's urine samples show presumptive adverse analytical findings that we find suspicious. Our recommendation would have been to proceed with confirmation procedure of such samples. Assuming the presumptive adverse analytical findings would have been confirmed, a proposed doping scenario is the use of turinabol (DHCMT), MK-677 (ibutamoren), and testosterone or its precursors."*

128. In its summary and conclusion, NAPMU explicitly stated that:

> *"In the assessment, we provided an evaluation whether the results were suspicious and if confirmation procedures should have been performed. It is not possible, however, to predict the outcome of such confirmation procedures, nor if the criteria in the relevant technical documents would have been fulfilled."*

129. During her oral examination at the hearing, one of the authors of the NAPMU Report, Ms Yvette Dehnes, clarified what the NAPMU Report meant when it stated that it is not possible to predict the outcome of the Confirmation Procedure. Ms. Dehnes explained that generally, if the Initial Testing Procedure is successful (*i.e.* produces a positive result), she would expect the

Confirmation Procedure to be successful as well. A negative Confirmation Procedure following positive initial testing would be somewhat unusual and trigger an internal investigation within NAPMU to find out why the initial testing deviated from the results of the Confirmation Procedure. In case of repeated instances of positive initial testing, the expectation of successful Confirmation Procedures would increase. On the basis of Ms. Dehnes' testimony, which the Panel found plausible and which the Athlete did not discredit, the Panel is comfortably satisfied that a Confirmation Procedure would likely have been successful in the case of the 2013 Samples. That the outcome of the Confirmation Procedure cannot be predicted with certainty is irrelevant under the applicable standard of proof. What is relevant is that the likelihood of a successful Confirmation Procedure is high enough to corroborate the assumption that the initial testing performed on the 2013 Samples is reliable.

130. The scope and the assumption-based approach of NAPMU are the result of the specific type of data evidence available in this case. As pointed out by WADA, the whole point of the state-sponsored scheme is that the recorded LIMS evidence was in relation to samples whose results were purposely buried after the Initial Testing Procedure, without a Confirmation Procedure being done. The DADC decision comes down to the requirement of a *de facto* confirmation procedure to be carried out by NAPMU which (i) is not possible and (ii) was also not the scope of the assessment.

131. Furthermore, the NAPMU's analysis of additional samples that were negative in the LIMS has no link to the 2013 Samples, which were positive in the 2015 LIMS, and therefore the DADC's reference to the NAPMU additional samples is without any avail.

132. Conclusively, the Panel notes that the evidence presented in this case exceeds the evidence required for the establishment of an anti-doping rule violation in previous LIMS- and EDP-related CAS cases. For example, in CAS 2021/A/7840, the panel sanctioned the athlete on the basis of LIMS, raw data and PDFs as well as emails although there were no indications that the athlete participated in the Sample Swapping Methodology. In CAS 2019/A/6168, the panel sanctioned the athlete primarily on the basis of EDP documents irrespective of the potential existence of related LIMS data.

133. The reliance on the evidence provided does not undermine the Athlete's rights to a fair hearing. In a case where an analysis of the original material is not possible anymore, an anti-doping rule violation based on Article 2.2 of the 2011 ADR can still be established on the basis of other evidence, in particular circumstantial and related documentary evidence. In its decision, the Panel has to evaluate the substance, extent and reliability of such evidence. In this respect, the Athlete has the possibility to contest the evidence and submit substantial counter-arguments including expert opinions. Any such counter-submission is taken into account and evaluated by the Panel. Moreover, taking into account the principle universally applied in adversarial arbitration proceedings such as before CAS that parties exercise their rights independently, the Panel notes that the Athlete, due to her own decisions (not calling any other experts to challenge expert opinions which were relied on by WADA and RUSADA), is responsible for the situation as it is under the Panel's review. Therefore, any insufficiency of the Athlete's submissions does not impair her judicial rights.

134. In summary, having carefully considered all of the evidence adduced by the Parties, the Panel concludes as follows:

    1. There was a systemic cover-up and manipulation of the doping control process within Russia in the manner described by Prof. McLaren in the McLaren Reports, commonly

referred to as the Russian doping scheme.

2. The Moscow Laboratory performed Initial Testing Procedures on the 2013 Samples, the results of which showed the presence of the DHCMT.
3. DHCMT is a prohibited substance.
4. In furtherance of the Russian doping scheme, and in order to protect the Athlete from the consequences of the positive test result, the Moscow Laboratory recorded the analytical results of the 2013 Samples in ADAMS as negative.
5. In relation therefore to the anti-doping rule violation allegations in this matter, the Panel concludes that, upon taking the evidence as a whole and assessing its cumulative weight, the Panel is comfortably satisfied that, on or about 1 April and 20 June 2013, the Athlete used a prohibited substance (namely, DHCMT) in violation of Article 2.2 of the 2011 ADR.

B. What is the Athlete's sanction?

135. Having found that the Athlete committed an anti-doping rule violation, the Panel moves to examining the consequences that must be drawn from such finding.

1. The duration of the Period of Ineligibility

136. Article 9.2 of the 2011 ADR provides that the sanction to be imposed for an anti-doping rule violation under Article 2.2 of the 2011 ADR is as follows:

> *"The period of ineligibility imposed for a violation of paragraph 2.1, paragraph 2.2 and paragraph 2.6 shall be as follows, unless the conditions for eliminating or reducing the period of ineligibility, as provided in paragraph 9.4 and 9.5, or the conditions for increasing the period of ineligibility, as provided in paragraph 9.6, are met:*
>
> *First violation: Two (2) years Ineligibility."*

137. Article 9.6 of the 2011 ADR addressing aggravating circumstances sets forth:

> *"If Disciplinary Committee or Court of Arbitration establishes in an individual case involving an anti-doping rule violation other than violations under paragraph 2.7 and 2.8 that aggravating circumstances are present which justify the imposition of a period of ineligibility greater than the standard sanction, then the period of ineligibility otherwise applicable shall be increased up to a maximum of four (4) years unless the Athlete or other Person can prove to the comfortable satisfaction of the hearing panel that he or she did not knowingly commit the anti-doping rule violation.*
>
> *An Athlete or other Person can avoid the application of this Paragraph by admitting the anti-doping rule violation as asserted promptly after being confronted with the anti-doping rule violation by Disciplinary Committee or Court of Arbitration.*
>
> *Examples of aggravating circumstances which may justify the imposition of a period of ineligibility greater than the standard sanction are:*
>
> *-the Athlete or other Person committed the anti-doping rule violation as 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;

- the Athlete who enjoys 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 anti-doping rule violation.

The examples of aggravating circumstances are not exclusive."

138. Article 9.7 of the 2011 ADR addressing multiple violations provides:

"9.7.1 Second Anti-Doping Rule Violation:

For an Athlete's or other Person's first anti-doping rule violation, the period of ineligibility is set forth in paragraph 9.2 and 9.3 (subject to elimination, reduction or suspension under paragraph 9.4 or 9.5, or to an increase under paragraph 9.6). For a second anti-doping rule violation the period of ineligibility shall be within the range set forth in the table below.

First Violation	Second Violation					
	RS	FFMT	NSF	St	AS	TRA
RS	1–4	2–4	2–4	4–6	8–10	10 – life
FFMT	1–4	4–8	4–8	6–8	10 – life	life
NSF	1–4	4–8	4–8	6–8	10 – life	life
St	2–4	6–8	6–8	8 – life	life	life
AS	4–5	10 – life	10 – life	life	life	life
TRA	8 – life	life	life	life	life	life

The table is applied by locating the Athlete's or other Person's first anti-doping rule violation in the left-hand column and the second violation on the first line of subsequent columns.

The Athlete's or other Person's degree of fault shall be the criterion considered in assessing a period of Ineligibility within the applicable range.

Definitions for purposes of the second anti-doping rule violation table:

RS (Reduced sanction for Specified Substance under paragraph 9.4): The anti-doping rule violation was or should be sanctioned by a reduced sanction under paragraph 9.4 because it involved a Specified Substance and the other conditions under paragraph 9.4 were met.

FFMT (Filing Failures and/or Missed Tests): The anti-doping rule violation was or should be sanctioned under paragraph 9.3.3 (Filing Failures and/or Missed Tests).

NSF (Reduced sanction for No Significant Fault or Negligence): The anti-doping rule violation was or should be sanctioned by a reduced sanction under Paragraph 9.5.2 because No Significant Fault or Negligence was proved by the Athlete.

St (Standard sanction): The anti-doping rule violation was or should be sanctioned by the standard sanction of two (2) years under paragraph 9.2 or 9.3.1.

AS (Aggravated sanction under paragraph 9.2 or 9.3.1): The anti-doping rule violation was or should be sanctioned by an aggravated sanction under paragraph 9.6 because the Anti-Doping Organization established the conditions set forth under paragraph 9.6.

TRA (Trafficking or Attempted Trafficking and administration or Attempted administration):

The anti-doping rule violation was or should be sanctioned by a sanction under paragraph 9.3.2."

139. For the sake of clarity and for the avoidance of doubt the Panel wishes to underline that while in the present proceedings, the Athlete has been found to have committed two ADRVs on two different occasions, it follows from Article 9.7.4 of the 2011 ADR that the two samples at issue here constitute only one anti-doping rule violation. Furthermore, while WADA has alluded to evidence of the Athlete using other prohibited substances, there was no claim (and no request either) of the existence of aggravating circumstances due to the use of multiple prohibited substances.

140. This case is the Athlete's second anti-doping rule violation. In fact, the Athlete was previously subject to a period of Ineligibility of two years from 2006 to 2008, following a positive test for Mesterolone. The Athlete, who has not duly contested her previous anti-doping rule violation, has not brought forward any particular circumstances allowing for an elimination or reduction of the period of Ineligibility.

141. For the second anti-doping rule violation, WADA submits that it must either be "St" or "AS" for the purposes of the table quoted at para. 138 above. WADA's primary position is that it is "AS", as Aggravating Circumstances apply under rule 9.6 of the ADR. In particular, the Athlete committed the anti-doping rule violation as part of the Russian doping scheme, viz. the most serious and sophisticated doping scheme in history so far, which involved a calculated conspiracy to hide the doping conduct. The Athlete's protection included, *inter alia,* the deliberate failure to undertake Confirmation Procedures, the non-reporting of positive samples, the changing of data in ADAMS, and the creation and exploitation of a clean urine bank. In addition, the Athlete's name appeared on multiple occasions on file names as part of the Moscow laboratory data.

142. Therefore, the pertinent question is whether the existence of this system qualifies as "aggravating circumstances" that require the Period of Ineligibility to be increased.

143. In the view of the Panel, there is no reliable evidence as to what was known by the Athlete at the time when the anti-doping rule violations occurred. Even though the Panel is comfortably satisfied that the Athlete used prohibited substances, the specific circumstances of such use are unknown. Without any evidence as to the state of knowledge of the Athlete at the time of the anti-doping rule violation, the Panel cannot be satisfied to the required standard that she was aware that she was part of a wider doping plan or scheme. The Panel finds that although an organized doping system existed in Russia at the relevant time, the Athlete's participation in such system has not been established. There is no evidence before the Panel to demonstrate that the Athlete knew that she 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, in and of itself, amount to an aggravating circumstance (see also CAS 2019/A/6161, para. 211).

144. Therefore, with respect to the table above (para. 138), the Panel deems that the Athlete's anti-doping rule violation has to be classified as "St" and "St" providing for a potential period of Ineligibility between 8 years and a life ban. On balance, the Panel declines to add any further period of Ineligibility to the period of 8 years, the Panel being of the opinion that a period of Ineligibility of that length is a proportionate sanction taking into account all the circumstances of this case.

2. Commencement of the Ineligibility Period

145. Article 9.10 of the 2011 ADR regarding the commencement of the Ineligibility Period stipulates as follows:

> *"9.10.1. Except as provided below, the period of Ineligibility shall start on the date of the hearing decision providing for ineligibility or, if the hearing is waived, on the date Ineligibility is accepted or otherwise imposed.*
>
> *9.10.2. If a provisional suspension is imposed and respected by the Athlete, then the Athlete shall receive a credit for such period of provisional suspension against any period of ineligibility which may ultimately be imposed.*
>
> *9.10.3. Delays Not Attributable to the Athlete or other Person*
>
> *Where there have been substantial delays in the hearing process or other aspects of Doping Control not attributable to the Athlete or other Person, the Disciplinary Anti-Doping Committee may start the period of Ineligibility 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."*

146. The Panel takes note that the Athlete was provisionally suspended starting 13 November 2020 until 30 June 2022. This period shall be credited against the total period of Ineligibility.

147. As a result, the Athlete's period of Ineligibility shall start on the date of this present Award. The period of the provisional suspension from 13 November 2020 until 30 June 2022 shall be credited against the period of Ineligibility imposed in the present Award.

3. Disqualification of Results

148. Moreover, the Panel notes that Article 9.8 of the 2011 ADR regarding the disqualification of results states as follows:

> *"Disqualification of Results in Competitions Subsequent to Sample Collection or Commission of an Anti-Doping Rule Violation*
>
> *In addition to the automatic disqualification of the results in the competition which produced the positive sample under paragraph VIII, all other competitive results obtained from the date a positive Sample was collected (whether in-competition or out-of-Competition), or other anti-doping rule violation occurred, through the commencement of any provisional suspension or ineligibility period, shall, unless fairness requires otherwise, be disqualified with all of the resulting consequences including forfeiture of any medals, points and prizes."*

149. WADA requests that the Athlete's results obtained since 1 April 2013 (the date on which the first of the 2013 Samples was collected) be disqualified, including forfeiture of medals, points and prizes. This request would result in the disqualification of more than a dozen of gold, silver and bronze medals won by the Athlete between 2013 and 2019 in World and European Championships, and, potentially, other results obtained in international events until the date of the present Award. The retroactive disqualification requested by WADA would be particularly harsh in the present case, given that it would cover a very long period by a successful Athlete, and given that there is no evidence that the Athlete has ever again committed an anti-doping rule violation since the 2013 Samples. If the Panel were to follow WADA's request, the Athlete would be treated as if she had been continuously committed ADRVs for more than 10 years since the collection of the 2013 Samples, despite the fact that there is no evidence of any further anti-doping rule violations by the Athlete within that same period of time for which disqualification is sought.

150. The Panel finds that the established facts of the present case call for the application of the fairness exception enshrined in Article 9.8 of the 2011 ADR ("*unless fairness requires otherwise*"). While retroactive disqualification of competitive results is a "*vital part of a credible anti-doping regime for various reasons*", including its "*deterrent effect on doping*" (*Manninen/Nowicki*, "Unless Fairness Requires Otherwise" – A Review of Exceptions to Retroactive Disqualification of Competitive Results for Doping Offenses", CAS Bulletin 2017/2, p. 8 et seq.), CAS panels have frequently found that the general principle of fairness must prevail in order to avoid disproportionate sanctions (see, e.g., CAS 2016/O/4481, para. 195; CAS 2018/O/5713, para. 71; CAS 2019/A/6167 para. 243 et seq.).

151. Several factors may be taken into consideration by CAS panels when assessing the principle of fairness. The decision is not to rest on any particular factor, but an overall evaluation of the evidence in support of fairness, including delays in results management, the athlete's degree of fault, sporting results unaffected by the administration of the prohibited substance, significant (financial or sporting) consequences, or – in the case of ADRVs based on non-analytical evidence –a long period of time between the commission of the ADRV and the athlete's suspension (see *Manninen/Nowicki*, *supra*, p. 8, 11 et seq.). As a matter of principle, CAS panels enjoy broad discretion in adjusting the disqualification period to the circumstances of the case.

152. In the present case, seven years passed between the Athlete's alleged anti-doping rule violation and her provisional suspension. This long time is certainly not WADA's fault, since it is the result of the unprecedented sophistication of the Russian cover-up doping scheme that was not (and probably could not be) detected by WADA until late in 2014. At the same time, and as explained above, there is no proof that the Athlete personally knew of the existence of that doping scheme. Yet, because the fairness exception shall be primarily assessed from the point of view of the athlete (*Manninen/Nowicki*, *supra*, p. 10), the extensive time required for uncovering, investigating and prosecuting anti-doping rule violations that were part of the Russian doping scheme cannot go to the Athlete's detriment when deciding on retroactive disqualification. Furthermore, at least for the time period after the collapse of the Russian doping system, the Panel appreciates that there is no evidence that the Athlete has again committed an anti-doping rule violation since the 2013 Samples. The Panel also considers that the large number of successful results obtained by the Athlete until at least 2019 is a factor that must be considered in favour of applying the fairness exception.

153. On the other hand, the Athlete is not a first-time offender. She had used prohibited substances before 2013, and had been a previous subject of doping sanctions. Apparently, these previous sanctions did not have the desired deterrent effect on her, which justifies that sanctions now to

be imposed by this Panel be more severe. In this respect, the Panel also notes that the imposed ineligibility period of 8 years does not necessarily have the same severe impact for an athlete aged 32 (as the Athlete) as it would have for a younger athlete. Therefore, disqualification of results may matter to the Athlete just as much as the period of Ineligibility, if not more.

154. Taking all of these factors into account, and exercising its broad discretion, the Panel finds it fair and appropriate to disqualify the Athlete's results for a period of roughly four (4) years, starting from the date of the 1 April 2013 Sample and until 19 June 2017 (20 June 2013 being the second positive sample dealt with in the present proceedings). Hence, the Athlete's results between 1 April 2013 and 19 June 2017 shall be disqualified, with all the resulting consequences, including the forfeiture of any titles, awards, medals, points and prize and appearance money.

X. COSTS

(…).

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 5 September 2022 by the Association Russian Anti-Doping Agency against the decision by the RUSADA Disciplinary Anti-Doping Committee rendered on 30 June 2022 (*CAS 2022/A/9128 Association Russian Anti-Doping Agency (RUSADA) v. Tatiana Kashirina*) is upheld.

2. The appeal filed on 14 October 2022 by the World Anti-Doping Agency against the decision by the RUSADA Disciplinary Anti-Doping Committee rendered on 30 June 2022 (*CAS 2022/A/9217 World Anti-Doping Agency (WADA) v. Association Russian Anti-Doping Agency (RUSADA) and Tatiana Kashirina*) is partially upheld.

3. The decision rendered on 30 June 2022 by the RUSADA Disciplinary Anti-Doping Committee is set aside.

4. Ms. Tatiana Kashirina is found to have committed an anti-doping rule violation pursuant to Article 2.2 of the 2011 All-Russian Anti-Doping Rules.

5. Ms. Tatiana Kashirina is sanctioned with a period of Ineligibility of eight (8) years, commencing on the date of the notification of this award. The period of provisional suspension served by Tatiana Kashirina between 13 November 2020 and 30 June 2022 shall be credited against the period of Ineligibility imposed.

6. All the competitive results obtained by Ms. Tatiana Kashirina from 1 April 2013 until 19 June 2017 are disqualified, with all the resulting consequences, including the forfeiture of any titles, awards, medals, points and prize and appearance money.

7. (…).

8. (…).

9. (…).

10. Any other and further motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland
Date: 28 August 2023

THE COURT OF ARBITRATION FOR SPORT

Annett Rombach
President of the Panel

Luigi Fumagalli
Arbitrator

Siarhei Ilyich
Arbitrator