CAS 2019/O/6153 International Association of Athletics Federations (IAAF) v. Russian Athletics Federation (RUSAF) and Yulia Gushchina

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

Sitting in the following composition:

Sole Arbitrator: Mr Ken E. Lalo, attorney-at-law in Gan-Yoshiyya, Israel

in the arbitration between

International Association of Athletics Federations, Monaco
represented by Mr Ross Wenzel and Mr Nicolas Zbinden, attorneys-at-law, Kellerhalls Carrard, Lausanne, Switzerland

Claimant

and

Russian Athletics Federation, Moscow, Russia

First Respondent

and

Ms Yulia Gushchina, Russia

Second Respondent

I. THE PARTIES

1. The International Association of Athletics Federations (the "Claimant" or "IAAF"), is the international federation governing the sport of Athletics worldwide. For such purposes, IAAF has enacted various regulations, including the IAAF Anti-Doping Rules to implement the provisions of the World Anti-Doping Code (the "WADC") established by the World Anti-Doping Agency ("WADA"). IAAF has its registered seat in Monaco.

2. The Russian Athletics Federation (the "First Respondent" or "RUSAF"), is the national governing body for the sport of Athletics in Russia and has its registered seat in Moscow, Russia. RUSAF is a member federation of the IAAF but at all relevant times was suspended from membership.

3. Ms Yulia Gushchina (the "Second Respondent" or the "Athlete"), born on 4 March 1983, is a Russian athlete, specializing as a sprinter. At the relevant times the Athlete was a member of RUSAF. The Athlete represented Russia at international competitions, Olympic Games and World and European Championships, including at the 13th IAAF World Championships in Athletics in Daegu, South Korea during 2011 (the "2011 WC") and at the XXX Olympiad, London 2012 (the "2012 Olympic Games").

4. The First Respondent and the Second Respondent are hereinafter referred to as the "Respondents". The Claimant and the Respondents are hereinafter referred to as the "Parties".

II. FACTUAL BACKGROUND

5. Below is a summary of the relevant facts and allegations based on the Parties' written submissions and evidence produced in connection with these proceedings. Additional facts and allegations found in the Parties' written and oral submissions and evidence may be set out, where relevant, in connection with the legal discussion below. While the Sole Arbitrator has considered all the facts, evidence, allegations and legal arguments submitted by the Parties in the present proceedings, it refers in this Award only to the submissions and evidence it considers necessary to explain its reasoning.

A. The 2011 WC Test

6. On 1 September 2011, during the 2011 WC, the Athlete underwent a doping test. The sample was analysed by the WADA–accredited laboratory in Seoul, South Korea and did not reveal the presence of any prohibited substance.

7. Samples collected during the 2011 WC were transferred to Laboratoire Suisse d'Analyse du Dopage, the WADA-accredited laboratory in Lausanne, Switzerland (the "Laboratory") for long-term storage. The Athlete's urine sample (the "2011 Sample") was received by the Laboratory on 12 April 2012.

8. The IAAF decided to perform further analysis on samples collected during the 2011 WC. The additional analyses were performed with improved analytical methods which have been developed over the years for the purpose of detecting prohibited substances which could not be identified by analysis performed earlier.

9. A further analysis of the 2011 Sample was conducted by the Laboratory and reported on 15 December 2016. This analysis revealed the presence of three (3) metabolites of Dehydrochloromethyltestosterone ("DHCMT").

10. DHCMT is an Exogenous Androgenic Anabolic Steroid, prohibited under section S1.1.a of WADA's 2011 Prohibited List, published on 18 September 2010 with effect as from 1 January 2011 (the "2011 Prohibited List") and effective during the 2011 WC.

11. By a letter dated 16 December 2016, the IAAF notified the Athlete of the positive 2011 Sample, informed her of the right to have the B sample analysed and invited her to provide an explanation by 26 December 2016.

12. The Athlete did not respond to this letter.

13. By a letter dated 28 March 2017, the IAAF informed the Athlete that no explanation for the positive result had been received and that a provisional suspension had therefore been imposed on the Athlete, effective immediately. The Athlete was also informed that a hearing would be convened by the IAAF before CAS and requested the Athlete to confirm by 10 April 2017 whether the hearing should proceed before CAS pursuant to either Rule 38.3 (first instance before a Sole Arbitrator) or Rule 38.19 (single instance) of the relevant IAAF Anti-Doping Rules.

14. On 30 March 2017, the IAAF received notification from RUSAF that the Athlete had confirmed receipt of the IAAF letter of 28 March 2017.

15. By a letter dated 12 May 2017, the Athletics Integrity Unit of the IAAF ("AIU"), which was delegated authority on behalf of the IAAF, with effect from 3 April 2017, for, inter alia, Results Management and Hearings, pursuant to Article 1.2 of the IAAF Anti-Doping Rules entered into force on 1 January 2019 (the "2019 IAAF Rules"), notified the Athlete that it had received notification from The International Olympic Committee (the "IOC") regarding a positive test of a sample provided by the Athlete during the 2012 Olympic Games and that it decided to stay the results management procedures in respect of the 2011 Sample until the case arising from the sample provided during the 2012 Olympic Games had been fully determined by the IOC.

16. On 16 May 2017, RUSAF confirmed that the Athlete had received the letter from the AIU dated 12 May 2017 and "*as she said she everything understood*".

B. The 2012 Olympic Games Test

17. On 3 August 2012, during the 2012 Olympic Games, the Athlete underwent a doping test. The sample was analysed by the London Laboratory and did not reveal the presence of any prohibited substance.

18. The samples collected during the 2012 Olympic Games were transferred to the Laboratory for long-term storage. The Athlete's urine sample (the "2012 Sample") was received by the Laboratory on 29 November 2012.

19. The IOC decided to perform further analysis on samples collected during the 2012 Olympic Games. The additional analyses were performed with improved analytical methods which have been developed over the years for the purpose of detecting

prohibited substances which could not be identified by analysis performed at the time of the 2012 Olympic Games.

20. A further analysis of the 2012 Sample was conducted by the Laboratory and reported on 12 April 2017. This analysis resulted in a Presumptive Adverse Analytical Finding for metabolites of DHCMT and stanozolol, but the Laboratory indicated that "*the volume of A sample was not sufficient for confirmation procedure*".

21. By a letter dated 25 April 2017, the IOC advised the Athlete and the IAAF that the 2012 Sample had been reanalysed by the Laboratory and resulted in a Presumptive Adverse Analytical Finding for metabolites of DHCMT and stanozolol.

22. DHCMT is an Exogenous Androgenic Anabolic Steroid, prohibited under section S1.1.a of WADA's 2012 Prohibited List, published on 24 August 2011 with effect as from 1 January 2012 (the "2012 Prohibited List") and effective during the 2012 Olympic Games.

23. In its letter of 25 April 2017, the IOC further advised the Athlete that it decided, in accordance with Article 5.2.2.12.10 of the 2016 International Standard for Laboratories (the "2016 ISL"), to proceed to a confirmation analysis based on a split B-Sample; namely, dividing the volume of the B-Sample into B1 and B2 bottles, analysing the B1-Sample and resealing the B2-Sample. While not required under the 2016 ISL, the IOC offered the Athlete the possibility of attending on 10 May 2017 at the Laboratory the opening and splitting of the B-Sample, the sealing of the B2-Sample and the analysis of the B1-Sample. The IOC also invited the Athlete to provide an explanation for the 2012 Sample. The Athlete did not respond.

24. On 8 May 2017, the Athlete was advised that in the absence of an answer, the process had been rescheduled to take place on 23 May 2017. She was granted a deadline until 12 May 2017 to indicate whether or not she and/or a designated representative would attend the opening and splitting of the B-Sample, the sealing of the B2-Sample and the analysis of the B1-Sample. The Athlete did not respond.

25. On 15 May 2017, the Athlete was granted an additional deadline until 17 May 2017 to indicate whether or not she and/or a designated representative would attend the opening and splitting of the B-Sample, the sealing of the B2-Sample and the analysis of the B1-Sample. The Athlete did not respond.

26. Numerous additional approaches to the Athlete were made both directly and through her NOC. These were left unanswered.

27. In the absence of any response by the Athlete, the IOC proceeded with the analysis of the B1-Sample on 23 May 2017 at the Laboratory. As provided in the ISL, the opening, splitting and analyses of the sample were attended by an independent witness. The results of the B1-Sample analysis were reported by the Laboratory on 24 May 2017. These results established the presence of metabolites of DHCMT.

28. On 6 June 2017, the IOC notified the Athlete of the Adverse Analytical Finding and of the institution of disciplinary proceedings to be conducted by the Disciplinary Commission. The IOC also informed the Athlete of her right to request and attend the opening of the B2-Sample and its analysis, either in person and/or through a representative. The Athlete was finally informed of her right to request a copy of the

laboratory documentation package. The Athlete did not reply.

29. On 23 June 2017, the Athlete was granted an additional deadline until 30 June 2017. The Athlete did not reply.

30. On 13 July 2017, the IOC informed the Athlete that the IOC had elected not to proceed with the analysis of the B2-Sample. She was further invited to indicate by 21 July 2017 whether she would attend the hearing of the Disciplinary Commission, whether she would personally attend the hearing and/or be assisted/represented by a representative and/or whether she would present her defence in writing. The Athlete did not reply.

31. On 8 August 2017, the Athlete was granted an additional deadline until 15 August 2017 to provide responses. The Athlete did not reply.

32. On 11 September 2017, the Athlete was advised that the Disciplinary Commission would issue a decision on the basis of the file. She was invited to submit her written defence by 18 September 2017. On 19 September 2017, the Athlete was granted an additional deadline until 26 September 2017 to submit her written defence. The Athlete did not reply.

33. On 16 October 2017, the IOC Disciplinary Commission issued a decision determining that the Athlete had committed an anti-doping rule violation (the "2012 ADRV") arising from the 2012 Sample and disqualified the Athlete from the women's 400m event and the women's 4x400m relay event at the 2012 Olympic Games (the "Decision").

C. The follow-up procedures in regard to both the 2011 Sample and the 2012 Sample

34. By a letter dated 15 November 2017, the AIU informed the Athlete that the IOC had referred the Decision to the IAAF to determine the further consequences that should be imposed for the 2012 ADRV pursuant to the applicable IAAF Rules. The AIU also confirmed that it planned to proceed with the matter of the 2011 Sample now that the IOC proceedings relating to the 2012 Sample had concluded.

35. In the same letter, the AIU advised that the case would be referred to CAS for adjudication and granted the Athlete a deadline to select whether to proceed under Rule 38.3 or Rule 38.19 of the IAAF Competition Rules 2016 – 2017 effective from 1 November 2015 (the "2016 IAAF Rules"). The Athlete was advised that the case would be referred to CAS under Rule 38.3 of the 2016 IAAF Rules if the Athlete did not reply.

36. The Athlete did not respond to the letter dated 15 November 2017.

37. Throughout the process, additional notifications and reminders were sent to the Athlete, but the Athlete did not respond.

38. On 17 December 2018, the AIU wrote again to the Athlete and requested notification by no later than 31 December 2018 of whether the Athlete wished to proceed under Rule 38.3 or Rule 38.19 of the 2016 IAAF Rules.

39. On 18 December 2018, RUSAF confirmed that the AIU's correspondence of 17 December 2018 had been translated into Russian and sent to the Athlete and that the CEO of RUSAF had contacted the Athlete and explained the importance of the letter.

40. The Athlete did not respond by the final deadline of 31 December 2018.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

41. On 6 February 2019, the IAAF filed its Request for Arbitration in accordance with Articles R47, R48, and R51 of the CAS Code of Sports-Related Arbitration (the "Code").

42. Rule 38.3 of the 2016 IAAF Rules states that the CAS procedure shall be governed by the procedural rules governing CAS appeal arbitrations without reference to any time limit to appeal. Therefore, the rules set out at Rule 47 et seq. of the Code are applicable to this dispute on a mutatis mutandis basis, save as explicitly varied by the applicable IAAF Rules (see for example 2016/A/4486; CAS 2016/A/4487; CAS 2016/A/4480).

43. This Request for Arbitration which includes the IAAF's requests, arguments and evidence in connection with the Athlete's case should be considered also as IAAF's Statement of Appeal and Appeal Brief for the purposes of Articles R47, R48 and R51 of the Code.

44. On 20 February 2019, the CAS Court Office sent to the Parties notification regarding the initiation of these proceedings, detailing, inter alia, the requirements from the Respondents. This letter also requested RUSAF to forward the letter and enclosures including the Statement of Appeal to the Athlete.

45. On 27 February 2019, RUSAF Anti-Doping Coordinator advised the CAS Court Office of a new email address for the Athlete.

46. On 4 March 2019, RUSAF Anti-Doping Coordinator confirmed that the package was delivered to the Athlete and provided the courier tracking number. Throughout the process RUSAF confirmed delivery of other documents and letters to the Athlete providing proofs of such deliveries.

47. Rule 42.15 of the 2016 IAAF Rules provides a deadline of thirty (30) days from receipt of the Request for Arbitration to file an Answer. The Respondents did not file their respective Answers in accordance with Rule 42.15 of the 2016 IAAF Rules and Article R55 of the Code.

48. This matter was submitted to a sole arbitrator in accordance with Rule 38.3 of the 2016 IAAF Rules. On 11 April 2019, the CAS Court Office, on behalf of the President of the CAS Ordinary Arbitration Division and in accordance with Article R54 of the Code, confirmed that the panel appointed to decide this matter was constituted as follows:

Sole Arbitrator: Mr Ken E. Lalo, attorney-at-law in Israel

The Sole Arbitrator was assisted in these proceedings by Mrs Andrea Sherpa-Zimmermann, CAS Counsel.

49. On 1 May 2019, the CAS Court Office informed the Parties that the Sole Arbitrator, after considering the Parties' positions with respect to a hearing and pursuant to Article R57 of the Code, deemed himself sufficiently well-informed to decide this case based solely

on the Parties' written submissions, without the need to hold a hearing.

50. On 16 May 2019, the CAS Court Office, on behalf of the Sole Arbitrator, sent to the Parties an Order of Procedure to be signed and returned by 23 May 2019. On 16 May 2019, the IAAF signed and returned the Order of Procedure to the CAS Court Office. On 27 May 2019, the CAS Court Office provided another notification to the Respondents requesting that the Order of Procedure be signed and returned by 31 May 2019. The Respondents neither signed the Order of Procedure nor objected to its contents.

51. The Sole Arbitrator has carefully taken into account in his decision all of the submissions, evidence, and arguments presented by the Parties, even if these have not been specifically summarised or referred to in this Award.

IV. SUBMISSIONS OF THE PARTIES

A. IAAF's Submissions and Requests for Relief

i. Submissions

52. The IAAF submissions in this matter may be summarised as follows:

- The Athlete has committed an anti-doping rule violation ("ADRV") as a result of the finding of metabolites of DHCMT in the 2011 Sample, in accordance with Rule 32.2(a) of the IAAF Competition Rules 2010 – 2011 (the "2011 IAAF Rules") (which forbids the Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample) and/or Rule 32.2(b) of the 2011 IAAF Rules (which forbids the Use or Attempted Use of a Prohibited Substance or a Prohibited Method).

- The Athlete has committed an additional ADRV for the presence of metabolites of DHCMT in the 2012 Sample, as determined in the Decision of the IOC Disciplinary Commission dated 16 October 2017 which confirmed the 2012 ADRV.

- The Athlete committed the second ADRV before receiving notice of the first ADRV. Pursuant to Rule 40.7(b) of the 2012 IAAF Rules, the two ADRVs shall therefore be considered together as one single first violation.

- DHCMT is a non-specified substance that is prohibited in- and out-of-competition under section S1.I.a of both the 2011 Prohibited List and the 2012 Prohibited List.

- In accordance with Rule 40.2 of the then applicable IAAF Rules, the sanction to be imposed on the Athlete should be a sanction of two (2) years to four (4) years of ineligibility.

- The Athlete's sanction should be increased to four (4) years period of ineligibility pursuant to Rule 40.6 of the then applicable IAAF Rules.

- The Athlete has been subject to a provisional suspension since 28 March 2017 and should receive credit for the period served, provided she has complied with the terms of that provisional suspension.

- The Athlete's results in the 200m and 4x100m at the 2011 WC should be disqualified

in accordance with IAAF Rule 39 of the 2011 IAAF Rules with all resulting consequences including the forfeiture of all titles, awards, medals, points and prize and appearance money.

- In addition and pursuant to Rule 40.8 of the then applicable IAAF Rules, the results obtained by the Athlete in the period between 1 September 2011 and 28 March 2017 should also be disqualified.

- The Respondents should bear the costs of these proceedings.

ii. Requests for Relief

53. The IAAF requests the Sole Arbitrator to rule as follows:

"(i) CAS has jurisdiction to decide on the subject matter of this dispute.

(ii) The Request for Arbitration of the IAAF is admissible.

(iii) The Athlete is found guilty of an anti-doping rule violation in respect of her 1September 2011 sample on the occasion of the 2011 WC.

(iv) A period of ineligibility of between two and four years is imposed upon the Athlete, commencing on the date of the CAS Award. The period of provisional suspension imposed on the Athlete from 28 March 2017 until the date of the CAS Award shall be credited against the total period of ineligibility, provided it is effectively served by the Athlete.

(v) The Athlete's results in the 200m and 4x100m at the 2011 WC are disqualified in accordance with IAAF Rule 39 of the 2011 IAAF Rules with all resulting consequences including the forfeiture of all titles, awards, medals, points and prize and appearance money.

(vi) The Athlete's results between 1 September 2011 and 28 March 2017 be disqualified with all resulting consequences including the forfeiture of any titles, awards, medals, points and prize and appearance money in accordance with IAAF Rule 40.8.

(vii) The arbitration costs are borne entirely by RUSAF or, in the alternative, jointly and severally by the Respondents.

(viii) The IAAF is awarded a contribution to its legal costs."

B. The Respondents' Submissions and Requests for Relief

54. Despite the numerous notices and reminders sent to the Respondents by the CAS, the Respondents have failed to provide any submission or communication on this matter (aside from the First Respondent's confirmations that it had transmitted to the Athlete the various letters and pleadings sent by the CAS).

V. JURISDICTION

55. Rule 38.3 of the 2016 IAAF Rules provides as follows:

> *"If a hearing is requested by an Athlete, it shall be convened without delay and the hearing completed within two months of the date of notification of the Athlete's request to the Member [....] If the Member fails to complete a hearing within two months, or, if having completed a hearing, fails to render a decision within a reasonable time period thereafter, the IAAF may impose a deadline for such event. If in either case the deadline is not met, the IAAF may elect, if the Athlete is an International-Level Athlete, to have the case referred directly to a single arbitrator appointed by CAS. The case shall be handled in accordance with CAS rules (those applicable to the appeal arbitration procedure without reference to any time limit for appeal). The hearing shall proceed at the responsibility and expense of the Member and the decision of the single arbitrator shall be subject to appeal to CAS in accordance with Rule 42 [....]."*

56. The suspension of RUSAF's membership of the IAAF was confirmed during the IAAF Council meeting in Monaco on 26 November 2015.

57. On 17 June 2016, 1 December 2016, 31 July 2017, 26 November 2017, 27 July 2018 and on 4 December 2018, the IAAF Council decided that RUSAF had not met the conditions for reinstatement to membership. Therefore, the suspension of RUSAF remained in place when these proceedings were initiated.

58. As a consequence of the suspension of its membership, RUSAF was not in a position to conduct the hearing process of the Athlete's case by way of delegated authority from the IAAF pursuant to Rule 38 of the 2016 IAAF Rules. Consequently, RUSAF was not in a position to convene and complete a hearing within the two-month time period set out in Rule 38.3 of the 2016 IAAF Rules. The Sole Arbitrator confirms IAAF's position that in the circumstances it was plainly not necessary for the IAAF to impose any deadline on RUSAF for that purpose and that IAAF acted in accordance with Rule 38.3 of the 2016 IAAF Rules in initiating these proceedings before CAS.

59. In view of the inability of RUSAF to conduct a hearing process within the requisite timeframe and the Athlete's status as an International-Level Athlete, the IAAF was entitled pursuant to Rule 38.3 of the 2016 IAAF Rules to refer the case of the Athlete to CAS to be heard in the first instance by a sole arbitrator. This has also been confirmed in different CAS awards, including CAS 2016/O/4463, at para. 48 et seq. and CAS 2016/O/4464, at para. 62 et seq. and by the Swiss Federal Tribunal (in the matter 4A_490/2017).

60. Consequently, CAS has jurisdiction over the present case.

VI. ADMISSIBILITY

61. Rule 38.3 of the IAAF Competition Rules provides in its pertinent part:

> *"If the Member fails to complete a hearing within two months, or, if having completed a hearing, fails to render a decision within a reasonable time period thereafter, the IAAF may impose a deadline for such event. If in either case the deadline is not met, the IAAF may elect, if the Athlete is an International-Level Athlete, to have the case referred directly to a single arbitrator appointed by CAS. The case shall be handled in accordance with CAS rules (those applicable to the appeal arbitration procedure without reference to any time limit for*

appeal). The hearing shall proceed at the responsibility and expense of the Member and the decision of the single arbitrator shall be subject to appeal to CAS in accordance with Rule 42."

62. Thus, Rule 38.3 of the 2016 IAAF Rules which states that the CAS procedure shall be governed by the procedural rules governing CAS appeal arbitrations, specifically highlights that any time limits to initiate the proceedings before CAS do not apply to proceedings under this Rule.

63. The finding of the 2012 ADRV by the Athlete was made by the IOC Disciplinary Commission on 16 October 2017. Thereafter, the AIU notified the Athlete, by a letter dated 15 November 2017, that the IOC had referred the decision of the IOC Disciplinary Commission to the IAAF to determine the further consequences that should be imposed for the 2012 ADRV, reiterating that the case would be referred to CAS for adjudication. The Athlete did not respond to this letter. A similar notification was sent to the Athlete by the AIU on 17 December 2018, over a year from the first notification and some fourteen (14) months from the Decision of the IOC Disciplinary Commission. These proceedings were then initiated only on 6 February 2019.

64. Similarly, the proceedings in relation to the 2011 Sample were diligently processed by the IAAF. On 12 May 2017, IAAF decided to stay the results management procedures in respect of the 2011 Sample until the case arising from the 2012 Sample was decided. The 2011 Sample case then proceeded as from 15 November 2017, with the same delay between 15 November 2017 and 17 December 2018.

65. The Sole Arbitrator finds that this delay in the initiation of these proceedings does not limit their admissibility, since neither the Code nor the applicable IAAF Rules provide a specific time limit within which to file this first instance procedure or identify the date on which it could have been filed and since the delay was at least in part designated to provide an ample opportunity for the Athlete to address the matters raised by the AIU. The Athlete has failed to respond to the earlier notifications, despite the numerous approaches. The Athlete has also not indicated that she suffered any hardship due to this delay.

66. Finally, it is noted that pursuant to Rule 46 of the 2011 IAAF Rules and Rule 46 of the IAAF Competition Rules 2012 – 2013 (the "2012 IAAF Rules"), the statute of limitation for ADRV proceedings is "*eight (8) years from the date on which the anti-doping rule violation occurred*" and that pursuant to Rule 47 of the 2016 IAAF Rules, the statute of limitation for ADRV proceedings is "*ten years from the date on which the anti-doping rule violation is asserted to have occurred*". These proceedings relate to certain consequences of ADRVs at the 2011 WC and the 2012 Olympic Games, respectively, and have been initiated within less than eight years of the collection of the respective samples.

VII. APPLICABLE LAW AND REGULATIONS

67. Article R58 of the CAS Code provides the following:

"The Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or

sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".

68. Article 13.9.4 of the 2019 IAAF Rules states:

"In all CAS appeals involving the IAAF, the CAS Panel shall be bound by the IAAF Constitution, Rules and Regulations (including the Anti-Doping Rules and Regulations). In the case of conflict between the CAS rules currently in force and the IAAF Constitution, Rules and Regulations, the IAAF Constitution, Rules and Regulations shall take precedence."

69. Further, Article 13.9.5 of the IAAF Rules provides as follows:

"In all CAS appeals involving the IAAF, the governing law shall be Monegasque law and the appeal shall be conducted in English, unless the parties agree otherwise".

70. Consequently, the Sole Arbitrator considers that the IAAF rules and regulations apply to the present matter and Monegasque law shall apply on a subsidiary basis.

71. Pursuant to Article 21.3 of the 2019 IAAF Rules, ADRVs committed prior to 3 April 2017 are subject, for substantive matters, to the rules in place at the time of the alleged ADRV and, for procedural matters, to the 2016 IAAF Rules.

72. As the 2011 Sample was collected in 2011, the 2011 IAAF Rules shall apply to the substantive matters in relation to the positive test at the 2011 WC.

73. As the 2012 Sample was collected in 2012, the 2012 IAAF Rules shall apply to the substantive matters in relation to the positive test at the 2012 Olympic Games.

74. The 2016 IAAF Rules shall apply as to all procedural matters.

VIII. MERITS

A. ADRV in regard to the 2011 Sample

75. Rule 32.2(a) of the 2011 IAAF Rules states in its pertinent part that:

"*2. [...]The following constitute anti-doping rule violations:*

(a) Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample.

(i) it is each Athlete's personal duty to ensure that no Prohibited Substance enters his body. Athletes are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples. 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 under Rule 32.2(a).

(ii) sufficient proof of an anti-doping rule violation under Rule 32.2(a) is established by either of the following: presence of a Prohibited Substance or its Metabolites or Markers in the Athlete's A Sample where the Athlete waives analysis of the B Sample and the B Sample is not analysed; or, where the Athlete's B Sample is analysed and the analysis of the Athlete's B Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the Athlete's A Sample."

76. Rule 32.2(a) of the 2011 IAAF Rules thus forbids the Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample.

77. Rule 32.2(b) of the 2011 IAAF Rules states in its pertinent part that:

> *"2. [...]The following constitute anti-doping rule violations:*
>
> ---
>
> *(b) Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method.*
>
> *(i) it is each Athlete's personal duty to ensure that no Prohibited Substance enters his body. Accordingly, it is not necessary that intent, fault, negligence or knowing Use on the Athlete's part be demonstrated in order to establish an anti- doping rule violation for Use of a Prohibited Substance or a Prohibited Method.*
>
> *(ii) the success or failure of the Use or Attempted Use of a Prohibited Substance or Prohibited Method is not material. It is sufficient that the Prohibited Substance or Prohibited Method was Used, or Attempted to be Used, for an anti- doping rule violation to be committed."*

78. Rule 32.2(b) of the 2011 IAAF Rules thus also forbids the Use or Attempted Use of a Prohibited Substance or a Prohibited Method.

79. The presence of DHCMT metabolites was detected in the 2011 Sample and confirmed by the Laboratory.

80. DHCMT is a non- specified substance that is prohibited in- and out-of-competition under section S1.I.a of the 2011 Prohibited List.

81. The Athlete has, therefore, committed an ADRV in connection with the presence of DHCMT metabolites in the 2011 Sample.

B. ADRV in regard to the 2012 Sample

82. In accordance with Article 5.1 of The International Olympic Committee Anti-Doping Rules applicable to the Games of the XXX Olympiad, London 2012 (the "IOC Anti-Doping Rules"), the IOC is entitled to re-analyse samples collected during the period of the 2012 Olympic Games, including the Athlete's sample.

83. The presence of DHCMT metabolites was detected in the 2012 Sample.

84. DHCMT is a non-specified substance that is prohibited in- and out-of-competition under section S1.1.a of the 2012 Prohibited List.

85. The Decision has determined that the Athlete had committed the 2012 ADRV for the presence of metabolites of DHCMT in the 2012 Sample, in violation of Article 2 of the IOC Anti-Doping Rules.

86. The Athlete did not appeal the Decision, with the consequence that the Decision, including the finding of the 2012 ADRV, is final and binding.

87. The Athlete has, therefore, committed the 2012 ADRV in connection with the presence of DHCMT metabolites in the 2012 Sample.

C. The Sanction

88. The AIU, acting on behalf of the IAAF, processed this case throughout these proceedings and from May 2017. This was done in line with the provisions of Article 1.2 of the 2019 IAAF Rules which states as follows:

> *"In accordance with Article 16.1 of the IAAF Constitution, the IAAF has established an Athletics Integrity Unit ("Integrity Unit") with effect from 3 April 2017 whose role is to protect the Integrity of Athletics, including fulfilling the IAAF's obligations as a Signatory to the Code. The IAAF has delegated implementation of these Anti-Doping Rules to the Integrity Unit, including, but not limited to the following activities in respect of International-Level Athletes and Athlete Support Personnel: Education, Testing, Investigations, Results Management, Hearings, Sanction and Appeals. The references in these Anti-Doping Rules to the IAAF shall, where applicable, be references to the Integrity Unit (or to the relevant person, body or functional area within the Unit)."*

89. This matter concerns two occasions where prohibited substances were detected in samples provided by the Athlete, in regard to both the 2011 Sample and 2012 Sample.

90. In order to determine whether the 2012 ADRV may be considered a second violation, the 2012 IAAF Rules govern. Rule 40.7(d) of the 2012 IAAF Rules specifies:

> *"(d) Additional Rules for Certain Multiple Violations*
>
> *(i) For the purposes of imposing sanctions under Rule 40. 7, an anti-doping rule violation will only be considered a second violation if it can be established that the Athlete or other Person committed the second anti- doping rule violation after the Athlete or other Person received notice pursuant to Rule 37 (Results Management) or after reasonable efforts were made to give notice of the first anti-doping rule violation; if this cannot be established, the violations shall be considered together as one single first*

violation and the sanction imposed shall be based on the violation that carries the more severe sanction; however, the occurrence of multiple violations may be considered as a factor in determining aggravating circumstances (Rule 40.6)."

91. The IAAF provided the Athlete with notice of the first ADRV in relation to the 2011 Sample on 16 December 2016. The 2012 ADRV occurred on 3 August 2012. The Athlete, therefore, committed the second ADRV before receiving notice of the first. Pursuant to Rule 40.7(d) of the 2012 IAAF Rules, the two violations shall, therefore, be considered together as one single first violation.

92. Rule 40.2 of both the 2011 IAAF Rules and 2012 IAAF Rules sets out the following:

> *"The period of Ineligibility imposed for a violation of Rules 32.2(a) [. ..], unless the conditions for eliminating or reducing the period of Ineligibility as provided for in Rules 40.4 and 40.5, or the conditions for increasing the period of Ineligibility as provided in Rule 40.6 are met, shall be as follows:*
>
> *First violation: Two (2) years' Ineligibility".*

93. The Athlete has committed an ADRV in connection with the presence of DHCMT metabolites in the 2011 Sample.

94. Furthermore, the Decision of the IOC Disciplinary Commission found that the Athlete had committed an ADRV for the *"presence, and/or use, of Prohibited Substances or its Metabolites or Markers in an athlete's bodily specimen"* which is a violation of Rule 30.2(a) of the 2012 IAAF Rules.

95. Accordingly, the starting point for the sanction to be imposed on the Athlete is an ineligibility period of two (2) years.

96. This sanction of two years of ineligibility is subject to any mitigation or, alternatively, the presence of any "*aggravating circumstances*" pursuant to both the 2011 IAAF Rules and the 2012 IAAF Rules.

97. The Athlete has not argued and the record does not evidence any fact which may give rise to a reduction of this sanction pursuant to Rules 40.4 or 40.5 of both the 2011 IAAF Rules and the 2012 IAAF Rules, or otherwise.

98. Rule 40.6 of both the 2011 IAAF Rules and 2012 IAAF Rules provides for an increase in the mandatory two-year period of ineligibility, up to a maximum of four years, where it can be demonstrated that aggravating circumstances are present which justify the imposition of an increased period of ineligibility.

99. Rule 40.6 (a) of both the 2011 IAAF Rules and 2012 IAAF Rules provides:

> *"Examples of aggravating circumstances which may justify the imposition of a period of Ineligibility greater than the standard sanction are: the Athlete or other Person committed the anti-doping rule violation as part of a doping plan or scheme, either individually or involving conspiracy or common enterprise to*

> *commit anti-doping rule violations; the Athlete or other Person used or possessed multiple Prohibited Substances or Prohibited Methods or used or possessed a Prohibited Substance or Prohibited Method on multiple occasions; [. ..] For the avoidance of doubt, the examples of aggravating circumstances referred to above are not exclusive and other aggravating factors may also justify the imposition of a longer period of Ineligibility."*

100. The Athlete *"used or possessed a Prohibited Substance ... on multiple occasions"*. The ADRVs occurred at major competitions: World Championships and Olympic Games, by an experienced athlete, on successive years. This is a clear aggravating factor pursuant to Rule 40.6 (a) of both the 2011 IAAF Rules and 2012 IAAF Rules. Pursuant to Rule 40.7(d)(i) of the 2012 IAAF Rules *"the occurrence of multiple violations may be considered as a factor in determining aggravating circumstances (Rule 40.6)"*.

101. The Athlete did not present and the file does not include any fact which establishes that the period of ineligibility should not be increased to the maximal period under Rule 40.6 of the applicable IAAF Rules in the circumstances of the case.

102. The Sole Arbitrator concludes that, in accordance with Rule 40.2 and Rule 40.6(a) of both the 2011 IAAF Rules and 2012 IAAF Rules, the sanction to be imposed on the Athlete for the ADRVs shall be a sanction of four (4) years of ineligibility.

103. Rule 40.10 of both the 2011 IAAF Rules and the 2012 IAAF Rules specifies:

> *"Except as provided below, the period of Ineligibility shall start on date of the hearing decision providing for Ineligibility [...]*
>
> *(b) If a Provisional Suspension is imposed and respected by the Athlete, then the Athlete shall receive a credit for such period of Provisional Suspension against any period of Ineligibility which may ultimately be imposed. [...]".*

104. The Athlete has been subject to a provisional suspension since 28 March 2017. The IAAF did not allege nor evidence that the Athlete has not complied with the terms of that provisional suspension.

105. The Sole Arbitrator concludes that the period of ineligibility imposed on the Athlete shall thus begin on the date of this Award, but the Athlete shall receive credit for the period from 28 March 2017 against the total period of ineligibility imposed.

D. Disqualification

106. The IAAF requested to disqualify all competitive results obtained by the Athlete from and including 1 September 2011 and until her provisional suspension on 28 March 2017, together with the forfeiture of any prizes, medals, prize money and appearance money, pursuant to the applicable IAAF Rules.

107. Rule 39 of the 2011 IAAF Rules requires the automatic disqualification of the Athlete's results obtained in connection with the in-competition test at the 2011 WC on 1 September 2011. The Sole Arbitrator concludes that the Athlete's results in the women's 200m and 4x100m at the 2011 WC shall be disqualified, including the forfeiture of all titles, awards, medals, points and prize and appearance money.

108. The IOC Disciplinary Commission in its Decision has disqualified the Athlete's results obtained in the women's 400m and 4x400m events at the 2012 Olympic Games. In that respect, the requirements of Rule 39 of the 2012 IAAF Rules have been met with respect to the 2012 Sample.

109. Rule 40.8 of both the 2011 IAAF Rules and the 2012 IAAF Rules sets out further provisions relevant to the disqualification of results in competitions subsequent to sample collection as follows:

> *"In addition to the automatic disqualification of the results in the Competition which produced the positive sample under Rules 39 and 40, all other competitive results obtained from the date the positive Sample was collected (whether In-Competition or Out-of-Competition) or other anti-doping rule violation occurred through to the commencement of any Provisional Suspension or Ineligibility period, shall be Disqualified with all of the resulting Consequences for the Athlete including the forfeiture of any titles, awards, medals, points and prize and appearance money."*

110. The rationale behind this rule was explained in the article *"Unless Fairness Requires Otherwise" - A Review of Exceptions to Retroactive Disqualification of Competitive Results for Doping Offenses*, by Brent Nowicki and Markus Manninen, CAS Bulletin 2/2017 (https://www.tas-cas.org/en/bulletin/cas-bulletin.html) at p. 7:

> *"Retroactive disqualification of competitive results is a vital part of a credible anti-doping regime for various reasons. It has a deterrent effect on doping, particularly when combined with increased use of Athlete Biological Passports ("ABP") and re-testing of samples. Moreover, from the clean athletes' point of view, retroactive re-rankings and re-allocation of medals may have intangible significance and considerable economic effects as successful athletes are awarded substantial amounts of monetary compensation based on their results."*

111. The Sole Arbitrator observes that neither of the Respondents filed an Answer in these proceedings, and thus the Athlete did not submit arguments with respect to the disqualification of her results from the dates of samples' collection to the date of the provisional suspension.

112. Rule 40.8 of both the 2011 IAAF Rules and the 2012 IAAF Rules does not explicitly contain a "fairness exception". The Sole Arbitrator notes that the 2008 version of the IAAF Rules contained a "fairness exception" (worded "*unless fairness requires otherwise*"), but that this exception was removed for all versions of the IAAF Rules from 2009 to 31 December 2014. It was only in the 2015 version of the IAAF Rules that the IAAF reintroduced the "fairness exception".

113. The Sole Arbitrator accepts the logic of CAS 2015/A/4007 which states at para. 115 as follows:

> *"The Panel sees the force of the IAAF argument that specific rules cannot be picked from different systems. The lex mitior principle prevents the continued applicability of a disciplinary rule after it has been replaced by a more lenient one, and reflects, in favour of the accused, the evolution of a legislative policy,*

> *which translates into rules the opinion that the same infringement is less severe than it was previously perceived. However, this principle cannot be applied in a way that creates a law that never existed, composed of a mixture of old and new rules and upsetting the rationale of both systems."*

114. However, and as also recognized in CAS 2015/A/4007 and numerous other CAS cases, at the very least it cannot be excluded that a general principle of "fairness" may be applied under Swiss and Monaco laws including in regard to Rule 40.8 of the 2011 IAAF Rules and the 2012 IAAF Rules or its equivalents in deciding whether some results are to be left untouched even in the absence of an explicit rule to this effect (e.g., CAS 2016/O/4464; CAS 2017/O/4980; CAS 2015/A/4005; CAS 2017/O/5332).

115. The Sole Arbitrator in CAS 2018/O/5666 stated in this regard at para. 156:

> *"Fairness exception is an embodiment of the principle of proportionality, which according to the established CAS case law must be applied in doping cases. The sanction to be imposed for an ADRV must be proportional considering the length of the ineligibility period and the disqualification of results, together and alone. Indeed, although the main purpose of the disqualification of results is not to punish the transgressor, but rather to correct any unfair advantage and to remove any tainted performances from the record (cf. CAS 2016/A/4464 para. 194, CAS 2016/O/4469 para. 176 and CAS 2017/O/5039 para. 132), having regard to the fact that the disqualification of results embraces the forfeiture of any titles, awards, medals, points, and prizes, as well as appearance money, disqualification may be considered equal to a retroactive ineligibility period and therefore a sanction (CAS 2016/A/4469 para. 176)."*

116. Indeed, according to established CAS jurisprudence, the principle of proportionality requires to assess whether a sanction is appropriate to the violation committed and excessive sanctions are prohibited (e.g., CAS 2005/A/830, at paras. 10.21 ff.; 2006/A/1025, at paras 75 ff.).

117. The Sole Arbitrator finds that in line with these CAS cases he should consider the proportionality of the sought period of disqualification and whether it would be fair to disqualify the Athlete's results for a period of well over five (5) years, on top of the four (4) years' period on ineligibility. While the burden of proof in this regard is on the Athlete and, in the absence of the Athlete's position some circumstances which may have assisted the Athlete's case cannot and should not be assumed, there may still be relevant criteria enabling the Sole Arbitrator to decide whether the requested period of disqualification is fair or whether it should be limited.

118. The Sole Arbitrator accepts that pursuant to the applicable IAAF Rules, the disqualification of results is the main rule and that the "fairness exception" is indeed only an exception. This is the reading of the 2015 IAAF Rules (which do not apply here) and clearly apply to the application of general principles of law which add an additional layer to the applicable enacted rules.

119. Therefore, in principle, all the Athlete's results from the 2011 ADRV to the commencement of her provisional suspension should be disqualified. However, results may remain valid if fairness so requires in the circumstances of each case. Among factors which CAS panels assessed in the application of the fairness test are the athlete's degree

of fault (evidenced by, among others, the athlete's intent, the number and period of violations, the substances involved, being part of an evidenced doping scheme and more), the affected sporting results (the athlete being able to establish that results which may be disqualified are not affected such as by evidencing a negative test result during the period; although as this case evidences negative results may later be found positive), significant consequences of disqualification of results (such as a substantial financial impact), Athlete's Blood Passport ("ABP"), specific issues, additional ineligibility period in the second instance, delays in results management, the overall length of the disqualification and longer periods of disqualification specifically associated with re-testing.

120. In the absence of evidence by the Athlete, who carries the burden of proof in regard to the "fairness exception", the Sole Arbitrator cannot assess or assume factors such as unaffected results or financial hardship stemming from the disqualification. The Sole Arbitrator is able, however, to review the Athlete's degree of fault and issues such as delays in results management and the overall length of the disqualification relevant in particular to a re-testing situation.

121. In regard to re-testing cases concerning a single positive sample some cases connect the disqualification period to the length of the period of ineligibility (e.g., CAS 2016/O/4463 at para. 138; CAS 2017/O/5330 at para. 70; CAS 2017/O/5332 at para. 93). The argument in this regard is that had the case been brought immediately following the violation, the athlete would not have been able to compete for such a period.

122. Most CAS panels reviewing this issue applied the "fairness exception" and allowed results to remain partly in force, even in cases involving multiple violations, potent substances and a higher degree of fault, when the potential disqualification period extended over a long period of years and there was no evidence that the athlete had committed ADRVs over that entire period (e.g., CAS 2016/O/4481; CAS 2017/O/4980; CAS 2017/O/5039; CAS 2017/A/5045).

123. The "fairness exception" was often applied by CAS panels both in cases relating to the version of the rules which did not include the "fairness exception" (e.g., CAS 2017/O/5332 at paras. 82 ff.; CAS 2018/O/5666 at paras. 149 ff.; CAS 2018/O/5672 CAS 2017/O/5332 at paras. 82 ff.; CAS 2018/O/5666 at paras. 149 ff.; CAS 2018/O/5672) and to re-analysis cases where the applicable version of the IAAF Rules did contain the "*unless fairness requires otherwise*" language or where other IAAF regulations were applied as lex mitior (e.g., CAS 2017/O/5331 at para 70; CAS 2018/O/5673 at paras. 104 ff.; CAS 2018/O/5674 at paras. 108 ff.; CAS 2018/O/5675 at paras. 105 ff.; CAS 2018/O/5676 at paras. 88 ff.; CAS 2018/O/5704 at paras. 91 ff.; CAS 2017/O/5039). Other cases relate specifically to cases involving an ABP which inherently involve a long period of testing without necessarily an exact date for the first violation. These (which include as an example cases such as CAS 2018/O/5667 at paras. 219 ff. and CAS/O/4481 at paras. 182 ff.) support the consideration of fairness but are less relevant to our specific analysis due to their special nature.

124. The Sole Arbitrator is also aware of three CAS cases which found that the "fairness exception" was not applicable. These are CAS 2015/A/4005 at paras. 108 ff. (the total two periods of additional disqualification extended to less than 2.5 years); CAS 2015/A/4006 at paras. 89 ff. (the total period of additional disqualification extended to just over 2 years); and CAS 2015/A/4007 at paras. 108 ff. (the total period of additional

disqualification extended to less than 2 years).

125. In CAS 2016/O/4469 the applicable version of the IAAF Rules did not contain the "*unless fairness requires otherwise*" language, but still the applied disqualification did not cover the full period from testing to provisional suspension. The sole arbitrator in that case recognised the principles of fairness and proportionality stating at para. 172:

> *"Established CAS jurisprudence is aware of this obligation and holds that the principle of proportionality requires to assess whether a sanction is appropriate to the violation committed in the case at stake. Excessive sanctions are prohibited (see e.g. CAS 2005/A/830, at paras. 10.21 – 10.31; 2005/C/976 & 986, at paras. 139, 140, 143, 145 – 158; 2006/A/1025, at paras 75 –103; TAS 2007/A/1252, at paras. 33 – 40, all of them referring to and analysing previous awards and doctrine). The Sole Arbitrator does not see that any more recent arbitral award referred to by the IAAF in its observations has deviated from this requirement. These more recent awards simply come to the conclusion that there was no issue with regard to proportionality in the facts of these cases. One arbitral award discussed only fairness."*

126. The Athlete has committed ADRVs at least twice, at the 2011 WC and at the 2012 Olympic Games, and this consistent use of a similar substance suggests that she might have used this substance also on other occasions. However, there is no evidence of such administration, although the Sole Arbitrator is also fully aware that negative samples do not always signify that an athlete has not administered prohibited substances – as this particular case shows. The Athlete has administered substances that could not be traced easily in 2011 and in 2012, and she has not contributed to the uncovering of her ADRVs.

127. The re-testing of the Athlete's 2011 Sample took place over five (5) years and three (3) months following the 2011 Sample collection and the re-testing of the Athlete's 2012 Sample took place over four (4) years and eight (8) months following the 2012 Sample collection. The Sole Arbitrator recognises that anti-doping organisations are entitled to re-test samples at any time within the applicable statutes of limitations, and that they tend to await a later period as re-testing is typically done once and they want to benefit from the most advanced science and testing process available. Nevertheless, the Athlete should not be penalized by and disqualified for an excessive period merely as a result of a decision of the anti-doping organisations not to proceed with the re-testing at an earlier date. The Sole Arbitrator notes that once the Samples were re-tested the anti-doping organisation has acted diligently and without delay.

128. In this regard, the article *"Unless Fairness Requires Otherwise" - A Review of Exceptions to Retroactive Disqualification of Competitive Results for Doping Offenses*, by Brent Nowicki and Markus Manninen, CAS Bulletin 2/2017 (https://www.tas-cas.org/en/bulletin/cas-bulletin.html) at p. 16 states:

> *"Re-testing cases and ADRVs based on non-analytical evidence may cover a considerable period of time between the commission of an ADRV and the imposition of a provisional suspension or an ineligibility period. In such cases, a strict application of the main rule of Art. 10.8 may lead to an unjust result."*

129. This has to be weighed against the notion that refraining from disqualifying the results would run against the rationale of re-testing stored samples, disqualifying the results of

cheating athletes and preventing an athlete from gaining the advantage sought by severe doping violations over other competitors who competed without the use of prohibited substances.

130. CAS case law confirms the broad discretion of panels in adjusting the disqualification period to the circumstances of a specific case. Taking into account, on the one hand, the seriousness of the ADRVs in the present case, the fact that multiple ADRVs occurred and the argued degree of fault by the Athlete and, on the other hand, the period of over five years of requested disqualification without evidence of use of prohibited substances (but for the two confirmed ones) when the governing body could have theoretically brought this case earlier, as well as the sanction already imposed, the Sole Arbitrator finds that the principles of proportionality and fairness in line with vast CAS jurisprudence do not support disqualification of results for such an extended period of time.

131. Pursuant to the foregoing, the Sole Arbitrator concludes that the results obtained by the Athlete in the period between 1 September 2011 and 31 December 2014 shall be disqualified.

IX. COSTS

132. Taking into account the special nature of this arbitral procedure, which constitutes a first instance arbitration proceeding conducted through the Code's appeal procedural rules, the Sole Arbitrator considers that the present arbitration procedure is subject to the provisions on costs set out in Article R64 of the Code.

133. In particular, Article R64.4 of the Code provides that:

> "*At the end of the proceedings, the CAS Court Office shall determine the final amount of the cost of arbitration, which shall include:*
>
> - *the CAS Court Office fee,*
> - *the administrative costs of the CAS calculated in accordance with the CAS scale,*
> - *the costs and fees of the arbitrators,*
> - *the fees of the ad hoc clerk, if any, calculated in accordance with the CAS fee scale,*
> - *a contribution towards the expenses of the CAS, and*
> - *the costs of witnesses, experts and interpreters.*
>
> *The final account of the arbitration costs may either be included in the award or communicated separately to the parties. The advance of costs already paid by the parties are not reimbursed by the CAS with the exception of the portion which exceeds the total amount of the arbitration costs.*"

134. Article R64.5 of the Code provides that:

"In the arbitral award, the Panel shall determine which party shall bear the arbitration costs or in which proportion the parties shall share them. As a general rule 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 outcome of the proceedings, as well as the conduct and the financial resources of the parties."

135. Taking into account the outcome of these proceedings, in which the IAAF's requested relief has been fully granted, and the Athlete's failure to offer any credible defences to the IAAF's allegations, the Sole Arbitrator considers that it is fair and reasonable that the Respondents should, jointly and severally, bear the full costs of this arbitration, which will be communicated separately by the CAS Court Office to the Parties at a later date.

136. Regarding the legal fees and other expenses incurred by the Parties in connection with these proceedings, the Sole Arbitrator has considered, on the one hand, the respective financial resources of the Parties, and, on the other hand, the fact that neither a hearing nor testimony were required and that there was a lengthy delay in the initiation of these proceedings, and decides that it is fair and reasonable that the Respondents contribute, jointly and severally, the amount of CHF 3,000 (three thousand Swiss Francs) towards the Claimant's legal fees and other expenses incurred in connection with these proceedings.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1) The Request for Arbitration filed by the International Association of Athletics Federations against the Russian Athletics Federation and Ms Yulia Gushchina on 6 February 2019 is admissible and is upheld.

2) Ms Yulia Gushchina is sanctioned with a four-year period of ineligibility, commencing on the date of the present Award. The period of ineligibility served during the period of provisional suspension imposed on Ms Yulia Gushchina from 28 March 2017 through the date of the present Award shall be credited against the total period of ineligibility.

3) All the competitive results obtained by Ms Yulia Gushchina between and including 1 September 2011 and 31 December 2014 are disqualified, with all the resulting consequences, including the forfeiture of any titles, awards, medals, points and prize and appearance money.

4) The costs of the arbitration, to be determined and served separately to the Parties by the CAS Court Office, shall be borne, jointly and severally, by the Russian Athletics Federation and Ms Yulia Gushchina.

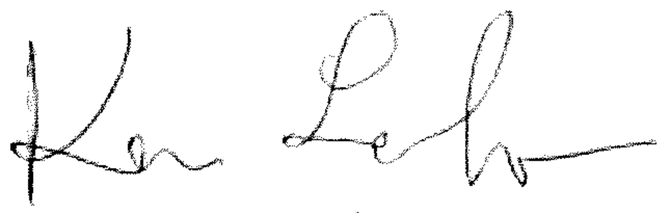
5) The Russia Athletics Federation and Ms Yulia Gushchina are ordered to pay, jointly and severally, to the International Association of Athletics Federations a total amount of CHF 3,000 (three thousand Swiss Francs) as contribution towards its legal fees and expenses incurred in connection with this arbitration procedure.

6) Any other motions or prayers for relief are rejected.

Seat of arbitration: Lausanne, Switzerland

Date: 18 October 2019

THE COURT OF ARBITRATION FOR SPORT



Ken E. Lalo
Sole Arbitrator