



2021/ADD/29 World Rowing v. Vladislav Ryabtsev
2021/ADD/36 World Rowing v. Denis Kleshnev
2021/ADD/39 World Rowing v. Vyacheslav Mikhaylevskiy
2021/ADD/40 World Rowing v. Sergej Fedorovtsev

ARBITRAL AWARD

delivered by the

ANTI-DOPING DIVISION OF THE COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Mr Markus Manninen, Attorney-at-law in Helsinki, Finland

in the arbitration between

World Rowing, Lausanne, Switzerland

Represented by Ms Dominique Leroux-Lacroix, Head of Legal Affairs, Ms Ayesha Talpade, Senior Legal Counsel, and Mr Anton Sotir, Senior Legal Counsel, International Testing Agency, Lausanne, Switzerland

Claimant

and

Mr Vladislav Ryabtsev, Russia

Mr Denis Kleshnev, Russia

Mr Vyacheslav Mikhaylevskiy, Russia

Mr Sergej Fedorovtsev, Russia

Represented by Mr Andrea Pinna, Attorney-at-law, Pinna Goldberg, Paris, France

Respondents

I. PARTIES

1. World Rowing (“WR” or the “Claimant”), formerly known as the “Fédération Internationale des Sociétés d’Aviron” (“FISA”) until 2021, is the world governing body for the sport of rowing. As a signatory of the World Anti-Doping Code (the “WADC”), WR has enacted the WR anti-doping rules as amended from time to time. WR has delegated the implementation of the WR anti-doping programme to the International Testing Agency (the “ITA”, referred to as “WR” when the ITA is acting on behalf of WR). This delegation includes the results management and subsequent prosecution of potential anti-doping rule violations (“ADRV”) under the jurisdiction of WR. By virtue of this delegation, the ITA acts on behalf of WR in these proceedings.
2. Mr Vladislav Ryabtsev (“Mr Ryabtsev”) is a Russian rower. He has participated in elite rowing competitions since 2008. He is the 2015 winner of the European title in quadruple sculls and a six-time Russian champion in quadruple sculls. He competed in the Olympic Games in London in 2012 and in Rio De Janeiro in 2016.
3. Mr Denis Kleshnev (“Mr Kleshnev”) is a Russian rower. He has participated in elite rowing competitions since 2005. He has represented the Russian national team on several international events, including the World Rowing Championships and the European Rowing Championships. He won the Russian Rowing Championship in quadruple sculls in 2014 and in octuple sculls in 2016. He became a silver medallist of the Russian Rowing Championship in single sculls in 2012 and 2015 and a bronze medallist in double sculls in 2017 and 2018.
4. Mr Vyacheslav Mikhaylevskiy (“Mr Mikhaylevskiy”) is a Russian rower. He has participated in elite rowing competitions since 2007. He won the first place in the 2015 quadruple sculls World Championships and the first place in the 2015 quadruple sculls European Championships.
5. Mr Sergej Fedorovtsev (“Mr Fedorovtsev”) is a Russian rower. He participated in rowing competitions from 1997 to 2016. He won a gold medal in the Olympic Games in Athens in 2004 and competed in the Olympic Games in Beijing in 2008 and in London in 2012.
6. Mr Ryabtsev, Mr Kleshnev, Mr Mikhaylevskiy, and Mr Fedorovtsev are hereinafter jointly referred to as the “Athletes” or the “Respondents” and individually as an “Athlete”. The Claimant and the Respondents are hereinafter referred to as the “Parties” and individually as a “Party”.

II. FACTUAL BACKGROUND

7. Below is a summary of the relevant facts and allegations based on the Parties’ written submissions, pleadings, and evidence adduced in these proceedings. Additional facts and allegations found in the Parties’ written submissions, pleadings, and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments, and evidence submitted by the Parties in the present proceedings, he only refers to the submissions and evidence he considers necessary to explain his reasoning.
8. These proceedings arise from alleged violations under Article 2.2 of the 2009 FISA Anti-Doping Bye-Laws (“2009 ADR”) for use of anabolic androgenic steroids (“AAS”) by the Athletes when preparing for the 2014 World Rowing Championships. The Athletes participated in said competitions held in Amsterdam, the Netherlands, from 24 to 31 August 2014, where they placed 5th.
9. On 18 June 2014, Mr Ryabtsev, Mr Mikhaylevskiy, and Mr Fedorovtsev were subject to an out-of-competition (“OOC”) doping control by the Russian National Anti-Doping Organisation (“RUSADA”) during a training camp. They provided the following urine samples: 2916655 (Mr

Ryabtsev), 2916392 (Mr Mikhaylevskiy), and 2920086 (Mr Fedorovtsev). The samples were reported as negative by the World Anti-Doping Agency (“WADA”) accredited laboratory of Moscow (the “Moscow Laboratory”).

10. On 18 July 2014, the Athletes were subject to another OOC doping control by RUSADA. They provided the following samples: 2917997 (Mr Ryabtsev), 2916824 (Mr Kleshnev), 2920168 (Mr Mikhaylevskiy), and 2916364 (Mr Fedorovtsev). The samples were reported as negative by the Moscow Laboratory.
11. On 9 August 2014, the Athletes were subject to another OOC doping control by RUSADA. No prohibited substances were detected in the initial testing procedure (“TTP”) of the following samples: 2946802 (Mr Ryabtsev), 2946508 (Mr Kleshnev), 2945822 (Mr Mikhaylevskiy), and 2946503 (Mr Fedorovtsev).
12. On 30 October 2017, WADA’s Intelligence & Investigation Department (“WADA I&I”) obtained the Laboratory Information Management System (“LIMS”) data of the Moscow Laboratory from a whistleblower (“2015 LIMS Copy”).
13. In January 2019, WADA I&I was given access to the Moscow Laboratory and secured additional data, including a copy of the LIMS data (“2019 LIMS Copy”) as well as the underlying analytical documents of the analyses reported in the LIMS.
14. Upon receipt of information and documents from WADA, WR carried out a review relating to the Athletes’ samples identified above. WR was satisfied that the Athletes had committed ADRVs.
15. On 13 April 2021, WR notified the Athletes that ADRVs were being asserted against them under Article 2.2 of the 2009 ADR (the “Notifications”). A provisional suspension was imposed upon the Athletes with immediate effect pursuant to the 2009 ADR and the 2021 edition of the FISA Anti-Doping Bye-Laws (the “WR ADR”).
16. On 27 April 2021, the Athletes submitted responses to the Notifications, disputing the assertions made against them. Mr Ryabtsev, Mr Kleshnev, and Mr Fedorovtsev also requested provisional hearings to challenge the provisional suspensions as per Article 7.4.3 of the WR ADR.
17. On 31 May 2021, WR informed the Athletes that it was WR’s opinion that there were no grounds to lift the provisional suspensions imposed. WR invited the Athletes to confirm by 21 June 2021 whether they agreed to an expedited final hearing on the merits of the cases before the Anti-Doping Division of the Court of Arbitration for Sport (the “ADD”) instead of provisional hearings.
18. On 21 June 2021, Messrs Ryabtsev, Kleshnev, and Fedorovtsev maintained their requests for provisional hearings. Mr Mikhaylevskiy submitted that his case should be adjudicated in the normal procedure as provided for in Article 8 of the WR ADR.
19. On 5 July 2021, WR informed the Athletes that the matters pertaining to the provisional suspensions imposed on Messrs Ryabtsev, Kleshnev, and Fedorovtsev would be submitted for adjudication to the ADD for provisional hearings.
20. On 3 August 2021, Mr Ryabtsev informed WR that he intended to participate in national competitions that were scheduled to commence on 13 August 2021. He submitted that the denial of a provisional hearing constituted “*irreparable harm which justifies the immediate lifting of the Provisional Suspension*”.

21. On 4 August 2021, WR informed Mr Ryabtsev that it had taken notice of his intent to participate in an upcoming event and stated that it would refer the matter to the ADD by the end of 6 August 2021.
22. On 1 September 2021, Mr Fedorovtsev sent WR a letter requesting the immediate lifting of his provisional suspension.
23. On 6 September 2021, WR lifted Mr Fedorovtsev's provisional suspension with immediate effect, basing its decision essentially on Mr Fedorovtsev having already served a period of ineligibility of four years.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

A. Related prior proceedings

24. On 5 August 2021, WR filed with the ADD an application in accordance with Article 7.4.3 of the WR ADR. The application contained requests to maintain the provisional suspensions imposed on Mr Ryabtsev and Mr Kleshnev.
25. On 6 August 2021, Mr Ryabtsev filed an application for provisional measures with the ADD.
26. On 13 August 2021, the President of the ADD dismissed Mr Ryabtsev's application.
27. On 30 September 2021, the ADD issued two Orders on Lifting of Provisional Suspension and upheld WR's requests to maintain the provisional suspensions imposed on 13 April 2021 against Mr Ryabtsev and Mr Kleshnev.

B. Proceedings under Article 8 of the WR ADR and Article A13 of the ADD Rules

28. On 10 November 2021, WR filed with the ADD four separate Requests for Disciplinary Proceedings in relation to the Athletes (the "Requests for Disciplinary Proceedings") in accordance with Article 8 of the WR ADR and Article A13 of the 2021 edition of the Arbitration Rules of the CAS Anti-Doping Division ("ADD Rules"). The Requests for Disciplinary Proceedings contained a request to consolidate the proceedings of the four Athletes.
29. On 15 November 2021, the ADD informed WADA of the Requests for Disciplinary Proceedings and of its right under Article A14 of the ADD Rules and Article R41.3 of the Code of Sports-related Arbitration (the "Code") to participate as a party in the present arbitration.
30. On the same day, the ADD invited the Athletes to file with the ADD answers to the Requests for Disciplinary Proceedings (the "Answer"). The ADD also invited the Athletes to inform the ADD whether they agree to consolidate the proceedings.
31. On 19 November 2021, the Athletes requested an extension of their deadline to file their Answers until 24 March 2022.
32. On 22 November 2021, WADA informed the ADD that it does not intend to participate in the arbitrations concerning Mr Ryabtsev and Mr Kleshnev.
33. On 23 November 2021, the Athletes filed their replies to WR's request to consolidate the proceedings of the four Athletes, objecting to the consolidation. The Athletes stated that they would, however, agree to file a joint Answer and to have a joint hearing on the issues that are common for all the Athletes, provided that they are allowed to file separate submissions addressing factual and

legal arguments specific to each of them and have them heard separately, should the defence of their cases so require.

34. On 24 November 2021, WR informed the ADD that it maintains its request for consolidation and leaves the decision on consolidation to the discretion of the President of the ADD.
35. On 25 November 2021, WADA informed the ADD that it does not intend to participate in the arbitrations concerning Mr Mikhaylevskiy and Mr Fedorovtsev.
36. On 1 December 2021, the ADD informed the Parties that the Athletes' request for an extension to file their Answers is granted and the deadline is extended until 24 March 2022. In addition, the ADD informed that WR's request for consolidation is denied and the four matters will be adjudicated separately. However, the President of the ADD allowed the filing of a joint Answer as well as the holding of a joint hearing and joint correspondence. Finally, the ADD invited the Parties to liaise with each other with the aim of reaching an agreement on the appointment of the sole arbitrator in the matters.
37. On 22 December 2021, WR informed the ADD that the Parties were unable to reach an agreement as to the appointment of the sole arbitrator.
38. On 18 February 2022, the ADD informed the Parties that Mr Manninen had been appointed by the President of the ADD as the Sole Arbitrator in accordance with Articles A16 and A17 of the ADD Rules.
39. On 25 February 2022, the Athletes challenged the appointment of Mr Manninen pursuant to Article A10 of the ADD Rules.
40. On 24 March 2022, the Athletes filed their joint Answer to the Requests for Disciplinary Proceedings (the "Joint Answer"), containing a request to lift the provisional suspensions imposed on Messrs Ryabtsev, Kleshnev, and Mikhaylevskiy and a request for production of documents ("Request for Document Production").
41. On 6 March 2024, the ADD provided the Parties with the Decision rendered by the Challenge Commission of the International Council of Arbitration for Sport. The Challenge Commission dismissed the petition for challenge to the appointment of Mr Manninen.
42. On 11 March 2024, the ADD invited WR to comment on the Athletes' Request for Document Production dated 24 March 2022. Concurrently, the ADD invited WR to file a preliminary opinion on the Athletes' request to be granted a second round of written submissions.
43. On 18 April 2024, WR requested to be given the opportunity to file additional submissions as per Article 19.2 of the ADD Rules. Regarding the Request for Document Production, WR clarified that none of the documents sought by the Athletes were in the "*possession, custody, or control*" of WR at the time the disclosure request was made. WR consulted WADA as a gesture of good faith and submitted WADA's responses to each of the 15 document production requests made by the Athletes. Furthermore, WR requested the opportunity to submit into the case file the entirety of WADA's response and submitted part of the requested documents.
44. On 26 April 2024, the ADD informed the Parties that their request to file further written submissions was granted. The ADD also invited the Athletes to confirm whether their Request for Document Production had been satisfied and, if not, to identify which documents are missing and reasons why such documents should be produced by WR. Finally, the ADD confirmed that WADA's statement described by WR in its letter of 18 April 2024 was admitted to the case file.

45. On 30 April 2024, WR submitted WADA's statement dated 17 April 2024.
46. On 17 May 2024, the Athletes submitted that, in their view, the document production was not complete. The Athletes specifically identified attachments ARW-1 to ARW-13 to the "*Chain of Custody Statement*" by Mr Walker dated 5 March 2021 and Annexures A, C, F, G, and H to the "*Final report to the CRC regarding the Moscow Data*" dated 20 November 2019 ("CRC Report") as not having been produced. The Athletes also submitted a Redfern Schedule including all 15 requests, an explanation of their relevance, WR's responses to each request, and the Athletes' observations.
47. On 4 June 2024, the ADD informed the Parties of the Sole Arbitrator's decision regarding the Athletes' Request for Document Production. In his decision, the Sole Arbitrator dismissed requests 1, 2, 3, 4, 7, 8, 9, 10, 11, 12, and 15 based on the requested documents not being in the possession or under the control of WR. The Sole Arbitrator further noted that requests 5, 6, and 14 had been satisfied or that there were no pending requests. Regarding request 13, the Sole Arbitrator stated that it was pending and needed further clarification. The Sole Arbitrator invited WR to respond to the specified document production request.
48. On 21 June 2024, WR submitted attachments ARW-1 to ARW-13 to the "*Chain of Custody Statement*" by Mr Walker dated 5 March 2021 and Annexures A, C, F, G, and H to the CRC Report.
49. On 27 June 2024, the ADD noted that the document "*WADA New Data Report (PFS 19.0431)*" is missing and invited WR to produce. In addition, the ADD invited WR to file its Reply to the Athletes' Answer.
50. On 15 July 2024, the Athletes submitted a Second Request for Document Production ("Second Request for Document Production"). The Athletes requested WR to produce "[a]ll documents received by and sent by WADA and World Rowing in connection to the WADA/RUSADA post February 2021 investigation (including the re-analysis of the Athletes' Samples: (...)), carried out at the request of WADA, notably following Mr Younger's letter to RUSADA dated 2 February 2021".
51. On the same day, the ADD invited WR to comment on the Athletes' Second Request for Document Production.
52. On 25 July 2024, the ADD noted that no communication was received from WR within the time limit granted.
53. On 30 July 2024, the ADD informed the Parties that the Sole Arbitrator had granted the Athletes' Second Request for Document Production to the extent the requested documents were in WR's possession or under its control.
54. On 26 August 2024, WR submitted a document titled "*WADA New Data Report (PFS 19.0431)*". With respect to the Athletes' Second Request for Document Production, WR submitted that WADA did not have any documents to provide in response to the Athletes' request. WR also referred to the Addendum Joint Statement of Mr Walker and Dr Broséus of WADA dated 17 April 2024, where they submitted that "*the samples associated with the Athletes in respect of this [sic] cases have been discarded and therefore cannot be found and analyzed. Additionally, the associated chain of custody documents has [sic] not been found. As detailed in the Joint Statement, such records have been removed from the Moscow Laboratory by the Investigative Committee and are inaccessible to WADA.*"
55. On 28 August 2024, and further to granted extensions of time, WR filed its Reply to the Athletes' Joint Answer.
56. On 27 November 2024, and further to granted extensions of time the Athletes filed their joint Rejoinder.

57. On 28 November 2024, the ADD invited the Parties to state whether they consider a hearing necessary in the procedure.
58. On 11 December 2024, the Athletes submitted that they consider a hearing necessary and requested that it be held. On the same day, WR submitted that the final decision could be issued solely on the basis of the Parties' written submissions.
59. On 16 December 2024, the ADD informed the Parties that the Sole Arbitrator had decided to hold a hearing in the matters.
60. On 20 March 2025, the ADD called the Parties and their witnesses to appear at a hearing to be held by videoconference on 7 April 2025. The ADD reminded the Parties of their responsibility for the availability of the witnesses and experts to be heard at the hearing. The Parties were also requested to provide the names of all persons attending the hearing.
61. On 26 March 2025, the Athletes submitted their list of participants to the hearing.
62. On 27 March 2025, WR submitted its list of participants to the hearing.
63. On 28 March 2025, the Athletes submitted the following additions to their list of participants to the hearing, to only participate during the examination of WR's experts (Professors Souvignet and Casey): Mr Bev Clues and Ms Lisa Barnes.
64. On the same day, WR submitted that the Athletes' announcement of the participation of additional experts was done belatedly and without specifying their role or area of expertise. WR reserved the right to call additional experts, depending on the clarifications to be provided by the Athletes.
65. On the same day, the ADD invited the Athletes to explain the reasons for the attendance of Mr Clues and Ms Barnes during the examination of WR's experts and the capacity in which they would appear at the hearing.
66. On 31 March 2025, the Athletes clarified that Mr Clues and Ms Barnes were retained as additional counsel by the Athletes because of their expertise in technical issues (computer forensics).
67. On 1 April 2025, the ADD provided to the Parties the Order of Procedure, inviting the Parties to sign and return it. In addition, the ADD stated that Mr Clues and Ms Barnes were allowed to attend the hearing during the examination of the experts called by WR as they were acting as counsel for the Athletes and not as experts.
68. On 2 April 2025, ITA submitted the Order of Procedure signed on behalf of WR.
69. On 3 April 2025, the Athletes submitted the Order of Procedure signed on behalf of the Athletes.
70. On 7 April 2025, a video hearing was held. The Sole Arbitrator was assisted by Mr Fabien Cagneux, Managing Counsel of the ADD, and joined by the following:

For WR:

- Ms Ayesha Talpade, Senior Legal Counsel, the ITA
- Mr Anton Sotir, Senior Legal Counsel, the ITA
- Professor Eoghan Casey, Expert Witness

- Professor Thomas Souvignet, Expert Witness
- Professor Christiane Ayotte, Expert Witness

For the Athletes:

- Mr Andrea Pinna, Counsel
- Ms Olga Cucu, Counsel
- Mr Bev Clues, Counsel
- Ms Lisa Barnes, Counsel
- Athletes (partly)
- Professor Pascal Kintz, Expert Witness

71. During the hearing, the Athletes submitted that the expert reports by Mr Sheldon, Mr Walker, and Dr Broséus shall be deemed inadmissible considering that WR did not call said experts to appear at the hearing for the Athletes' cross-examination. WR objected to the Athletes' position essentially on the ground that the Athletes never indicated any wish to cross-examine them. According to Article 19.3 of the ADD Rules, referred to in the Order of Procedure, "[t]he parties may call only such witnesses and experts as they have identified in their written submissions. Each party is responsible for the availability (...) of the witnesses and experts it has called." The Sole Arbitrator found that this provision does not clearly obligate a party to call an expert to appear at a hearing for cross-examination unless there is an indication by the counterparty that it wants to use its right to cross-examine the expert. A different interpretation would not be aligned with the arbitration practice and would likely lead to increased inefficiency. Therefore, the Sole Arbitrator found that WR had a justified understanding that there is no need to call Mr Sheldon, Mr Walker, and Dr Broséus to the hearing. On these grounds, the Sole Arbitrator found the expert reports admissible but ordered that another hearing day be arranged for the Athletes to have an opportunity to cross-examine said experts, thus safeguarding the Athletes' right to plead their respective cases.
72. During the hearing, the lifting of the provisional suspensions was also discussed. Messrs Ryabtsev, Kleshnev, and Mikhaylevskiy reiterated their request for the lifting of their provisional suspensions as from 13 April 2025 at the latest. They submitted that even if WR's requests for the ineligibility periods to be imposed would be granted in full, the provisional suspensions could not last beyond 12 April 2025. WR left the issue to the Sole Arbitrator's consideration.
73. Finally, WR stated that it prefers one joint Award over separate Awards for all four Athletes. The Athletes noted that, as most issues are common for all the Athletes, only one award is required insofar as separate reasonings and reliefs are included for each Athlete.
74. After the discussions, opening statements by the Parties, and examination of four expert witnesses, the hearing was suspended to be reconvened at a later date suitable for the Sole Arbitrator, the ADD, the Parties, and the remaining experts to be examined.
75. On 14 April 2025, the ADD rendered a Partial Award on the lifting of provisional suspensions imposed on Messrs Ryabtsev, Kleshnev, and Mikhaylevskiy. The Sole Arbitrator granted the Athletes' request and lifted the provisional suspensions imposed on the three Athletes on 13 April 2021 with immediate effect.

76. On 22 April 2025, the ADD confirmed to the Parties that the second part of the hearing would be held on 28 April 2025.
77. On 28 April 2025, the hearing was reconvened by video conference. The Sole Arbitrator was assisted by Mr Fabien Cagneux, Managing Counsel of the ADD, and joined by the following:

For WR:

- Ms Ayesha Talpade, Senior Legal Counsel, the ITA
- Mr Anton Sotir, Senior Legal Counsel, the ITA
- Mr Aaron Walker, Expert Witness
- Mr Andrew Sheldon, Expert Witness

For the Athletes:

- Mr Andrea Pinna, Counsel
- Ms Olga Cucu, Counsel
- Mr Bev Clues, Counsel
- Ms Lisa Barnes, Counsel
- Athletes (partly)

78. At the end of the hearing, the Parties confirmed that their right to plead their cases had been respected and that they had been treated equally.

IV. SUBMISSIONS OF THE PARTIES

79. The following outline of the Parties' submissions is illustrative only and does not necessarily comprise every submission advanced by WR and by the Athletes. The Sole Arbitrator has nonetheless carefully considered all the submissions made by the Parties, whether or not there are specific references to them in the following summary.

A. The Claimant

80. WR's submissions, in essence, may be summarised as follows:

Burden of proof and means of proof

- Pursuant to Article 3.1 of the WR ADR, the burden of proof is on WR to establish, to the comfortable satisfaction of the hearing body, that an ADRV has occurred. Article 3.1 of the WR ADR defines the comfortable satisfaction standard as “*greater than a mere balance of probability but less than proof beyond a reasonable doubt*”.
- With regard to means of proof, and as a general rule, Article 3.2 of the WR ADR provides that “*[f]acts related to anti-doping rule violations may be established by any reliable means, including admissions*”.

- The comment to Article 2.2 of the WR ADR specifically provides that regarding the alleged use of a prohibited substance or a prohibited method, such ADRV “*may be established by any reliable means. As noted in the Comment to Article 3.2, unlike the proof required to establish an anti-doping rule violation under Article 2.1, Use or Attempted Use may also be established by other reliable means such as admissions by the Athlete, witness statements, documentary evidence, conclusions drawn from longitudinal profiling, including data collected as part of the Athlete Biological Passport, or other analytical information which does not otherwise satisfy all the requirements to establish “Presence” of a Prohibited Substance under Article 2.1.*”
- The Sole Arbitrator does not need to contemplate whether the Athletes knew that they were doping or intended to dope. As per the established principle of strict liability, intent or even knowledge of the use of a prohibited substance is not necessary to establish that an ADRV has occurred under Article 2.2 of the 2009 ADR. Pursuant to Article 2.2.1 of the 2009 ADR, the mere ‘use’ of a prohibited substance is sufficient, which is proven by the evidence on file.
- WR has met and surpassed its evidentiary threshold in proving to a comfortable satisfaction standard that all four Athletes have committed ADRVs under Article 2.2 of the 2009 ADR for use of multiple prohibited steroids.
- Regarding the Athletes’ submission that the disqualification of their competitive results and resulting consequences would be unwarranted for fairness reasons, the burden is on the Athletes to show why the fairness exception should apply.

Summary of the evidence

- The Athletes provided a total of seven urine samples during OOC testing on 18 June 2014 and on 18 July 2014 (together the “Samples”). The Samples were analysed by the Moscow Laboratory, which validly detected and reported presumptive adverse analytical findings (“PAAF”) for three AASs, i.e. trenbolone, metenolone, and oxandrolone in each of the Samples.
- The Moscow Laboratory’s Laboratory Information Management System (“LIMS”) data provided to WADA by a whistleblower on 30 October 2017 (the “2015 LIMS Copy”) indicates that metabolites of trenbolone, metenolone, and oxandrolone were found in the ITPs of Mr Ryabtsev’s, Mr Mikhaylevskiy’s, and Mr Fedorovtsev’s samples collected on 18 June 2014. Trenbolone, metenolone, and oxandrolone are exogenous AASs prohibited under S1.1(a) of the 2014 WADA Prohibited List and every prohibited list since.
- The “Disappearing Positives Methodology” (“DPM”) was a state-directed failsafe system operated by the Moscow Laboratory for the protection of doped Russian athletes between 2011 and 2015. This system was applied to the 18 June 2014 samples of Mr Ryabtsev, Mr Mikhaylevskiy, and Mr Fedorovtsev as demonstrated by the e-mail exchange between the liaison person of the Russian Ministry of Sports and the Moscow Laboratory on 23 and 24 June 2014.
- On 24 June 2014, Mr Velikodny communicated a “SAVE” directive via e-mail to Dr Rodchenkov in respect of the 18 June 2014 samples. This directive dictated that Mr Ryabtsev, Mr Mikhaylevskiy, and Mr Fedorovtsev were to be protected and the positive findings would not be officially reported. Consequently, the Moscow Laboratory did not finalise the analysis, and the positive results of the three Athletes were falsely reported as “Negative” in WADA’s Anti-Doping Administration and Management System (“ADAMS”).

- The same *modus operandi* was applied for the 18 July 2014 samples of all four Athletes. The 2015 LIMS Copy indicates that metabolites of trenbolone, metenolone, and oxandrolone were found in the ITPs of the 18 July 2014 samples of the Athletes.
- On 22 July 2014, Dr Sobolevsky of the Moscow Laboratory reported the PAAFs to the liaison person and Dr Rodchenkov, via e-mail, to which the liaison person communicated a “SAVE” directive via e-mail to Dr Rodchenkov and Dr Sobolevsky in respect of all four Athletes. Consequently, the analysis was interrupted, and the samples were reported as negative by the Moscow Laboratory. This inconsistency of data was also confirmed by Professor Ayotte in her reports regarding the Athletes.
- The presence of the Athletes’ names in the respective “General Comments” field of the 2015 LIMS Copy and of the 2019 LIMS Copy in respect of the 18 July 2014 samples as well as other samples provided by the Athletes on 9 August 2014 is additional proof that the Moscow Laboratory was informed of the names of the Athletes in advance to ensure that any potential positive samples belonging to the Athletes should be covered up and reported as negative.
- Since the three AASs detected in the urine of each of the four Athletes are of synthetic origin, the only explanation for their presence in the Athletes’ bodily specimens is an exogenous administration by the Athletes, which further corroborates that the Athletes used the banned substances.
- An additional attempt to conceal the ADRVs post facto came to light in 2019 in the scope of WADA I&I’s investigation, where WADA I&I was not provided with the original data from the Moscow Laboratory during the retrieval mission in January 2019. As later discovered by WADA I&I and confirmed by the CAS, the 2019 LIMS Copy and supporting analytical documents were intentionally tampered with.
- In the present case, investigation by WADA I&I of the 2019 LIMS Copy revealed the extent of the brazen manipulation of the data. Firstly, the ITP results entered in the LIMS for the 18 June 2014 samples for Mr Ryabtsev, Mr Mikhaylevskiy, and Mr Fedorovtsev and the 18 July 2014 samples for all four Athletes were deleted from the 2019 LIMS Copy. Furthermore, the following raw data files of the 2019 LIMS Copy were manipulated from positive to negative: “a_07558.raw” and “a_08975.raw” (Mr Ryabtsev), “a_08977.raw” (Mr Kleshnev), “a_07554.raw” and “a_08976.raw” (Mr Mikhaylevskiy), and “a_07555.raw” and “a_08978.raw” (Mr Fedorovtsev).
- The provided evidence shows that inculpatory LIMS data was deleted, and the ITP raw data was manipulated from positive to negative. The only reason for proceeding with such detailed manipulation and deletion of data is that the LIMS data and ITP PAAF chromatograms clearly indicated that the prohibited substances were found in the Athletes’ Samples.

Reliability of the evidence

- The evidence on which WR is relying to establish the ADRVs is reliable and surpasses the required standard of proof.
- The reliability of the 2015 LIMS Copy is established by both the expert statements of Mr Walker and Dr Broséus and confirmed by recent jurisprudence. The 2015 LIMS Copy is found by the CAS panels to be “an accurate, authentic and contemporaneous account of the original data and its contents can be relied upon as accurate and valid” (CAS 2021/A/7839, paragraphs 112-114).

- Furthermore, upon receipt of the 2015 LIMS Copy, WADA I&I conducted investigations, 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 could be relied upon as being accurate and forensically valid information.
- At the material times, the Moscow Laboratory was a WADA-accredited laboratory and was ISO-accredited for all required methods, including the qualitative measurement of AASs in urine. Hence, there is no reason to question the reliability of the ITPs and the PAAFs reported by the Moscow Laboratory in relation to the Samples.
- The Athletes and their Samples are clearly identified in the 2015 LIMS Copy. The data shows that for Mr Ryabtsev, Mr Mikhaylevskiy, and Mr Fedorovtsev, there were two confirmed PAAFs for three prohibited steroids, and this constitutes direct evidence that they used prohibited substances on multiple occasions. With regard to Mr Kleshnev, there was one confirmed PAAF for three prohibited steroids, which constitutes direct evidence that he used prohibited substances on at least one occasion.
- In relation to the 2019 LIMS Copy, the panel in CAS 2020/O/6689 concluded that it was intentionally altered with a view of obstructing the processing of individual ADRVs and that the 2015 LIMS Copy is “*more reliable evidence*” than the 2019 LIMS Copy.
- Regarding the reliability of the EDP data, its probative value has been conclusively established by numerous CAS and first instance panels, including CAS 2018/O/5667, CAS 2018/O/5668, CAS 2018/O/5671, CAS 2018/O/5712, CAS 2018/O/5713; CAS 2019/A/6161; CAS 2019/A/6165; CAS 2019/A/6166; CAS 2019/A/6167; and CAS 2019/A/6168.
- In addition, WR obtained the expert evidence of Mr Sheldon, who, after a forensic review, concluded that all the five (5) e-mails were authentic. There is no forensic indication of any manipulation or fabrication in any of the EDP e-mails and documents. The EDP evidence is authentic, contemporaneous, and reliable.

Proportionality

- The Athletes claim that even if the Sole Arbitrator eventually finds that they have committed ADRVs, “*any sanction imposed on the [Athletes] would be disproportionate*” and that requesting “*the same period of ineligibility for Mr Kleshnev is manifestly disproportionate and unwarranted*” due to him being accused of having committed an ADRV related to only one sample unlike the other three Athletes.
- The Athletes’ claims appear unreasonable and illogical in light of the unambiguous Article 10.2 of the 2009 ADR, according to which a “use ADRV” is subject to a period of ineligibility of two years. This two-year period may be increased to a maximum of four years if aggravating circumstances are present.
- The present case is a textbook example of a “use ADRV” with multiple aggravating circumstances, any one of which would justify increasing the period of ineligibility to the maximum of four years, and even more so when they are combined.
- Regarding proportionality in consistent CAS case law, the principle is that “*the ‘no fault or negligence’ and ‘no significant fault or negligence’ exceptions to an otherwise strict liability anti-doping rule are themselves embodiments of the proportionality*” (CAS 2008/A/1489, paragraph 7.19). It is only if there

is a gap in the rules that the principle of proportionality might potentially apply, which is clearly not the case with respect to the Athletes.

- The fact that Mr Kleshnev was not tested in June 2014, unlike the other Athletes, does not diminish the aggravating circumstances. His ADRV was still committed as part of a doping scheme involving a conspiracy, he used multiple prohibited substances, and he continues to engage in deceptive and obstructive conduct to avoid the detection of his ADRV.
- Therefore, the imposition of a four-year period of ineligibility cannot be considered disproportionate, as this sanction is explicitly provided for in the applicable regulations.

Applicable consequences

- According to Article 10.2 of the 2009 ADR, a violation of Article 2.2 is subject to a two years' period of ineligibility. This period of ineligibility may be increased to a maximum of four years if aggravating circumstances (within the meaning of Article 10.6 of the WR ADR) are present.
- In relation to aggravating circumstances, Appendix 1 of the WR ADR states that “[s]uch circumstances and actions shall include, but are not limited to: the Rower (...) Used or Possessed multiple Prohibited Substances (...), Used or Possessed a Prohibited Substance (...) on multiple occasions or committed multiple other anti-doping rule violations; a normal individual would be likely to enjoy the performance-enhancing effects of the anti-doping rule violation(s) beyond the otherwise applicable period of Ineligibility; the Rower (...) engaged in deceptive or obstructive conduct to avoid the detection or adjudication of an anti-doping rule violation; or the Rower (...) engaged in Tampering during Results Management”.
- WR considers that an increased period of ineligibility of four years should be imposed against Mr Ryabtsev, Mr Kleshnev, and Mr Mikhaylevskiy on the basis of aggravating circumstances in accordance with Article 10.6 of the 2009 ADR. Regarding Mr Fedorovtsev, WR notes that as he has been previously sanctioned with a period of ineligibility of four (4) years from 17 May 2016 (“2016 ADRV”), in application of Article 10.7.4 of the 2009 ADR, the ADRV from 2014 will not be treated as a second ADRV, but as a joint first ADRV along with the 2016 ADRV. Since Mr Fedorovtsev has already served four years of ineligibility for his 2016 ADRV, there is no applicable period of ineligibility for the ADRV from 2014.
- Furthermore, Article 10.8 of the 2009 ADR (and Article 10.10 of the WR ADR) prescribes that all competitive results of an athlete from the date on which an ADRV occurred will be disqualified, along with forfeiture of medals, points and prizes, unless fairness requires otherwise. WR submits that all competitive results of Mr Ryabtsev, Mr Mikhaylevskiy, and Mr Fedorovtsev from the date of first evidence of the ADRVs, i.e. 18 June 2014, until the date of the provisional suspension (i.e. 13 April 2021) should be disqualified. With regard to Mr Kleshnev, the timespan for disqualification of competitive results would be between 18 July 2014 and 13 April 2021. Should the Sole Arbitrator consider that the “fairness exception” is applicable in the present cases, at the very least, the period of disqualification of the results should be of the same duration as the period of ineligibility to be imposed on the Athletes, i.e. four years.
- As per Article 10.10 of the WR ADR, the periods of ineligibility shall start on the date of the final hearing decision providing for ineligibility periods. However, as per Article 10.13.2 of the WR ADR, any periods of provisional suspension effectively served by the Athletes before the entry into force of the CAS award should be credited against the total periods of ineligibility to be served.

- Article 10.12 of the 2009 ADR (and the equivalent provision in the WR ADR) provides that WR can impose financial consequences for an ADRV. The WR ADR further clarifies that such financial consequences include recovery of costs associated with an ADRV, regardless of the period of ineligibility imposed. Pursuant to Articles A24 and A25 of the ADD Rules, WR requests the Sole Arbitrator to impose upon the Athletes the costs associated with these proceedings.

81. WR's requests for relief, as set out in the Reply to the Joint Answer, read as follows:

"The ITA, on behalf of World Rowing, hereby respectfully requests the Sole Arbitrator to issue decisions holding the following:

In the case 2021/ADD/29 World Rowing v. Vladislav Ryabtsev:

- 1) *The ITA's Request is admissible.*
- 2) *Mr Vladislav Ryabtsev is found to have committed anti-doping rule violations for Use of Prohibited Substances under Article 2.2 of the WR ADR.*
- 3) *Mr Vladislav Ryabtsev is sanctioned with a period of Ineligibility of four (4) years starting on the date on which the CAS ADD award enters into force. Any period of provisional suspension effectively served by Mr Vladislav Ryabtsev before the entry into force of the CAS award is to be credited against the total period of ineligibility to be served.*
- 4) *All competitive results of Mr Vladislav Ryabtsev from and including 18 June 2014 until 13 April 2021 are disqualified with all resulting Consequences, including forfeiture of any medals, points and prizes.*
- 5) *The costs of the proceedings, if any, shall be borne by Mr Vladislav Ryabtsev.*
- 6) *World Rowing is granted a significant contribution towards its legal and other costs incurred in connection with these proceedings.*
- 7) *Any other prayer for relief that the Sole Arbitrator deems fit in the facts and circumstances of the present case.*

In the case 2021/ADD/36 World Rowing v. Denis Kleshnev:

- 1) *The ITA's Request is admissible.*
- 2) *Mr Denis Kleshnev is found to have committed anti-doping rule violations for Use of Prohibited Substances under Article 2.2 of the WR ADR.*
- 3) *Mr Denis Kleshnev is sanctioned with a period of Ineligibility of four (4) years starting on the date on which the CAS ADD award enters into force. Any period of provisional suspension effectively served by Mr Denis Kleshnev before the entry into force of the CAS award is to be credited against the total period of ineligibility to be served.*
- 4) *All competitive results of Mr Denis Kleshnev from and including 18 July 2014 until 13 April 2021 are disqualified with all resulting Consequences, including forfeiture of any medals, points and prizes.*
- 5) *The costs of the proceedings, if any, shall be borne by Mr Denis Kleshnev.*

- 6) *World Rowing is granted a significant contribution towards its legal and other costs incurred in connection with these proceedings.*
- 7) *Any other prayer for relief that the Sole Arbitrator deems fit in the facts and circumstances of the present case.*

In the case 2021/ADD/39 World Rowing v. Vyacheslav Mikhaylevskiy:

- 1) *The ITA's Request is admissible.*
- 2) *Mr Vyacheslav Mikhaylevskiy is found to have committed anti-doping rule violations for Use of Prohibited Substances under Article 2.2 of the WR ADR.*
- 3) *Mr Vyacheslav Mikhaylevskiy is sanctioned with a period of Ineligibility of four (4) years starting on the date on which the CAS ADD award enters into force. Any period of provisional suspension effectively served by Mr Vyacheslav Mikhaylevskiy before the entry into force of the CAS award is to be credited against the total period of ineligibility to be served.*
- 4) *All competitive results of Mr Vyacheslav Mikhaylevskiy from and including 18 June 2014 until 13 April 2021 are disqualified with all resulting Consequences, including forfeiture of any medals, points and prizes.*
- 5) *The costs of the proceedings, if any, shall be borne by Mr Vyacheslav Mikhaylevskiy.*
- 6) *World Rowing is granted a significant contribution towards its legal and other costs incurred in connection with these proceedings.*
- 7) *Any other prayer for relief that the Sole Arbitrator deems fit in the facts and circumstances of the present case.*

In the case 2021/ADD/40 World Rowing v. Sergej Fedorovtsev:

- 1) *The ITA's Request is admissible.*
- 2) *Mr Sergej Fedorovtsev is found to have committed anti-doping rule violations for Use of Prohibited Substances under Article 2.2 of the WR ADR.*
- 3) *All competitive results of Mr Sergej Fedorovtsev from and including 18 June 2014 until 13 April 2021 are disqualified with all resulting Consequences, including forfeiture of any medals, points and prizes.*
- 4) *The costs of the proceedings, if any, shall be borne by Mr Sergej Fedorovtsev.*
- 5) *World Rowing is granted a significant contribution towards its legal and other costs incurred in connection with these proceedings.*
- 6) *Any other prayer for relief that the Sole Arbitrator deems fit in the facts and circumstances of the present case."*

B. The Respondents

82. The Athletes' joint submissions, in essence, may be summarised as follows:

Concerted effort against Russian athletes

- The allegations against the Athletes are part of a broader campaign targeting Russian athletes by alleging the use of prohibited substances several years ago. WR admits that it brings these cases without any evidence for the presence of prohibited substances in the Athletes' Samples. The allegations are rooted in a contrived theory that the Athletes were protected by a DPM, which was allegedly aimed at "deleting" the presence of prohibited substances from the test results and falsely rendering them "negative". This theory is predominantly based on the dubious McLaren Reports and the LIMS data retrieved from the Moscow Laboratory.
- Both the McLaren Reports and the LIMS data from the Moscow Laboratory, however, fail to provide a sufficient basis to allege, let alone prove, the alleged ADRVs. In fact, (1) CAS panels ruled that the McLaren Reports are insufficient to justify sanctions against individual athletes, and (2) WR has failed to provide the LIMS data in its original form, which makes it forensically incomplete and unreliable and therefore casts reasonable doubts on its authenticity and reliability.
- This case is about whether there is evidence to prove, to the Sole Arbitrator's comfortable satisfaction, that the Athletes individually committed the alleged ADRVs. After reviewing the evidence WR presented, the Sole Arbitrator must conclude that there is no such evidence and thus dismiss WR's requests for relief in their entirety.

Burden and standard of proof

- WR has the burden of proving that the Athletes committed the alleged ADRVs. WR must show to the comfortable satisfaction of the Sole Arbitrator – i.e. beyond a mere balance of probability – that the Athletes committed the alleged ADRVs, and the Athletes bear a lower standard, which is the one of balance of probability.
- The seriousness of the alleged ADRVs and the sanctions sought is highly relevant to the application of the comfortable satisfaction standard in a specific case. The more serious the allegation against an athlete, the higher the standard to prove that the athlete committed an ADRV, as confirmed in numerous CAS decisions.
- WR has not provided any direct evidence, nor has it made best efforts to obtain such evidence. Instead, WR relies solely on circumstantial evidence, which contains numerous inconsistencies that do not meet the applicable standard of proof. WR has failed to provide any reliable evidence that the Athletes committed any ADRVs, let alone any evidence meeting the required burden and standard of proof. Given the serious nature of the ADRV allegations, the relevance and reliability of evidence tendered in support of an allegation should be carefully weighed and considered.
- WR has not discharged its burden of proof and, therefore, no sanction must be imposed against the Athletes.

Personality rights and principle of proportionality

- Under Swiss law, an infringement of one's personality rights is "by default" unlawful, unless the victim has consented to it, the infringement is justified by law, or there is an overriding public or private interest. Hence, any sanction imposed on the Athletes must be justified by at least one of the requirements under Article 28(2) of the Swiss Civil Code. The Athletes have not given their consent to be sanctioned and there is no law justifying sanctioning them. Therefore, only the balance of interests' test may justify an infringement of the Athletes' personality rights.

- CAS case law recognises that, under the principle of proportionality, the cumulative requirements of aptitude, necessity, and proportionality *stricto sensu* must be met for a measure to be proportionate and hence valid (CAS 2016/O/4684, paragraph 130). It is also considered that the principle of proportionality is part of the general principle of fairness and that it serves as a tool to ensure that the sanction imposed is not more serious than justified by the circumstances (CAS 2018/O/5712, paragraph 269). CAS case law further requires that each situation must be evaluated on a case-by-case basis, balancing the respective interests at stake in accordance with the principle of proportionality (CAS 2017/A/5117, paragraph 84). The principle of proportionality is recognised by CAS panels as part of the “*ordre public*” and is to be observed by CAS independently of the Parties’ prayers for relief and submissions.
- WR argues that the principle of proportionality “*has no application in the Rowers’ case where the detailed provisions of the 2009 FISA ADR and the WR ADR already embody this principle*”. WR’s argument relies on CAS 2018/A/5546, where the panel stated that “*the CAS jurisprudence since the coming into effect of WADC 2015 is clearly hostile to the introduction of proportionality as means of reducing yet further the period of ineligibility*”. WR’s position is misconceived and does not take into account the temporal application of the anti-doping rules. Given that the purported facts on which WR’s claim is grounded took place in 2014, the applicable rules are the 2009 ADR, which were enacted before the 2015 WADC entered into force. Before this date, the CAS panels have often applied the principle of proportionality autonomously from the applicable anti-doping rules.

Human rights

- The Sole Arbitrator must also apply human rights, including but not limited to, (1) the presumption of innocence and (2) the prohibition of discrimination (Article 14 of the ECHR).
- The presumption of innocence is an element of the overall requirements of fairness for every process. It has been applied by the Court of Justice of the European Union in disciplinary matters as well. Similarly, a CAS panel ruled that “*there can be no departure from the presumption of innocence. The athlete is not presumed, but must be proven, to have committed an anti-doping rule violation*” (CAS 2017/A/5009, paragraph 45).
- It follows that WR must prove, to the comfortable satisfaction of the Sole Arbitrator, that the Athletes committed the alleged ADRVs. If the Sole Arbitrator considers that WR has failed to discharge its burden of proof to his comfortable satisfaction, he will have to afford the Athletes the presumption of innocence, and no sanction must be imposed on them.
- As to the prohibition of discrimination, discrimination based on grounds of nationality or origin is prohibited in Article 14 of the ECHR. In this case, WR relies on circumstantial evidence and has not discharged its burden of proof. WR is in fact assuming that because the Athletes are Russians, there is a presumption of improper conduct. This is contrary to both the presumption of innocence and the prohibition of discrimination.

WR does not produce any direct evidence of an ADRV

- WR does not provide any direct evidence of the “utilization, application, ingestion, injection or consumption” of the AASs. WR is trying to convince the Sole Arbitrator of the existence of ADRVs based solely on indirect evidence.
- Neither WR nor WADA made any serious attempt to collect and put forward direct evidence. Moreover, all the Athletes’ efforts to obtain (exculpatory) direct evidence of the alleged ADRVs were frustrated by the obstruction of said authorities.

- The 2015 LIMS Copy and the 2019 LIMS Copy do not constitute reliable evidence to incriminate the Athletes. If the Sole Arbitrator were to decide that the LIMS data is reliable (*quod non*), the EDP e-mails are not and can therefore not be used as circumstantial evidence against the Athletes.
- Following the award in CAS 2020/O/6689, RUSADA was ordered to conduct investigations under WADA I&I's supervision. RUSADA was compelled to conduct investigations into any "*cases impacted by the deletions and/or alterations of the Moscow Laboratory data*" and to re-analyse the samples obtained by WADA I&I.
- It is undisputed that WADA identified the Samples of the Athletes as being impacted by the alleged alterations of the Moscow Laboratory data. However, WR and WADA I&I failed to provide any evidence resulting from RUSADA's investigations regarding the Athletes' individual cases that would support WR's allegations against the Athletes.
- It remains unknown whether the Samples were located and re-analysed. The subsequent analysis of the Samples could have shown that the Athletes are – and have always been – clean. It is also unknown whether the Moscow Laboratory chains of custody were obtained and analysed. The analysis of the chains of custody could have allowed the Athletes to verify that the applicable procedures were followed. Hence, the results of RUSADA's investigations could have significantly affected WADA I&I's investigations and their conclusions.
- Despite the considerable importance of identifying and retesting the Samples, WR's effort was superficial and insignificant in this respect, to the damage of the Athletes. WR's and WADA's failure to properly try to recover the Samples from the Moscow Laboratory is faulty and leads to conclude that the Athletes did not commit any ADRV.

The digital forensic evidence submitted by WR is insufficient

- WR has filed data, which are incomplete from a forensic perspective. WR failed to submit (1) the original authentic data of the 2015 LIMS Copy and the 2019 LIMS Copy and (2) the SQL files of the 2015 LIMS Copy and the 2019 LIMS Copy, as required by the Athletes. Hence, it is not possible to reperform the activities of WR's experts. The ability to reperform forensic activities of experts (reproducibility and repeatability testing) is one of the key elements of any forensic investigation to verify the reliability of a file and validate the results obtained by other experts.
- WR did not present any forensic chain of custody forms in relation to the evidence it submitted. In computer forensics, the chain of custody is fundamental to prove that the files have been acquired, preserved, processed, and handled properly, i.e. in compliance with applicable standards.
- The LIMS data submitted by WR is also unreliable and inconclusive. WR's case is built on the premise that the 2015 LIMS Copy is reliable and authentic, when in fact there is no evidence in the file that WADA's experts ever tested the reliability and authenticity of the data received from the whistleblower.
- The comparison between the 2015 LIMS Copy and the carved version of the 2019 LIMS Copy ("Carved LIMS") has no value because the reliability of the 2015 LIMS Copy and the Carved LIMS was not verified by WADA I&I's experts as (1) there is no evidence in the file that the 2015 LIMS Copy was proven to be reliable and (2) there is no evidence that the Carved LIMS is reliable since it was recovered from the 2019 LIMS Copy which was not proven to be reliable.

- WADA I&I's experts failed to provide a reliable and complete chain of custody for the 2015 LIMS Copy, which is not in compliance with forensic standards applicable to conducting a digital investigation. Additionally, WADA I&I's experts failed to demonstrate that forensic methods were used appropriately to collect, preserve, and handle the 2015 LIMS Copy.
- In relation to the 2019 LIMS Copy, WR's case is based on the premise that it can be used as reliable evidence to show that the forensic image that was released to WADA on 17 January 2019 contains alterations. However, the 2019 LIMS Copy is not reliable evidence that can be used against the Athletes. Absent any access to the original data and WR having failed to submit any forensic chain of custody, WR's evidence shall be disregarded because it is impossible to verify its reliability and authenticity.
- It must also be noted that the CAS 2020/O/6689 award cannot serve as a basis to incriminate individual athletes, as its scope was to find whether “*RUSADA was compliant with the 2018 WADC*” and not to investigate or decide upon whether there is sufficient evidence specifically targeting individual athletes.
- The LIMS data contains important and unexplained discrepancies which raise legitimate doubts as to their authenticity and to which WR did not provide any explanation and which WADA's experts seem to have ignored. For example, the Excel extracts from the 2015 LIMS Copy and the 2019 LIMS Copy have discrepancies with the doping control form (“DCF”) data of the Athletes with regard to, e.g., gender, volume of the urine recorded, and the specific gravity of the urine recorded.
- Professor Ayotte's opinion is flawed and insufficient to demonstrate the alleged ADRVs because the findings are based on the preconceived position that the 2015 LIMS Copy is reliable, which it is not. The findings by Professor Ayotte based on the 2015 LIMS Copy are insufficient to characterise an ADRV from a scientific perspective as the standard for confirmation is to perform a confirmation procedure and to provide chromatograms for a blank, for the specimen, and for a reference standard at a concentration close to the one estimated in the specimen. Professor Kintz considers in his report that “*in the absence of confirmation [confirmation procedure], it is simply not possible to consider that the urine specimens have returned in adverse analytical finding*”.
- WR asserts that the reference to the Athletes' names in the “General Comments” field of the 2015 and 2019 LIMS databases, in relation to their 18 July 2014 and 9 August 2014 samples, would have been a “sign” to the Moscow Laboratory that the Athletes were to be protected. However, if the Athletes were to be protected regarding their allegedly positive samples of 18 July 2014 by the insertion of their name in the “General Comments” field, there was no reason to confer such protection to them with regard to their 9 August 2014 samples, which no one disputes were negative. In addition, this accusation is based on allegations by Dr Rodchenkov, whose testimony has been found in other CAS proceedings to be, to the largest extent, “hearsay” of “very limited” probative value (CAS 2017/A/5379). This argument must be rejected given that it is insufficiently substantiated.

The evidence produced by WR is unreliable

- The McLaren Reports cannot serve as evidence to show that the Athletes committed the alleged ADRVs. The probative value of the McLaren Reports is extremely low due to numerous flaws described by other CAS panels.

- It is impossible to verify the reliability and authenticity of the relevant EDP e-mails in the absence of any forensic chain of custody.
- WR provides no reliable evidence proving that the Athletes' raw data files were manipulated from positive to negative. WR relies on Attachment 29 titled "Raw Data manipulation discovery". However, first, WR relies on said document without providing the documents on which WADA based its analysis therein. As such, the Athletes are not able to verify WADA's assertions. Second, even assuming that the raw data files were manipulated in the Russian swimmer case, this does not mean that the same is true for the Athletes. Moreover, if WR's (WADA's) hypothesis proved correct, then the Moscow Laboratory would have had no reason to delete the PDFs generated from the "modified" raw data files, since they would have shown "negative" results for adverse analytical findings ("AAF") in any case.
- The available evidence shows that no manipulation occurred to the Athletes' ITP raw data files. As stated in the CRC Report, Russian experts who have analysed all available digital evidence unequivocally state that raw data files are the only reliable source of information because they cannot be manipulated. WADA's allegation of manipulation was never confirmed by the manufacturer of the analytical instrument.
- Both WADA I&I's experts and Mr Sheldon wrongly relied on third parties' observations, such as the McLaren Reports, that the EDP e-mails are trustworthy.
- The Athletes were not given the opportunity to access the same materials as WR's experts, including the relevant e-mails in their native format. As a result, the Athletes were prevented from performing reproducibility and repeatability testing.
- The reliability and authenticity of the evidence that Mr Sheldon has analysed cannot be verified by the Athletes, and this is in breach of the Athletes' right of defence.

Legal consequences

- No period of ineligibility must be imposed for lack of evidence incriminating the Athletes. WR has failed to show that the evidence that it has submitted is reliable and conclusive and, thus, that the Athletes committed the alleged ADRVs.
- In any event, no ineligibility periods must be imposed based on the principle of proportionality. WR has failed to show that the ineligibility sanction is apt, necessary, and proportionate *stricto sensu* to reach WR's undisclosed goal. The four-year ineligibility sanction requested by WR is disproportionate and cannot be upheld. In the alternative, if the Sole Arbitrator decided to sanction Mr Ryabtsev, Mr Kleshnev, and/or Mr Mikhaylevskiy with a period of ineligibility, it should not exceed two years.
- Regarding the commencement of an eventual ineligibility period, if the Sole Arbitrator decides to impose a period of ineligibility on Messrs Ryabtsev, Kleshnev, and Mikhaylevskiy, it should begin on 13 April 2021, as they were notified of the alleged ADRVs on that date and they were since then provisionally suspended until the provisional suspensions were lifted on 14 April 2025.
- Because WR has failed to discharge its burden of proving that the Athletes committed the alleged ADRVs, there must be no disqualification of their competitive results and resulting consequences. In any case, the disqualification would be unwarranted for fairness reasons. WR is seeking a disqualification covering a period of seven years, which is almost double the

maximum period of ineligibility that can be imposed. The Samples were taken out of competition. There is no evidence that the alleged ADRVs impacted the level playing field of the competitions in which the Athletes participated. Moreover, the Athletes underwent numerous doping tests both in Russia and abroad between 18 July 2014 and 13 April 2021. It would be unfair to turn a blind eye to over 70 negative urine tests taken by the Athletes during the relevant period.

- Alternatively, only the sporting results included in the period between the date of the first evidence until the date of the last evidence should be annulled. Put differently, the period would be from 18 June 2014 to 18 July 2014 for Messrs Ryabtsev, Mikhaylevskiy, and Fedorovtsev. For Mr Kleshnev, who is accused of having committed only one ADRV on 18 July 2014, it would be fair not to impose any disqualification of results.

83. The Athletes' requests for relief, as set out in their joint Rejoinder, read as follows (sic):

"For all the foregoing reasons, the Athletes respectfully request the Sole Arbitrator:

- *To dismiss World Rowing requests in their entirety.*
- *To declare that the Athletes did not commit any anti-doping rules violation.*
- *To lift the provisional suspension imposed on Messrs Ryabtsev, Kleshnev and Mykhailevskiy.*
- *To confirm that no period of ineligibility is imposed on Messrs Ryabtsev, Kleshnev and Mykhailevskiy.*
- *In the alternative, to conclude that the applicable period of ineligibility shall be at most two years.*
- *In case a period of ineligibility is imposed on the Athletes, decide that the later shall start on 13 April 2021 and decide that any period of provisional suspension effectively served before the entry into force of the CAS award is to be credited against the total period of ineligibility to be served.*
- *In the event that it will be held that the Athletes had committed an anti-doping rule violation, decide that the Athletes' results shall not be disqualified.*
- *In the alternative, decide that only the Athletes' results obtained between 18 June 2014 and 18 July 2014 shall be disqualified (for Mr Ryabtsev, Mr Mykhailevskiy and Mr Fedorovtsev).*
- *To order WR to pay a reasonable contribution to the Athletes for the legal and other costs they have incurred in these proceedings.*
- *To order WR to compensate Messrs Ryabtsev, Kleshnev and Mykhailevskiy for any period of suspension served, that exceeds the period of an eventual sanction of ineligibility."*

V. JURISDICTION

84. Article A2, Paragraphs 1 and 2 of the ADD Rules provide as follows:

"CAS ADD shall be the first-instance authority to conduct proceedings and issue decisions when an alleged anti-doping rule violation has been filed with it and for imposition of any sanctions resulting from a finding that an anti-doping rule violation has occurred. CAS ADD has jurisdiction to rule as a first-instance authority on behalf of any WADC signatory which has formally delegated its powers to CAS ADD to conduct anti-doping proceedings and impose applicable sanctions.

These Rules apply whenever a case is filed with CAS ADD. Such filing may arise by reason of an arbitration clause in the Anti-Doping Rules of a WADC signatory, by contract or by specific agreement.”

85. Pursuant to Article 8.1.1 of the WR ADR, WR has delegated its responsibilities under Article 8 of the WR ADR to the ADD:

“FISA has delegated its Article 8 responsibilities (...) to the CAS Anti-Doping Division (CAS ADD). The procedural rules of CAS ADD pertaining to the hearing of first instance shall apply. CAS ADD will always ensure that the Rower or other Person is provided with a fair hearing within a reasonable time by a fair, impartial and Operationally Independent hearing panel in compliance with the Code and the International Standard for Results Management.”

86. The jurisdiction of the ADD is not contested by the Athletes, who confirmed the jurisdiction by signing the Order of Procedure. In consideration of the foregoing, the Sole Arbitrator confirms the jurisdiction of the ADD to decide whether the Athletes or any of them has committed an ADRV and the possible consequences of such potential violation(s). The jurisdiction of the ADD to adjudicate the compensation claim submitted by Messrs Ryabtsev, Kleshnev, and Mikhaylevskiy is addressed separately in this Award.

VI. APPLICABLE LAW AND PROCEDURAL RULES

87. Article A20 of the ADD Rules provides as follows:

“The Panel shall decide the dispute according to the applicable ADR or the laws of a particular jurisdiction chosen by agreement of the parties or, in the absence of such a choice, according to Swiss law.”

88. The Parties agree that the 2009 ADR govern the consequences of the alleged ADRVs. Furthermore, the Parties agree that the WR ADR shall govern the procedural matters and that Swiss law applies.
89. The Sole Arbitrator notes that the ADD Rules have been replaced during the present proceedings with “Procedural Rules - CAS Anti-Doping Division”, which “are applicable to all procedures initiated by CAS ADD as from 10 June 2024” (Article A26). Based on this provision and the fact that the present proceedings were initiated on 10 November 2021, they shall be governed by the 2021 edition of the ADD Rules applicable to all procedures initiated by CAS ADD as from 1 January 2021.

VII. MERITS

90. In view of the Parties’ submissions, the main issues to be resolved by the Sole Arbitrator are the following:
- A. Did any of the Athletes commit one or more ADRVs under Article 2.2 of the 2009 ADR by using one or more prohibited substances on or before 18 June 2014 and/or on or before 18 July 2014?
 - B. If the answer to question A. is in the affirmative, what are the appropriate consequences to be imposed on such Athlete(s)?
 - a. What are the applicable periods of ineligibility?
 - b. When should the potential ineligibility periods commence?
 - c. Should the Athletes’ competitive results be disqualified, and if the answer is in the affirmative, for which period(s)?

C. If an ineligibility period imposed on an Athlete exceeds the length of a provisional suspension served by an Athlete, should WR be ordered to pay compensation to such Athlete?

91. The Sole Arbitrator notes in this context that according to Article A21, Paragraph 1 of the ADD Rules governing these first instance proceedings, “[t]he award shall contain brief reasons.” Therefore, and considering the exceptional volume of allegations and documentary evidence submitted in the present cases, the Sole Arbitrator reiterates that while he has considered all the facts, allegations, legal arguments, and evidence submitted by the Parties in the present proceedings, he only refers to the submissions and evidence he considers necessary to explain his reasoning.

A. Have the Athletes committed ADRVs in summer 2014 under Article 2.2 of the 2009 ADR?

a. Legal framework – introduction

92. Before addressing the merits of the Parties’ factual and legal arguments, the Sole Arbitrator finds it necessary to identify the relevant provisions which define the specific ADRVs that the Athletes are alleged to have committed and govern how the Sole Arbitrator shall carry out his task of determining whether the Athletes, or any one of them, in fact committed ADRVs.
93. The Sole Arbitrator notes that the characteristics of these cases are somewhat unusual. The Athletes have not officially tested positive for any prohibited substances. Unlike most other doping cases where there is an official positive test result, here there are none. The allegations primarily stem from the 2015 LIMS Copy, the 2019 LIMS Copy, and the EDP e-mails. The Athletes submit that the specificity of their cases is that “for none of them is there any direct evidence of ADRV in the file. The Athletes’ samples were never identified, retested and reanalyzed.” In addition, the Athletes submit that “the digital forensic evidence submitted by WR does not meet the threshold of ‘comfortable satisfaction’, given that it is both insufficient and unreliable”.

b. Use of a prohibited substance

94. The Athletes have been accused by WR of breaching Article 2.2 of the 2009 ADR, which states in its essential parts as follows:

“Use or Attempted Use by A Rower of a Prohibited Substance or a Prohibited Method

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

95. According to the definitions of the 2009 ADR, “USE” means “[t]he utilization, application, ingestion, injection or consumption by any means whatsoever of any Prohibited Substance (...).”
96. WR submits that the Athletes have used three AASs: trenbolone, metenolone, and oxandrolone. These were prohibited substances at the relevant time in summer 2014 under S1.1(a) of the WADA List of Prohibited Substances and Methods.

c. Burdens and standards of proof

97. Before examining whether any of the Athletes committed ADRVs under the 2009 ADR, the Sole Arbitrator will define the applicable burden and standard of proof as well as the applicable means of proof.
98. Article 3.1 of the WR ADR provides as follows:

“FISA shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether FISA has established an anti-doping rule violation 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 these Anti-Doping Bye-Laws place the burden of proof upon the Rower or other Person alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, except as provided in Articles 3.2.2 and 3.2.3, the standard of proof shall be by a balance of probability.”

99. Article 3.1 of the 2009 ADR has substantially the same content.
100. Based on the above provision, the burden of proving that any of the Athletes committed an ADRV is on WR.
101. With respect to the applicable standard of proof of “*comfortable satisfaction*”, the Sole Arbitrator underlines that it is insufficient for WR to establish that it is more likely that an Athlete did commit an ADRV than that he did not. At the same time, criminal standard of proof is not applicable, and the Sole Arbitrator is not required to be satisfied beyond any reasonable doubt of an Athlete’s guilt. Moreover, the test of comfortable satisfaction “*must take into account the circumstances of the case*”, which 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 2017/A/5379, paragraph 704, with reference to CAS 2009/A/1920 and CAS 2013/A/3258). The CAS panel confirmed in CAS 2015/A/4059 (paragraphs 107-108) that a panel is allowed to consider the cumulative effect of circumstantial evidence. Therefore, even if single items of evidence may each be inadequate to establish a violation to the comfortable satisfaction of a hearing panel, considered together they may suffice.
102. Finally, “[t]he gravity of the particular alleged wrongdoing is relevant to the application of the comfortable satisfaction standard in any given case (...) 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’” (CAS 2017/A/5379, paragraph 705, with reference to CAS 2014/A/3625).

d. Means of proof

103. With respect to the applicable means of proof, Article 3.2 of the WR ADR provides that facts related to ADRVs may be established by “*any reliable means, including admissions*”. The comment to Article 3.2 of the WR ADR gives examples of such reliable means: athlete’s admissions, the credible testimony of third persons, reliable documentary evidence, reliable analytical data from either an A or B sample, or conclusions drawn from the profile of a series of the athlete’s blood or urine samples, such as data from the athlete’s biological passport.
104. Moreover, the comment to Article 2.2 of the WR ADR provides that “[i]t has always been the case that Use or Attempted Use of a Prohibited Substance or Prohibited Method may be established by any reliable means. As noted in the Comment to Article 3.2, unlike the proof required to establish an anti-doping rule violation under Article 2.1, Use or Attempted Use may also be established by other reliable means such as admissions by the Rower, witness statements, documentary evidence, conclusions drawn from longitudinal profiling, including data collected as part of the Rower Biological Passport, or other analytical information which does not otherwise satisfy all the requirements to establish ‘Presence’ of a Prohibited Substance under Article 2.1.”
105. The Sole Arbitrator observes that Article 3.2 of the WR ADR makes no distinction between “*direct*” and “*circumstantial*” evidence, nor does it specify that evidence must have been created or obtained specifically for the purpose of proving ADRVs. Article 3.2 of the WR ADR states that the party with the burden of proving an ADRV, i.e. WR, may resort to “*any reliable means*”. The use of word “*any*”

makes clear that there is no restriction on the type or nature of evidence that may be adduced. However, the Sole Arbitrator can only reach findings of fact on the basis of evidence that is reliable.

106. The above has been confirmed in CAS case law. By way of an example, in CAS 2005/A/884, the CAS panel noted as follows (paragraph 48): *“It is important to note that this rule gives great leeway to USADA and other anti-doping agencies 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, as some cases have found, a violation may be proved through admissions, testimony of witnesses, or other documentation evidencing a violation.”*
107. In CAS 2010/A/2083, the CAS panel found the athlete guilty of a “Use” violation based on (1) a report describing the organisation and operations of a medical doctor’s doping network and the evidence recovered in connection with so-called Operation Puerto, (2) documents recovered from Operation Puerto and other sources, evidencing travel by the athlete to the vicinity of the medical doctor, the withdrawal of blood from athletes on specific dates, and payments from the athlete to the medical doctor, and (3) a report comparing DNA materials taken from the athlete against samples provided by the Spanish Civil Guard.
108. In CAS 2017/O/5039, the CAS panel accepted that a Moscow washout schedule, read in connection with the IP Report, was a strong indication that the athlete had used prohibited substances. In CAS 2017/A/5422, the CAS panel concluded that the results of the scientific analysis of the content of the athlete’s urine samples, namely the physiologically impossible level of salt in the athlete’s samples together with confirmation through a DNA analysis that those samples contained the athlete’s urine and the absence of any concrete and plausible explanation, established to the panel’s comfortable satisfaction that the athlete had committed an ADRV in the form of the use of a prohibited method (paragraph 791). Once it was established that the athlete deliberately facilitated the substitution of his urine in order to conceal his use of a prohibited substance, the presence of the athlete’s name on the Duchess List was deemed to provide some additional support for the conclusion that the athlete did in fact use a prohibited substance, and the athlete was found to have committed an ADRV in the form of the use of a prohibited substance as well (paragraph 814).
109. In consideration of the applicable provisions and the case law set out above, the Sole Arbitrator notes that the following principles shall guide his assessment of the allegations and evidence in the present case.
110. First, the onus is on WR to establish the existence of an ADRV to the comfortable satisfaction of the Sole Arbitrator. This standard is higher than a mere balance of probabilities, meaning that it is insufficient for WR to establish that it is more likely than not that the Athlete(s) committed an ADRV. However, the Sole Arbitrator is not required to be satisfied beyond any reasonable doubt of the Athlete(s)’s guilt.
111. Second, in considering whether he is comfortably satisfied that an ADRV has occurred, the Sole Arbitrator will consider all the relevant circumstances of the cases. In the context of the present cases, the relevant circumstances include, but are not limited to, the following.
112. WR contends that the Athletes used three AASs in the context of training camps held in Russia in summer 2014. According to WR, the ADRVs *“were however concealed on two occasions by Russian authorities. First, in 2014, in the scope of the doping and cover-up scheme in place in Russian sport”* and *“then again between June 2016 and January 2019 during which time the evidence pertaining to [the Athletes’] Anti-Doping Rule Violations was further manipulated”*. As a result, the more successful the alleged doping scheme was, the less direct evidence of wrongdoing is likely to be available to WR. The Sole Arbitrator thus notes that the absence of direct evidence is not necessarily an indication of innocence but may equally be indicative that the wrongdoing has been effectively concealed.

113. WR is not a law enforcement agency, and its investigatory powers are more limited than the powers available to such bodies. The Sole Arbitrator's assessment of the evidence shall take these limitations into consideration. Having said that, the Sole Arbitrator is mindful that the allegations asserted against the Athletes are serious and that it is not sufficient for WR merely to establish the existence of a doping scheme. Instead, WR shall establish that the Athlete(s) themselves committed an ADRV. Furthermore, considering the seriousness of the allegations against the Athletes, the Sole Arbitrator requires a high level of certainty of the Athlete(s)'s guilt to be comfortably satisfied that the Athlete(s) committed ADRVs.

e. Evidence – general

114. In general, the doping scheme in Russia in the first half of the 2010s has been established and acknowledged on various occasions, including by the Russian Minister for Sport on 13 September 2018. However, it is clear and undisputed that the Sole Arbitrator must assess whether WR is able to establish to the Sole Arbitrator's comfortable satisfaction that any of the Athletes has committed an ADRV.
115. In this case, there is no direct evidence of use by the Athletes, as all the evidence is circumstantial. For example, as the Athletes have correctly pointed out, there are no eyewitnesses who would have testified on the Athletes using prohibited substances. In addition, the Athletes have not admitted any use of doping but consistently denied it. Therefore, the Sole Arbitrator must assess the circumstantial evidence separately and together and have regard to the cumulative weight of the evidence. As noted in CAS 2018/O/5713 (paragraph 61), “[c]ircumstantial evidence might be compared to a rope comprised of several cords: one strand of the cord might be insufficient to sustain the weight, but three stranded together may be quite of sufficient strength”.

f. Evidence – 2015 LIMS Copy

116. WR argues that WADA I&I obtained the LIMS data of the Moscow Laboratory from a whistleblower on 30 October 2017 and that this 2015 LIMS Copy is an accurate copy of the original LIMS created contemporaneously as part of the Moscow Laboratory's analytical procedures. Therefore, its contents can be relied upon as accurate and forensically valid information.
117. The Athletes have challenged the reliability of the 2015 LIMS Copy on various grounds. In essence, they submit that there is no evidence that WADA I&I tested the reliability and authenticity of the data received from the whistleblower and that there is no reliable chain of custody for the 2015 LIMS Copy. Furthermore, the Athletes have invoked the discrepancies between the 2015 LIMS Copy and the 2019 LIMS Copy as well as the discrepancies between the 2015 LIMS Copy and the DCFs of the Athletes.
118. The Athletes' views have been addressed in the Addendum Joint Statement of Mr Walker and Dr Broséus dated 17 April 2024. In brief, they submit that their investigation “*did properly collect, verify, handle, preserve and analyze the data*”.
119. The Sole Arbitrator first notes that the CAS has previously found that the 2015 LIMS Copy shall be held reliable. According to e.g. CAS 2021/A/7839 (paragraph 112) and CAS 2021/A/7840 (paragraph 110), “(...) *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*”. In 2021/ADD/23, the sole arbitrator was comfortably satisfied that “*the 2015 LIMS is reliable evidence upon which WT can rely*” (paragraph 195). Although the Sole Arbitrator cannot overlook the recent jurisprudence, he is not bound by such findings but needs to assess the reliability of the 2015 LIMS Copy independently in light of the evidence of the present matters.

120. As noted above, WR's position is based on WADA I&I's investigations. According to WADA I&I's reports of 5 November 2021 and 17 April 2024, the 2015 LIMS Copy is reliable evidence of the ADRVs, as it is authentic and contains analytically valid information of the detected prohibited substances.
121. In summary, the Sole Arbitrator accepts the results of WADA I&I's investigations. With respect to authenticity, the Sole Arbitrator finds it compelling that the data for the Samples matched completely between the 2015 LIMS Copy and the 2019 LIMS Copy, apart from the "Found" and "log_do" tables, of which the "Found" table reports the presumptive AAFs. However, these tables were also recovered by independent experts, Professors Casey and Souvignet of the University of Lausanne's Ecole des Sciences Criminelles, and the recovered files included every parameter of data recorded for each respective sample.
122. With respect to the validity of the 2015 LIMS Copy, the Sole Arbitrator finds it persuading that there is data of over 63,000 samples, and such data has a 99% or even 99.9% match with ADAMS concerning sample codes, specific gravity, pH values, event types, and gender. In addition, the analytical data legitimately reported in ADAMS by the Moscow Laboratory for all athletes between January 2012 and August 2015 matched the data contained in the 2015 LIMS Copy.
123. After having analysed the Athletes' arguments, Mr Walker and Dr Broséus convincingly summarised their position as follows (Addendum Joint Statement, pages 6-7):
- "It can definitely be excluded that the data of the 2015 LIMS Copy was manipulated to include 'fake evidence against Russian athletes' before it was provided to WADA because 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. Moreover, the Carved LIMS matched the database in the 2015 LIMS Copy in its entirety (every parameter of data for every sample). In other words, the LIMS in use at the Moscow Laboratory just prior to WADA's January 2019 attendance at the Laboratory, contained the exact same data as that in the 2015 LIMS Copy. Thus the Carved LIMS is observable digital evidence that the 2015 LIMS Copy was not corrupted, manipulated, or falsified at any time between 2015 and the time it came into WADA's possession. Put simply, if the 2015 LIMS Copy had been subject of such nefarious interference, then it would have been impossible for WADA to find a matching version within the Moscow Data in January 2019."*
124. The reliability of WADA I&I's findings was supported by the testimonies of Mr Walker, Professor Casey, and Professor Souvignet. In brief, they credibly confirmed that the data recovered from the server in the Moscow Laboratory verified the content of the 2015 LIMS Copy provided to WADA by a whistleblower.
125. The Athletes have emphasised three issues related to the sufficiency and reliability of the 2015 LIMS Copy: (1) the potential existence of their Samples for re-testing, (2) the fact that the raw data does not support WR's position, and (3) the fact that the Moscow Laboratory did not perform confirmation procedures ("CP") necessary for a finding of an ADRV.
126. First, with respect to the Athletes' allegation that their Samples would be available for re-testing, Mr Walker credibly confirmed during his examination that the Samples had been discarded by the Moscow Laboratory. Therefore, they are not available for further testing and cannot produce exculpatory evidence to the Athletes' benefit – or inculpatory evidence to the Athletes' detriment.
127. In relation to re-testing, the Athletes have submitted that WR did not produce all the documents that were ordered to be produced by the Sole Arbitrator and have requested the Sole Arbitrator to draw adverse inferences, i.e. that the allegedly missing documents would be exculpatory (paragraph 71 of the Athletes' Rejoinder). The Sole Arbitrator does not find it justified to draw such adverse

inferences. First, it remains unclear whether any relevant documentation has not been produced. In this respect, the Athletes have referred to their document production request number 15, to which WADA has responded on 17 April 2024 that it has no documents to provide and that it has provided WR and the Athletes with “*all available and relevant evidence (inculpatory and exculpatory) in [its] possession.*” Mr Walker’s testimony that there has been some correspondence between WADA and RUSADA after 2 February 2021 does not change this conclusion. Second, the importance of the correspondence regarding the discarded Samples as evidence is secondary in relation to the discarded Samples themselves. Considering also that any adverse inferences should reasonably fit the evidence in the file and cannot automatically lead to a conclusion that withheld documents are unfavourable to the party who did not produce them, and that there are no indications of the unreliability of WR’s evidence, there are no grounds to find that there is undisclosed exculpatory evidence in WR’s possession.

128. Second, Professors Casey and Souvignet credibly testified that it has now been confirmed that in fact raw data – i.e. data from the laboratory instruments – can be manipulated without leaving a trace. This matter was unresolved by the issuance of the CRC Report (see e.g. page 51). At that time, the investigation of the matter was not complete. The Sole Arbitrator has no reason to question their testimonies, in which they described the raw data manipulation issue in detail. Therefore, the fact that all raw data does not show signs of use of prohibited substances does not evidence that no use of prohibited substance took place.
129. Third, as noted above, “use” ADRVs can be evidenced by any reliable means. It is not necessary to conduct CPs as in the “presence” ADRVs for a finding of a violation. Therefore, the lack of CPs is irrelevant in the present case. Furthermore, as testified by Professor Ayotte, trenbolone, metenolone, and oxandrolone are not “threshold substances”, i.e. substances that lead to an ADRV only when a certain minimum concentration is detected. Instead, any concentration of said substances or their metabolites suffices for the finding of an ADRV. Considering that the Moscow Laboratory detected three AASs in seven samples provided by four different athletes on two different dates is in the Sole Arbitrator’s view a strong indication that the WADA-accredited Moscow Laboratory did not accidentally report negative results as positives. Professor Ayotte credibly testified that the ITPs were appropriately conducted by the Moscow Laboratory.
130. Moreover, the Sole Arbitrator observes that Professor Kintz’s views regarding contamination at the Moscow Laboratory are not supported by evidence. On the contrary, according to Professor Ayotte, the Moscow Laboratory used negative control samples, which were found to be negative. This indicates that there was no contamination at the Moscow Laboratory at the relevant time. Furthermore, the Samples analysed by the Moscow Laboratory do not indicate a consistent decreasing level of concentrations of prohibited substances that one could expect in a contamination scenario, but a random sequence that indicates different patterns of administration of prohibited substances by the Athletes. Considering also that trenbolone, metenolone, and oxandrolone are the ingredients of the “Duchess” cocktail widely used in Russian sports at the relevant time, the mere detection of these three substances cannot be deemed an indication of contamination. In summary, the 2015 LIMS Copy can generally be deemed reliable also from a scientific point of view.
131. In summary, the Sole Arbitrator notes that there is extensive documentation of the analyses performed by WADA I&I. Based on the documentation and the testimonies of Mr Walker, Professor Casey, and Professor Souvignet, the Sole Arbitrator is comfortably satisfied that the 2015 LIMS Copy is authentic, valid, and thus a reliable piece of evidence.

g. Evidence – 2019 LIMS

132. In addition to submitting that the 2015 LIMS Copy is reliable, WR submits that the 2019 LIMS Copy is not. In support of its position, WR has relied on previous findings by the CAS and the investigations of independent experts commissioned by WADA I&I.
133. The Athletes have submitted that (1) WR failed to provide the Athletes with access to the 2019 LIMS Copy as WR provided only alleged Excel excerpts from the 2019 LIMS Copy, leading to the Athletes being precluded from accessing the same data available to WR and their experts, resulting in a violation of the Athletes' process rights. In addition, the Athletes have put forth that (2) WR failed to provide a reliable and complete chain of custody for the 2019 LIMS Copy. Therefore, the Athletes were unable to verify whether the data was copied in compliance with forensic standards applicable to conducting a digital investigation. In summary, the Athletes submit that the 2019 LIMS Copy cannot be held as reliable evidence and used against them.
134. As a response to the Athletes' submissions, WR provided a copy of Mr Walker's Chain of Custody Statement.
135. The Sole Arbitrator first notes that the CAS has stated with respect to the 2019 LIMS Copy as follows (CAS 2020/O/6689, paragraph 614):
- "The Panel finds that, prior to the Moscow Data being retrieved by WADA in January 2019, and during its retrieval, it was subjected to deliberate, sophisticated and brazen alterations, amendments and deletions. Those alterations, amendments and deletions were intentionally carried out in order to remove or obfuscate evidence of improper activities carried out by the Moscow Laboratory as identified in the McLaren Reports or to interfere with WADA's analysis of the Moscow Data."*
136. In the present case, WR is not relying on the 2019 LIMS Copy as primary evidence on the Athletes' ADRVs. Instead, the 2019 LIMS Copy is invoked by WR to establish the so-called second wave of protection of the Athletes.
137. The Sole Arbitrator notes that WADA I&I has thoroughly examined the authenticity of the 2019 LIMS Copy and concluded in the CRC Report that *"the Moscow Data was intentionally altered prior and during to it being forensically copied by WADA"* (page 11). The Athletes have not been able to undermine the credibility of the reports or testimonies of Mr Walker, Dr Broséus, Professor Casey, or Professor Souvignat. Therefore, the Sole Arbitrator finds that the 2019 LIMS Copy is not reliable evidence and the fact that it does not indicate the use of AASs by the Athletes, e.g. in the "found" table, is irrelevant in the adjudication of the present matters.

h. Evidence – EDP e-mails

138. WR supports its case also with five e-mails identified as EDP0392, EDP0393, EDP0395, EDP0432, and EDP0434. According to WR, the e-mails establish that after the Moscow Laboratory had detected the use of prohibited substances in the ITPs, the DPM was applied to the Athletes as demonstrated by the e-mail exchanges between the liaison person of the Russian Ministry of Sports and the Moscow Laboratory.
139. The Athletes have submitted that the EDP e-mails are unreliable and cannot be used as evidence to incriminate the Athletes. In the Athletes' view, there is no sufficient evidence to establish that the e-mails are complete, genuine, authentic, and reliable. According to the Athletes, in absence of any forensic chain of custody, it is impossible to verify the reliability and authenticity of the e-mails. Furthermore, WADA I&I and Mr Sheldon wrongly relied on third parties' observations. Finally, WR did not grant the Athletes access to the same materials as its own experts and as a result, the Athletes were prevented from performing reproducibility and repeatability testing.

140. The Sole Arbitrator observes that the CAS has assessed the reliability of EDP documents in various cases. In e.g. CAS 2019/A/6167, the CAS panel found that the data contained in three EDP documents (two London washout schedules and a Moscow washout schedule) is scientifically credible (paragraph 217):

“Bearing in mind the expert evidence which has been accepted by the Panel, namely that there is no evidence of any forensic manipulation, forgery or fabrication, and that the data is scientifically credible, the majority of the Panel is comfortably satisfied that the evidence before it comprises reliable means to establish ADRVs. 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. Whereas minor discrepancies exist within the EDP, these do not dislodge the reliability of the evidence insofar as it relates to the Athlete using prohibited substances. The Panel concludes that EDP0019, EDP0021 and EDP0034 are sufficiently reliable to form the basis of a finding that the Athlete has committed ADRVs. (...)”

141. WR has submitted an expert report by Mr Sheldon, a computer forensic consultant, who also testified in the hearing. His task was to examine EDP e-mails and to assess whether they are authentic. Upon having completed a detailed analysis of the five e-mails, Mr Sheldon concluded that *“all the messages are authentic”*. He further concluded that *“all the mails were created between the 23rd June 2014 and 22nd July 2014 and that none of the emails contain attachments”*. Mr Sheldon’s conclusion was based on an investigation described by him as follows:

“Processing the contents of the L01 forensic image file in this manner allowed me to examine the contents and metadata of the files it contained without making changes and further allowed me to perform multiple tool validation of the extracted data.

I was able to calculate an MD5 hash value for every file contained in the forensic image. I compared the hash values in the schedule MD5.CSV I received against the re-calculated hash values and noted they all matched. This indicates that the L01 file and its contents had not been changed in any way between the time it was created and the time I received it.”

142. In the cross-examination, Mr Sheldon confirmed that “authentic” means that the e-mails had come through an e-mail system and were authentic in terms of the technology used to transfer or create the e-mails. Put differently, the e-mails were sent and received by the e-mail accounts indicated in the e-mails and there was no inconsistency. Mr Sheldon excluded the possibility that the e-mails had been manipulated. According to him, there are several features of the e-mail “header” which are independent of the author of the e-mail and which scientifically and mathematically support the fact that nothing has changed in the e-mails.
143. The Sole Arbitrator concludes that the Athletes’ arguments in challenging Mr Sheldon’s findings have not convinced the Sole Arbitrator. There is no evidence of a motive to frame the Athletes for ADRVs or that the EDP e-mails have been falsified or manipulated e.g. in an e-mail system set up in an off-line laboratory environment. The Athletes have not been able to undermine the validity of the conclusions presented by Mr Sheldon or his expertise or credibility as an expert witness. In addition, the EDP e-mails corroborate the content of the 2015 LIMS Copy. Fabricating this logical web of files with a number of details regarding athletes, dates, locations, substances, and sample codes would have been a challenging exercise. Therefore, the Sole Arbitrator finds that the EDP e-mails provided by WR in the present case are authentic and reliable evidence within the meaning of Article 3.2 of the WR ADR.

i. Conclusion on the reliability of WR's evidence

144. The first task for the Sole Arbitrator has been to determine whether the 2015 LIMS Copy and the EDP e-mails are reliable means by which he can be comfortably satisfied that the Athletes or any one of them has used prohibited substances. In his assessment, the Sole Arbitrator has also taken into account the Athletes' arguments and evidence, which support a finding that no ADRVs have taken place. Based on the above findings, the Sole Arbitrator is comfortably satisfied that the 2015 LIMS Copy and the EDP e-mails are reliable evidence.
145. The facts that (1) CPs were not carried out with respect to any of the Samples and that (2) the ADAMS entries regarding the Samples do not indicate a finding of ADRVs are not relevant as these are to be expected in the doping scheme that undisputedly took place in Russia at the relevant time. The same applies to raw data, which can be and has been manipulated. The practice of protecting select athletes involved the removal of inculpatory evidence of doping and the creation of false exculpatory evidence.
146. Next, the Sole Arbitrator will examine the evidence submitted by WR with respect to each Athlete.

j. Evidence – Mr Vladislav Ryabtsev

147. WR has submitted two DCFs concerning samples provided by Mr Ryabtsev: sample 2916655 on 18 June 2014 and sample 2917997 on 18 July 2014. The Athlete has not challenged the fact that he provided said samples.
148. The 2015 LIMS Copy that contains the results of the ITP analysis carried out by the Moscow Laboratory indicates that both sample 2916655 and sample 2917997 contained three AASs and/or their metabolites, i.e. trenbolone, metenolone, and oxandrolone.
149. The e-mails between the Moscow Laboratory and the Russian Ministry of Sports identified as EDP0392, EDP0393, and EDP0395 also indicate that sample 2916655 contained three AASs. In EDP0395, Mr Ryabtsev's name is connected to sample 2916655.
150. The e-mails identified as EDP0432 and EDP0434 also indicate that sample 2917997 contained three AASs. In EDP0434, Mr Ryabtsev's name is connected to sample 2917997.
151. Based on the above findings and evidence, the Sole Arbitrator is comfortably satisfied that Mr Ryabtsev has used three prohibited substances and thus committed an ADRV under Article 2.2 of the 2009 ADR on or before 18 June 2014.

k. Evidence – Mr Denis Kleshnev

152. WR has submitted a DCF concerning a sample provided by Mr Kleshnev: sample 2916824 on 18 July 2014. The Athlete has not challenged the fact that he provided said sample.
153. The 2015 LIMS Copy that contains the results of the ITP analysis carried out by the Moscow Laboratory indicates that sample 2916824 contained three AASs and/or their metabolites, i.e. trenbolone, metenolone, and oxandrolone.
154. The e-mails between the Moscow Laboratory and the Russian Ministry of Sports identified as EDP0432 and EDP0434 also indicate that sample 2916824 contained three AASs. In EDP0434, Mr Kleshnev's name is connected to sample 2916824.

155. Based on the above findings and evidence, the Sole Arbitrator is comfortably satisfied that Mr Kleshnev has used three prohibited substances and thus committed an ADRV under Article 2.2 of the 2009 ADR on or before 18 July 2014.

l. Evidence – Mr Vyacheslav Mikhaylevskiy

156. WR has submitted two DCFs concerning samples provided by Mr Mikhaylevskiy: sample 2916392 on 18 June 2014 and sample 2920168 on 18 July 2014. The Athlete has not challenged the fact that he provided said samples.
157. The 2015 LIMS Copy that contains the results of the ITP analysis carried out by the Moscow Laboratory indicates that both sample 2916392 and sample 2920168 contained three AASs and/or their metabolites, i.e. trenbolone, metenolone, and oxandrolone.
158. The e-mails between the Moscow Laboratory and the Russian Ministry of Sports identified as EDP0392, EDP0393, and EDP0395 also indicate that sample 2916392 contained three AASs. In EDP0395, Mr Mikhaylevskiy's name (written as Mihailovsky in the English version) is connected to sample 2916392.
159. The e-mails identified as EDP0432 and EDP0434 also indicate that sample 2920168 contained three AASs. In EDP0434, Mr Mikhaylevskiy's name (written as Mihailovsky in the English version) is connected to sample 2920168.
160. Based on the above findings and evidence, the Sole Arbitrator is comfortably satisfied that Mr Mikhaylevskiy has used three prohibited substances and thus committed an ADRV under Article 2.2 of the 2009 ADR on or before 18 June 2014.

m. Evidence – Mr Sergej Fedorovtsev

161. WR has submitted two DCFs concerning samples provided by Mr Fedorovtsev: sample 2920086 on 18 June 2014 and sample 2916364 on 18 July 2014. The Athlete has not challenged the fact that he provided said samples.
162. The 2015 LIMS Copy that contains the results of the ITP analysis carried out by the Moscow Laboratory indicates that both sample 2920086 and sample 2916364 contained three AASs and/or their metabolites, i.e. trenbolone, metenolone, and oxandrolone.
163. The e-mails between the Moscow Laboratory and the Russian Ministry of Sports identified as EDP0392, EDP0393, and EDP0395 also indicate that sample 2920086 contained three AASs. In EDP0395, Mr Fedorovtsev's name (written as Fedortsev in the English version) is connected to sample 2920086.
164. The e-mails identified as EDP0432 and EDP0434 also indicate that sample 2916364 contained three AASs. In EDP0434, Mr Fedorovtsev's name (written as Fedortsev in the English version) is connected to sample 2916364.
165. Based on the above findings and evidence, the Sole Arbitrator is comfortably satisfied that Mr Fedorovtsev has used three prohibited substances and thus committed an ADRV under Article 2.2 of the 2009 ADR on or before 18 June 2014.

B. What are the appropriate consequences to be imposed on the Athletes?

a. Period of ineligibility

Basic sanction and aggravating circumstances under the 2009 ADR

166. The Sole Arbitrator first notes that WR has not requested any ineligibility period to be imposed on Mr Fedorovtsev. Therefore, the following reasoning is limited only to Mr Ryabtsev, Mr Kleshnev, and Mr Mikhaylevskiy.
167. The Sole Arbitrator has concluded above that Messrs Ryabtsev, Kleshnev, and Mikhaylevskiy have violated Article 2.2 of the 2009 ADR. WR does not even allege that the Athletes would have been found guilty of committing ADRVs prior to these cases. It follows that the findings of the Sole Arbitrator in this Award are the Athletes' first violations.
168. Article 10.2 of the 2009 ADR provides, in so far as relevant, as follows:

"The period of Ineligibility imposed for a violation of (...) Article 2.2 (Use or Attempted Use of Prohibited Substance or Prohibited Method) (...) shall be as follows, unless the conditions for eliminating or reducing the period of Ineligibility, as provided in Articles 10.4 and 10.5, or the conditions for increasing the period of Ineligibility, as provided in Article 10.6, are met:

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

169. Article 10.6 of the 2009 ADR on aggravating circumstances reads, in the relevant parts, as follows:

"If FISA establishes in an individual case involving an anti-doping rule violation other than violations under Article 2.7 (Trafficking) and 2.8 (Administration) that aggravating circumstances are present which justify the imposition of a period of Ineligibility greater than the standard sanction, then the period of Ineligibility otherwise applicable shall be increased up to a maximum of four years unless the Rower (...) can prove to the comfortable satisfaction of the hearing panel that he did not knowingly violate the anti-doping rule. (...)"

170. In addition, Article 10.7.4 of the 2009 ADR sets out that *"the occurrence of multiple violations may be considered as a factor in determining Aggravating Circumstances (Article 10.6)"*.

171. In the WR ADR, *"Aggravating Circumstances"* have been defined as follows:

"Circumstances involving, or actions by, a Rower (...) which may justify the imposition of a period of Ineligibility greater than the standard sanction. Such circumstances and actions shall include, but are not limited to: the Rower (...) Used or Possessed multiple Prohibited Substances (...), Used or Possessed a Prohibited Substance (...) on multiple occasions or committed multiple other anti-doping rule violations; a normal individual would be likely to enjoy the performance-enhancing effects of the anti-doping rule violation(s) beyond the otherwise applicable period of Ineligibility; the Rower (...) engaged in deceptive or obstructive conduct to avoid the detection or adjudication of an anti-doping rule violation; or the Rower (...) engaged in Tampering during Results Management. For the avoidance of doubt, the examples of circumstances and conduct described herein are not exclusive and other similar circumstances or conduct may also justify the imposition of a longer period of Ineligibility."

172. Although not directly applicable to the violations that took place in 2014, the definition of aggravating circumstances in the WR ADR can be used as guidance in interpreting Article 10.6 of the 2009 ADR also in the three Athletes' cases.
173. Mr Ryabtsev, Mr Kleshnev, and Mr Mikhaylevskiy have not advanced any submissions for the purposes of eliminating or reducing the periods of ineligibility under Articles 10.4 or 10.5 of the 2009 ADR. The Athletes simply deny having used any prohibited substances. WR submits that a number of aggravating factors are relevant in the present cases of Mr Ryabtsev, Mr Kleshnev, and Mr Mikhaylevskiy: said Athletes (1) used three different AASs, and (2) were part of a sophisticated cover-up scheme and received protection from the Russian government on two occasions. In

addition, (3) Mr Ryabtsev and Mr Mikhaylevskiy have committed multiple violations. WR has also submitted that (4) Mr Kleshnev continues to engage in deceptive and obstructive conduct to avoid the detection of his ADRV. In WR's view, these circumstances justify a four-year ineligibility period for each of the three Athletes. Therefore, the Sole Arbitrator must consider whether there are such aggravating circumstances present that may justify an increase in the ineligibility periods pursuant to Article 10.6 of the 2009 ADR.

174. The three Athletes have disputed WR's position emphasising that there is no evidence that the alleged cover-up scheme was implemented with the Athletes' knowledge. The Athletes have also challenged Professor Ayotte's expert report and its findings on the administration and re-administration of the prohibited substances. They submit that instead of a four-year ineligibility period, the sanction should be two years, if any sanction can be imposed at all.
175. With respect to use of multiple prohibited substances, the Sole Arbitrator is comfortably satisfied that Mr Ryabtsev and Mr Mikhaylevskiy used three AASs (trenbolone, metenolone, oxandrolone) on or before 18 June 2014. The Sole Arbitrator is also comfortably satisfied that Mr Kleshnev used the same three AASs on or before 18 July 2014. These findings are based on the 2015 LIMS Copy and the EDP e-mails, which the Sole Arbitrator finds reliable and therefore to form the basis of a finding that the three Athletes have committed ADRVs. The fact that the Moscow Laboratory identified the three substances from seven Samples concerning four Athletes in a period of approximately one month, combined with the acknowledged capability of the Moscow Laboratory to identify AASs, supports a view that the seven Samples have not been false positives with respect to any of the AASs.
176. Turning to the issues of multiple violations or use of prohibited substances on multiple occasions, the Sole Arbitrator finds that WR has not established that any of the three Athletes used prohibited substances on multiple occasions.
177. First, as Mr Kleshnev was tested only on 18 July 2014 and not on 18 June 2014, WR has not even contended that he used prohibited substances on multiple occasions.
178. Second, according to Professor Ayotte's expert report, the concentrations of prohibited substances detected in the samples of Mr Ryabtsev decreased or remained on the same level between 18 June 2014 and 18 July 2014. According to Professor Ayotte, the concentration of epitrenbolone decreased in his samples from 35 ng/mL to 28 ng/mL. Professor Ayotte has considered re-administration possible but has not described it, for example, as likely or very likely, as she has done in other contexts in her expert reports. In general, Professor Ayotte submitted in her testimony that re-administration by the Athletes was possible, but she could not be sure. The concentration of metenolone and its metabolites remained on the same level in both samples (lower than 1 ng/mL), and the concentration of oxandrolone decreased from 4.8 ng/mL in June to 1.6 ng/mL in July. In conclusion, the development of the concentrations does not justify a finding that Mr Ryabtsev used the AASs on multiple occasions. The Sole Arbitrator cannot exclude the possibility of Mr Ryabtsev administering the three AASs on only one occasion on or before 18 June 2014.
179. Third, with respect to Mr Mikhaylevskiy, the Sole Arbitrator observes that according to Professor Ayotte's report, the concentrations of all three AASs increased between the June and July samples of Mr Mikhaylevskiy. However, there is significant uncertainty whether the concentration levels show that Mr Mikhaylevskiy administered any prohibited substance on more than one occasion. Indeed, according to Professor Ayotte, the fact that the trenbolone metabolite was detected in a more than doubled concentration in the July sample only *"may suggest that it was readministered."* Regarding metenolone and oxandrolone, she has not made even this finding. In conclusion, although there are some indications of multiple use, WR has not established that Mr Mikhaylevskiy used AASs on more than one occasion.

180. Fourth, according to the Joint Statement of Mr Walker and Dr Broséus, all four Athletes were tested negative on 22 May 2014. In addition, it is undisputed that the Athletes were also tested negative on 9 August 2014. These facts indicate that the use of prohibited substances by the Athletes has not lasted for a considerably long period. On the other hand, the use seems to be connected to the preparation for the World Championships at the end of August 2014.
181. With respect to an athlete's participation in a wider doping plan or scheme, the issue has been addressed by CAS panels. For example, in CAS 2019/A/6167 (paragraph 237), a panel noted the following:
- "Whereas the Panel is comfortably satisfied that the Athlete used prohibited substances, it is not known precisely when and how the prohibited substances were used. Without any evidence as to the state of knowledge of the Athlete at the time of ADRVs, the Panel cannot be satisfied to the required standard that she was aware that she was part of a wider 'doping plan or scheme' orchestrated by Dr. Rodchenkov, his colleagues and collaborators. The Panel finds that although such a doping plan or scheme did exist in Russia at the relevant time, it has not been established that the Athlete was a knowing participant. It may be argued that due of the nature [of the] prohibited substances in this case (anabolic agents), the Athlete must have known of their use. However, there is no evidence before the Panel to demonstrate that the Athlete knew that 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, of itself, amount to an aggravating circumstance (...)"*
182. Turning back to the facts of the present cases, the Sole Arbitrator notes that there is no evidence establishing that the Athletes were aware of a wider doping plan or scheme at the time the prohibited substances were used. Even though the facts of the cases indicate that the four athletes were part of a joint doping effort amongst themselves, there is no evidence of such small-scale scheme, either. There is no information about the precise circumstances in which the AASs were administered by the Athletes, i.e. when, where, and how the prohibited substances were used. The mere facts that (1) there was a doping scheme in Russia in 2014 and (2) the Athletes were protected by the Russian Ministry of Sports when the Samples were found to contain AASs and their metabolites do not mean that the Athletes were part of such scheme.
183. In fact, the evidence lends some support to a finding that the Athletes were not part of a wider scheme: in EDP0392, Mr Sobolevsky asks Dr Rodchenkov whether *"rowing [is] one of the ministerial programmes too?"*, and in EDP0395 Dr Rodchenkov comments that *"[i]t's a well known combination but nevertheless, 'experiments' like this must be authorised somehow and we should be notified too, they can't be part of the usual pool"*. In the Sole Arbitrator's interpretation, to Mr Sobolevsky's and Dr Rodchenkov's knowledge, the Athletes were not part of a wider doping scheme at least before their Samples turned positive in the ITPs performed by the Moscow Laboratory.
184. In conclusion, the Sole Arbitrator notes that WR has not established that the three Athletes were part of a doping plan or scheme or otherwise engaged in deceptive or obstructive conduct that would in itself justify a finding of an aggravating circumstance.
185. Based on the above, the Sole Arbitrator concludes that the use of multiple prohibited substances by the Athletes is the only aggravating circumstance that WR has established. Therefore, there are no grounds for imposing the maximum length of the ineligibility period provided for in the 2009 ADR, i.e. four years. On the other hand, the use of multiple prohibited substances shall be considered an aggravating circumstance that may lead to an increased ineligibility period. In these circumstances, the Sole Arbitrator considers that only a moderate increase of three (3) months above the standard sanction of two years is appropriate under Article 10.6 of the 2009 ADR. It follows that Mr Ryabtsev,

Mr Kleshnev, and Mr Mikhaylevskiy are sanctioned with a period of ineligibility of two (2) years and three (3) months.

Personality rights and the principle of proportionality

186. The Athletes, who have consented to the anti-doping system and regulations by participating in international-level sports, submit that the principle of proportionality requires that no sanction shall be imposed as any sanction would be disproportionate. They note that they are accused of having committed ADRVs in June and July 2014 and WR is not accusing them of still being unclear. Consequently, they should not be prevented from participating in competitions at present. In addition, the Athletes have submitted that requesting a four-year ineligibility period for Mr Kleshnev is disproportional as he is accused of only one ADRV, whereas the other Athletes are accused of ADRVs relating to two samples.
187. WR submits that the anti-doping code has been found proportional and the principle of proportionality is not applicable in the Athletes' cases.
188. The Sole Arbitrator concurs with WR. The WADC has repeatedly been found proportional in its approach to sanctions. This has been confirmed in various CAS Awards (e.g. CAS 2008/A/1489 paragraph 7.19, and CAS 2018/A/5546 & 5571 paragraphs 86-87). In a recent Award, the CAS panel found that *"the principle of proportionality is already built into the system of imposing sanctions under the WADC"* (CAS 2023/A/9550 & 9586 & 9607, paragraph 284) and quoted the following passage of CAS 2018/A/5958:

"[T]he WADC (...) has the principle of proportionality built into it within the nature of its sanctioning regime. It is on this basis of proportionality that the concepts of 'no fault or negligence' and 'no significant fault or negligence' are conceived and applied in the rules, and which provide the potential basis for an elimination or reduction of an athlete's suspension within an otherwise strict-liability regime. There is, as such, no separate basis of 'proportionality' on which to reduce an athlete's suspension for an anti-doping rules violation."

189. Therefore, a sanction that follows the principles of the WADC should not be adjusted. Only very special circumstances, i.e. a gap in the rules, could justify a reduction in an individual case. The Athletes have not established that such special circumstances are present in any of the matters at hand. Instead, the Sole Arbitrator has found above that the facts of the cases justify the imposition of a slightly increased ineligibility period on Mr Ryabtsev, Mr Kleshnev, and Mr Mikhaylevskiy due to aggravated circumstances. On the other hand, the Sole Arbitrator has dismissed WR's request concerning a four-year ban on them.

b. Commencement of the periods of ineligibility of Mr Ryabtsev, Mr Kleshnev, and Mr Mikhaylevskiy

190. WR has submitted that the periods of ineligibility of Messrs Ryabtsev, Kleshnev, and Mikhaylevskiy shall start on the date of the final hearing decision providing for ineligibility and that any periods of provisional suspension effectively served shall be credited against the total periods of ineligibility. The Athletes have submitted that the ineligibility periods should begin on 13 April 2021 because of the substantial delays in the hearing process that are not attributable to them. In any case, the Athletes shall receive a credit for the provisional suspension.
191. Article 10.9 of the 2009 ADR provides as follows:

"Except as provided below, the period of Ineligibility shall start on the date of the hearing decision providing for ineligibility (...)"

10.9.1 Delays Not Attributable to the Rower or other Person

Where there have been substantial delays in the hearing process or other aspects of Doping Control not attributable to the Rower (...), FISA or Anti-Doping Organization imposing the sanction 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.

(...)

10.9.3 If a Provisional Suspension is imposed and respected by the Rower, then the Rower shall receive a credit for such period of Provisional Suspension against any period of Ineligibility which may ultimately be imposed.”

192. Mr Ryabtsev, Mr Kleshnev, and Mr Mikhaylevskiy have been provisionally suspended since 13 April 2021, and it has not been alleged that they have violated the provisional suspensions. Accordingly, their periods of ineligibility are deemed to commence on that date.

c. Disqualification of results

193. WR has requested the disqualification of all competitive results of Mr Ryabtsev, Mr Mikhaylevskiy, and Mr Fedorovtsev from and including 18 June 2014 until 13 April 2021 and of Mr Kleshnev from and including 18 July 2014 until 13 April 2021. In the alternative, WR submits that the period of disqualification should correspond with the duration of the ineligibility periods, i.e. four years.
194. The Athletes have disputed WR's position. They submit that the fairness exception of 2009 ADR applies for a number of reasons. First, the sought disqualification period is almost double the maximum period of ineligibility that can be imposed. Second, WR has not requested any period of ineligibility regarding Mr Fedorovtsev. Third, any disqualification period would be unfair in light of CAS case law. The Samples were collected out of competition, and there is no evidence that the ADRVs impacted the level playing field. In addition, the Athletes underwent numerous doping tests in Russia and abroad from 2014 until 2021, and WR does not even allege that the Athletes committed other ADRVs beyond summer 2014.
195. According to Article 10.8 of the 2009 ADR (Article 10.10 of the WR ADR is essentially similar):

“In addition to the automatic Disqualification of the results in the Competition which produced the positive Sample under Article 9 (...), 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.”

196. Pursuant to the 2009 ADR, the disqualification of results is the main rule and applying fairness would be an exception. Thus, in principle, all results of the Athletes from a period of almost seven (7) years should be disqualified. However, results may remain valid if fairness so requires in the circumstances of each case. The factors to be assessed in the fairness test include, but are not restricted to, the athlete's intent and degree of fault, as well as the length of the disqualification period.
197. The fairness exception is an embodiment of the principle of proportionality, which, according to established CAS case law, must be applied in doping cases. The sanction to be imposed for an ADRV must be proportional considering the length of the ineligibility period and the disqualification of results, together and alone. Although the main purpose of the disqualification of results is not to punish the transgressor but rather to correct any unfair advantage and to remove any tainted performances from the record, having regard to the fact that the disqualification of results entail the forfeiture of any medals, points, and prizes, disqualification may be considered equal to a retroactive ineligibility period and therefore a sanction.

198. There is plenty of CAS case law on the disqualification of results and the fairness exception. In retesting cases concerning a single positive sample, which the present cases resemble, the disqualification period is many times connected to the length of the ban. The underlying logic is that the athlete would not have been able to compete during such period had the ADRV been detected immediately. In cases where an athlete has engaged in doping practices for an extended period of time, the CAS panels have not hesitated to disqualify all the results of an athlete who has been shown to have administered prohibited substances or used prohibited methods for a number of years. Conversely, the CAS panels have frequently applied the fairness exception and let results remain partly in force when the potential disqualification period extends over many years and there is no evidence that the athlete has committed ADRVs over the whole period from the ADRV to the commencement of the provisional suspension or the ineligibility period. For example, in CAS 2019/A/6168, the CAS panel disqualified the athlete's results for approximately one year and a half after the last ADRV and for approximately two years and a half, when the period from the first ADRV until the rendering of the award extended to six and a half years. The CAS case law confirms that the panels have broad discretion in adjusting the disqualification period to the circumstances of the case.
199. The Sole Arbitrator notes that WR has requested the disqualification of results from a period extending to no less than almost seven years, which is considerably longer than the maximum period of ineligibility of four years that could have been imposed under the applicable rules and the periods of ineligibility of two years and three months imposed by the Sole Arbitrator on Messrs Ryabtsev, Kleshnev, and Mikhaylevskiy.
200. While the disqualification of results for a period exceeding six years would, as such, comply with the language of the applicable rules, the circumstances of the cases as well as the principle of fairness do not support this. The Sole Arbitrator does not consider it fair to disqualify any and all results of the Athletes between (1a) 18 June 2014 in Mr Ryabtsev's, Mr Mikhaylevskiy's and Mr Fedorovtsev's case, (1b) 18 July 2014 in Mr Kleshnev's case, and (2) the commencement of the provisional suspensions on 13 April 2021 on the following grounds.
201. The Athletes have committed ADRVs on or before 18 June 2014 or on or before 18 July 2014 in Mr Kleshnev's case, when they administered AASs. The nature of the substances found in the Athletes' Samples is consistent with intentional use of prohibited substances to improve sporting performance. Considering the main effects of exogenous anabolic steroids, it is obvious that the Athletes have gained advantage even after summer 2014. Therefore, it would not be fair on the other athletes who have competed against the Athletes if their results immediately after 18 July 2014 remained untouched. The undisputed fact that each Athlete provided a negative sample on 9 August 2014 does not change this conclusion. On the other hand, there indeed is no evidence of other ADRVs in the period between 18 July 2014 and the commencement of the provisional suspensions. Moreover, the Athletes have not been able to influence the timing of the investigative measures taken by anti-doping authorities.
202. In the circumstances of the present cases, it is not appropriate to maintain all results between the ADRVs and the commencement of the provisional suspensions (ineligibility periods) on the basis of fairness. The Athletes have endeavored to enhance their sporting performance with prohibited substances, thereby gaining unjustified advantage over their rivals. The Sole Arbitrator finds it appropriate to disqualify the Athletes' results until 31 December 2015, i.e. for approximately one and a half years after the last ADRV.

C. Compensation for any period of suspension served in excess of the ineligibility period ordered

203. Mr Ryabtsev, Mr Kleshnev, and Mr Mikhaylevskiy have requested that *"according to the principles of fairness and proportionality"* WR be ordered to compensate them for any period of suspension served

that exceeds the period of an eventual ineligibility. Said Athletes have been provisionally suspended from 13 April 2021 until 14 April 2025, i.e. four years and one day. The Sole Arbitrator has found above that the same Athletes shall be sanctioned with ineligibility periods of two years and three months. Put differently, the provisional suspensions they have served exceed the final ineligibility periods.

204. WR has objected to the claim presented by Messrs Ryabtsev, Kleshnev, and Mikhaylevskiy. First, WR has submitted that the claim falls outside the scope of the arbitration clause and thus the jurisdiction of the ADD. Second, according to WR, there have been no delays that can be attributed to either the ITA or WR.
205. The Sole Arbitrator observes that the jurisdiction of the ADD is limited by Article 8 of the WR ADR, which only concerns “*results management*” under the applicable anti-doping rules. Furthermore, the jurisdiction of the ADD is restricted by Articles A1 and A2 of the ADD Rules. According to Article A1 of the ADD Rules, the ADD “*has been established to hear and decide anti-doping cases as a first-instance authority pursuant to a delegation of powers*” from, inter alia, international federations. Article A1 goes on to note that “[t]hese WADC signatories have delegated their powers to CAS ADD to decide whether or not there has been a violation of their anti-doping rules, as well as to decide any sanction, if applicable, in accordance with the WADC”. Article A2 of the ADD Rules limits the jurisdiction of the ADD to “*conduct proceedings and issue decisions when an alleged anti-doping rule violation has been filed with it and for imposition of any sanctions resulting from a finding that an anti-doping rule violation has occurred*”. Nothing in the WR ADR or the ADD Rules indicate that the ADD would have jurisdiction to adjudicate monetary claims of the sort presented by Mr Ryabtsev, Mr Kleshnev, and Mr Mikhaylevskiy.
206. Based on the above, the Sole Arbitrator finds that he lacks jurisdiction to adjudicate the claims for compensation presented by Mr Ryabtsev, Mr Kleshnev, and Mr Mikhaylevskiy.

VIII. COSTS

(...)

IX. APPEAL

215. Article 13 of the WR ADR provides in its essential parts as follows:

“13.2 A decision that an anti-doping rule violation was committed, a decision imposing Consequences or not imposing Consequences for an anti-doping rule violation, or a decision that no anti-doping rule violation was committed (...) may be appealed exclusively as provided in this Article 13.2.

13.2.1 Appeals Involving International-Level Rowers or International Events

In cases arising from participation in an International Event or in cases involving International-Level Rowers, the decision may be appealed exclusively to CAS.

(...)

13.6.1 Appeals to CAS

The time to file an appeal to CAS shall be twenty-one (21) days from the date of receipt of the decision by the appealing party. (...)”

216. Pursuant to Article 13 of the WR ADR and Article A21 of the ADD Rules, this Award may be appealed to the CAS Appeals Arbitration Division within 21 days from receipt of the notification of the final Award with reasons. Such appeal is to be filed in accordance with Articles R47 *et seq.* of the Code of Sports-Related Arbitration, applicable to appeals procedures.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The Requests for Disciplinary Proceedings filed by World Rowing on 10 November 2021 against Mr Vladislav Ryabtsev, Mr Denis Kleshnev, Mr Vyacheslav Mikhaylevskiy, and Mr Sergej Fedorovtsev are partially upheld.
2. Each of Mr Vladislav Ryabtsev, Mr Denis Kleshnev, Mr Vyacheslav Mikhaylevskiy, and Mr Sergej Fedorovtsev are found to have committed an anti-doping rule violation of use of prohibited substances pursuant to Article 2.2 of the 2009 ADR.
3. Each of Mr Vladislav Ryabtsev, Mr Denis Kleshnev, and Mr Vyacheslav Mikhaylevskiy are sanctioned with a period of ineligibility of two (2) years and three (3) months.
4. The periods of ineligibility of Mr Vladislav Ryabtsev, Mr Denis Kleshnev, and Mr Vyacheslav Mikhaylevskiy are deemed to have commenced on 13 April 2021, which is the date when the provisional suspensions imposed on Mr Vladislav Ryabtsev, Mr Denis Kleshnev, and Mr Vyacheslav Mikhaylevskiy started to run.
5. All competitive results of Mr Vladislav Ryabtsev, Mr Vyacheslav Mikhaylevskiy, and Mr Sergej Fedorovtsev from and including 18 June 2014 to and including 31 December 2015 are disqualified with all resulting consequences, including forfeiture of any medals, points, and prizes. All competitive results of Mr Denis Kleshnev from and including 18 July 2014 to and including 31 December 2015 are disqualified with all resulting consequences, including forfeiture of any medals, points, and prizes.
6. It does not have jurisdiction to decide on the claims for compensation by Mr Vladislav Ryabtsev, Mr Denis Kleshnev, and Mr Vyacheslav Mikhaylevskiy.
7. (...).
8. (...).
9. All other motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Date: 13 April 2026

THE ANTI-DOPING DIVISION OF THE COURT OF ARBITRATION FOR SPORT

Markus Manninen
Sole Arbitrator