CAS 2020/A/6834 Svetlana Sleptsova v. International Biathlon Union (IBU)

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President:	Mr André Brantjes, Attorney-at-Law in Amsterdam, The Netherlands
Arbitrators:	Mr Rui Botica Santos, Attorney-at-Law in Lisbon, Portugal
	Mr Jacques Radoux, Référendaire in Luxembourg, Luxembourg
Clerk :	Ms Stéphanie De Dycker, CAS Clerk, Lausanne, Switzerland

in the arbitration between

Ms Svetlana Sleptsova, Russia

Represented by Mr Yvan Henzer, Attorney-at-Law, Libra Law SA, Lausanne, Switzerland and Herbert Smith Freehills CIS LLP, Moscow, Russia

Appellant

and

International Biathlon Union (IBU), Salzburg, Austria

Represented by Dr Stephan Netzle and Dr Karsten Hofman, Attorneys-at-Law, Times Attorneys AG, Zurich, Switzerland

Respondent

I. PARTIES

1. Ms Svetlana Sleptsova (the "Athlete" or "Appellant") is a former Russian biathlete with an international-level career. The Athlete won several medals, notably at the 2008 and 2009 World Championships as well as at the 2010 Winter Olympic Games and European Championship. The Athlete retired from biathlon after the end of the 2016/2017 World Cup.

2. The International Biathlon Union (the "IBU" or "Respondent") is the world governing body of biathlon having its registered offices in Salzburg, Austria.

3. The Appellant and the Respondent are collectively referred to as the "Parties".

II. FACTUAL BACKGROUND

4. Below is a summary of the relevant facts and allegations based on the Parties' written submissions, pleadings and evidence adduced at the hearing. Additional facts and allegations found in the Parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in this award (the "Award") only to the submissions and evidence it considers necessary to explain its reasoning.

5. The present appeal was brought by the Athlete against the 11 February 2020 decision (the "Decision") of the IBU Anti-Doping Hearing Panel (the "IBU ADHP"), according to which she was found guilty of use of a prohibited substance or a prohibited method under Article 2.2 of the IBU Anti-Doping Rules (the "IBU ADR"), was found ineligible for a period of two years and got disqualified from all her competitive results as from that date of the sample collection, *i.e.* 22 March 2013, up to her retirement at the end of the 2013/2014 World Cup season with all the resulting consequences for medals, points and prizes. As will be explained below in more detail, in support of its case, the IBU relies mainly on the data retrieved from the World Anti-Doping Agency ("WADA") accredited laboratory in Moscow (the "Moscow Laboratory"), which the Athlete contests.

A. Background of the Dispute: The Russian Doping Scheme

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

7. On 9 November 2015, the Independent Commission submitted its report to WADA entitled "The Independent Commission Report #1 – Final Report". In the report, the Independent Commission (inter alia): (a) identified systemic failures to the extent that neither RUSADA nor the Russian Federation can be considered to be acting in

compliance with the WADA Code (the "WADC"); and (b) confirmed the existence of widespread cheating through the use of doping substances and methods to ensure, or enhance the likelihood of, victory for athletes and teams. The Independent Commission also recommended, among other things, that the Russian Anti-Doping Agency (the "RUSADA") be declared non-compliant with the WADC and that the WADA accreditation of the Moscow Laboratory be revoked, both of which steps were implemented by WADA on 18 November 2015.

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

9. On 19 May 2016, WADA announced the appointment of Prof. Richard McLaren as an Independent Person (the "IP") to investigate the allegations made by Dr Rodchenkov.

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

11. On 9 December 2016, Prof. McLaren issued a second report (the "Second McLaren Report"), in which he identified a number of athletes who appeared to have been involved in or benefited from the systematic and centralised cover-up and manipulation of the doping control process.

12. Accompanying the Second McLaren Report was a cache of non-confidential documents examined by the IP during the investigation which was named as the "Evidence Disclosure Package" or "EDP".

B. The WADA LIMS and the Moscow LIMS

13. In October 2017, WADA received an extract of the Laboratory Information Management System ("LIMS") of the Moscow Laboratory (the database used by the Moscow Laboratory to store results of testing of samples) from a whistle-blower. That extract related to samples obtained in the period from January 2012 to August 2015 (the "WADA LIMS" or the "2015 LIMS"). The WADA LIMS copy was found to include presumptive adverse analytical findings made on the initial testing of samples which had not been reported in WADA Anti-Doping Administration & Management Systems (the "ADAMS") (a web-based database management system for use by WADA's stakeholders), nor followed up with confirmation testing.

14. In the context of the re-instatement procedure of RUSADA as compliant with the WADC, a WADA expert team was permitted to enter the Moscow Laboratory between 10 and 17 January 2019, and make copies of the Moscow Data. Over 23 terabytes of data were obtained, including a copy of the LIMS database (the "Moscow LIMS" or "2019 LIMS"). In April 2019, Russian authorities sent to WADA a large number of samples that had been in storage in the Moscow Laboratory.

C. The Sample

15. The present appeal concerns urine doping control sample nr. 2784294 provided in-competition by the Athlete in Uvat, Russia on 22 March 2013 for analysis by RUSADA.

16. The Moscow Laboratory did not report an Adverse Analytical Finding ("AAF") in ADAMS with respect to the Sample.

17. However, according to the IBU:

- The WADA LIMS indicates that both the Initial Testing Procedure (the "ITP") and the confirmation procedure (the "CP") performed on the Sample showed the presence of ostarine and EPO, both prohibited substances, and that the Sample should therefore have been reported as an AAF.

- In furtherance of what became known as the Russian doping scheme (as described above), the Moscow Laboratory, however, falsely recorded the analytical results of the Sample in ADAMS as negative so that the Athlete could avoid the consequences of an AAF.

18. Based on such information, the IBU notified the Athlete on 16 September 2018 that an anti-doping rule violation ("ADRV") had occurred by way of her "use" of a prohibited substance or a prohibited method under Article 2.2 IBU ADR, and that "aggravating circumstances" pursuant to Article 10.6 IBU ADR existed, which justify the imposition of a period of ineligibility of four years.

19. In its letter of 16 September 2018, the IBU invited the Athlete to provide an explanation for the possible ADRV for her use of ostarine and EPO within 14 days of receipt, which she did, disputing having committed an ADRV.

D. Proceedings before the Anti-Doping Hearing Panel of the IBU

20. By letter of 24 October 2018, the IBU referred the matter to the IBU ADHP.

21. On 24 October 2018, the IBU submitted its application to the IBU ADHP.

22. On 19 December 2018, the Athlete filed her Answer.

23. By letter of 30 December 2018, the IBU and the Athlete were notified that pursuant to the IBU ADR, a panel had been established to hear the Athlete's case.

24. On 1 February 2019, the IBU filed its Response.

25. On 28 February 2019, the Athlete filed her Response.

26. On 24 April 2019, a first hearing was held in presence of both Parties and their representatives.

27. On 9 July 2019, the IBU ADHP issued a procedural order affording both Parties the opportunity to file and submit further evidence and submissions.

28. On 16 September 2019, the IBU filed its additional submissions.

29. On 22 November 2019, the Athlete filed her additional submissions.

30. On 10 December 2019, a second hearing was held.

31. On 11 February 2020, the IBU ADHP rendered the Decision, as follows:

> *"i. Svetlana Sleptsova has committed an anti-doping rule violation for 'use' of a prohibited substance, in contravention to Article 2.2 IBU ADR.*
>
> *ii. Svetlana Sleptsova is ineligible to compete for a period of two years from the date of this decision.*
>
> *iii. All competitive results obtained by Svetlana Sleptsova in the competitions she participated in from 22 March 2013 through to her retirement at the end of the 2013/14 World Cup season are disqualified with all resulting consequences for medals, points and prizes.*
>
> *iv. Each party bears its own costs of and incidental to this proceeding."*

32. The reasoning of the Decision can be summarized as follows:

> *"[…] **Summary of the IBU's Further Written Submissions***
> *[…] On 16 September 2019 the IBU files and serves additional submissions in anticipation of the second hearing. […] In its executive summary, IBU confirms that it is only charging the Athlete with an ADRV for her 'use' of Ostarine, as discovered by way of the analysis of her urine sample 2784294. Though the IBU no longer brings any charges against the Athlete in relation to the EPO finding and other samples identified in its Application, IBU nonetheless requests for the Panel to keep these other samples in mind when determining the quantum of the Athlete's sanction in consideration of 'aggravating circumstances'.*
> ***Applicable Law***
> *[...] The parties agree that the Athlete is bound by the IBU Anti-Doping Rules of the IBU Integrity Code effective in full force as of October 19, 2019 (the present IBU ADR), by virtue of her membership to RBU and IBU and pursuant to Article 1.2.1 of the present IBU ADR. […]*
> ***Jurisdiction***
> *[…] Regarding the procedural issues of the dispute, this matter was assigned to the ADHP in November 2018, under the IBU ADR in effect at that time. […]*
> *[…] However, the disciplinary procedures for this dispute were already well under way and a second hearing pending at the date the present IBU ADR became effective. The present IBU ADR are silent regarding the transfer of ongoing cases before the ADHP to the new IBU dispute resolution mechanism. Therefore, the ADHP continues to be the competent body to settle this dispute.*
> *[…] As stated at par. 20 supra, neither party challenged this Panel's jurisdiction to adjudicate this dispute at any time, nor the appointment of any Panel member or its composition. […]*

Burden and Standard of proof

[…] [T]he standard of proof to establish that an ADRV has occurred, even in a 'use' case, remains that of a comfortable satisfaction, and not that of beyond a reasonable doubt.

[…] However, IBU's evidence supporting the charge of aggravating circumstances pursuant to Article 10.6 IBU ADR and which carries up to a four year period of ineligibility, must be even more persuasive than the evidence supporting the charge of 'use' pursuant to Article 2.2 IBU ADR because 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 'comfortable satisfied'. […]

Reliable Means

The Panel must therefore determine if IBUs evidence and means of proving the ADRV for 'use' are reliable. Taking into consideration all the relevant circumstances of the case, the Panel must be persuaded that IBU's evidence is credible and sufficiently reliable to meet the Panel's comfortable satisfaction.

ISSUES FOR DETERMINATION […]

1. Have any departures from International Standards occurred?

i. Has a departure to the ISTI occurred which could reasonably have caused the PAAF or IBU's factual basis for the ADRV charge, e.g. the data contained in the LIMS database?

The Panel's determination is that by way of her submissions, both written and oral, the Athlete fails to bring forth any arguments to support her allegation that a departure from the ISTI might have caused the PAAF for Ostarine. She, therefore, does not establish to the required standard that a departure from the ISTI could reasonably have caused the PAAF or IBU's factual basis for the ADRV charge, e.g. the data contained in the LIMS database.

ii. Has a departure to ISL occurred which could reasonably have caused the PAAF or IBU's factual basis for the ADRV charge, e.g. the data contained in the LIMS database?

[…]

The chain of custody

Even if the actual internal Chain of Custody Forms are missing, through no fault of IBUs, from the extensive WADA LIMS data and Moscow LIMS data, the associated Chain of Custody Form and the spreadsheet entries, the Panel is satisfied that one can easily discern the movement of the Athlete's sample within the Laboratory throughout the various stages of analysis.

[…] The Panel finds that the missing internal Chain of Custody Form could not have reasonably caused or resulted in the Athlete's PAAF. If anything, as argued by IBU and established in its evidence, the Panel may infer that the fact that no Chain of Custody Forms are available is likely to result from the many efforts undertaken to hide and manipulate data at the time.

The Absent Laboratory Documentation Packages ('Doc Packs') and Quality Management Systems ('QMS')

[…] More importantly, the non-availability of a Doc Pack is not in itself a cause to decide in favor of an athlete in a 'use' case. While in this case, the existence of a Doc Pack would likely be considered one of a number of reliable means of proof, neither its absence nor the Moscow Laboratory's lacking QMS render the IBU's charge groundless or without merit so long as 'use' is established by any other 'reliable mean' and so long as this Panel is satisfied that sufficient safeguards have been observed.

The 'zero' concentration

[...] The Athlete submits that because the concentration of Ostarine was reported as 'zero' in the WADA LIMS and because the Moscow LIMS shows no presence of Ostarine whatsoever, IBU charge must be withdrawn.

[…] The Panel accepts Dr Gmeiner's evidence according to which the recording a concentration of 'zero' in the field reserved for this purpose is of little relevance to a finding that the substance was detected in the Athlete's sample.

[…] Dr Gmeiner explains, and the Panel accepts, that a zero figure in the concentration column/filed when a substance is detected is not uncommon when there is no limit of detection. So long as the substance is detected in a sample further to analysis, there is no need to report an actual concentration, and therefore laboratories will put 'zero' in that field to complete the exercise.

Determination on the ISL

[…] For the reasons above, the Panel fails to see how any of the alleged departures from the ISL highlighted by the Athlete could have caused the PAAF or IBU's factual basis for this case. […]

The fact that an SOP is not in place, or that a confirmation method may not have been validated or that the concentration of a detected substance was abnormally listed as 'zero', does not and cannot of its own lead to the conclusion that such departures caused the PAAF for Ostarine.

[…] This Panel has been given no compelling reason to find that the information found in the WADA LIMS related to this sample was the result of or caused by any shortcoming of the Moscow Laboratory in its custodial procedures.

[…] The evidence shows that although the Moscow Laboratory appears to have had shortcomings in some of its custodial procedures, these could not reasonably have caused the PAAF for Ostarine – as is required for the Athlete to succeed on this point.

[…] Pursuant to Article 3.2.1 IBU ADR, because it was operating as a functional WADA-accredited laboratory at the time of the analysis of sample 2784294, the presumption remains that the Moscow Laboratory conducted its sample analysis and custodial procedures in accordance with the ISL and all applicable ISO standards.

[…] In view of the above, the Panel accepts the Moscow Laboratory's non-conformities could neither have reasonably caused the presumptive adverse analytical finding of Ostarine in the Athlete's sample nor IBU's factual basis for its allegations against her.

2. Does IBU establish that the Athlete committed an ADRV? *[…]*

i. Is the WADA LIMS reliable evidence?

[…] Having examined the WADA LIMS spreadsheets at length, this Panel understands from the hard data provided in the IBU Operation LIMS investigation Report and other related evidence, that the information from the LIMS master data file referring to the Athlete's sample 2785294 confirms, among others, that a presumptive AAF for sample 2785294 was reported and detected Ostarine. The WADA LIMS also provides evidence

that a confirmation procedure confirmed the finding of Ostarine and that the sample was 'hidden' and not reported in ADAMS. The Athlete is clearly identified, as is the date of the sample collection, the location of test, the PAAF, the estimated concentration etc. There is also an internal chain of custody for each step of the Moscow Laboratory's analytical and custodial process.

[…] Also, according to Mr. Walker and supported by way of his key reliability tenets below, the theoretical possibility that the Moscow LIMS could be falsely constructed or is otherwise fake, in part or in total, cannot be absolutely excluded. That said, such a construction would have required monumental time, resources, access and coordination. However, for the reasons stated above, and summarized below, that possibility, is so improbable that it must be rejected. […]

The Panel does not accept the Athlete's assertion that the whistleblower is an unknown criminal. Although their identities were initially concealed and protected by the WADA whistle-blower program, their identities have been revealed and they are in fact former employees of the Moscow Laboratory. Although the whistleblowers were not called as witnesses before the Panel, their absence does not diminish the evidentiary value of the WADA LIMS material.[…]

Reliance by Panel on the analytical facts set forth in the WADA LIMS as accurate information is founded upon four key pillars outlined by Mr. Walker in the WADA I & I Report:

i. Firstly, the analytical data for AAFs legitimately reported in ADAMS (for Russian and non-Russian athletes) by the Moscow Laboratory between January 2012 and August 2015, matches the data contained in the Moscow LIMS (Matching Using AAF Results).

ii. Secondly, 59 samples tested by the Moscow Laboratory as part of the 'external quality assurance scheme' were all correctly analyzed (EQAS Evidence).

iii. Thirdly, some of the samples which appear in the Moscow LIMS have been seized by WADA and subject to reanalysis (Sample Reanalysis), which validates the Moscow LIMS data.

iv. Fourthly, content of the McLaren Emails (e.g. Sample numbers, Presumptive AAFs) matches the associated data detailed within the Moscow LIMS.

[…] These four pillars are quite compelling and of considerable weight. Mr. Walker and Dr. Broséus' testimony, which the Panel accepts, is of the same effect and leaves very little room for reasonable doubt.

[…] The Panel therefore accepts both the expert testimony the IBU relies upon as well as the explanations provided in the WADA LIMS flowcharts and Investigative Reports as to reliability of the WADA LIMS Data.

[…] The Panel also finds that the Excel spreadsheets distributed by WADA to IBU are indeed not 'a mere spreadsheet' as asserted by the Athlete. After studying them at length, the Panel, without reservation, accepts Mr. Walker's evidence and finds that they contain a "trove of information" that has been forensically authenticated and is reliable.

[…] For the above reasons, the Panel concludes that the information contained in the WADA LIMS is 'reliable' within the meaning of Articles 2.2 and 3.2 IBU ADR.

ii. Is the Moscow LIMS reliable evidence?

[…] The Panel accepts the forensic experts' analysis that reveals that data was deleted, altered and modified, and rejects the Athlete's argument that the fact that the Moscow LIMS data was manipulated renders the WADA LIMS data unreliable.

[…] From the evidence filed before the Panel and heard at the hearing, a manipulation of the Athlete's Moscow LIMS data clearly took place (as well as that of other athletes) and was only in the Athlete's favor to protect her. Dr Broséus' evidence is that the general protection scheme undertaken by the Moscow Laboratory especially in 2013 and 2014 was designed to conceal doping by Russian athletes and not to falsely implicate them. The Panel accepts this evidence.
[…] Mr. Walker further explains that investigations have established that the WADA Data is more reliable than the Moscow Data both generally and specifically with regards to the Athlete's samples. Again, the Panel accepts Mr. Walker's evidence.
[…] Professors Souvignet and Casey describe how their forensic examination indicates that some of the Athlete's specific records were deleted, altered or overwritten in the Moscow LIMS system. This confirms both their prior existence in the WADA LIMS and Moscow LIMS databases and the fact they were selectively manipulated. The Panel accepts their evidence.
[…] Mr. Nikitin testifies and argues that the Moscow LIMS was forensically unsound. The WADA experts however provide clear and convincing evidence that it was sound. While both parties present valid arguments with regards to the reliability of the data relating to the Athlete in the Moscow LIMS, Mr. Nikitin's evidence fails to discredit Mr. Walker, Dr Broséus, and Profs Souvignet and Casey's copious evidence, which the Panel finds credible and forensically reliable.
[…] The Panel accepts Professors Casey and Souvignet's response to Mr. Nikitin's Witness Statement and report. The Moscow Laboratory processes and LIMS operation do not alter results of forensic examination of the Moscow LIMS data which, when considered in conjunction with the reliable WADA LIMS data, provides very strong evidence on the Athlete.
[…] The Moscow LIMS certainly appears to have been selectively manipulated, on suspicious dates, both for the benefit of the Athlete and to cast doubt on the reliability of the WADA LIMS data.
[…] It bears mention that based on the evidence heard with regards to the Athlete's samples, a finding that the Moscow LIMS was manipulated (as it clearly appears to have been) would not per se render it generally unreliable. This is particularly so if it can be established that the selective manipulation was solely for the benefit of protected athletes. However, this is beyond the scope of this decision.
[…] In any event, these points neither alter nor have any effect on the established reliability of the WADA LIMS for the purpose of meeting the requirements of IBU ADR Articles 2.2 and 3.2.

iii. Did the Athlete 'use' Ostarine

[…] The Panel has already decided that while the Athlete establishes that the Moscow Laboratory did not perform the entirety of its custodial procedures in accordance with the ISL, these departures from the ISL did not cause the PAAF for Ostarine or the factual basis for IBU's charge. […]
Essentially, the compelling evidence before the Panel is that the data revealed in the Moscow LIMS PDF report relating to the Athlete was selectively manipulated within the Moscow Laboratory, prior to WADA seizing the Moscow LIMS. The peaks and ions relating to the Athlete's sample and presented in the PDF report of the Moscow LIMS were altered, in order to cast doubt on the findings of the WADA LIMS. The Panel accepts this evidence. The Athlete can therefore not rely on the information contained in the PDF for 417013 or c_04122, both referring to the Athlete's sample 2784294,

because it has been established that such chromatograms and PDF's have been altered and manipulated.
[…] Other than challenging the Laboratory's custodial procedures, the Athlete also does not proffer any compelling explanation as to why the PAAF and confirmation procedure findings linked to her samples and identity were first recorded in the WADA LIMS then hidden and not reported in ADAMS, why data relating to her specific samples was manipulated in the Moscow LIMS, or why she has been expressly connected to Ostarine in both LIMS databases.
[…] Finally, there has been no evidence tendered to the Panel in respect of the Athlete's sample which leads to a compelling inference of a false positive result of Ostarine. Indeed, the underlying facts arising from the WADA LIMS data establish the opposite in stark candour – Ostarine was present in the Athlete's sample, thereby suggesting 'use' on the part of the Athlete, given that it cannot be endogenously produced.
[…] Dr Gmeiner confirms and the reliable WADA LIMS Data establishes in detail, to the comfortable satisfaction of the Panel, that the Athlete's initial screening procedures showed that Ostarine was present in the Athlete's sample and reported a PAAF as a result. The reliable WADA LIMS also shows that a confirmation procedure confirmed the presence of Ostarine in sample 2784294 and that it was hidden thereafter and not reported as an AAF in ADAMS. The Panel finds that it should have been considered an AAF and reported as such in ADAMS.
[…] Because the AAF was never reported, the Panel also accepts the IBU's approach in charging the Athlete with an ADRV for 'use', relying on all the reliable analytical and circumstantial evidence in the case file related to the WADA LIMS and all the compelling evidence that has since been brought forth regarding the Moscow LIMS data and its manipulation.
[…] Here, established facts made available by way of the WADA LIMS and reliable circumstantial evidence in support lead to a compelling inference that the Athlete used Ostarine. For the reasons above, upon careful deliberation of all the evidence before us, the Panel is comfortably satisfied that the Athlete 'used' Ostarine and therefore committed an ADRV within the meaning of Article 2.2 of the IBU ADR.
3. Do aggravating circumstances exist?
[…] Accordingly, as a matter of fact, and law, the Panel finds there is insufficient reliable direct evidence before us linking the Athlete as a knowing, willing and active participant to any organised doping scheme. Consequently, we are not comfortably satisfied that there are aggravating circumstances in this case. Thus, IBU ADR Article 10.6 does not apply.
4. What are the appropriate consequences to impose, if any?
[…] Article 10.2 IBU ADR applies to ADRVs including Article 2.2 which is an ADRV for 'use or attempted use' of a prohibited substance. It provides for a mandatory sanction of a two-year period of ineligibility for a first ADRV for 'use' of a prohibited substance, unless the conditions for eliminating or reducing the period of ineligibility under Articles 10.4 or 10.5 IBU ADR are met. However, because this case involves a non-specified substance and the Athlete never raised the issue of sanction reduction, neither Article 10.4 nor Article 10.5 IBU ADR apply here.
[…] Pursuant to Article 10.9 IBU ADR, the period of ineligibility shall start on the date of the issuance of the present decision. […]
Therefore, all competitive results the Athlete may have obtained from 23 March 2013 through to her retirement in 2014 shall be disqualified with all resulting consequences including forfeiture of any medals, points and prizes. […]"

33. The Decision was notified to the Athlete on 12 February 2020.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

34. On 4 March 2020, the Appellant filed her appeal against the Decision before the Court of Arbitration for Sport (the "CAS") and submitted her Statement of Appeal pursuant to Article R48 of the 2019 edition of the Code of Sports-related Arbitration (the "CAS Code").

35. On 13 March 2020, the Respondent requested that the present procedure be submitted to the same panel as the procedure *CAS 2020/A/6842 Evgeny Ustyugov v. International Biathlon Union*, and that the present proceedings be stayed until the CAS has rendered its final Award in the case *CAS 2020/O/6689 World Anti-Doping Agency (WADA) v. Russian Anti-Doping Federation*.

36. On 20 March 2020, the Appellant objected to the Respondent's requests (a) that the present procedure be submitted to the same Panel as the procedure *CAS 2020/A/6842 Evgeny Ustyugov v. International Biathlon Union (IBU)*; and (b) that the present proceedings be stayed until the CAS has rendered its final award in the case *CAS 2020/O/6689 World Anti-Doping Agency (WADA) v. Russian Anti-Doping Agency (RUSADA)*.

37. On 23 March 2020, the Respondent made its comments on the Appellant's letter dated 20 March 2020.

38. On 26 March 2020, the CAS Court Office informed the Parties that the Deputy President of the CAS Appeals Arbitration Division had decided that (a) the present procedure will not be consolidated nor submitted to the same Panel as the procedure *CAS/A/6842 Evgeny Ustyugov v. International Biathlon Union*, however reserving the possibility to appoint the same President in both cases, and (b) to dismiss the Respondent's request to stay the present proceedings until the CAS has rendered its final Award in the case *CAS 2020/O/6689 World Anti-Doping Agency (WADA) v. Russian Anti-Doping Agency (RUSADA)*.

39. On 30 March 2020, the Respondent nominated Mr Jacques Radoux, Référendaire in Luxembourg, as arbitrator.

40. On 20 April 2020, the Appellant filed her Appeal Brief with the CAS Court Office. In her Appeal Brief, the Appellant requested (i) the CAS Court Office to hold a public hearing in the present matter, (ii) the CAS panel to order the Respondent to disclose the WADA LIMS and the Moscow LIMS without any restriction, and (iii) to be able to file a rejoinder upon receipt of the Answer.

41. On 3 June 2020, the Respondent filed its Answer with the CAS Court Office. In its Answer, the Respondent took due note of the Appellant's request for a public hearing, and informed the CAS Court Office that it already submitted all data relating to the Athlete before the ADHP so that the Appellant's request is moot.

42. On 9 July 2020, the Appellant nominated Mr Rui Botica Santos, Attorney-at-Law in Lisbon, Portugal, as arbitrator.

43. On 17 July 2020, the Respondent informed the CAS Court Office that it preferred a hearing to be held in this matter and did not object to the Appellant's request to hold a public hearing.

44. On 24 August 2020, the CAS Court Office informed the Parties that the Panel appointed to decide the present procedure was constituted as follows:

President: Mr Franco Frattini, Attorney-at-Law in Rome, Italy

Arbitrators: Mr Rui Botica Santos, Attorney-at-Law in Lisbon, Portugal;
Mr Jacques Radoux, Référendaire in Luxembourg.

The CAS Court Office also advised the Parties that Ms Stéphanie De Dycker, CAS Clerk, would assist the Panel in this matter.

45. On 16 September 2020, the CAS Court Office informed the Parties that the Panel had decided to hold a hearing in the present matter and consulted the Parties as to possible hearing dates.

46. On 6 October 2020, the CAS Court Office informed the Parties that a hearing would be held in the present matter on 19 October 2020 in Lausanne, Switzerland, and invited the Parties to provide their list of hearing attendees.

47. On 16 October 2020, upon the Parties' joint request, the CAS Court Office confirmed that the hearing initially scheduled on 19 October 2020 was postponed.

48. On 21 October 2020, the Appellant requested the Panel to limit the scope of the present proceedings to the issues that were discussed in front of the ADHP and that as a result exhibits IBU S-3, S-16 and S-19 with supporting evidence (WADA-01 to WADA-24) be declared inadmissible and that the IBU be barred to examine Dr Olivier Rabin, Dr José Antonio Pascual and Mr Thierry Boghosian as witnesses.

49. On 23 October 2020, the Respondent requested the Panel to reject the Appellant's request since it was clearly belated and based on incorrect factual and legal assumptions. Moreover, the Respondent contended that the Appellant's request to bar certain witnesses seemed to be standard procedure.

50. On 29 October 2020, the CAS Court Office informed the Parties that the Panel had decided (i) to admit the Respondent's allegation related to the matter of abuse of EPO in this procedure and (ii) to admit the Respondent's announced witnesses at the hearing, and that the Panel reserved its decision on the matter in the Award.

51. On 7 January 2021, the Respondent informed the CAS Court Office of the Parties' common preference that the hearing be held in person and that they shall revert with possible fresh hearing dates.

52. On 31 May 2021, the CAS Court Office informed the Parties that Mr Franco Frattini, had resigned from the CAS.

53. On 14 June 2021, the CAS Court Office informed the Parties of the appointment of Mr André Brantjes, Attorney-at-Law in Amsterdam, as President of the Panel, and that the Panel to decide upon the present appeal would be constituted as follows:

President:	Mr André Brantjes, Attorney-at-Law in Amsterdam, The Netherlands
Arbitrators:	Mr Rui Botica Santos, Attorney-at-Law in Lisbon, Portugal Mr Jacques Radoux, Référendaire in Luxembourg, Luxembourg

54. On 22 July 2021, after having consulted the Parties on possible hearing dates and the format of such hearing, the CAS Court Office informed the Parties that a hearing would be held in the present matter on 14-15 October 2021.

55. On 12 August 2021, the Appellant requested the CAS Panel to invite the Respondent to provide the specific information relating to reanalysis of certain samples.

56. On 17 August 2021, the Panel invited the Respondent to answer the following questions raised by the Appellant:

> "
>
> 1. *Is it possible to conduct further testing on the sample 2784294 [sic]?*
> 2. *How many samples appearing as positive findings in the LIMS, but reported as negative in ADAMS, could have been reanalysed?*
> 3. *Out of these samples, how many were ultimately found to be negative further to the reanalysis procedure?*"

57. On 24 August 2021, the Respondent provided its answer to the above questions.

58. On 7 September 2021, the Respondent informed the CAS Court Office that the Parties had agreed to proceed at the hearing scheduled on 14-15 October 2021 according to a jointly accepted hearing schedule and communicated its list of attendees. On the same day, the Appellant communicated her list of hearing attendees and reiterated her request for a public hearing.

59. On 7 September 2021, the Appellant requested that the Respondent be invited to file a request with the Investigation Committee of Russia (the "ICR)" in order to obtain the Sample for retesting.

60. On 16 September 2021, the CAS Court Office advised the Parties that due to the limited space available and the COVID-related restriction then in place, it was not possible to hold a public hearing at the CAS Court Office, and invited the Parties to comment on the available alternatives, i.e. hold a public hearing otherwise than at CAS Court Office or as from March 2022 only at the new CAS premises. The CAS Court Office also informed the Parties that the Panel considered it necessary to amend the jointly proposed hearing schedule in order to allot more time for the examination of experts and witnesses.

61. On 20 September 2021, the Respondent provided its comments as to the Appellant's request with respect to the reanalysis of the Sample. With respect to the hearing schedule, the Respondent agreed to maintain the hearing in the case *CAS 2020/A/6842 Evgeny Ustyugov v. International Biathlon Union* but to postpone the hearing date for

the present matter. Finally, the Respondent reserved its right to cross-examine the Appellant.

62. On 29 September 2021, the Appellant requested the CAS Panel to invite the Respondent to disclose additional information concerning the Sample. With respect to the hearing schedule, the Appellant objected to the proposal to hold two separate hearings in the present case and in the case *CAS 2020/A/6842 Evgeny Ustyugov v. International Biathlon Union*. Finally, the Appellant objected to her cross-examination by the Respondent but said she would be available to answer the questions from the Panel.

63. On 1st October 2021, the CAS Court Office informed the Parties that the Panel had decided to postpone the hearing scheduled for 14-15 October 2021.

64. On 7 October 2021, the CAS Court Office consulted the Parties in order to identify new possible hearing dates.

65. On 22 October 2021, the CAS Court Office informed the Parties that the Panel had decided to request the Respondent to provide further information with respect to the Sample and to dismiss the Respondent's request to cross-examine the Appellant.

66. On 25 October 2021, after having consulted the Parties, the CAS Court Office informed the Parties that the hearing in this matter and in the case *CAS 2020/A/6842 Evgeny Ustyugov v. International Biathlon Union* would take place on 14-15-16 March 2022.

67. On 1st November 2021, the Respondent provided its answer to the additional information requested with respect to the Sample.

68. On 3 November 2021, the CAS Court Office informed the Parties that the Panel had decided not to allow the Respondent to cross-examine the Appellant on the grounds that the Panel would not consider the Appellant's statement as evidence.

69. On 24 November 2021, the Appellant provided the CAS Court Office with an updated hearing schedule accepted by both Parties. The Appellant objected to the Respondent's proposal to have a PowerPoint presentation by one of the witnesses.

70. On 14 January 2022, the Parties sent their respective list of participants to the hearing.

71. On 18 February 2022, the CAS Court Office informed the Parties that due to a delay in the construction works at the headquarters of the CAS Court Office in *Palais de Beaulieu*, it would not be possible to host a public hearing on the scheduled hearing date whether in person or through video streaming. The CAS Court Office therefore suggested either to maintain the hearing at the new headquarters but without public attendance by any means or to postpone the hearing until April 2022.

72. On 18 February 2022, the Respondent informed the CAS Court Office that it preferred to hold the hearing as scheduled but without public.

73. On 22 February 2022, the Appellant informed the CAS Court Office that she preferred to postpone the hearing to April 2022.

74. On 24 February 2022, the CAS Court Office advised the Parties on behalf of the Panel that the hearing was postponed and suggested new hearing dates.

75. On 28 February 2022, the Appellant and the Respondent separately informed the CAS Court Office about the list of topics that would be addressed by the experts and the format of examination of experts and witnesses as well as the hearing attendees.

76. On 1st March 2022, the CAS Court Office confirmed to the Parties that the hearing in the present matter would be held together with the matter *CAS 2020/A/6834 Evgeny Ustyugov v. International Biathlon Union* on 4-5-6 May 2022 at the headquarters of the CAS Court Office in Lausanne, and that such hearing would be held in public.

77. On 7 March 2022, the CAS Court Office invited the Respondent to send a copy of the PowerPoint presentation of Dr Broséus to be presented at the hearing.

78. On 14 March 2022, the Respondent provided the CAS Court Office with that PowerPoint presentation.

79. On 11 April 2022, the CAS Court Office issued an order of procedure (the "Order of Procedure") in the present proceedings and requested the Parties to return a signed copy of it, and informed the Parties that the hearing scheduled on 4, 5 and 6 May 2022 was maintained subject to unforeseen developments, therefore inviting the Parties to confirm their list of hearing participants.

80. On 21 April 2022, the Appellant requested the postponement of the hearing scheduled on 4 to 6 May 2022 as a result of the economic sanctions against the Russian Federation related to the conflict in Ukraine.

81. On 25 April 2022, the Respondent informed the CAS Court Office that it had agreed to postpone the hearing until the end of August 2022 to allow the Appellant to explore the possibilities for her attendance in person and that the Parties agreed that in case any participant would not be able to attend the newly scheduled hearing in person, such participant could participate to the hearing by videoconference. Finally, the Parties also jointly requested a procedural video conference with the President of the Panel.

82. On 26 April 2022, the CAS Court Office informed the Parties that, as a result of their agreement, the hearing scheduled for 4-5-6 May 2022 would be postponed and that a procedural video conference would be held on 5 May 2022.

83. On 5 May 2022, a procedural meeting was held by video conference. The President of the Panel, the CAS Clerk, the CAS Counsel and the Counsel for each of the Parties attended such meeting. After the meeting, the CAS Court Office invited the Parties to liaise and jointly provide a combined draft hearing schedule for the hearings in the present matter and also in the matter *CAS 2020/A/6842*.

84. On 17 May 2022, the Respondent submitted a hearing schedule accepted by both parties as well as an alternative preferred by the Respondent.

85. On 19 May 2022, the CAS Court Office informed the Parties that the Panel would be available for a hearing in this matter on 31 August 2022, and invited the Parties to indicate whether they would be available.

86. On 24 and 27 May 2022, the Parties respectively confirmed their availability for a hearing to be held in the present matter at CAS headquarters in Lausanne.

87. On 30 May 2022, the CAS Court Office confirmed to the Parties that a hearing would take place in the present matter on 31 August 2022 at the CAS headquarters in Lausanne and invited the Parties to provide their list of attendees.

88. On 7 June 2022, the Appellant informed the CAS Court Office that its list of attendees communicated on 14 January 2022 was unchanged.

89. On 9 June 2022, the Respondent provided its own list of attendees.

90. On 15 August 2022, the CAS Court Office, on behalf of the Panel, provided the Parties with the final hearing schedule to which the Parties had both agreed, requesting both Parties to prepare short closing statements instead of post-hearing briefs. The CAS Court Office also issued the updated Order of Procedure, which the Parties were requested to sign and return to the CAS Court Office. Finally, the CAS Court Office invited the Parties to communicate the names of any invited guests to the hearing.

91. On 22 August 2022, the Appellant returned a signed copy of the Order of Procedure to the CAS Court Office. On the same day, the Respondent requested the Panel some clarification as to the examination of the experts at the hearing.

92. On 29 August 2022, the Appellant made some comments regarding the Respondent's request for clarification as to the examination of the experts at the hearing.

93. On 30 August 2022, the CAS Court Office, on behalf of the President of the Panel, made clarification as to such examination of the experts.

94. On 31 August 2022, a hearing was held in the present matter at the headquarters of the CAS in *Palais de Beaulieu*, Lausanne, Switzerland. In addition to the members of the Panel, Ms Andrea Sherpa-Zimmermann, CAS Counsel, and Ms Stéphanie De Dycker, CAS Clerk, the following persons attended the hearing:

For the Appellant: Ms Svetlana Sleptsova, the Athlete;
Mr Yvan Henzer, counsel;
Ms Tatiana Petropavlovskaya, counsel [by video-conference];
Mr Sergey Nikitin, expert [by video-conference];
Dr Douwe de Boer, expert;
Mr Grigory Krotov, expert [by video-conference];
Mr Maxim Siderov, interpreter.

For the Respondent: Mr Stephan Netzle, counsel;
Mr Karsten Hofmann, counsel
Mr Greg McKenna, IBU representative;
Mr Aaron Walker, expert;
Dr Julian Broséus, expert;
Prof. Eoghan Casey, expert [by video-conference];
Prof. Thomas Souvignet, expert;
Dr Günter Gmeiner, expert [by video-conference];;

Prof. Christiane Ayotte, expert;
Dr Olivier Rabin, witness [by video-conference].

95. At the outset of the hearing, the Parties declared that they had no objections as to the constitution of the Panel.

96. At the hearing, the Panel heard evidence from the following experts and witnesses: Dr Douwe De Boer, Mr Grigory Krotov and Mr Sergey Nikitin, all named by the Appellant, as well as Mr Aaron Walker, Dr Julian Broséus, Prof. Eoghan Casey, Prof. Thomas Souvignet, Dr Günter Gmeiner, Prof. Christiane Ayotte and Dr Olivier Rabin, all named by the Respondent.

97. Before taking their evidence, the President of the Panel informed all of the experts and witnesses of their duty to tell the truth subject to sanctions of perjury under Swiss law. The Parties and the Panel had the opportunity to examine and cross-examine them. Each of them confirmed their written statement or expert opinion. Finally, the Athlete also made a statement.

98. The Parties were given full opportunity to present their case, submit their arguments and answer the questions from the Panel. At the end of the hearing, the Parties confirmed that they were satisfied with the procedure throughout the hearing, and that their right to be heard had been fully respected.

99. On 6 September 2022, the Respondent returned a signed copy of the updated Order of Procedure.

IV. SUBMISSIONS OF THE PARTIES

100. The aim of this section of the Award is to provide a summary of the Parties' main arguments rather than a comprehensive list thereof. However, the Panel confirms that in deciding upon the Parties' claims it has carefully considered all of the submissions made and evidence adduced by the Parties, even if not expressly mentioned in this section of the Award or in the discussion of the claims below.

A. The Appellant

101. In its Appeal Brief, the Appellant requested the following relief:

"

[...] The appeal is upheld.

[…] The decision issued on 11 February 2020 by the IBU Anti-Doping Hearing Panel is annulled.

[…] The International Biathlon Union shall be ordered to bear all arbitration costs and to reimburse Ms Svetlana Sleptsova the minimum CAS Court Office fee of CHF 1,000.

[…] The International Biathlon Union shall be ordered to pay Ms Svetlana Sleptsova a contribution towards the legal and other costs incurred in the framework of

these proceedings in an amount to be determined at a later stage or at the discretion of the Panel."

102. The Appellant's submissions, in essence, may be summarized as follows:

- The scope of the present appeal is limited to the issue of whether or not the Appellant used ostarine, a prohibited substance under the WADA prohibited list. The IBU withdrew its accusation of use of EPO against the Athlete in front of the ADHP and the Athlete did not present her case with respect to EPO in front of the previous instance.

- The Decision was issued by a disciplinary body that had been replaced by the IBU Statutes in force at the time of issuance. The Decision was therefore invalid.

- The IBU has the burden of proving to the comfortable satisfaction of the Panel that the Athlete committed an ADRV. In light of the utmost seriousness of the allegations made against the Athlete, the Panel must ensure that a commensurate standard of proof is applied. In addition, it is for the IBU to establish that the evidence provided – in particular the analyses of the Moscow laboratory and the documents emanating from such laboratory – are 'reliable'. It is only when this is established that the Athlete has the need to show that any departure from standards may have caused an AAF.

- Since, according to IBU, ostarine was identified in the Sample, the alleged violation can only fall within the scope of application of Article 2.1 IBU ADR which specifies that "*the presence of a prohibited substance or its metabolites or markers in an athlete's sample*" constitutes an ADRV. A violation for "use" under Article 2.2 of the IBU ADR cannot be charged when a laboratory did not comply with the applicable standards for analysis or when there is no proof that the standards are met.

- The only evidence on file – the data from the WADA LIMS – allegedly supports the "presence" of a prohibited substance rather than its "use". *In casu* however, several flaws in the testing process prevent the Panel from finding that the Athlete committed an ADRV based on Article 2.1 IBU ADRV:

    - There is no laboratory documentation package, which therefore prevents the testing process to be verified.

    - The chain of custody, in particular the internal chain of custody, is not properly documented; As a result, it is impossible to establish that the results generated by the laboratory are unequivocally linked to the Athlete.

    - There is no B-sample analysis, which is a fundamental right of the Athlete.

- Alternatively, even if the Panel were to find that Article 2.2 of the IBU ADR is applicable – *quod non* -, the use of a prohibited substance lacks evidence.

Indeed, neither the copy of the WADA LIMS nor the Moscow LIMS are reliable pieces of evidence:

- The analyses are not documented so that there is no record that all mandatory safeguards as outlined in the International Standard for Laboratories (the "ISL") and the applicable technical documents issued by WADA have been complied with.

- The analyzes on the Sample required the use of a specific analytical method, that was not validated at the time of such analyses for the Moscow Laboratory.

- There was no valid positive quality control for ostarine and its metabolite.

- As a result of the above-mentioned flaws and departure from, several other ISL standards, the Moscow Laboratory was not operating competently. It was for that reason that disciplinary proceedings were initiated by WADA against the Moscow Laboratory.

- According to the WADA LIMS data, the concentration of ostarine allegedly found in the Sample was zero, below the LOD specified in SOP P1.006. In the absence of laboratory documentation package, it is crucial to have at least a concentration in order to check if the analytical results are robust. The lower the concentration, the higher the risk is of a false positive result. Hence, in the present matter, the Moscow Laboratory was not able to identify ostarine with sufficient certainty.

- The zero concentration of the Sample may also be the result of a possible contamination with another urine sample in the Moscow Laboratory.

B. The Respondent

103. In its Answer, the Respondent requested the following relief:

"(1) The Appeal shall be dismissed and the Decision of the Anti-Doping Hearing Panel of the International Biathlon Union dated 11 February 2020 shall be up-held in its entirety.
(2) The Appellant's procedural requests shall be dismissed.
(3) The costs of this appeal procedure, if any, shall be borne by the Appellant.
(4) The Appellant shall pay a fair contribution to the legal costs of the Respondent."

104. The Respondent's submissions, in essence, may be summarized as follows:

- The scope of this appeal is not limited to the Appellant's use of ostarine, but rather concerns the charges on the Appellant of ADRV based on the AAF's of ostarine and EPO found in the Athlete's Sample. The analysis of the Sample indicates the use of both substances, and this was stated in the initial charges and submissions before the IBU. The Respondent never revoked the allegation of the Appellant's use of EPO before the ADHP and the ADHP never ruled out the use of EPO. The evidence relating to the use of EPO by the Athlete was discovered only after the notification of the Decision.

- According to the principle *perpetuatio fori*, a tribunal entrusted with a case retains jurisdiction unless it is expressly excluded. *In casu*, at the moment the IBU Statutes were amended, the ADHP was already validly entrusted with the present case; since the IBU Statutes do not remove competence of the ADHP to continue hearing procedures of pending cases, the ADHP validly adopted the Decision.

- The present case is about a violation of Article 2.2 IBU ADR ('use of a prohibited substance') and not of Article 2.1 IBU ADR. The standard of proof is the "comfortable satisfaction" of the Panel, as described under Article 3.1 IBU ADR, and, in accordance with Article 3.2 IBU ADR, the allegation can be proven by any reliable means.

- The WADA LIMS data shows the presence of two prohibited substances in the Sample, namely ostarine and EPO in the ITP. The following CP confirmed the presence of both prohibited substances as evidenced in the WADA LIMS.

- Investigations revealed that the Moscow LIMS data relating to the Athlete's record on ostarine was selectively manipulated within the Moscow Laboratory in order to cast doubt on the results in the WADA LIMS. The Athlete can therefore not rely on the Moscow LIMS.

- With respect to the Appellant's record on EPO, the Moscow Laboratory intentionally attributed the Appellant's Sample to another athlete, Ms Dubrova, whose sample was tested at the same time, in order to protect the Appellant. This manipulation was triggered by the WADA site visits in April 2013 and September 2013 during which the Moscow Laboratory informed the WADA assessment team of the existence of a positive EPO finding and could therefore no longer hide such result by reporting it as negative in ADAMS. The Athlete's positive result on EPO is moreover confirmed by experts Prof. Christiane Ayotte and Dr Gmeiner.

- The present case is a case about "use" of a prohibited substance as there was no *reported* AAF. The fact that the Moscow Laboratory failed to report an AAF in ADAMS does not exclude the prosecution of the alleged ADRV of the Athlete: the use of a prohibited substance should not go unpunished just because the Moscow Laboratory was successful for a considerable time to hide the Athlete's AAF. In such situation Article 2.2 of the IBU ADR can be engaged.

- Since the present case is a case about "use" which can be demonstrated by any reliable evidence, the alleged lack of laboratory documentation package and of a B-sample analysis both are irrelevant. Although the *internal* chain of custody for the Sample is lacking, the Moscow LIMS still enables to the tracing back of the steps taken by the laboratory and the persons entrusted with the handling of the Sample.

- The WADA LIMS data constitutes reliable evidence of the alleged ADRV:

    - the updated WADA statement of Aaron Richard Walker and Dr Julian Broséus together with other earlier WADA reports confirm the reliability and authenticity of the data contained in the WADA LIMS.

    - The experts – i.e. Dr Guenter Gmeiner, Dr Olivier Rabin and Prof. Christiane Ayotte – confirm that the analyses performed by the Moscow Laboratory are reliable:

        - Contrary to what Appellant claims, the Moscow laboratory was in possession and used a positive control sample for the detection and confirmation of ostarine.

        - The Moscow Laboratory operated competently since it was ISO accredited between 2012 and 2014, i.e. at the very time when the Sample was analyzed.

        - The WADA scientific expert review of the Moscow laboratory held in 2012-2013, unanimously concluded that the Moscow laboratory was operating sufficiently well to allow it to continue its routine analytical activities despite the requirement for several corrective actions.

        - The fact that the Sample showed a zero concentration of ostarine cannot justify the not reporting the AAF in ADAMS since ostarine is a non-threshold substance.

        - The hypothesis that the finding of ostarine could be the result of a contamination of the Sample was rejected by Prof. Christiane Ayotte.

    - The analysis performed by the Moscow Laboratory as well as the WADA LIMS demonstrate the presence of ostarine and EPO in the Sample as well as the fact that it was hidden thereafter and not reported in ADAMS. It is particularly shocking that the data of the AAF of EPO in the Sample were assigned to another athlete, to protect the Appellant.

V. THE HEARING

105. At the hearing, as described at paragraph 96 above, the Panel heard evidence from the witnesses and experts (i) on the issue of the reliability of the LIMS, including on its manipulation; (ii) on the capability of the Moscow Laboratory to detect the substances at stake, and finally (iii) on the assessment of the analytical results.

106. The evidence of the witnesses and experts can be summarized as follows:

- Dr Grigoriy Ivanovich Krotov:

Dr Krotov is biochemist and holds a PhD in biological sciences. From July 2008 to July 2016, he was head of the peptide doping department and blood analysis at the Moscow Laboratory. He explained that in 2009, Moscow Lab employees Oleg Stanislavovich Migachev ("Mr Migachev") and Timofey Gennadievich Sobolevsky ("Mr Sobolevsky") together developed the LIMS with a Russian language interface for keeping records of analysis carried out in the Moscow Lab.

With respect to the reliability of the LIMS, Dr Krotov confirmed that since this system was hand-made, it suffered regular failures and technical malfunctions. Therefore, Mr Migachev had been improving and updating LIMS for many years. Moreover, changes to the LIMS system were also necessary in order to take into account new WADA requirements. Dr Krotov was not aware of the existence of any technical documentation or user guidelines in respect of LIMS. Thus, no document has ever been presented to him for review which would describe LIMS and provide any information on how to use the system. No education on how to work with LIMS was ever given to the employees of the Moscow Lab. It could accordingly be said that all employees, including him, mastered LIMS by trial and error. For instance, upon completion of the analysis of a sample, the employee recording the results in the system put a mark against the sample in the column labelled "completed" ("*завершено*"). In Dr Krotov's understanding, in addition to denoting that the analysis procedure in respect of the sample had been completed, this mark was necessary for the accounting department to issue invoices to customers. Nevertheless, after some further changes were made to the LIMS interface, Mr Sobolevsky wrote an angry letter to Dr Krotov saying that the column "completed" meant, in fact, "confirmed" ("*подтверждено*") and that it was necessary to put these marks only opposite the samples where the presence of a prohibited substance had been confirmed. Such situations occurred time and again, since the employees were not trained to work with LIMS and were not promptly informed about changes in the LIMS system. At the same time, LIMS had no tools to prevent mistakes resulting from employee error. Moreover, LIMS users had no means of correcting the mistakes. Only Mr Migachev and Mr Sobolevsky could make changes to LIMS. Dr Krotov also confirmed that he has no experience with other systems used by WADA-accredited laboratories.

Dr Krotov also stated that in the department of Mr Sobolevsky the positive control samples of urine were obtained as a result of the "excretion study". Usually, the medicines used for studies which could not be bought within the territory of the Russian Federation (such as, for example, oxandrolone), were bought on the black market without any guarantees of the purchased substance's conformity to its apparent name.

- Mr Sergey Nikitin:

Mr Nikitin is deputy head of digital forensics laboratory at the Moscow office of Group-IB and is a GIEC Certified Forensic analyst as well as a BS ISO/IEC 27001:2013 Information security management systems Lead Auditor.

Mr Nikitin explained that the LIMS does not meet WADA ISL 2012 requirements nor the ISO 17025:2005 and the ISO 17025:2017 standards. He explained that the LIMS was designed, maintained and functioned in violation of the standards of the time for this kind of software and even more so in violation of the new modern standards and that, as a result, it cannot constitute reliable source. In particular, Mr Nikitin observed that there is no proper audit trail in the LIMS. In his opinion, the findings of experts that the data were copied or changed only confirm his conclusions as in a system that meets the standards, mishandling of data is simply impossible. As such, a case like the present one would not have been possible had the ISO requirements been met by the Moscow Laboratory. Mr Nikitin confirmed that he has no experience with other WADA accredited laboratories. Mr Nikitin finally stated that had the at the time applicable ISO requirements been complied with, mishandlings of the LIMS would have been impossible and the present case would therefore not have occurred.

- Dr Douwe de Boer:

Dr de Boer is a biochemist working with Drug Testing Consultancy and formerly scientific and technical Director of the doping department of an IOC and WADA accredited Sport Drug Testing laboratory in Portugal. Dr de Boer explained that the fact that the Moscow Laboratory did not lose its WADA accreditation, does not automatically imply that the quality of its analyses was sufficient, but could also indicate – in his personal opinion – the effect of immense political and logistic pressure just before the start of 2014 Winter Olympic Games in Sochi. ISO 17025 does not guarantee that every single analysis is adequate but rather that the complete process has been set up according to specific norms for their management system for quality, administrative and technical operations. The results of a few analyses of a fully accredited laboratory may have an insufficient quality and the accreditation quality mark guarantees only complete transparency.

In the case at hand, a contamination with another urine sample in the Moscow Laboratory cannot be excluded; in light of the absence of adequate quality management in the procedures of the laboratory, there was even a significant risk of contamination by ostarine and its metabolites. Dr de Boer agrees that a scenario of contamination – as it occurred in the WADA-accredited laboratory in Paris – is rare.

There is no possibility to check that the analyses are compliant with the applicable standards because of the doubtful reliability of the LIMS data and the missing information on chain of custody and Laboratory Documentation Package. The chain of custody – if any – is insufficiently robust as even WADA confirmed that there was an absence of adequate quality management in the procedures of the Moscow laboratory and serious issues in the proper maintenance of the chain of custody. Since the respective concentrations were unclear and/or unknown, and no analytical validation and no adequate positive quality control samples were available, the Moscow

Laboratory may have been reluctant to report an AAF in order to avoid the risk of a false positive result.

As for the "zero" concentration of ostarine and its metabolite, Dr de Boer stated that during the initial screening, ostarine and its metabolite was seemingly observed at a concentration of 0 [ng/ml], while according to Dr Rodchenkov, the minimal concentration for confirmation of ostarine by the Moscow Laboratory was 0.1 ng/mL and, according to the presumed SOP disclosed by the Moscow Laboratory, the LOD for ostarine was 2 ng/ml. The concentration below this limit by definition cannot be detected with reasonable certainty. In addition, a concentration of 0 [ng/ml] by definition does not exit, the presence of a compound is either present [fulfilling the identification criteria in anti-doping control] or not present [not fulfilling the identification criteria in anti-doping control]. Since there were no evidence of actual presence of ostarine and its metabolite, logically the Moscow Laboratory did not report the identification of these substances. Combined with serious issues in the proper maintenance of the Chain-of-Custody, these might have been reasons in that stage not yet to report the identification of ostarine and its metabolite.

There is no evidence that the method for the identification of ostarine and its metabolite was validated nor that the Moscow Laboratory did have an analytical instrument for the analysis of ostarine and its metabolite in sample 2784294, which is in fact a violation of the ISL.

There is no indication that the Moscow Laboratory did have a proper positive quality control sample. In addition, the negative and positive control samples used by Dr Gmeiner were not from the same batch as the Sample of the Appellant. As a result, there is no guarantee that the identification procedure was adequate. Moreover, the Laboratory did not purchase ostarine or its metabolite until November 2013, so that it could not have conducted an excretion study.

There is no evidence that the Moscow Laboratory was operating according to the Standard Operating Procedure as of 1 April 2013. The SOP provided by the Moscow Laboratory is only a concept of SOP.

- Mr Aaron Richard Walker and Dr Julian Broséus:

Mr Walker is Deputy Director at the WADA Intelligence and Investigations Department ("WADA I&I") and Dr Broséus is Principal Data and Scientific Analyst at the WADA I&I.

The experts explained that the WADA LIMS, which was received by WADA on 30 October 2017 from a whistleblower, shows that the Sample underwent an ITP, which ended in a PAAF for ostarine and EPO; the Sample then underwent a CP which was successful and reported an AAF for ostarine and EPO. To the contrary, the Moscow LIMS, which was retrieved from the Moscow Laboratory in 2019 by WADA, shows that there was no PAAF for the same Sample. Mr Walker and Dr Broséus explained that after careful analysis, it is clear that the WADA LIMS constitutes reliable evidence and that the Moscow LIMS was manipulated as to its content before it was provided to

WADA in 2019. The analysis of the LIMS enabled the experts to make the following three major discoveries: (i) the Moscow LIMS data analyzed enabled to retrieve a complete copy of the Confirmation Procedure datafile regarding the Sample as well as the fact that it had been deleted before release of the Moscow LIMS to WADA; (ii) the Moscow data enabled retrieval of a deleted version of the LIMS (the "Carved LIMS") which corresponds to the WADA LIMS; (iii) the logs of the LIMS could be retrieved, which provided evidence of each of the manipulations on the LIMS as well as their timing.

Dr Broséus first explained that the LIMS enables, through a chart of 8 tables, the tracking of what happened with a sample from its initial reception by the Moscow Laboratory up to the end of the procedure and the upload to ADAMS, each table containing all the raw data file and pdfs. The LIMS also contains information relating to users' actions in the Moscow LIMS database, including what action, when and in what LIMS table it occurred, i.e. the logs, which not only constitute an internal chain of custody but also enable to authenticate the information contained in the LIMS. With respect to the case at hand, Dr Broséus explained that the manipulation in the Moscow Database was observed only with respect to the ITP and the CP as well as with respect to the logs. For the rest, all the data are identical.

A comparison of the "found" and "confirmation" tables of the WADA LIMS, the Moscow LIMS and the Carved LIMS as well as the "log_do" table in each version of the LIMS, shows that:

(i) a PAAF for ostarine and EPO was reported in the "found" table of the WADA LIMS;
(ii) a successful CP for ostarine and EPO was reported in the "confirmation" table of the WADA LIMS;
(iii) the record of a PAAF for ostarine and EPO was deleted in the "found" table of the Moscow LIMS;
(iv) the ITP raw data for ostarine was manipulated;
(v) the record of a successful CP for ostarine was deleted in the "confirmation" table of the Moscow LIMS and the corresponding raw data were deleted.

Recovered evidence – Ostarine

The ITP and CP raw data files in relation to the detection of ostarine were not observed in the Moscow LIMS. However, the information of the CP files (but not the content) of this file was recovered from the Moscow data; there is thus observable digital evidence that the CP raw data previously existed in the Moscow data but was deleted prior to the release of the Moscow Data to WADA on 17 January 2019.
Moreover, the PDFs, which are created following the analysis of the Sample, indicate whether a Prohibited Substance was detected in an aliquot. Among the PDFs connected to the Sample present in the LIMS server, experts could observe a manipulated PDF in a deleted state (the "Manipulated PDF"). The analysis of the Manipulated PDF showed that the original chromatograms for ostarine and its metabolite within the PDF had been replaced with another chromatogram. The Manipulated PDF thus showed a signal which is not the true signal of the substance and metabolite that the Moscow Laboratory originally based its assessment on. Therefore, the Manipulated PDF correlates to the

Moscow LIMS entries for the Sample. The Manipulated PDF was produced at a time the Moscow Laboratory was not capable of manipulating the raw data that produces the pdf. Once the Moscow Laboratory succeeded in manipulating the raw data directly, it had to delete the Manipulated PDF.

Recovered Evidence – EPO

In April 2013, the Moscow Laboratory analyzed 26 samples (including the Athlete's) for EPO. Only the Athlete's Sample produced an AAF for EPO. Dr Krotov personally entered the CP result for 25 of the 26 samples (including the Athlete's). On 12 April 2013, during a WADA site visit, Dr Krotov produced data (images) from a recently "confirmed" AAF for EPO (the "EPO Data") to demonstrate the Laboratory's ability to successfully detect EPO. Dr Krotov advised that the data would be sent for a 'second opinion' review as required. Dr Krotov sent the EPO Data to Dr Pascual for his 'second opinion' review, the package included ITP and CP "images" produced on 5 April 2013 and 12 April 2013, respectively. Dr Krotov falsely attributed the EPO Data to the Dubrova Sample (viz 2784536). On 30 April 2013, Dr Krotov sent a Forum Message to Mr Sobolevsky. The message was titled, "EPO" and stated, "Re 4122 we are waiting for documents from Spain". The number "4122" is the Laboratory Code of the Athlete's Sample, "documents" is a reference to Dr Pascual's "second opinion" review and "Spain" is a reference to Dr Pascual's workplace, the Barcelona Laboratory. The same day, Mr Sobolevsky reported the Dubrova Sample as negative in ADAMS and indicated that no EPO analysis was performed. On 15 May 2013, Dr Pascual reported (the "Pascual Opinion") to Dr Krotov that the sample identified as "2784536" fulfilled the criteria "confirming the presence of exogenous "EPO". Dr Krotov did not progress the AAF. Dr Pascual has never provided a 'second opinion' review for a sample identified as "2784294" (the Athlete's Sample). On 9 September 2013, during a follow-up site visit to the Moscow Laboratory, WADA (the "Assessment Team") sought an update on the EPO case from Dr Krotov. In updating the Assessment Team, Dr Krotov referenced the Dubrova Sample and produced the Pascual Opinion. The Assessment Team searched the Dubrova Sample in ADAMS and observed it had been reported 'negative' on 30 April 2013 (by Mr Sobolevsky), and the ADAMS "tickbox" for the EPO test was unchecked - meaning the EPO test was not part of the original test menu for the Dubrova Sample and had likely not been conducted. The Assessment Team also discovered the Dubrova Sample was "negative" in the Laboratory's LIMS. The enquiries of the Assessment Team triggered a wave of fabrication and deletion of LIMS data and chain-of-custody records by Dr Krotov, Mr Sobolevsky, Evgeny Kudryavtsev ("Mr Kudryavtsev") and likely others. In particular, Mr Sobolevsky fabricated (i) a PAAF for EPO in the "found" table of the Dubrova Sample as well as (ii) a successful CP entry in the "confirmation" table of the same Dubrova Sample. These actions were designed to protect the Athlete, implicate Ms Dubrova and prevent discovery, by WADA, of their own wrongdoing. On 14 September 2013, Mr Sobolevsky uploaded the AAF for rEPO in the Dubrova Sample to ADAMS. On 16 September 2013, Ms Dubrova was provisionally suspended and by 22 October 2013, she was sanctioned and suspended. Ms Dubrova accepted the Part "A" analysis, declined to have the "B" sample analyzed, admitted the violation, did not attend the hearing and agreed in advance to "whatever penalty" was to be imposed against her.

- Professors Thomas Souvignet and Eoghan Casey:

Prof. Thomas Souvignet is Professor in Digital Forensic Science and Investigation and a researcher at the University of Lausanne, Switzerland. Prof. Eoghan Casey is Professor in the School of Criminal Sciences at the University of Lausanne, Switzerland, performing research, development and casework to advance digital forensic science and investigation.

They operated an in-depth forensic examination of the WADA LIMS database, the Moscow LIMS database and data in deleted state recovered from the LIMS system. In the WADA LIMS, they found three records in the "found" table and three records in the "confirmation" table that reference sample 4122, *i.e.* the Sample. These records were not present in the Moscow LIMS database. Forensic examination found evidence that some of these specific records are in deleted state on the Moscow LIMS system, which confirms their prior existence in the Moscow LIMS database.

Using forensic data recovery operations, the experts salvaged a PDF file related to the Sample. This PDF file only existed in deleted state and was not found anywhere else in the Moscow LIMS data. This PDF file has incongruities in text structure that relate in particular to the substances Ostarine and its metabolite.

The experts also observed metadata of a raw data file in deleted state named "4122.raw" with creation date in 2013. Forensic examination of recovered information related to this raw data file determined that the original content of the file had been overwritten by other data and, therefore, was not recovered.

Prof. Souvignet and Prof. Casey confirmed that the LIMS system is thorough and that the results are extremely strong and reliable; they are even more reliable in the framework of the present proceedings (as compared to in the first instance proceedings) since in the meantime they were able to find the evidence with respect to the EPO results. Moreover, they clarified that the manipulations of the Moscow LIMS were not accidental but intentional, and that, as a result, the requirements of ISO 17025 or any validation process could not prevent such type of intentional manipulations.

- Dr Olivier Rabin:

Dr Olivier Rabin is Senior Executive Director, Sciences and International Partnerships at WADA.

From 20 to 23 January 2013 and 11 and 12 April 2013, Dr Rabin led WADA Assessment Team that conducted site visits of the Moscow Laboratory. On 9 to 11 September 2013, a further site visit was conducted at the Moscow Laboratory; Dr Rabin was not part of the September site visit. Dr Rabin recalls that during the April 2013 visit of the Moscow Laboratory, Dr Krotov reported to him that the Moscow Laboratory had its first "confirmed" AAF for EPO for a very long time. Dr Rabin recalls looking at the 'images' produced by Dr Krotov and his team and confirming with him that indeed it was a clear positive. Dr Rabin then recommended a 'second opinion' review (as was then required per TD2013EPO), and congratulated Dr Krotov and his team for

their first EPO case for a very long time. Dr Rabin does not recall being provided with any details as to sample number, athlete sport or gender.

Dr Rabin further stated that even if the adherence to some of the rules in force, in particular the quality management processes, were not systematically applied by the Moscow Laboratory, the scientific expertise of the laboratory to analyze some classes of substances was never questioned by the auditors.

When the Moscow Laboratory was under close monitoring by WADA in 2012-2013, if at any time the auditors would have considered that the Laboratory should have been suspended, such a procedure would have been initiated immediately and without hesitation. If such a procedure was not initiated, it is because it was the unanimous expert opinion of the auditors that, at the time, the Moscow Laboratory was operating sufficiently well to allow it to continue its routine analytical activities despite several corrective actions required. Later, when a disciplinary hearing of the Moscow Laboratory was conducted in November 2013, the conclusion by the Hearing Panel was that the laboratory would be suspended unless it can expeditiously address its quality management issues. If the Hearing Panel would have been convinced that the Moscow Laboratory was operating significantly outside of the rules, we can anticipate that the Hearing Panel would have recommended a suspension of the laboratory immediately after the hearing procedure.

The Minimum Required Performance Level (the "MRPL") indicates the level of concentration a WADA laboratory must be capable to detect in 100% of the cases. A performant laboratory may have the capacity to detect with sufficient certainty substances below that level as well. Furthermore, the criteria for reporting an AAF for a non-threshold substance are not in any way related to its level of concentration but to the fact of whether or not the identification criteria are met.

- Prof. Christiane Ayotte:

Prof. Ayotte is the Director of the *Laboratoire de contrôle du dopage* at the *INRS Institut Armand-Frappier* in Québec, Canada, *i.e.* the only Canadian laboratory accredited by WADA; she has an extensive experience in anti-doping having been involved in various WADA committees.

Prof. Ayotte stated that even if the Moscow Laboratory had some issues with the quality management of its operations in 2013, the expertise of its scientists was recognized in the community. The Moscow Laboratory was able to detect and test ostarine and recombinant EPO in March 2013 and, in spite of the non-conformities noted by WADA during the site inspections, the Moscow Laboratory was accredited at that time.

With respect to the laboratory documentation package, Prof. Ayotte states that they were never requested by the Athlete.

As to the issue of the validity of the method employed by the Moscow Laboratory in 2013 for the detection and confirmation analysis of ostarine, Prof. Ayotte states that the Moscow Laboratory had presented the results of their studies made on two Selective Androgen Receptor Modulators ("SARMs"), one of which was ostarine, during a

workshop in Cologne in 2012. The Moscow Laboratory had published these results, which are accessible on the internet. The results described are coherent and the method appears to have been imported to routine testing.
The poster described a volunteer excretion study using 30 mg of ostarine approved by the local ethics committee at the Institute of Sports. Prof. Ayotte explained that the fact that the Moscow Laboratory performed studies on ostarine, the results of which had been presented at target scientific workshops already in 2012, shows that there is no doubt that the Moscow Laboratory had the necessary quality control samples for ostarine in order to perform the analysis of the Sample in relation to ostarine. Moreover, the Moscow Laboratory standard operating procedure, known as SOP P1.006, does include ostarine as the list of substances tested and provides for the retention time and traceable ions for each substance.

As to the evaluation of the method employed by the Moscow Laboratory for the detection and confirmation of ostarine, the LC-MS/MS method as described in the SOP appears a suitable for the detection and conformation of ostarine, and the Limit of Detection ("LOD") appears conservative.

The positive control sample from the initial testing procedure applied on sample 2784294 (lab code 4122) was reconstructed by Dr Gmeiner and shows coherent signals at the retention times described in the Moscow Laboratory SOP P1.006 for ostarine and its metabolite. The elements contained in the SOP P1.006 and the data of the positive control sample are evidence that the Moscow Laboratory had a positive control sample that could be employed for the detection and confirmation of ostarine in an athlete's sample.

The fact that the concentration was written as "0" could simply indicate that it was not estimated and does, in Prof. Ayotte's view, not challenge the detailed description of the AAF included by the analysts in the LIMS. Prof. Ayotte explained that the criteria for reporting an AAF for a non-threshold substance are not in any way related to its level of concentration – the identification criteria must be met and there is no uncertainty on this point, as Dr Gmeiner established. Moreover, an AAF may result from concentration below the LOD.

With respect to the chain of custody, Prof. Ayotte states that the link between sample 2784294 and Ms Svetlana Sleptsova is established from the Doping Control Form, an external document. Then, the LIMS provides the date, time and identity of the laboratory staff involved for the sample reception and the correspondence with the laboratory code.

Although the analytical data of the ITP and the CP is not available in the present matter, the entries in the LIMS indicate both actions, i.e. the screening and the confirmation as well as the procedures utilized, date and time and the analysts involved.

With respect to the contamination episode that occurred in the WADA-accredited laboratory in Paris, which was provided by Dr de Boer, Prof. Ayotte explained that the laboratory in Paris admitted to having failed to separate heavily positive stanozolol samples and other routine samples on the automatic robot processing the samples, and utilized the same sequence for all the confirmations, therefore repeating the cross-

contamination. To the contrary, in the Moscow Laboratory, screening and confirmation procedures were done on different aliquots.

Finally, Prof. Ayotte explained that she reviewed the evaluation made by Dr Toni Pascual with respect to the EPO finding, and she agreed with the result of this evaluation.

- Dr Gunter Gmeiner:

  Dr Gmeiner is chemist, head of the WADA-accredited laboratory in Seibersdorf, Austria. Dr Gmeiner analysed the data of the WADA LIMS and the Moscow LIMS, specifically with respect to the Sample.

  In July 2019, Dr Gmeiner was asked by the IBU to compare data of the WADA LIMS and the Moscow LIMS concerning the Sample (sample no 2784294). The evaluation of the LIMS data provided to him indicate the presence of ostarine as well as an ostarine metabolite and EPO in the Sample; the data extracted by WADA I &I indicates in the "found" table the presence in the Sample of ostarine as well as an ostarine metabolite and EPO. In the "confirmation" table the presence of ostarine as well as an ostarine metabolite and EPO in the Sample was confirmed (column "if_found" = 1); the raw data regarding the Sample corresponding to initial testing file (c_04122.raw), which corresponds to the Manipulated PDF, does not show any indication of the presence of ostarine or its metabolite. Finally, Dr Gmeiner stated that no data file for the evaluation of a possible presence of EPO in the Sample was provided.

  Dr Gmeiner also explained that given the CP is done at a later stage generally allows to exclude a scenario of contamination or cross-contamination of the Sample.

107. In addition, the following witnesses were not present at the hearing but produced written statements, which can be summarised as follows:

- Mr Thierry Boghosian: Mr Boghosian is a Senior Manager in the department of Laboratory Accreditation at WADA. From 20 to 23 January 2013, 11 to 12 April 2013 and 9 to 11 September 2013, Mr Boghosian was part of a WADA Assessment Team that conducted site visits of the Moscow Laboratory. Mr Boghosian recalls that on 12 April 2013, he was present at a meeting room on the upper floor of the Moscow Laboratory with the other members of the Assessment Team when Dr Krotov approached and presented the EPO AAF. He recalls members of the Assessment Team reviewing the 'images' produced by Dr Krotov and agreeing that it was a clear positive. He does not recall that the Assessment Team were provided with any details as to sample number, athlete sport or gender. Deputy Director Walker asked him if he can recall specific details of how the enquiries were made within the Laboratory LIMS concerning the 'negative' reporting of the sample identified as "*2784536*" (the "Dubrova sample"). Mr Boghosian stated that Mr Sobolevsky, himself, accessed the LIMS page that records the test result from each analysis conducted by Dr Krotov's department and reported to the Assessment Team his observation of the 'negative' LIMS entry for the sample.

- Dr José A. Pascual Esteban: Dr Pascual is Associate Professor of Chemistry and a Senior Researcher within the Research Group of Integrated Pharmacology and Systems Neuroscience at IMIM-Institut Hospital del Mar d'Investagacions Mèdiques, in Barcelona. He is a former Deputy Director of the WADA-accredited laboratory in Barcelona and one of the "designated experts" within the meaning of the 2013 WADA Technical Document for the harmonization of analysis and reporting of EPO. On 13 May 2020, Dr Broséus of the WADA I&I requested him to provide information regarding any 'second opinion' review conducted by him in relation to two samples namely, "2784294" (the Sample) and "2784536" (the "Dubrova Sample"). Dr Pascual confirmed to Dr Broséus that he had only conducted a 'second opinion' review on the sample identified as "2784536" (corresponding to the "Dubrova Sample"). Dr Pascual reported to Dr Krotov that his review confirmed the presence of rEPO in the sample"2784536". More specially, Dr Pascual concluded, "*the sample 2784536 shows a profile strongly departing from an endogenous EPO profile and fulfilling the criteria confirming the presence of exogenous rEPO both by IEF and SDS after immunopurification*." Dr Pascual was informed by Deputy Director Walker of the allegation that the AAF for EPO he confirmed in the sample identified 2784536 was attributable to the sample of a different Russian athlete. He had no knowledge of this allegation; his role being limited to that of an independent expert on EPO analysis.

108. Finally, the statement of the Athlete can be summarised as follows:

Ms Sleptsova is a former professional athlete of Russian nationality. She dedicated more than ten years to biathlon, dedicating all of her energy and work to professional sport accepting many sacrifices. For many years, she spent 50% of her time in Europe, during that time she was tested almost every week; all the doping tests she went through her career were negative. The current situation is all beyond her comprehension and very confusing and it is going on for a long time. For the past four years, she could not keep out of her mind that somebody could say that she participated in a doping scheme. It was more than a shock to her when she was first told that she was charged for doping. In 2017, she finished her career successfully; she was expecting her son. She is satisfied that the hearing in her case is taking place as it gives her the opportunity to transmit to her son the dear values of hard work and honesty that were transmitted to her by her parents.

VI. JURISDICTION

109. Article R47 of the CAS Code provides as follows:

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

110. Article 13.2.1 of the IBU ADR provides as follows:

"*In cases arising from competition in an international event or in cases involving international-level athletes, the decision may be appealed exclusively to the CAS in accordance with the provisions applicable before such court*."

111. Article 13.2.3 let. a of the IBU ADR also states that "*in cases under Article 13.2.1, the following parties will have the right to appeal to CAS: (a) the athlete or other person who is the subject of the decision being appealed;* […]"

112. There is no doubt that the present matter arose from a competition in an international event as well as that it involves an international-level athlete at the time of the relevant facts. The Panel therefore finds that the Athlete has a right to appeal to CAS and therefore CAS holds jurisdiction to decide on the present matter. Moreover, the Panel notes that Respondent does not contest the jurisdiction of CAS to decide on the present appeal.

VII. ADMISSIBILITY

113. Article R49 of the CAS Code provides as follows:

"*In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document. When a procedure is initiated, a party may request the Division President or the President of the Panel, if a Panel has been already constituted, to terminate it if the statement of appeal is late. The Division President or the President of the Panel renders her/his decision after considering any submission made by the other parties.* […]"

114. In the present matter, the Statement of Appeal was filed with the CAS Court Office on 4 March 2020, i.e. before the expiration of the time limit of 21 days as from notification of the Decision which occurred on 12 February 2020. Moreover, the present appeal fulfils the requirements provided under Article R48 of the CAS Code. The present appeal is therefore admissible.

VIII. APPLICABLE LAW

115. Article R58 of the CAS Code provides as follows:

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

116. Based on the above provision, the Panel finds that it shall decide on the present matter based on the IBU ADR as adopted in 2009 and amended in 2010 and 2012.

IX. MERITS

117. The Panel notes that, while it has carefully considered the entirety of the submissions made and the evidence adduced by the Parties, it sets out below only those matters which it deems necessary for it to decide the dispute. In this section of the Award, the Panel will accordingly examine the following issues:

- Was the IBU ADHP competent to issue the Decision?
- Did the Athlete violate Article 2.2 IBU ADR? In the affirmative,
- What are the consequences?

118. The Panel shall examine in the present section each of the above-mentioned questions in the indicated order. However, before delving in the analysis of the above-mentioned issues, the Panel shall revert on the issue of the scope of the present appeal, which was raised by the Appellant during the written procedure.

119. In particular, the Appellant requests that the submissions relating to the charges on the Athlete in relation to EPO be excluded from the scope of the present appeal as they were not discussed in the first instance in front of the IBU ADHP. For the same reasons, the Appellant requests that the exhibits relating to these submissions as well as the supporting evidence be declared inadmissible and that the IBU be barred from examining Dr Olivier Rabin, Dr José Antonio Pascual and Mr Thierry Boghosian witnesses in relation to the EPO allegation. In the Appellant's view, the IBU withdrew the charges related to EPO use before the IBU ADHP. The Respondent in turn contends that the EPO use by the Athlete was included in the initial charges and submissions before the IBU ADHP and that the Respondent never waived the initial allegation of the Athlete's use of EPO; to the contrary, it was on request of the IBU ADHP that the Respondent focused on the finding of the use of ostarine in the second hearing before that same ADHP. Moreover, the fraudulent attribution of the EPO finding to another athlete was discovered only after the notification of the Decision; the respective evidence was however timely included in the Answer.

120. The Parties disagree as to whether or not in front of the IBU ADHP, the IBU waived its initial allegation that the Athlete used EPO (in addition to ostarine). The allegation relating to the Athlete's use of EPO were part of the initial charges and the submissions of the Parties before the IBU ADHP. It appears from the case file of the first instance that the IBU ADHP decided to focus on the use of ostarine during the second hearing. The IBU ADHP stated in the Decision that "*Though the IBU no longer brings any charges against the Athlete in relation to the EPO finding and other samples identified in its Application, IBU nonetheless requests for the Panel to keep these other samples in mind when determining the quantum of the Athlete's sanction in consideration of 'aggravating circumstances'.*" In the Panel's view, this is not a clear evidence that the IBU waived its allegation with respect to the Athlete's use of EPO in first instance. Moreover, the Panel is of the view that the Respondent's charges on the Athlete in relation to EPO are not considered and do not have the requirements of a counterclaim. The Panel also notes that based on Article R57 of the CAS Code, the Panel has "*full power to review the facts and the law*" and therefore operates a *de novo* review of the case. Panels' full power of review has besides been confirmed by a long-lasting CAS

case law and by the Swiss Federal Tribunal (See D. MAVROMATI & M. REEB, THE CODE OF THE COURT OF ARBITRATION FOR SPORT, COMMENTARY, CASES AND MATERIALS, para. 23-25, and references). The Panel therefore enjoys a wide margin of discretion in its review of the case, including in accepting new evidence. The Panel emphasizes that it cannot sanction the Athlete for more than what the Decision provided as this would violate the *ne ultra petita* principle. But the Panel finds it has discretion to allow new evidence to decide whether or not the IBU established that the Athlete violated Article 2.2 IBU ADR.

121. Indeed, as was noted by the IBU, the data of the laboratory procedures resulting in the detection of EPO in the Sample, including the images and the review of these images by Dr Pascual as well as the assignment of such data to a sample of another Russian athlete, became available only after the end of the first instance proceedings. As a result, the evidence with respect to the allegation of use of EPO qualifies as "new" evidence that (i) could not possibly be brought forward in the first instance proceedings and (ii) was put forward without delay by the IBU in its Answer.

122. In accepting such new evidence, the Panel does not go beyond the scope of the previous litigation. The Panel indeed recalls that in the present appeals proceedings, the IBU limits itself to request the confirmation of the Decision; by bringing forward new evidence in relation to the allegation of use of EPO, it merely brings new evidence in support of its case.

123. The Panel finds that based on Article R57 para. 3 of the CAS Code, the evidence regarding the allegation of use of EPO is admissible and therefore falls within the scope of the present appeal.

A. Competence of the IBU ADHP

124. The Appellant submits that the Decision is invalid since, at the time it issued the Decision, *i.e*. on 11 February 2020, the IBU ADHP was no longer competent under the IBU ADR. In accordance with article 30.2.1 of the new IBU Constitution which entered into force on 19 October 2019, anti-doping cases must be referred to the CAS Anti-Doping Division instead of the IBU ADHP. In addition, while article 37.1 of the new IBU Constitution expressly provides that the members of the Executive Board, Technical Committee and Athlete's Committee in office as of 19 October 2019 remain in office for the rest of their original terms, there is no equivalent provision for the members of the IBU ADHP.

125. The Respondent, in turn, contends that the IBU ADHP was competent to issue the Decision since it was competent according to Article 8 of the IBU ADR, i.e. the law in force at the time the proceedings were initiated; in addition, according to the principle *perpetuatio fori*, a tribunal entrusted with a case retains jurisdiction unless it is expressly excluded.

126. In resolving the question whether or not the IBU ADHP was competent to issue the Decision, the Panel notes initially that the Parties agree that when, on 24 October 2018, the IBU referred the present matter to the IBU ADHP for it to decide whether or not the Athlete had committed an ADRV, it did so in accordance with the law in force at the time of the initiation of such proceedings, namely Article 8 of the IBU ADR.

127. The Panel further notes that the IBU Constitution was amended in 2019 while the first instance proceedings in the present matter before the IBU ADHP were pending, and that article 30.2.1 of the new version of the IBU Constitution, which entered into force on 19 October 2019, provides that anti-doping cases will be referred to the CAS Anti-Doping Division.

128. CAS panels have already had the occasion to stress that inter-temporal issues are governed by the principle "*tempus regit actum*" which principle is referred to inter alia in CAS 2006/A/1008, para. 10, CAS 2018/A/5628, para. 70 and CAS 2018/O/5822, para. 64:

"In accordance with the CAS jurisprudence (CAS 2004/A/635), the Panel underscores that, as a general rule, transitional or inter-temporal issues are governed by the principle 'tempus regit actum', holding that any deed should be regulated in accordance with the law in force at the time it occurred. As a consequence, procedural actions, such as the filing of an appeal, should be done in compliance with rules and time limits in force when they are performed, unless a transitory rule provide otherwise."

"*According to the principle tempus regit actum, substantive aspects are governed by the regulations in force at the time of the relevant facts, while procedural matters are governed by the rules in force at the time when the procedural action occurs (CAS 2016/O/4683; CAS 2016/O/4883). Questions relating to jurisdiction are procedural issues as they pertain to the procedure rather than the nature of the obligations arising from a legal relationship (CAS 2015/A/4059).*" (see also CAS 2018/O/5822, para. 63 and cited references).

129. Applying those principle to the case at hand, the Panel notes that since the issue at stake in the present case is an issue of jurisdiction and thus a procedural matter, it shall be governed by the law applicable at the time the relevant procedural action was performed, i.e. the initiation of the disciplinary proceedings, unless a transitional provision would apply. The Panel however notes that there is no such provision applicable in the present matter: the IBU Constitution is silent regarding the specific issue of the transfer of ongoing cases before the IBU ADHP to the new IBU dispute resolution mechanism. The Panel finds therefore that the issue of whether or not the IBU ADHP was competent to issue the Decision is governed by the regulations in force at the time of the initiation of such proceedings.

130. The Parties agreed that when disciplinary proceedings were commenced before the IBU ADHP, Article 8 of the IBU ADR in force at that time was correctly applied. Accordingly, the Panel finds that, based on the reasons set out above, the IBU ADHP was indeed competent to render the Decision.

B. The Alleged Violation of Article 2.2 of the IBU ADR

131. The IBU submits that the Athlete violated Article 2.2 of the IBU ADR, which provides as follows:

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

2.2.1 It is each athlete's personal duty to ensure that no prohibited substance enters his or her body. Accordingly, it is not necessary that intent, fault, negligence or knowing use on the athlete's part be demonstrated in order to establish an anti-doping rule violation for use of a prohibited substance or a prohibited method.

2.2.2 The success or failure of the use of a prohibited substance or prohibited method is not material. It is sufficient that the prohibited substance or prohibited method was Used or attempted to be Used for an anti-doping rule violation to be committed."

1. Applicable Burden, Standard and Means of Proof

132. In order to examine whether the Athlete committed an ADRV under the IBU ADR, the Panel shall first define the applicable burden and standard of proof as well as the applicable means of proof.

133. Article 3.1 of the IBU ADR provides as follows:

"*The IBU and its member federations will have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof will be whether the IBU or its member federation have established an anti-doping rule violation to the comfortable satisfaction of the hearing panel, bearing in mind the seriousness of the allegation that has been made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt. Where these Rules place the burden of proof upon the athlete or other person alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, the standard of proof will be by a balance of probability, except as provided in Articles 10.4 and 10.6, where the athlete must satisfy a higher burden of proof.*"

134. Accordingly, based on the above provision the burden of proving that the Appellant committed an ADRV rests on the IBU.

135. With respect to the applicable standard of proof of "comfortable satisfaction" envisaged in Article 3.1 of the IBU ADR, the Panel accepts and adheres to the overview of relevant case law made by the Sole Arbitrator in the case CAS 2018/0/5712:

"*The Sole Arbitrator observes that CAS jurisprudence provides important guidance on the meaning of the application of 'comfortable satisfaction' standard of proof. This standard of proof is well-known in CAS practice, as it has been the normal CAS standard in many anti-doping cases even prior to the WADA-code, cf. CAS 2009/A/1912, at para. 54.*

The Sole Arbitrator aligns with the analysis of CAS jurisprudence by the Panel in CAS 2017/A/5379, at paras. 704-707:

- *The test of comfortable satisfaction 'must take into account the circumstances of the case', cf. CAS 2013/A/3258, 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 compared to national formal interrogation authorities', cf. CAS 2009/A/1920 and CAS 2013/A/3258.

- *The gravity of the particular alleged wrongdoing is relevant to the application of the standard in any given case, cf. CAS 2014/A/3526 in which the Panel stated that the comfortable satisfaction standard is a kind of sliding scale, based on the allegations at stake: the more serious the allegation and its consequences, the higher certainty (level of proof) the Panel would require to be 'comfortable satisfied.'*

- *However, the standard of proof is not a variable one. The standard remains constant, but inherent within that immutable standard is a requirement that the more serious the allegation, the more cogent the supporting evidence must be in order for the allegation to be found proven, cf. CAS 2014/A/3650 in which the Panel stated that, 'the standard of proof does not itself change depending on the seriousness of (pure disciplinary) charges. Rather the more serious the charge, the more cogent the evidence must be in support'* (CAS 2018/O/5712, para. 130-131)."

136. Accordingly, in the Panel's view, based on the consistent jurisprudence of the CAS, the burden of proving, to the comfortable satisfaction of the Panel (taking into account the seriousness of the allegation) that the Athlete committed an ADRV, rests on the IBU.

137. With respect to the applicable means of proof, Article 2.2 of the IBU ADR provides that facts relating to ADRVs may be established by "*any reliable means*". Article 3.2 of the IBU ADR also provides that "*facts related to anti-doping rule violations may be established by any reliable means, including admissions*". The comment to Article 2.2 gives non-exhaustive examples of such "reliable means": admissions on the part of the athlete, witness statements, documentary evidence, conclusions drawn from longitudinal profiling, or other analytical information that does not otherwise satisfy all the requirements to establish "presence" of a prohibited substance.

138. In the context of the Articles cited in the foregoing paragraph, the Panel must first examine the argument made by the Appellant that since the IBU claims that ostarine and its metabolite were identified in the Athlete's Sample, the case against the Athlete can only be a "presence" case under Article 2.1 of the IBU ADR and not a "use" case under Article 2.2 of the IBU ADR. In particular, the Appellant contends that violation for "use" under Article 2.2 of the IBU ADR cannot be applied to circumvent the safeguards that have been duly implemented in the WADC in order to protect the athletes against possible errors from laboratories.

139. From that premise, the Appellant further argues that since both there was no laboratory documentation package, as would be necessary to adequately verify the testing process and the chain-of-custody of the Sample, and the Athlete was deprived of her right to have the B-Sample analysed, the Athlete cannot be found guilty of the ADRV under Article 2.1 of the IBU ADR.

140. The IBU ADR, like the WADC and the respective ADRs of various anti-doping organisations, make a distinction between two forms of anti-doping rule violations: on the one hand, the "presence" of a prohibited substance in an athlete's sample (Article

2.1 IBU ADR), which must be established exclusively by laboratory analysis, and on the other hand, the "use" by an athlete of a prohibited substance (Article 2.2 IBU ADR), which may be established by "any reliable means" of evidence.

141. In accordance with the practice of previous CAS panels, the Panel shall start its examination of this issue by referring to the applicable rules.

142. The official comment under Article 2.2 of the IBU ADR regarding the methods by which a "use" violation may be proved, makes it clear that the "*reliable means*" include "*analytical information that does not otherwise satisfy all the requirements to establish 'presence' of a prohibited substance under Article 2.1. For example, use may be established based upon reliable analytical data from the analysis of an A sample (without confirmation from an analysis of a B sample) or from the analysis of a B sample alone where the IBU provides a satisfactorily explanation for the lack of confirmation in the other sample*."

143. The reference to "*the requirements to establish 'presence' of a Prohibited Substance under Article 2.1*" is a reference to the requirements for "sufficient proof" under Article 2.1 IBU ADR, namely:

- that the analysis of the athlete's A sample shows the presence of a prohibited substance in the sample, and the athlete waives analysis of the B sample and the B sample is not analysed; or

- that the analysis of the B sample confirms the presence of a prohibited substance or its metabolite or markers found in the A sample where the athlete does not waive analysis of the B sample and the B sample is analysed.

144. It follows inexorably that a sample analysis that does not meet the requirements to establish "presence" of a prohibited substance, may nevertheless be relied upon as evidence of "use" under Article 2.2 of the IBU ADR.

145. In the Panel's view, this conclusion is corroborated by the IBU ADR provisions relating to results management. Article 7.1.7 of the IBU ADR indeed provides that "*If the B sample proves negative, the entire test will be considered negative and the athlete, his or her national federation, and the IBU will be so informed (unless the IBU takes the case forward as an anti-doping rule violation under Article 2.2)* […]". Hence, analyses that are not available to be deployed in support of an Article 2.1 IBU ADR "presence" violation may still be relied upon by the IBU with respect to an alleged "use" violation under Article 2.2 of the IBU ADR.

146. The Panel would observe that it does not follow from the above that proving a "use" case is somehow easier than proving a "presence" case. In the Panel's view, these Articles simply provide different routes to the verification of the existence of different ADRVs, each of them with their own particularities. In a "presence" case, the anti-doping organisation relies exclusively on the scientific results of laboratory analysis and the strict laboratory procedures that are implemented to ensure their reliability. In contrast, in a "use" case, the anti-doping organisation is in general not able to rely on a classic sample analysis nor on procedural safeguards such as the opening of a B sample; rather, it is required to bring forward sufficiently reliable evidence of any kind to

convince the Panel to the necessary standard of proof, that the athlete indeed used a prohibited substance. In either case it will be for the Panel to assess the evidence on record so as to determine the athlete's liability.

147. The Panel therefore dismisses the submission made by the Appellant that the present matter is a "presence" case that can exclusively be examined in light of Article 2.1 of the IBU ADR, and finds to the contrary that the IBU is free to place reliance on the sample analysis (and other reliable means of evidence) to support an allegation of "use" under Article 2.2 of the IBU ADR. The Panel shall examine such evidence on record in light of the applicable burden and standard of proof in order to decide whether or not the Athlete committed an ADRV.

148. Finally, in the light of the Panel's conclusion that Article 2.1 of the IBU ADR is not in issue in the present matter, the arguments made by the Appellant as to the absence of any laboratory documentation package and thereby chain-of-custody as well as the absence of a B-Sample analysis, are not significant, still less decisive. Whereas such absence would result in an acquittal in a "presence" case, in a "use" case, it constitutes at most only one factor to be taken into account amongst many others. Since these arguments are reprised in the Appellant's plea to conclude that the IBU failed to establish that the Athlete committed an ADRV for the 'use' of a prohibited substance, the Panel shall revert to them in the next section.

2. The Liability

149. The Panel now turns to the analysis of the evidence on record to decide whether or not the Athlete committed an ADRV under Article 2.2 of the IBU ADR. The IBU's charges with respect to the Athlete's use of ostarine and EPO rely essentially on the analysis of the WADA LIMS and the Moscow LIMS as well as on the analysis by Dr Gmeiner, Prof. Ayotte, Dr Rabin, Dr Pascual and Mr Boghosian of the LIMS data regarding the Sample and other aspects of the functioning of the Moscow Laboratory. The Athlete disputes the charges relying on the expert opinions of Dr Krotov, Mr Nikitin and Dr De Boer.

150. In order to assess the Athlete's liability under Article 2.2 of the IBU ADR in the present matter, the Panel will start its examination with the assessment of the WADA LIMS and the Moscow LIMS.

a. Reliability of the LIMS Data and Functioning of the Moscow Laboratory in general

151. The IBU submits that the WADA LIMS shows that the Athlete's Sample tested positive for ostarine and EPO at the ITP as well as at the CP, and that the Moscow LIMS shows that the Moscow Laboratory staff fraudulently manipulated the LIMS data to conceal such positive results regarding the Athlete. In support of its submission, the IBU relies on the opinion from experts from WADA, Mr Walker and Dr Broséus, as well as those from the University of Lausanne, Professors Souvignet and Casey. The Athlete in turn

submits that the WADA LIMS and the Moscow LIMS are not reliable pieces of evidence since they suffer from several flaws as detailed by the experts called by the Athlete, Dr Krotov and Dr Nikitin.

152. The Panel heard extensive evidence from all the above experts brought by the Parties on the issue of the reliability of the LIMS data and its alleged manipulation. In addition, both Parties adduced the same affidavit from Dr Rodchenkov, the former Director of the Moscow Laboratory (between 2005 and 2015) and an expert in anti-doping matters.

153. The Panel will start its analysis with some facts contained in the affidavit of Dr Rodchenkov, which was adduced by both Parties. The relevant part of his affidavit can be summarised as follows:

"*When an Athlete's urine sample (Sample) was collected in Russia, the Sample and its associated collection records (External Collection Record) were delivered to the Moscow Laboratory.*
[…] *The External Collection Record ensured that the Sample and its test result could be unequivocally linked to the Athlete. Each Sample had a unique identifying number (Sample Code) that was reflected on the External Collection Record.* […] *Upon receipt of the Sample, a laboratory representative in the Moscow Laboratory would document the date and time that the Sample was received by the Moscow Laboratory. This information would be included as part of the Laboratory Internal Chain of Custody (Internal Chain-of-Custody Record). The Internal Chain-of-Custody Record documented the sequence of persons in custody of the Sample and all aliquots taken of the Sample for Analytical Testing. An Aliquot is a representative portion of the Sample used in the analytical process.* […] *The Moscow Laboratory, like all W ADA accredited laboratories, had a system to uniquely identify all Samples and link them with the respective External Collection Records and Internal Chain-of-Custody Records.*
[…] *As a WADA accredited laboratory, the Moscow Laboratory was capable of detecting Prohibited Substances or Metabolites of Prohibited Substances, Markers of the Use of a Prohibited Substance, and Prohibited Methods for relevant substances covered by the respective WADA Prohibited List (Prohibited List). WADA updates the Prohibited List annually.*
[…] *The Prohibited List is comprised of Threshold and Non-Threshold Substances. A Threshold Substance is an exogenous or endogenous Prohibited Substance, Metabolite, or Marker of a Prohibited Substance, which is analysed quantitatively and for which any analytical result that is in excess of a pre-determined decision limit (Decision Limit) constitutes an Adverse Analytical Finding (AAF). If analysis results in the finding of a Non-Threshold Substance, such result constitutes an AAF as soon as Identification Criteria are met.* […] *The parameters of the detection level are determined by a 'Minimum Required Performance Level' (MRPL). The MRPL is a WADA approved Technical Document that reflects the concentration of substances on the Prohibited List that a WADA accredited laboratory is expected to reliably detect and confirm in the routine daily operation of the laboratory.* […]
First, the Sample is subject to an Initial Testing Procedure (Initial Testing). The purpose of an Initial Testing is to obtain information about the potential presence of substances from the Prohibited List. For threshold substances, Initial Testing includes appropriate controls near the applicable thresholds. For non-threshold substances, whenever such a substance is commercially available, Initial Testing includes appropriate controls at MRPL level for each available analyte.

[…] *A Sample identified during Initial Testing as exhibiting the potential presence of Prohibited Substances, but for which a Confirmation Procedure (Confirmation Procedure) has not yet been done, is defined in the ISL as a Presumptive AAF. Generally, the ISL requires all Presumptive AAFs be subject to a Confirmation Procedure. The purpose of the Confirmation Procedure is to accumulate additional information to support a reported AAF. The Confirmation Procedure has an equal or greater selectivity than the Initial Testing.* [...] *Once Initial Testing was complete, the Instrument's software generates the Instrument's Electronic Data File (EDF). The Instrument's software processes analytical data from the EDF and generates a PDF Report.* […] *Relevant data, such as the detected substance (metabolite) and concentration value, was electronically introduced into the Laboratory Information Management System (LIMS) in the form of a PDF Report. The evaluation would generally involve reviewing the chromatographic peak retention time, ion transitions, and its ratios. Each PDF Report is reviewed by two data readers.*
[…] *There were two scenarios for which the Disappearing Positive Methodology was utilized.*
Scenario 1
[…] *The first scenario occurred when Sample Codes of known protected athletes were sent to the Moscow Laboratory. When Sample Codes of protected Russian Athletes were communicated to the Moscow Laboratory in advance of urine analysis, the urine analysis were terminated after Initial Testing and the results were reported as negative in ADAMS. Protected athletes Sample Codes were communicated to the Moscow Laboratory via text message (SMS) from involved Russian officials or via messenger to the Moscow Laboratory as a document including a table of Athlete Sample Codes. If laboratory analysts found Presumptive AAFs, those findings were reported to the Deputy Minister for Sports, Yury Nagomykh (Deputy Minister Nagornykh).*
Scenario 2
[…] *The second scenario occurred when the Moscow Laboratory conducted urine analysis of a Sample Code without knowing whether it belonged to a protected Athlete. In this scenario, if laboratory analysts identified Presumptive AAFs in a urine Sample after Initial Testing, the Moscow Laboratory would send an email (or an SMS on rare occasions) to a member of Deputy Minister Nagornykh' s staff (Liaison) for a direction on how to treat the Athlete (i.e. protect or not protect). However, unlike the first scenario above, further analysis was not halted after Initial Testing. Instead, another aliquot was requested and the Confirmation Procedure was undertaken. The continuity of these processes was a necessary reality as any delay- either in aliquoting or the Confirmation Procedure- would be readily traceable in the Laboratory's records (e.g. Internal Chain-of-Custody forms, LIMS). This type of delay would appear as a red flag of suspicion to any discerning party. The question on how to treat the athlete was communicated to a Liaison, who then gave directions on whether to "protect" the athlete. Deputy Minister Nagomykh gave me the instructions to use his Liaison's to communicate the information. There were some instances when I communicated issues to Deputy Minister Nagomykh directly.* […] *After an email or SMS message was sent, the Liaison would contact the Russian Anti-Doping Agency (RUSADA) to request the Athlete identity associated with a Sample Code.* […] *According to the Program's established procedure, Deputy Minister Nagornykh required that the Moscow Laboratory send him the aforementioned information allowing him to decide which Athletes to protect. If Deputy Minister Nagomykh decided that an Athlete was to be protected, the Liaison would communicate the code "SAVE" (generally via email) to*

the laboratory, often to me directly. If Deputy Minister Nagornykh decided an Athlete was not to be protected, the code "QUARANTINE" was communicated in the same manner.
[…] *If the Liaison communicated the "SAVE" directive, the Presumptive AAF or confirmed AAF would be falsely reported as negative throughout the open LIMS and ADAMS systems. I was often directly involved in this false reporting. I use the term "open LIMS" when describing the aforementioned because a hidden LIMS database (Hidden LIMS) was operated to manage and track the Program.* […] *If a "SAVE" directive was received for an Athlete before the Confirmation Procedure was conducted, then an aliquot for a Confirmation Procedure was not requested and no further testing was done.* […] *If a "QUARANTINE" directive was received then the AAF was accurately reported into ADAMS after the finding.* […] *It was imperative to the effectiveness of the Disappearing Positive Methodology that the correct values of the Presumptive AAF or AAF were included in the emails; after all, this was an important basis for the decision of whether to "SAVE" or "QUARANTINE" an Athlete.*
[…] *Investigator Walker asked me to identify which Initial Testing values would, based on my professional experience and expert opinion, most likely be confirmed following the Confirmation Procedure. In other words, the Presumptive AAF values that would most likely become a confirmed AAF to a Confirmation Procedure was conducted. Given the vast number of substances which appear on the Prohibited List, I have restricted my evidence to the following substances:*

Drug	**Metabolite**	**Minimal concentration for confirmation** **Ng/ml**	**Comments**
OSTARINE	((2S)-3-(4-cyanophenoxy)-N-[4-cyano-3-(trifluiromethyl)phenyl]-2-hydroxy-2-methylpropanamide)	0,1	Parent

[…]"

154. The Panel accepts Dr Rodchenkov's statement as a coherent and credible account of how, in general terms, the LIMS was manipulated and, in particular, how the Disappearing Positive Methodology (the "DPM") worked in practice. Besides being revealed by the McLaren Reports, the existence and functioning of the DPM has been also confirmed by various CAS Panels (see for instance CAS 2021/A/7838; CAS 2021/A/7839; CAS 2021/A/7840). For the purposes of this Award, it is scenario 2 rather than scenario 1 as described by Dr Rodchenkov which is relevant. The Panel is comfortably satisfied that the DPM deployed by the Moscow Laboratory consisted in the Moscow Laboratory conducting an initial analytical screening of samples collected from Russian athletes; if that screening revealed a PAAF, a liaison person would obtain the identity of the athlete from RUSADA (by providing the bottle number of the sample); the athlete's identity would be provided to the Russian Deputy Minister for

Sport, Mr Yuri Nagornykh, who would then issue an order that the sample be "saved" or "quarantined; Where a "save" order was given, the Moscow Laboratory would report the analysis of the sample as negative in ADAMS; Personnel of the Moscow Laboratory would then falsify the result in the LIMS, including the confirmation procedure result if any, to show a negative result. The Panel further notes that Dr Rodchenkov was the director of the Moscow Laboratory at the time of the relevant facts and had in depth knowledge on how that Laboratory was covering up the positive samples.

155. The Panel further notes that several CAS panels have previously confirmed the large-scale manipulation of the LIMS data by the Russian authorities as part of the Russian institutionalised doping scheme. In particular, in CAS 2020/O/6689, the CAS panel confirmed the "*deliberate, sophisticated and brazen alterations, amendments and deletions [of the LIMS data, and that those manipulations] 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 […]*".

156. In the Panel's view, it is especially interesting to note that an essential element of the DPM was that the samples collected were indeed accurately analysed and that the overall effectiveness of the DPM relied on the capacity of the Moscow Laboratory to correctly identify the results of the sample analysis and to forward the correct values of the PAAF or AAF to the Liaison so as to allow the Ministry of Sports to decide whether or not a specific athlete should be protected. This of itself shows clearly that the Moscow Laboratory performed sample analyses in a highly accurate manner and that, where applicable, such accurate results were thereafter manipulated in the LIMS in order to reflect the political decision to "protect" any such specific athlete.

b. Reliability of the LIMS Data and Functioning of the Moscow Laboratory with respect to the Appellant's Sample

157. The Panel then carefully reviewed the expert opinion and the oral statements from WADA representatives Mr Walker and Dr Broséus regarding the manipulation of the LIMS data with respect to the Athlete's Sample. In this respect, the Panel shall start its examination with the evidence regarding the alleged use by the Athlete of ostarine.

158. The Panel is convinced that the comparison between the records of the WADA LIMS and those of the Moscow LIMS regarding the Athlete's Sample analysis revealed discrepancies in the "found" table (containing the results of the ITP) and "confirmation" table (containing the results of the CP), as well as in the "log_do" table (containing the information as to a user's actions in the Moscow LIMS including what the action was and in what table it occurred).

159. Moreover, the Panel has no doubt concluding that the WADA LIMS is authentic evidence, whereas the Moscow LIMS is manipulated. Indeed, the Panel would rely on the fact that the Moscow LIMS contained a deleted version of the LIMS which could be recovered, i.e. the Carved LIMS.

160. In particular, the Panel accepts the evidence presented by Mr Walker and Dr Broséus, which is adequately summarised by the following tables:

Table 3 – "found" table[70]

LIMS version	Offset[71]	Record_state[72]	id[73]	code_int[74]	id_subs[75]	id_met[76]	scr_conc	DT_scr	scrin	id_user_scr	do
2015 LIMS	0x000066d2	Existing	664	4122	310	0	0	2013-04-01 04:00:23	6	5	0
Carved LIMS	0x000066d2	Deleted	NA	NA	310	0	0	2013-04-01 04:00:23	6	5	0
2015 LIMS	0x000066fb	Existing	665	4122	310	85	0	2013-04-01 04:00:33	6	5	0
Carved LIMS	0x000066fb	Deleted	NA	NA	310	85	0	2013-04-01 04:00:33	6	5	0

Table 4: "confirmation" table[77]

LIMS version	Offset	Record_state	id[78]	id_found[79]	number_aliq	vol_aliq	proc	id_user_start	id_laborant
2015 LIMS	0x00007b7c	Existing	311	664	1	1	6	5	35
Carved LIMS	0x00007b7c	Deleted-Multiple	NA	NA	0	1	6	5	35
2015 LIMS	0x00007bd4	Existing	312	665	1	1	6	5	35
Carved LIMS	0x00007bd4	Deleted-Multiple	NA	NA	0	1	6	5	35

DT_start	AB	if_found	conf_conc	ATF	SD	DT_end	comment	id_user_end	batch	do	ADAMS
2013-04-01 04:30:16	0	1	0	1	0	2013-04-01 16:33:15	Nil[80]	5	272	0	
2013-04-01 04:30:16	0	1	0	1	0	2013-04-01 16:33:15	Nil	5	272	0	
2013-04-01 04:30:16	0	1	0	1	0	2013-04-01 16:33:18	Nil	5	272	0	
2013-04-01 04:30:16	0	1	0	1	0	2013-04-01 16:33:18	Nil	5	272	0	

stor_out_DT	stor_out_uid	out_alik_DT	out_alik_uid	stor_in_DT	stor_in_uid
2013-07-04 00:06:00	6	2013-04-01 08:33:04	39		
2013-07-04 00:06:00	6	2013-04-01 08:33:04	39		
2013-07-04 00:06:00	6	2013-04-01 08:33:04	39		
2013-07-04 00:06:00	6	2013-04-01 08:33:04	39		

161. As convincingly explained by these experts, the "found" and "confirmation" tables in the Carved LIMS match the "found" and "confirmation" tables in the WADA LIMS including with respect to the Athlete's Sample.

162. In addition, the "log_do" table of the Carved LIMS match the "log_do" table of the WADA LIMS, including with respect to the Athlete's Sample:

Table 5: "log_do" table[82]

2015 Database			Carved LIMS		
Offset	Record_state	do	Offset	Record_state	do
0x00e82d9c	Existing	/2013/lab/scr_results.php a:6:{s:8:"code_int";s:4:"4122";s:5:"scrin";a:1:{i:1;s:1:"6";}s:3:"sub";a:1:{i:1;s:8:"ostarine";}s:8:"scr_conc";a:1:{i:1;s:0:"";}s:6:"id_sub";a:1:{i:1;s:3:"310";}s:6:"id_met";a:1:{i:1;s:0:"";}} [83]	0x00e82d9b	Deleted-Multiple	/2013/lab/scr_results.php a:6:{s:8:"code_int";s:4:"4122";s:5:"scrin";a:1:{i:1;s:1:"6";}s:3:"sub";a:1:{i:1;s:8:"ostarine";}s:8:"scr_conc";a:1:{i:1;s:0:"";}s:6:"id_sub";a:1:{i:1;s:3:"310";}s:6:"id_met";a:1:{i:1;s:0:"";}}

0x00e8309c	Existing	/2013/lab/scr_results.php a:6:{s:8:"code_int";s:4:"4122";s:5:"scrin";a:1:{i:1;s:1:"6";}s:3:"sub";a:1:{i:1;s:8:"ostarine";}s:8:"scr_conc";a:1:{i:1;s:0:"";}s:6:"id_sub";a:1:{i:1;s:3:"310";}s:6:"id_met";a:1:{i:1;s:2:"85";}} [84]	0x00e8309b	Deleted-Multiple	/2013/lab/scr_results.php a:6:{s:8:"code_int";s:4:"4122";s:5:"scrin";a:1:{i:1;s:1:"6";}s:3:"sub";a:1:{i:1;s:8:"ostarine";}s:8:"scr_conc";a:1:{i:1;s:0:"";}s:6:"id_sub";a:1:{i:1;s:3:"310";}s:6:"id_met";a:1:{i:1;s:2:"85";}}
0x00eef2c8	Existing	UPDATE `2013`.`confirmation` SET `if_found` = '1', `conf_conc` = '', `SD` = '', `DT_end` = NOW(), `comment` = '', `id_user_end` = '5' WHERE `id`= '311' a:6:{s:8:"if_found";s:2:"on";s:9:"conf_conc";s:0:"";s:2:"SD";s:0:"";s:7:"comment";s:0:"";s:8:"code_int";s:4:"4122";s:7:"id_conf";s:3:"311";} [85]	0x00eef2c8	Deleted	UPDATE `2013`.`confirmation` SET `if_found` = '1', `conf_conc` = '', `SD` = '', `DT_end` = NOW(), `comment` = '', `id_user_end` = '5' WHERE `id`= '311' a:6:{s:8:"if_found";s:2:"on";s:9:"conf_conc";s:0:"";s:2:"SD";s:0:"";s:7:"comment";s:0:"";s:8:"code_int";s:4:"4122";s:7:"id_conf";s:3:"311";}
0x00eef58c	Existing	UPDATE `2013`.`confirmation` SET `if_found` = '1', `conf_conc` = '', `SD` = '', `DT_end` = NOW(), `comment` = '', `id_user_end` = '5' WHERE `id`= '312' a:6:{s:8:"if_found";s:2:"on";s:9:"conf_conc";s:0:"";s:2:"SD";s:0:"";s:7:"comment";s:0:"";s:8:"code_int";s:4:"4122";s:7:"id_conf";s:3:"312";} [86]	0x00eef58c	Deleted	UPDATE `2013`.`confirmation` SET `if_found` = '1', `conf_conc` = '', `SD` = '', `DT_end` = NOW(), `comment` = '', `id_user_end` = '5' WHERE `id`= '312' a:6:{s:8:"if_found";s:2:"on";s:9:"conf_conc";s:0:"";s:2:"SD";s:0:"";s:7:"comment";s:0:"";s:8:"code_int";s:4:"4122";s:7:"id_conf";s:3:"312";}

163. The Panel can verify that the matching logs also matched the content of the records as they appeared in the "found" and "confirmation" tables of the WADA LIMS and the Carved LIMS, and that the same "log_do" records are absent from Moscow LIMS.

164. Therefore, it appears clearly that the Moscow LIMS contains observable evidence that the ITP and CP records in the WADA LIMS once existed in the Moscow LIMS but were deleted after their creation and before release of the Moscow LIMS to WADA on 17 January 2019. Against the background of Dr Rodchenkov's witness statement and the findings above with respect to the reliability of the LIMS Data and the functioning of the Moscow laboratory in general, the Panel finds that these data were deleted intentionally to cover up the Appellant's AAF.

165. Moreover, Mr Walker and Dr Broséus convincingly showed that although the raw file of the CP has been irretrievably deleted from the Moscow LIMS, the information (but not the content) of this file was recovered from the Moscow data. As a result, in the Panel's view, it is demonstrated that the CP raw data previously existed in the Moscow data but was deleted prior to the release of that data to WADA on 17 January 2019.

166. Finally, the Panel accepts the finding of the experts that one of the retrieved PDF files regarding the Sample was manipulated, so as to correlate to the Moscow LIMS entries for the Sample with respect to the ITP results on ostarine testing. The analysis of the Manipulated PDF indeed showed that the original chromatograms for ostarine and its metabolite within the PDF had been replaced with other chromatograms. In the Panel's view, the evidence regarding the Manipulated PDF convincingly shows that the LIMS data had been manipulated to cover the Athlete's PAAF on ostarine and its metabolite.

167. The Panel can accept Dr Krotov's explanation that the LIMS suffered regular technical malfunctions; that no education on how to work with LIMS was ever given to the employees of the Moscow Laboratory; and that the LIMS had no tools to prevent

mistakes resulting from employee error. Similarly, the Panel can accept the explanations put forward by Dr Nikitin that the LIMS was designed, maintained and functioned in violation of the contemporary standards of the time for this kind of software and even more so of the new modern standards and that it therefore failed to meet WADA ISL 2012 requirements, the ISO 17025:2005 and the ISO 17025:2017 standards. However, these explanations do not go to the heart of the present matter, because, as was explained by Mr Walker / Dr Broséus and Prof. Souvignet / Prof. Casey, the LIMS was manipulated intentionally rather than as a result of an employee mistake and neither the ISO requirements nor any validation process can prevent such type of intentional manipulations. Finally, the Panel notes that neither Dr Krotov nor Dr Nikitin have experience with systems used by other WADA-accredited laboratories.

168. The Panel further notes that Dr Krotov confirmed that the Moscow Laboratory was, at the time of the relevant facts, performing at its best, and for that same reason, despite having the power to do so, WADA did not revoke the accreditation of the Moscow Laboratory. The Panel was further not convinced by Dr de Boer's suggestion that the Moscow Laboratory's accreditation was not removed only because of the immense political and logistic pressure ahead of the start of 2014 Winter Olympic Games in Sochi. Such suggestion is merely Dr de Boer's personal opinion, which does not rely on any evidence. Moreover, Dr Rabin explained that, at the time the Moscow Laboratory was under close monitoring by WADA in 2012-2013, it was the unanimous expert opinion of the auditors that the Moscow Laboratory was operating sufficiently well to allow it to continue its routine analytical activities despite several corrective actions required; and this is also why later, in November 2013, when a disciplinary hearing took place with respect to the Moscow Laboratory, the hearing panel did not decide to directly suspend the Moscow Laboratory but instead that it would be suspended unless it could expeditiously address its quality management issues.

c. The Alleged Violations of ISL Requirements

169. The Athlete contends that as a result of a series of violations of the fundamental ISL requirements, the Moscow Laboratory was not operating competently at the time of the Sample analysis and the evidence on record, in particular the LIMS data, is not reliable specifically: (i) the analyses are not properly documented as required under ISL; (ii) there was no validated analytical method for the detection of ostarine; (iii) there was no valid positive control sample for the Sample analysis; (iv) the zero concentration found in the Sample according to the LIMS data was too low to constitute a robust result; (v) the Moscow Laboratory was not operating competently and was under disciplinary proceedings initiated by WADA; and finally, (vi) the zero concentration of the Sample may be the result of a contamination with another urine sample. The Respondent in turn maintains that the evidence is robust and reliable, and that the Athlete's use of ostarine is sufficiently demonstrated.

i) Laboratory Documentation Package and Chain of Custody

170. The Athlete contends that the Sample analysis performed by the Moscow Laboratory is not documented as required by the ISL, in particular as to a documented chain of custody for the Sample and is therefore not reliable. The IBU submits in turn that there is sufficient authentic and valid evidence on record to confirm that the Athlete committed an ADRV.

171. As was explained above, the Panel has carefully examined the expert reports from Professors Souvignet and Casey and Mr Walker and Dr Broséus and is convinced that the WADA LIMS constitutes authentic evidence and that the Moscow LIMS was indeed manipulated in order to "protect" the Athlete from doping sanctions. In particular, with respect to the Sample, the experts were able to identify the following information based on the comparison of the "found", "confirmation" and "log_do" tables of the WADA LIMS, the Moscow LIMS and the Carved LIMS:

- a PAAF for ostarine was reported in the "found" table of the WADA LIMS;
- a successful CP for ostarine was reported in the "confirmation" table of the WADA LIMS;
- the record of a PAAF for ostarine was deleted in the "found" table of the Moscow LIMS;
- the ITP raw data for ostarine was manipulated;
- the record of a successful CP for ostarine was deleted in the "confirmation" table of the Moscow LIMS and the corresponding raw data was deleted.

172. In the Panel's view, the above data from the LIMS constitute reliable evidence that the Appellant's Sample contained ostarine and its metabolite. In particular, the Sample identification number as well as the data regarding the concentration and other analytical data with respect to the Sample analysis were either visible on the WADA LIMS and the Carved LIMS or could be recovered by the experts. As to the chain of custody in particular, the Panel is convinced by the explanation of Prof. Ayotte, who confirmed that the link between sample 2784294 and Ms Svetlana Sleptsova was initially established from the Doping Control Form, an external document, and that the WADA LIMS – as confirmed by the Carved LIMS – then provides the date, time and identity of the laboratory staff involved for the sample reception and the correspondence with the laboratory code. The LIMS also contains the information on the ITP and the CP tests, including staff who performed each step. As a result, the Panel finds that the data regarding the analysis of the Sample, including the external and internal chain of custody, is sufficiently documented to constitute reliable evidence in the present matter.

ii) Method of Detection applied by the Moscow Laboratory

173. The Athlete submitted that the Sample testing is not reliable since the method of detection applied by the Moscow Laboratory for the Sample analysis was not validated at the time of the Sample analysis, in violation of the ISL and ISO requirements. The Athlete contends that WADA itself had raised the issue in its reports after its site visits to the Moscow Laboratory in 2013. In particular, the SOP P1.006 provided by the Moscow Laboratory, which is supposed to describe the method of detection used for ostarine and its validation, is unsigned and incomplete, and therefore does not show that the method of detection applied by the Moscow Laboratory was validated. In addition, the SOP P1.006 provides for the use of a specific instrument which was not

used in the case of the Sample analysis. The IBU submits that since the Moscow Laboratory was WADA-accredited, it must be considered that it was sufficiently capable of performing analysis that withstand scrutiny; in addition, even if there was room for improvement in particular as to the Moscow Laboratory's custodial procedures, there is no evidence that WADA's recommendations after the site visits invalidated any of its analytical data or caused the PAAF.

174. The Panel first notes that, according to the ISL, standard methods are generally not available for doping control analysis and that, as a result, accredited laboratories should develop, validate and document methods for the detection of prohibited substances. Such Laboratory should demonstrate the ability to identify successfully 100% of the time the prohibited substance in a specific sample.

175. The Panel accepts the evidence that was put forward by Prof. Ayotte according to which the method of detection of ostarine had been presented during a workshop in Cologne in 2012. The results of the Moscow Laboratory's study are published and accessible on the internet. Prof. Ayotte confirmed that these results are coherent and the method appears to have been imported to routine testing. The Panel finds that Prof. Ayotte's explanation as to the reliability of the method of detection of ostarine used by the Moscow Laboratory on the Sample analysis is convincing.

176. In addition, contrary to what Dr de Boer stated, the SOP P1.006 entitled "*Methodology for qualitative identification of conjugated in urine by UHPLC-MS/MS method*" appears to show the validation of the method : it includes ostarine as the list of substances tested and provides for the retention time and traceable ions for each substance in the screening and confirmation. Prof. Ayotte also confirmed that the LC-MS/MS method appears suitable for the detection and confirmation of ostarine, and the LOD appears conservative. Prof. Ayotte indicated that the WADA-accredited laboratory in Montreal applies the same ions transitions in the confirmation procedure with respect to ostarine detection. Finally, the Athlete argued that the SOP P1.006 provides that only "Acquity UPLC BEH C18" was calibrated for detecting various types of prohibited substances whereas instrument "Maximus" was used to analyse the Sample, is not decisive either. Prof. Ayotte however confirmed that "Acquity UPLC BEH C18" is not an instrument but a chromatographic column that equips a given instrument. There is no evidence on record that shows that the instrument used for the Sample analysis was wrongly equipped. In any case, if the Panel could appreciate that an inadequately equipped instrument may not detect that which it is supposed to detect, it does not accept that it follows that an inadequately equipped instrument may detect non-existent substances, and so generate false positives. There is simply no evidence to support such a conclusion.

177. Finally, the Panel notes that according to its report issued after the site visit on 20-23 January 2013, WADA stated that "*there is serious concern that in current situation some analytical procedures would not stand legal security in a Court*". It is clear and uncontested that there was room for improvement on the side of the Moscow Laboratory, especially as to its custodial procedures. However, as was confirmed by Dr Rabin, in case WADA had been of the opinion that the method of detection used by the Moscow Laboratory was suspect, it would have suspended the Laboratory's accreditation, as Dr Rabin confirmed. In the Panel's view, so long as the Moscow Laboratory maintained its WADA accreditation, the Laboratory's methods of detection

must be considered as valid. Moreover, Dr Rabin himself expressly confirmed that the experts' unanimous opinion after the site visit in 2013 was that the Moscow Laboratory was working sufficiently well to allow it to continue its routine analytical activities. Finally, the Panel recalls that, as it explained earlier (see above para. 156), the essential ingredient to the success of the Russian Doping Scheme was the ability of the Moscow Laboratory to detect correctly the presence of prohibited substances.

178. The Panel therefore concludes that the method of detection of ostarine used by the Moscow Laboratory to analyse the Sample relies on thorough scientific research and that any lack of formal validation of the method of detection of ostarine, if any, did not affect the quality of the Sample analysis nor its reliability.

iii) Positive/Negative Control Sample

179. The Athlete contends that the Sample analysis is not reliable since, as confirmed by the Moscow Laboratory, there was no valid positive/negative control sample ("PCS") of ostarine and its metabolites available at the Moscow Laboratory until November 2013. As stated by Dr Krotov and Dr de Boer, any home-made positive control sample for ostarine and its metabolite was produced on the basis of illegally purchased ostarine and is therefore not reliable. The IBU contends to the contrary that there is evidence that a reliable positive and negative control sample was used by the Moscow Laboratory in support of its Sample analysis.

180. The Panel first notes that, according to the ISL, all batches undergoing an analysis should include appropriate negative and positive controls in addition to the sample being tested (see for instance, Article 5.2.4.2.3); the positive and negative control samples are thus analyzed in the same analytical run as the sample being tested. Moreover, as was confirmed by Prof. Ayotte, the ISL provides that, in the absence of the reference standard, a collection of urine samples that, based on scientific data, can be proven to contain the relevant metabolite is acceptable.

181. In the present matter, the Moscow Laboratory acknowledged that it did not purchase officially ostarine until November 2013. According to Dr Krotov, the positive control sample was created in the Moscow Laboratory based on a "excretion study" performed using ostarine bought on the black market, in violation of the ISL standards. In Dr de Boer's opinion, in the absence of adequate urine control samples, there is no guarantee that the identification procedure was adequate.

182. The Panel notes that the Moscow Laboratory relied on an a "*volunteer excretion study using 30 mg of ostarine approved by the local Ethics Committee at the Institute of Sport*", which was part of the method of detection that was presented at the workshop in Cologne in 2013, the results of which were published and are available on the internet. The data with respect to the method of detection including the excretion study could therefore be reviewed, and were considered as coherent by Prof. Ayotte. The fact that the Moscow Laboratory used a PCS that contained ostarine is further confirmed by Prof. Ayotte's and Dr Gmeiner's review. Again, to be of benefit for the Russian Doping Scheme as a whole, the Moscow Laboratory required reliable testing. Against this background, the Panel does not consider it to be feasible that the Moscow Laboratory would use ostarine of inferior or unknown quality or composition as a reference standard.

183. Based on the above considerations, the Panel finds that the Sample analysis was based on a reliable positive/negative control sample.

iv) Alleged Incompetence of the Moscow Laboratory and WADA Disciplinary Proceedings

184. Since the Panel came to the conclusion that the Moscow Laboratory was using reliable positive/negative control samples and that its method of detection of ostarine relied on robust scientific research as well as on SOP P1.006 which adequately shows the validation of the method of detection applied by the Moscow Laboratory for the Sample analysis, and that the Moscow Laboratory never lost its WADA accreditation, the Panel concludes contrary to what the Athlete contended, that the Moscow Laboratory was indeed operating competently.

185. Moreover, the Panel finds that the Moscow Laboratory never lost its WADA-accreditation and such accreditation was never suspended. Dr de Boer explained that the fact that the Moscow Laboratory did not lose its WADA accreditation could also be the effect of immense political and logistic pressure just before the start of 2014 Winter Olympic Games in Sochi. The Panel does not accept such statement, which is not supported by any evidence and is the mere expression of a personal opinion. As was confirmed by Dr Rabin, when the Moscow Laboratory was under close monitoring by WADA in 2012-2013, if at any time the auditors would have considered that the Laboratory should have been suspended, such a procedure would have been initiated immediately and without hesitation. If such a procedure was not initiated, it is because it was the unanimous expert opinion of the auditors that, at the time, the Moscow laboratory was operating sufficiently well to allow it to continue its routine analytical activities despite several corrective actions required. Later, when a disciplinary hearing of the Moscow Laboratory was conducted in November 2013, the conclusion by the Hearing Panel was that the laboratory would be suspended unless it can expeditiously address its quality management issues. If the Hearing Panel would have been convinced that the Moscow Laboratory was operating significantly outside of the rules, one must assume that the Hearing Panel would have recommended a suspension of the laboratory immediately after the hearing procedure. The Panel finds that there is no evidence on record to conclude that the Moscow Laboratory was operating incompetently and that the disciplinary proceedings initiated by WADA affect the robustness of the evidence retrieved in the LIMS data.

v) "Zero" Concentration

186. The Athlete contends that the concentration found in the Sample according to the LIMS data was zero, which, in the absence of laboratory documentation package, does not constitute a robust result as it is below the LOD defined for ostarine in the SOP P1.006, below the minimum concentration for confirmation provided by Dr Rodchenkov and the MRPL provided for by WADA. In the Athlete's opinion, that low concentration was the reason why the AAF was not reported in ADAMS. The IBU disputes the Athlete's interpretation of the values included in Dr Rodchenkov's affidavit. The IBU further submits that nothing prevents a laboratory from validly detecting a non-threshold substance in a concentration below the LOD or the MRPL, and from validly reporting such positive result in ADAMS.

187. The Panel starts its examination of this issue by recalling that the MRPL indicates the level of concentration a WADA-accredited laboratory must be capable to detect in 100% of the cases; and that the LOD in turn refers to the minimum concentration of a specific substance that can be detected with reasonable certainty in urine at the ITP; the LOD is not higher than 50% of the MRPL.

188. The Panel agrees with Dr Rabin, Prof. Ayotte and Dr Gmeiner that the criteria for reporting an AAF for a non-threshold substance are not related to its level of concentration found in the sample but rather to whether the identification criteria are or are not met.

189. Furthermore, as was confirmed by Dr Rabin, the Panel accepts that performant laboratories may be able to validly detect non-threshold substances below the MRPL or the LOD. This is also not disputed by Dr de Boer.

190. The Panel then reviewed the affidavit of Dr Rodchenkov with reference to the specific issue of the minimum concentration values included therein. As was clarified by Mr Walker and Dr Broséus, these values were provided in answer to the question put to Dr Rodchenkov as to what concentration he would expect (indeed almost guarantee) would result in a successful CP – without any supporting analytical data. In reply to this question, in his affidavit, Dr Rodchenkov indicated that a concentration of ostarine of 0,1ng/mL "*would, based on my experience and expert opinion, most likely become a confirmed AAF to a Confirmation Procedure was conducted* [sic]".

191. In the Panel's view, it does not follow from Dr Rodchenkov's affidavit that the Moscow Laboratory would not conduct a CP if the minimal concentration for ostarine was below 0,1 ng/ml in the initial testing values, or that the Moscow Laboratory was not able to detect ostarine with sufficient certainty if the concentration was below 0,1ng/mL at the ITP level. Dr Rodchenkov's table means only that, based on his own experience, the result would most likely be confirmed at the CP if the ITP provided a concentration above 0,1 ng/ml. The Panel also recalls that this affidavit was rendered on 6 December 2017, i.e. at a time the WADA I&I had not recovered the Moscow LIMS yet, and was looking for ways to identify the most suspicious 'doping' cases within the WADA LIMS. Hence, by way of affidavit, Dr Rodchenkov was requested to identify very conservative concentrations of prohibited substances, which he believed would most likely result in a successful confirmation procedure. The situation is very different in the present matter since the IBU could retrieve and authenticate the LIMS data regarding the Sample.

192. Furthermore, Dr de Boer states that a concentration below the LOD defined for ostarine in the SOP P1.006 and below the MRPL provided for by WADA cannot be detected with reasonable certainty, especially when the chain-of-custody is not flawless and the PCS not reliable. The Panel disagrees with Dr de Boer's statement: the data contained in the WADA LIMS and recovered in the Carved LIMS show that the identification criteria were met at the ITP level, and that such result was confirmed at the level of the confirmation procedure. As was put by Prof. Ayotte, the fact that the concentration was written as "0" likely indicates that it was not estimated, and does not affect the detailed description of the AAF included by the analysts in the LIMS.

vi) Contamination

193. The Athlete submits that in the absence of a B-Sample analysis, the zero concentration found in the Sample could be due to contamination by other samples. The Athlete relies on the statement of Dr de Boer who referred in particular to a contamination episode that occurred in the WADA-accredited laboratory in Paris. The IBU contends that the contamination scenario is not realistic and relies on the opinion of its experts.

194. The Panel carefully reviewed the Parties' arguments and the expert opinions on this issue.

195. Dr de Boer stated that, like the contamination episode that occurred in the WADA-accredited laboratory in Paris, a contamination with another urine sample in the Moscow Laboratory cannot be excluded; the risk is even significant in light of the other existing flaws. Dr de Boer confirmed that throughout his career as head of WADA-accredited laboratory he had once a case of contamination.

196. Prof. Ayotte stated that the contamination episode that occurred in the Paris laboratory was in a situation very different from that which existed at the Moscow Laboratory: the laboratory in Paris admitted its failure to separate heavily positive stanozolol samples and other routine samples on the automatic robot processing the samples, and utilized the same sequence for all the confirmations, therefore repeating the cross-contamination; to the contrary, at the Moscow Laboratory, screening and confirmation procedures were done on different aliquots.

197. Having reviewed the above considerations, the Panel is comfortably satisfied that the AAF was not the result of a contamination. In the Panel's view, the contamination scenario alleged by the Appellant is highly unrealistic. The situation of the Moscow Laboratory is in no way close to similar to that of the WADA-accredited laboratory in Paris. In addition, as was stated by Dr Gmeiner, the fact that the CP is performed at a later stage generally allows to prevent contamination scenarios. Finally, as was already stated, (see above para. 156), the essential ingredient to the success of the Russian Doping Scheme was the ability of the Moscow Laboratory to detect correctly the presence of prohibited substances. Even if there was room for improvement, there is no evidence on record that shows that the Sample was contaminated; as a result, neither the quality of the Sample analysis nor its reliability are affected.

d. Conclusions

198. Based on the evidence examined above, the Panel is comfortably satisfied that:

- The ITP and CP records in the WADA LIMS regarding the Athlete's Sample with respect to ostarine are authentic: they once existed in the Moscow LIMS but were intentionally deleted before release of the Moscow LIMS to WADA. The Moscow LIMS, meanwhile, was manipulated in order to conceal the confirmed positive record for the Athlete's Sample in the WADA LIMS.

- The ITP and CP records in the WADA LIMS show that there was a confirmed PAAF for ostarine and its metabolite for the Athlete.

- The Moscow Laboratory provided state-of-the-art analysis on the Athlete's Sample. In particular, the Sample analysis data contained in the WADA LIMS and the Carved LIMS is sufficiently documented to constitute reliable evidence. In addition, the method of detection of ostarine and its metabolite applied by the Moscow Laboratory was based on thorough scientific studies, and is considered as sound; the SOP P1.006 shows validation of the method of detection and the PCS/NCS analyzed for the purpose of the Sample testing are reliable.

- Since ostarine and its metabolite is a non-threshold substance under the WADC, the confirmed result in the WADA LIMS constitutes an AAF despite the low concentration observed in the Sample. Moreover, this AAF did not result from a contamination.

- The AAF should have been reported in ADAMS. Because the AAF was never reported in ADAMS, the IBU was entitled to charge the Athlete with an ADRV for "use" under Article 2.2 of the IBU ADR.

199. Based on the analysis of the WADA LIMS and the Moscow LIMS with respect to the Athlete's Sample as well as the specific investigations and reviews performed by the experts on such LIMS data, taken in the context of the established existence of an organized Russian Doping Scheme as was revealed by the McLaren Reports and the Reports of the Independent Committee of the IOC, the Panel is comfortably satisfied that the evidence on record sufficiently demonstrates that the Athlete used a prohibited substance, namely ostarine, in violation of Article 2.2 of the IBU ADR.

200. Intent of the Athlete to dope or knowledge that she was doping is not necessary to establish that an ADRV occurred under Article 2.2 of the IBU ADR since, as provided under Article 2.2.1 of the IBU ADR, the mere use of a prohibited substance, which in the present case has been proven by the evidence on file, is sufficient for that purpose.

201. Since it is demonstrated that the Athlete committed an ADRV for Use of a prohibited substance, namely ostarine, for which the Decision appealed against by the Athlete ordered a two years' period of ineligibility and the IBU did not file an appeal, the Panel finds that it is unnecessary to examine the charges with respect to the use of EPO by the Athlete.

C. Consequences

202. The Panel found that the Athlete committed an ADRV under Article 2.2 of the IBU ADR for the 'use' of a prohibited substance, namely ostarine.

203. Article 10.2 of the IBU ADR provides as follows: "*The period of ineligibility imposed for a violation of Article 2.1 (Presence of Prohibited Substances or its Metabolites or Markers), Article 2.2 (Use or Attempted Use of Prohibited Substance or Prohibited Method) or Article 2.6 (Possession of Prohibited Substances and Methods) will 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.*"

204. The Panel notes that the Athlete did not raise the issue of sanction reduction or elimination provided for in Articles 10.4 and 10.5 of the IBU ADR and the Panel sees no reason to apply such a reduction or elimination, so the standard sanction of two years' ineligibility applies. Moreover, since the Decision appealed against by the Athlete ordered a two years' period of ineligibility and the IBU did not file an appeal, the Panel is barred from examining any allegation on aggravating circumstances which could have increased the period of ineligibility as provided under Article 10.6 of the IBU ADR.

205. According to Article 10.8 of the IBU ADR, "*[i]n addition to the automatic disqualification of the results in the competition that produced the positive sample under Article 9 (Automatic Disqualification of Individual Results), 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, will, unless fairness requires otherwise, be disqualified with all of the resulting consequences including forfeiture of any medals, points and prizes.*"

206. As a result, noting particularly that none of the Parties made submissions on the issue of disqualification of the Athlete's results, the Panel finds that the Decision shall be confirmed including on the aspect of disqualification of the Athlete's results as well.

X. COSTS

207. Article R65 of the CAS Code reads as follows:

> *"1. This Article R65 applies to appeals against decisions which are exclusively of a disciplinary nature and which are rendered by an international federation or sports-body. […]*
> *2. Subject to Articles R65.2, para. 2 and R65.4, the proceedings shall be free. The fees and costs of the arbitrators, calculated in accordance with the CAS fee scale, together with the costs of CAS are borne by CAS.*
> *Upon submission of the statement of appeal, the Appellant shall pay a non-refundable Court Office fee of Swiss francs 1,000. — without which CAS shall not proceed and the appeal shall be deemed withdrawn. […]*
> *3.Each party shall pay for the costs of its own witnesses, experts and interpreters. In the arbitral award and without any specific request from the parties, the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such contribution, the Panel shall take into account the complexity and the outcome of the proceedings, as well as the conduct and financial resources of the parties. […]"*

208. The appeal filed by the Athlete is directed against a decision which is exclusively of a disciplinary nature rendered by an international sports body. Therefore, these proceedings are free, except for the CAS Court Office fee in the amount of CHF 1,000 (one thousand Swiss francs) paid by the Athlete, which are retained by the CAS.

209. In light of the complexity and outcome of the present proceedings as well as the conduct of the Parties, the Panel finds that the Athlete shall pay the amount of CHF 10,000 (ten thousand Swiss francs) to the IBU as a contribution towards the expenses incurred in connection with these arbitration proceedings.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Ms Svetlana Sleptsova on 4 March 2020 against the Decision rendered by the Anti-Doping Hearing Panel of the International Biathlon Union on 11 February 2020 is dismissed.

2. The Decision rendered by the Anti-Doping Hearing Panel of the International Biathlon Union on 11 February 2020 in the matter *IBU v. Ms. Svetlana Sleptsova*, is confirmed.

3. The Award is pronounced without costs, except for the Court Office fee of CHF 1,000 (one thousand Swiss Francs) paid by Ms Svetlana Sleptsova, which is retained by the CAS.

4. Ms Svetlana Sleptsova shall pay the amount of CHF 10,000 (ten thousand Swiss francs) to the International Biathlon Union as a contribution towards the expenses incurred in connection with these arbitration proceedings.

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

Seat of arbitration: Lausanne, Switzerland
Date: 9 September 2024

THE COURT OF ARBITRATION FOR SPORT

André Brantjes
President of the Panel

Rui Botica Santos
Arbitrator

Jacques Radoux
Arbitrator

Stéphanie De Dycker
CAS Clerk