Arbitration CAS 2013/A/3112 World Anti-Doping Agency (WADA) v. Lada Chernova & Russian Anti-Doping Agency (RUSADA), award of 16 January 2014

Panel: Mr Romano Subiotto QC (United Kingdom), President; Prof. Martin Schimke (Germany); Mrs Alexandra Brilliantova (Russia)

Athletics (javelin)
Doping (hydroxybromantan)
Time limit to appeal
Standard of reasonableness of the link between the departure and the AAF
Lack of accreditation of a laboratory
Determination of the sanction

1. **If the statement of a witness constitutes relevant evidence related to one of the substantive issues of the case, the case file is incomplete until such document is provided to the appellant for the first time. Only then can the file be deemed complete and the twenty-one day time limit to appeal start.**

2. **A mere reference to a departure from the International Standard for Laboratories (ISL) is insufficient, in the absence of a credible link of such departure to a resulting Adverse Analytical Finding. In other words, in order for an athlete to meet his/her burden and thus effectively shift the burden to an anti-doping organization, the athlete must establish, on the balance of probabilities, (i) that there is a specific (not hypothetical) departure from the ISL; and (ii) that such departure could have reasonably, and thus credibly, caused a misreading of the analysis.**

3. **A lack of accreditation of a laboratory to the international "ISO/IEC 17025" standard is in itself insufficient for a finding that such a departure could reasonably have caused an Adverse Analytical Finding. It can only result in the reversal of the burden of proof, essentially requiring the anti-doping organisation to prove that the analysis did not depart from the ISL.**

4. **When the range of sanctions for an anti-doping violation goes from 8 years to a lifetime period of ineligibility, and the athlete has neither attempted to establish how the prohibited substance entered his/her system, nor attempted to establish that he/she bears no fault or negligence, or no significant fault or negligence, nor raised any other mitigating circumstances, the sanction is a lifetime period of ineligibility.**

I. THE PARTIES

1. The World Anti-Doping Agency ("WADA" or the "Appellant") is a Swiss private law foundation whose headquarters is in Montréal, Canada, but whose seat is in Lausanne, Switzerland. WADA was created in 1999 to promote, coordinate and monitor the fight against doping in sport in all its forms.

2. Ms. Lada Chernova ("First Respondent") is a Russian javelin thrower affiliated with the All-Russia Athletic Federation, which is itself a member of the International Association of Athletics Federations ("IAAF").

3. Russian Anti-Doping Agency ("RUSADA" or the "Second Respondent") is an independent national (Russian) anti-doping organization, included in the WADA list of anti-doping organizations.

4. The First Respondent and the Second Respondent are collectively referred to as the "Respondents".

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

II. FACTUAL BACKGROUND

6. Ms. Lada Chernova was previously suspended for a two-year period of ineligibility (as of December 15, 2008) due to an adverse analytical finding. On that occasion, Ms. Chernova tested positive for metenolone, a prohibited substance which appeared on the 2008 WADA Prohibited list, under the class *"S1.1 Anabolic Agents – Anabolic Androgenic Steroids"* ("First anti-doping rule violation").

7. On February 29, 2012, Ms. Chernova was tested in a competition by RUSADA. The sample collected indicated the presence of hydroxybromantan, a bromantan metabolite. This substance appears on the 2012 WADA Prohibited list, under the class *"S6.a – Non Specified Stimulants"* ("Second anti-doping rule violation").

8. On June 9, 2012, RUSADA issued a decision imposing a lifetime period of ineligibility on Ms. Chernova, as a result of Ms. Chernova's Second anti-doping rule violation ("RUSADA's Decision of June 9, 2012").

9. Ms. Chernova appealed RUSADA's Decision of June 9, 2012 to the Chamber of Commerce Court of Arbitration for Sport of the Russian Federation ("CCCAS"). On December 19, 2012, CCCAS annulled RUSADA's Decision of June 9, 2012 ("Appealed Decision"). In essence, CCCAS found several departures from the WADA International Standard for Laboratories ("ISL") that in CCCAS's view justified the annulment of the analytical results.

10. On January 29, 2013, RUSADA notified WADA of the Appealed Decision by e-mail, and provided WADA with the English translation of the Appealed Decision, as well as other case

file documents. WADA forwarded the English version of the Appealed Decision to the IAAF on January 30, 2013. Thereafter, RUSADA provided WADA with additional case file documents (i.e., the statement of Ms. Sokolova) on March 7, 2013.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

11. Pursuant to Article R47 of the Code of Sports-related Arbitration (the "Code"), the Appellant filed its statement of appeal on March 13, 2013 (the "Statement of Appeal") at the Court of Arbitration for Sport in Lausanne, Switzerland (the "CAS"), against the Appealed Decision (the "Appeal"). In the Statement of Appeal, the Appellant also requested that CAS extend the time limit for filing its Appeal Brief *"until the date falling ten days after the receipt of the translation in English of the full case file"* ("First request for an extension"). The Appellant essentially referred to the complexity of the matter and the large number of documents that required a translation into English.

12. By letter dated March 18, 2013, the CAS Court Office acknowledged the Appellant's Statement of Appeal, along with the Appellant's request that the appeal be conducted in English. The Respondents were given three days to indicate any objection to the selection of English as the language of the Appeal proceedings. Further, the CAS Court Office invited the Respondents to express their views on the Appellant's First request for an extension. By letter dated March 25, 2013, the Appellant took the view that the Respondents had failed to respond to the CAS Court Office's letter dated March 18, 2013, concluding that the proceedings would be conducted in English, and that the Appellant's deadline for filing of the Appeal Brief was April 19, 2013.

13. By e-mail dated March 25, 2013, the CAS Court Office received an email from the email address "chernovalada@yandex.ru" which attached a series of emails concerning Ms. Chernova's doping control test. The next day, on March 26, 2013, Ms. Chernova, by and through legal counsel Mr. Alexandr Chebotarev requested that the Appeal be rejected (the "Request"), arguing, in essence, that the time limit for the Appeal had expired.

14. By letter dated March 26, 2013, the CAS Court Office requested that the Parties file their comments on the Request, and suspended the proceedings pending the decision of the President of the CAS Appeals Arbitration Division regarding the timelines of the Appeal.

15. By letter dated April 2, 2013, WADA responded to Ms. Chernova's Request, arguing that it did not receive the complete case file until March 7, 2013 and therefore, the Appeal was filed in a timely manner under both time limit alternatives stipulated in Article 11.2.3.3 of the Anti-Doping Rules of the Russian Federation ("ADR") (further elaboration on the issue of timelines of the present Appeal is in part IV(C) below).

16. On the same day, RUSADA submitted a similar position, supporting WADA's argument that the complete case file was not sent to WADA until March 7, 2013.

17. By letter dated April 2, 2013, the CAS Court Office acknowledged the submissions of the Appellant and the Second Respondent. Further, the Parties were advised that the proceedings would remain suspended pending the decision on the timelines issue.

18. By letter dated April 12, 2013, the CAS Court Office informed the Parties that the President of the CAS Appeals Division had denied the Request.

19. By letter dated April 12, 2013, the CAS Court Office noted that, following Ms. Chernova's submission of the Request, all CAS Court Office communication to Ms. Chernova was returned as undeliverable. Further, the CAS Court Office attempted to communicate with Ms. Chernova through her counsel Mr. Chebotarev, and Mr. Oleg Popov, who previously responded to the CAS Court Office using an e-mail address previously identified as belonging to Ms. Chernova. However, both Mr. Chebotarev and Mr. Popov denied any further involvement with Ms. Chernova regarding the Appeal. The CAS Court Office therefore requested that the Appellant provide up-to-date contact information for Ms. Chernova. In the meantime, the CAS Court Office maintained the suspension of the proceedings.

20. By letter dated May 3, 2013, WADA informed the CAS Court Office that both RUSADA and the IAAF had confirmed Ms. Chernova's domicile in Samara, and Ms. Chernova's e-mail address at "chernovalada@yandex.ru". Further, WADA proposed that the CAS Court Office should proceed with an additional attempt to initiate contact with Ms. Chernova, failing which, WADA requested that the Appeal proceedings be conducted *in absentia*.

21. By letter dated May 6, 2013, the CAS Court Office invited the Respondents to submit their response to the Appellant's letter of May 3, 2013. The CAS Court Office further noted that the Statement of Appeal sent to Ms. Chernova by DHL was accepted and signed for by Ms. Chernova on March 20, 2013. The CAS Court Office acknowledged the Appellant's request for the proceedings to be conducted *in absentia*, and noted that it would be decided by the Panel once constituted. The CAS Court Office further acknowledged the Appellant's nomination of Prof. Dr. Martin Schimke as an arbitrator, while inviting the Respondents to jointly nominate an arbitrator from the list of CAS arbitrators. The Respondents were further advised that if they failed to jointly nominate an arbitrator, the President of the CAS Appeals Arbitration Division would proceed with the appointment *in lieu* of the Respondents. Moreover, the CAS Court Office noted that the Respondents did not, prior to the suspension of the Appeal proceedings, object in a timely manner to the Appellant's selection of the language of the Appeal. Hence, pursuant to Article R29 of the Code, all written submissions were to be filed in English and all annexes submitted in any other language would need to be accompanied by an English translation.

22. On May 7, 2013, the CAS Court Office sent an additional e-mail to the parties wherein it was advised that the present Appeal would be conducted in English, and that the CAS Court Office does not have a Russian translator. Such email was successfully delivered to Ms. Chernova at both chernovalada@yandex.ru and advokat-avh461@yandex.ru.

23. By letter dated May 13, 2013, RUSADA agreed that the Appeal proceedings be conducted *in absentia*.

24. On May 15, 2013, WADA informed the CAS Court Office that its Statement of Appeal should not be regarded as its appeal brief. Further, given that WADA did not receive English translations of all relevant documents, and that the case involved technical issues requiring engagement of scientific experts, WADA requested an extension of the deadline to file its appeal brief until June 14, 2013 ("Second request for an extension"). In this regard, WADA informed the CAS Court Office that RUSADA had already agreed with such extension. Concurrently, WADA requested that CAS suspend the deadline for filing of the appeal brief as set out in CAS letter dated May 6, 2013, pending a decision on WADA's Second request for an extension. By letter dated May 15, 2013, the CAS Court Office granted WADA's request for suspension of the deadline for filing of the appeal brief, and requested that Ms. Chernova inform the CAS Court Office of any objections regarding WADA's Second request for an extension.

25. By letter dated May 21, 2013 the CAS Court Office noted that Ms. Chernova failed to object to WADA's Second request for an extension to file an appeal brief until June 14, 2013, and thus granted the request.

26. On June 14, 2013, the WADA filed its Appeal Brief, together with an annexed exhibits list.

27. By letter dated June 26, 2013, the CAS Court Office informed the Parties that the President of the CAS Appeals Arbitration Division appointed Ms. Alexandra Brilliantova as an arbitrator *in lieu* of the Respondents.

28. RUSADA filed its answer to the Appellant's Appeal Brief on July 5, 2013

29. On July 23, 2013, the CAS Court Office informed the Parties that Mr. Romano Subiotto QC had been appointed President of the Panel.

30. By letter dated August 28, 2013, the CAS Court Office invited the Parties to respond as to whether they would prefer a hearing to be held in the present matter, or for the Panel to issue an award based solely on the Parties' written submissions. On August 28, 2013, the Appellant proposed to forego a hearing. Neither Respondent stated their position in this regard.

31. By letter dated September 24, 2013, the Panel requested that WADA furnish evidence that it had not received the full case file (including the statement of Ms. Sokolova) on January 29, 2013, and that it did not receive it until March 7, 2013. By letter dated September 30, 2013, WADA submitted an e-mail from RUSADA indicating that Ms. Sokolova's statement was not provided to WADA until March 7, 2013. By e-mail dated October 3, 2013, the Panel requested that WADA forward the e-mail of January 29, 2013 along with its actual attachments, to enable the Panel to verify WADA's claim. On October 4, 2013, WADA forwarded to the CAS Court Office the e-mail of January 29, 2013, including all 17 attachments to which the e-mail refers.

32. By letter dated October 30, 2013, the CAS Court Office notified the parties that the Panel was sufficiently well informed to render a decision on the written submissions, pursuant to Article R57 of the Code.

33. On 5 November 2013, the Appellant returned a fully-executed copy of the Order of Procedure in this appeal confirming that its right to be heard had been fully respected. Neither Respondent returned such executed Order of Procedure. At no time, however, did either Respondent object that its right to be heard was not fully respected.

IV. SUBMISSIONS OF THE PARTIES

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

FIRST – The appeal of WADA is admissible;

SECOND – The decision rendered by the Court of Arbitration for Sport at the Chamber of Commerce and Industry of the Russian Federation dated December 19, 2012, in the matter of Ms Lada Chernova is set aside;

THIRD – Ms Lada Chernova is sanctioned with a lifetime ban, starting on the date on which the CAS award enters into force. Any period of ineligibility (whether imposed on or voluntarily accepted by Ms Lada Chernova) before entry into force of the CAS award shall be credited against the total period of ineligibility to be served;

FOURTH – All competitive results obtained by Ms Lada Chernova from February 29, 2012, through the commencement of the applicable period of ineligibility shall be disqualified with all of the resulting consequences including forfeiture of any medals, points and prizes.

FIFTH – WADA is granted an Award on costs.

35. In its Answer, the Second Respondent requested the following relief:

FIRST – To set aside the CCCAS decision of December 19, 2012 and to reinstate the DADC decision of June 9, 2012;

SECOND – To impose on Ms Lada Chernova a lifetime period of ineligibility as a result of her second anti-doping rule violation

THIRD – To impose on Ms Lada Chernova an obligation to reimburse WADA expenses (legal fees and arbitration costs) in full amount.

36. The First Respondent did not submit an Answer, or otherwise participate in this Appeal.

V. JURISDICTION, APPLICABLE LAW, AND ADMISSIBILITY

A. Jurisdiction

37. The jurisdiction of the CAS was not contested by the Respondents. In accordance with Article R39 of the Code, the CAS has the power to decide upon its own jurisdiction. Hence, the Panel

proceeds with the jurisdictional analysis, notwithstanding the absence of Respondents' objections.

38. Article R47 of the Code provides as follows:

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

39. Pursuant to Article R47 of the Code, CAS has the power to decide appeals against a sports organization only if: (i) there is a decision of a federation, association or another sports-related body; (ii) all internal legal remedies have been exhausted prior to appealing to CAS; and (iii) the parties have agreed to CAS's jurisdiction. (CAS 2008/A/1583; CAS 2008/A/1584).

a) The existence of a decision

40. According to CAS jurisprudence, a decision is a unilateral act sent to one or more determined recipients and is intended to produce legal effects. (CAS 2004/A/659; CAS 2008/A/1634). In addition, the form of communication has no relevance for determining whether a decision exists. (CAS 2008/A/1634).

41. In the present case, the Appealed Decision constitutes a unilateral act intended to produce legal effects. Hence, the Appealed Decision constitutes a "decision" for the purposes of determining whether CAS has jurisdiction in the present dispute.

b) The exhaustion of the internal legal remedies

42. Article 11.2.3 of the ADR is titled as follows: *"Appeals Involving National-Level Athletes"*.

43. Article 11.2.3.1 of the ADR provides as follows:

"Decisions shall be appealed to the arbitration courts with which the decision-making organization holds an appropriate agreement. When an athlete or other Person wishes to file an appeal to an arbitration court not holding an agreement with the decision-making organization, and provided the latter accepts to proceed with the arbitration court suggested by the Athlete or other Person suspected of the anti-doping rule violation, the decision-making organization shall conclude an agreement holding an arbitration clause with any such Athlete or other Person".

44. Article 11.2.3.3 of the ADR provides as follows:

"WADA and the International Federation shall also have the right to appeal to CAS with respect to the decision of the national-level reviewing body in the Russian Federation".

45. RUSADA's Decision of June 9, 2013 was appealed to CCCAS, the national-level reviewing body in the Russian Federation and an arbitration court with which RUSADA has an appropriate agreement (*i.e.*, Clause 2 of the Agreement between CCCAS and RUSADA in the field of sports arbitration No. 160 dated April 29, 2009 provides as follows: *"The parties will cooperate in resolution of disputes relating to doping control in the Russian Federation, in the manner prescribed by the World Anti-Doping Code of the World Anti-Doping Agency, meaning that disputes related to the anti-doping controls on athletes at national level will be resolved on appeal only in the Court of Arbitration for Sport at the Chamber of Commerce and Industry of the Russian Federation".*) Subsequently, CCCAS rendered the Appealed Decision, which could be further appealed only to the CAS.

46. In light of the above cited provisions, the Panel concludes that the Appealed Decision is final, with no internal legal remedies available.

c) The consent to arbitrate

47. According to Article R55 of the Code, the Panel may rule upon its own jurisdiction. Pursuant to Article R47, CAS derives its jurisdiction to hear an appeal either from (i) a specific arbitration agreement concluded by the Parties, or (ii) insofar as the ADR so provides. (CAS 2011/A/2435; CAS 2012/A/2731).

48. The Panel notes that the Parties had not concluded a specific arbitration agreement establishing the CAS's jurisdiction in the present case. As a result, in the absence of a specific arbitration agreement, CAS only has jurisdiction to entertain the present dispute if *"the statutes of the federation, association or sports-related body so provide"*. (Article R47 of the Code). The Panel recalls in this regard that *"As art. R47 of the Code of Sports-related Arbitration states, the statutes or regulations of the sports-related body from whose decision the appeal is being made, must expressly recognize the CAS as an arbitral body of appeal, in order for the CAS to have jurisdiction to hear an appeal"*. (CAS 2005/A/952; CAS 2002/O/422).

49. Pursuant to Article 11.2.3.3 of the ADR, the decision of the national-level reviewing body (CCCAS) is appealable to CAS by either WADA or the respective International Federation.

50. The Panel notes that the Appealed Decision is a decision of a national-level reviewing body in the Russian Federation, and concludes that it has jurisdiction to entertain the present Appeal.

B. Applicable Law

51. Article R58 of the 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".

52. The Appealed Decision was issued under the ADR rules, and there is no dispute as to the applicability of the ADR rules in the present matter. Further, the Appealed Decision explicitly acknowledges the applicability of the World Anti-Doping Code ("WADC") to the present dispute.

C. Admissibility

1. Timeframe for the Statement of Appeal

53. Article 11.2.3.3 of the ADR provides as follows:

> *"WADA and the International Federation shall also have the right to appeal to CAS with respect to the decision of the national-level reviewing body in the Russian Federation.*
>
> *The filing deadline for an appeal or intervention filed by WADA shall be the later of:*
>
> *(a) Twenty-one (21) days after the last day on which any other party in the case could have appealed, or*
>
> *(b) Twenty-one (21) days after WADA's receipt of the complete file relating to the decision".*

i. Article 11.2.3.3(a)

54. Pursuant to Article 11.2.3.3(a) of the ADR, WADA's time limit for an appeal of CCCAS's decision expires 21 days following the day on which any other party in the case could have appealed. The Panel notes that according to Article 11.2.3.3, the only "other party" empowered to appeal CCCAS's decision is the relevant International Federation, namely the IAAF in the present dispute.

55. The IAAF received the case file related to the present matter on January 30, 2013. Therefore, IAAF's time limit to file an appeal to CAS expired on February 20, 2013. Consequently, WADA's time limit to file its Statement of Appeal expired on March 13, 2013. The Panel acknowledges that WADA filed the Statement of Appeal on March 13, 2013, and thus timely.

ii. Article 11.2.3.3(b)

56. Separately, the Panel finds that the present appeal is also timely pursuant to Article 11.2.3.3(b) of the ADR. The Panel has specifically requested that the Appellant furnish evidence that the Appellant did not receive the complete case file, including the statement of Ms. Sokolova, along with the e-mail of January 29, 2013. Upon review of the forwarded e-mails (including their attachments), the Panel is comfortably satisfied that the Appellant did not receive the complete case file until March 7, 2013, when the statement of Ms. Sokolova was provided to the Appellant for the first time (*i.e.*, given that the statement of Ms Sokolova constitutes relevant evidence related to one of the substantive issues in the present case, the Panel deems the case file incomplete without such document). Therefore, the Panel concludes, the filing of the Statement

of Appeal on March 13, 2013 was made in a timely manner under Article 11.2.3.3(b) of the ADR.

2. Timeframe for the Appeal Brief

57. Article R51 of the Code provides as follows:

"Within ten days following the expiry of the time limit for the appeal, the Appellant shall file with the CAS Court Office a brief stating the facts and legal arguments giving rise to the appeal, together with all exhibits and specification of other evidence upon which he intends to rely. Alternatively, the Appellant shall inform the CAS Court Office in writing within the same time limit that the statement of appeal shall be considered as the appeal brief. The appeal shall be deemed to have been withdrawn if the Appellant fails to meet such time limit".

58. The Appellant filed the Statement of Appeal on March 13, 2013. Concurrently, the Appellant submitted the First request for an extension to file the Appeal Brief *"until the date falling ten days after the receipt of the translation into English of the full case file",* due to the complexity of the matter and the need to translate the case file into English. The Panel acknowledges that the CAS Court Office proposed a specific deadline of April 19, 2013 instead, and invited the Parties to express their views as per Article R32 of the Code. The Panel further notes that the Respondents did not object to the proposed extension until April 19, 2013.

59. The CAS Court Office further suspended the present proceedings on March 26, 2013 pending the decision of the President of the CAS Appeals Arbitration Division related to the First Respondent's challenge of the timeliness of the Appeal. The present proceedings remained suspended through April 2013 due to the CAS Court Office's request that the Appellant provide up-to-date contact information for the First Respondent, following communication problems with the latter.

60. Further, the Panel takes note of the CAS Court Office's letter dated May 6, 2013 which imposed, pursuant to Article R51 of the Code, a time limit for the filing of the Appeal Brief of *"ten days following the receipt of such letter"*. The CAS Court Office proceeded with the setting out of the deadline for filing of the Appeal Brief, following the Appellant's request that the present proceedings be conducted *in absentia*. Following the Appellant's Second request for an extension to file the Appeal Brief dated May 15, 2013, and in the absence of objections from the Parties, the CAS Court Office granted a final deadline for filing of the Appeal Brief of June 14, 2013.

61. The Panel acknowledges that the Appellant filed the Appeal Brief on June 14, 2013, and thus timely.

3. Valid legal procedural relationship between the Parties

62. Article R55 of the Code provides as follows:

"If the Respondent fails to submit its answer by the stated time limit, the Panel may nevertheless proceed with the arbitration and deliver an award".

63. Further, the Panel refers to CAS jurisprudence stipulating that *"mandatory to an appeal proceeding is the participation of the respondent. Otherwise the appeal would be inadmissible due to the absence of a valid legal procedural-relationship between the parties to the proceedings. Especially in doping proceedings that involve – as does the case at hand – the magnification of the sanction imposed on the athlete, it would be procedurally unacceptable to make a decision on the merits if the athlete concerned has not been properly included in the proceedings; at the very least, he/she should receive knowledge of the proceedings in such a way that enables the person to legally defend him/herself"* (emphasis added by the Panel). (CAS 2007/A/1284 & CAS 2007/A/1308).

64. At the outset, the Panel acknowledges that the Second Respondent filed its answer in a timely manner. However, the First Respondent failed to communicate with the CAS Court Office and equally failed to submit its answer. It is therefore essential that the Panel resolve the question of whether a valid legal procedural relationship was established between the Appellant and the First Respondent, in order for the Appeal proceedings to be conducted *in absentia*.

65. First, the Panel notes that the Statement of Appeal, sent by the CAS Court Office to Ms. Chernova on March 18, 2013 by DHL was accepted and signed for by Ms. Chernova on March 20, 2013.

66. Second, Ms. Chernova submitted a request for the termination of the appeal on March 26, 2013, thus directly responding to the Statement of Appeal and in effect, participating in this Appeal.

67. Third, the information provided to the CAS Court Office by the Appellant was confirmed by RUSADA and the IAAF to be Ms. Chernova's updated contact information, including the e-mail address used by Ms. Chernova's coach, Mr. Oleg Popov.

68. In light of the above, the Panel is comfortably satisfied that Ms. Chernova had knowledge of the appeal proceedings in such a manner as to enable her to legally defend herself. Hence, in the Panel's view, a valid legal procedural relationship between the Appellant and the First Respondent was established and the present Appeal proceedings could thus be conducted *in absentia* of the First Respondent.

VI. MERITS

A. Structure of the Merits section of this Award

69. The summary of the submissions in Section VI refers to the substance of the allegations and arguments without listing them exhaustively in detail. In its discussion of the case and its

findings under Section VI of this Award, the Panel has nevertheless examined and taken into account all of the allegations, arguments, and evidence, whether or not expressly referred to herein.

70. The Appellant contested the Appealed Decision on four grounds, namely that (i) the Anti-Doping Centre of the Federal State Unitary Enterprise in Moscow, Russia ("Laboratory") possessed a valid accreditation; (ii) the volume of the urine sample was sufficient for analytical purposes; (iii) the internal chain of custody was not flawed; and (iv) all signatures of Ms. Sokolova were valid.

71. Regarding the first issue, the Appellant stressed that during the testing of Ms. Chernova's sample, the Laboratory was WADA-accredited, and also possessed a valid accreditation concerning the international ISO/IEC 17025 standard. With respect to the second issue, the Appellant argued that the sample's volume was sufficient for conducting the analyses, namely to screen for the substances on the prohibited list. For the third issue, the Appellant essentially took the view that the internal chain of custody was correct, and in any event, the possibility of contamination was ruled out. With respect to the fourth issue, the Appellant stressed that Ms. Sokolova's signature was not forged, and any claim based on the presence of an unidentified intruder was wholly unsubstantiated. Furthermore, the Appellant requested that Ms. Chernova should be sanctioned with a lifetime period of ineligibility, along with the disqualification of her competition results and all the resulting consequences.

72. As noted above, the First Respondent failed to submit an answer in the present proceedings.

73. The Second Respondent in essence supported the written submissions of the Appellant, without submitting additional arguments.

74. At the outset, the Panel notes that even during the proceedings before the CCCAS, Ms. Chernova did not attempt to establish how the prohibited substance entered her system, or that she bears no fault or negligence, or no significant fault or negligence. Instead, Ms. Chernova's submissions before the CCCAS focused solely on the issue of the alleged departures from the International Standard for Laboratories ("ISL").

75. The Panel addresses below the relevant substantive issues in the following sequence:

First, the Panel will discuss the burden of proof and the standard of review in anti-doping cases.

Second, the Panel will analyse whether the Laboratory was duly accredited during the testing of Ms. Chernova's sample.

Third, the Panel will discuss the sufficiency of the urine volume for the conducting of sample analysis.

Fourth, the Panel will investigate the internal chain of custody and discuss the correlation between any potential identified flaws and the adverse analytical finding.

Fifth, the Panel will address the allegations of a forged signature.

Lastly, the Panel will discuss the sanction imposed.

B. The Panel's scope of review

76. Pursuant to Article R57 of the Code *"the Panel shall have full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance"*. Therefore, the Panel is not bound by the conclusions of facts and law set forth in the Appealed Decision, but may proceed with a full review on this Appeal *de novo*.

C. Standard for review

77. Article 3.1.1 of the ADR provides as follows:

> *"RUSADA shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether RUSADA has established an anti-doping rule violation to the comfortable satisfaction of the hearing panel, bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt. Where the Rules place the burden of proof upon the Athlete or other person alleged to have committed the Rules violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability, except as provided in paragraph 9.4 and 9.6 where the Athlete must satisfy a higher burden of proof".*

78. Article 3.2.1 of the ADR provides as follows:

> *"WADA-accredited laboratories are presumed to have conducted Sample analysis and custodial procedures in accordance with the International Standard for Laboratories. The Athlete or other person may rebut this presumption by establishing that a departure from the International Standard for Laboratories occurred which could reasonably have caused the Adverse Analytical Finding.*
>
> *If the Athlete or other person rebuts the preceding presumption by showing that a departure from the International Standard for Laboratories occurred which could reasonably have caused the Adverse Analytical Finding, then RUSADA shall have the burden to establish that such departure did not cause the Adverse Analytical Finding"* (emphasis added by the Panel).

79. Article 3.2.2 of the ADR provides as follows:

> *"Departures from any other International Standard or other anti-doping rule or policy which did not cause an Adverse Analytical Finding or other Rules violation shall not invalidate such results. If the Athlete or other person establishes that a departure from another International Standard or other anti-doping rule or policy which could reasonably have caused the Adverse Analytical Finding or other Rules violation occurred, then RUSADA shall have the burden to establish that such departure did not cause the Adverse Analytical Finding or the factual basis for the Rules violation".*

80. Similarly, Article 3.1 of the WADC provides as follows:

"The Anti-Doping Organization shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether the Anti-Doping Organization has established an anti-doping rule violation to the comfortable satisfaction of the hearing panel bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt. Where the Code places 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 shall 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".

81. Article 3.2.1 of the WADC provides as follows:

"WADA-accredited laboratories are presumed to have conducted Sample analysis and custodial procedures in accordance with the International Standard for Laboratories. The Athlete or other Person may rebut this presumption by establishing that a departure from the International Standard for Laboratories occurred which could reasonably have caused the Adverse Analytical Finding. If the Athlete or other Person rebuts the preceding presumption by showing that a departure from the International Standard for Laboratories occurred which could reasonably have caused the Adverse Analytical Finding, then the Anti-Doping Organization shall have the burden to establish that such departure did not cause the Adverse Analytical Finding" (emphasis added by the Panel).

82. Article 3.2.2 of the WADC provides as follows:

"Departures from any other International Standard or other anti-doping rule or policy which did not cause an Adverse Analytical Finding or other anti-doping rule violation shall not invalidate such results. If the Athlete or other Person establishes that a departure from another International Standard or other anti-doping rule or policy which could reasonably have caused the Adverse Analytical Finding or other anti-doping rule violation occurred, then the Anti-Doping Organization shall have the burden to establish that such departure did not cause the Adverse Analytical Finding or the factual basis for the anti-doping rule violation".

83. At the outset, the Panel refers to well-established jurisprudence of the CAS clarifying that *"evidence has to be given that an anti-doping rule violation has occurred «to the comfortable satisfaction of the hearing body, bearing in mind the seriousness of the allegation which is made». This standard of proof is greater than «a mere balance of probability» but less than «proof beyond reasonable doubt». On the other hand, when the burden of proof is upon the player to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a «balance of probability». The balance of probability means that the athlete alleged to have committed a doping violation bears the burden of persuading the judging body that the occurrence of a specified circumstance is more probable than its non-occurrence".* (CAS 2009/A-1987 & CAS 2009/A/1844; CAS 2006/A/1385). The Panel notes that the latter finding is in line with the wording of Article 3.2.1 of the ADR and Article 3.1 of the WADC.

84. The Panel further notes that *"Doping is an offence which requires the application of strict rules. If an athlete is to be sanctioned solely on the basis of the provable presence of a prohibited substance in his body, it is his or her fundamental right to know that the Respondent, as the Testing Authority, including the WADA-accredited laboratory working with it, has strictly observed the mandatory safeguards. Strict application of the rules is the quid pro quo for the imposition of a regime of strict liability for doping offences".* (CAS 2009/A/1752 & CAS 2009/A/1753).

85. However, the Panel emphasises that the current wording of Article 3.2.1 of the WADC refers to the standard of reasonableness when establishing a correlation between the departure from the rules of the ISL and an adverse analytical finding (misreading of the analysis' results) ("Adverse Analytical Finding"). This should be contrasted to the previous wording of the Article 3.2.1 contained in the World Anti-Doping Code 2003, which preceded the adoption of the WADC in 2009: *"The Athlete may rebut this presumption by establishing that a departure from the International Standard occurred"*. Therefore, the Panel deems a mere reference to a departure from the ISL insufficient, in the absence of a credible link of such departure to a resulting Adverse Analytical Finding. In other words, in order for an athlete to meet his/her burden and thus effectively shift the burden to an anti-doping organization, the athlete must establish, on the balance of probabilities, (i) that there is a specific (not hypothetical) departure from the ISL; and (ii) that such departure could have reasonably, and thus credibly, caused a misreading of the analysis. Further, the Panel remarks that such athlete's rebuttal functions only to shift the burden of proof to the anti-doping organization, which may then show, to the Panel's comfortable satisfaction, that the departure did not cause a misreading of the analysis.

86. The Panel therefore reiterates the standard for review consisting of two prongs. First, whether there was a departure from the general principles of the ISL, or other international standard, in the activities of the respective WADA-accredited laboratory. Second, whether any identified departure could reasonably have caused an Adverse Analytical Finding.

D. Accreditation of the testing laboratory

a. The Appellant's arguments

87. The Appellant challenged the following findings of the Appealed Decision: *"the laboratory had no accreditation to the international ISO/IEC 17025 standard within the period from March 3 to May 24, 2012"* and *"the temporary absence of accreditation to the international ISO/IEC 17025 standard is a departure from the International Standard for Laboratories"*. The Appellant claims that the Russian Federal Agency on Technical Regulation and Metrology issued a certificate, dated May 4, 2009, certifying that the Laboratory met the requirements of "GOST R ISO/IEC 17025-2006". This certificate was valid until May 4, 2012 (after Ms. Chernova's sample was analyzed). The Appellant further stressed that the Laboratory was WADA-accredited throughout 2012.

88. According to the Appellant, even if the Laboratory were not accredited, *quod non*, this would be insufficient *per se* to invalidate the results. The Appellant argued that a lack of accreditation would only result in the reversal of the burden of proof, essentially requiring WADA to prove that the analysis did not depart from the ISL.

b. Analysis and findings of the Panel

i. Departure from ISL or other international standard?

89. First, the Panel recognizes that the Laboratory was WADA-accredited during the testing of Ms. Chernova's sample. The Panel wishes to emphasize the importance of the WADA-accreditation, given that WADA regularly conducts inspections of laboratories to verify conformity with the prescribed standards.

90. Second, the Panel notes that WADA-accredited laboratories must also maintain their accreditation under the international "ISO/IEC 17025" standard, through accreditation with a relevant nationally recognized body for accreditation of laboratories (Article 4.4.1 of the ISL). The Panel notes that the Laboratory possessed a certificate confirming that the Laboratory met the requirements of "GOST R ISO/IEC 17025-2006", that the latter certificate was valid throughout the testing of Ms. Chernova's sample, and that the "GOST R ISO/IEC 17025" standard is the Russian equivalent of the international ISO/IEC 17025 standard.

91. The Panel therefore concludes that the Laboratory was duly accredited during the testing of Ms. Chernova's sample.

ii. Could a departure reasonably have caused Adverse Analytical Finding?

92. The Panel wishes to note that even if the Laboratory were not accredited to the international "ISO/IEC 17025" standard, *quod non*, this would itself be insufficient for a finding that such a departure could reasonably have caused an Adverse Analytical Finding, in particular in light of the Laboratory's WADA-accreditation during the testing period.

E. Volume of the sample

a. The Appellant's arguments

93. The Appellant challenged the finding of the Appealed Decision stipulating that a minimum sample volume required for the analyses should be 60 ml for the A sample, and 30 ml for the B sample.

94. First, the Appellant argued that, with respect to the Doping Control Officer, the collected urine volume from Ms. Chernova must have complied with the International Standard for Testing ("IST"), and that the bottles likely indicated that the required volume was met. Further, to the extent that the volume calculated by the Laboratory was slightly below the volume specified by the IST, this is due to the Laboratory's equipment being more accurate and reliable for measuring purposes than the graduating scale indicated on the bottles.

95. Second, the Appellant stressed that although the IST specifies a minimum volume of urine to be collected, such standard does not indicate that the analysis is invalid if the volume is below the required minimum.

96. Third, the Appellant reiterated that the ISL does not require a prescribed minimum for the analyses.

97. Further, the Appellant referred to the expert report of Mr. Martial Saugy and Dr. Sylvain Giraud from *"Laboratoire Suisse d'Analyse du Dopage"* ("Expert Report") which essentially stipulates that the volume must be sufficient to screen for the substances on the prohibited list and that Ms. Chernova's 57 ml A sample was of a sufficient volume in this regard.

98. Lastly, the Appellant argued that, even if the volume were found to be insufficient, this would not have explained the presence of Bromantan in Ms. Chernova's sample.

b. Analysis and findings of the Panel

i. Departure from ISL or other international standard?

99. Article D.4.14 of the IST provides as follows:

> *"The Athlete shall pour the minimum Suitable Volume of Urine for Analysis into the B bottle (to a minimum of 30 ml), and then pour the remainder of the urine into the A bottle (to a minimum of 60 ml). If more than the minimum Suitable Volume of Urine for Analysis has been provided, the DCO shall ensure that the Athlete fills the A bottle to a capacity as per the recommendation of the equipment manufacturer".*

100. Annex D (1a) of the IST provides as follows:

> *"The Sample meets the Suitable Specific Gravity for Analysis and the Suitable Volume of Urine for Analysis. Failure of a Sample to meet these requirements in no way invalidates the suitability of the Sample for analysis. The determination of a Sample's suitability for analysis is the decision of the relevant laboratory, in consultation with the ADO".*

101. Article 5.2.2.3 of the ISL provides as follows:

> *"The laboratory shall observe and document conditions that exist at the time of receipt that may adversely impact on integrity of a Sample. For example, irregularities noted by the Laboratory should include, but are not limited to:*
>
> *- Sample volume is inadequate to perform the requested testing menu".*

102. At the outset, the Panel notes that, pursuant to the Laboratory documentation package, the volume of the urine sample (No 2672966) provided by Ms. Chernova was 57 ml for A sample, and 29 ml for B sample. The Panel further remarks that such volume was below the minimum volume to which the IST refers (60 ml for A sample, and 30 ml for B sample). However, the Panel notes that the IST itself clarifies that *"failure of a Sample to meet these requirements in no way*

invalidates the suitability of the Sample for analysis" (emphasis added by the Panel) and that *"the determination of a Sample's suitability for analysis is the decision of the relevant laboratory, in consultation with the ADO".*

103. It follows that the ISL does not prescribe a minimum volume required for the analyses. Instead, the Panel notes, the focus is on the sufficiency of the volume to conduct the analyses.

104. Furthermore, the Panel takes due note of the conclusions presented in the Expert Report: *"In the laboratory, the volumes of both A and B samples were respectively measured at 57 and 29 ml. If the international Standard for testing (IST) indicates that a total of 90 ml of urine must be collected, the International Standard for Laboratories (ISL) does not require a minimum volume. The volume must be sufficient to screen the substances from the prohibited list and it was clearly the case with the 57 ml from the A sample. Besides, the difference between the 90 ml estimated on the field and the 86 ml (for both A & B samples) is absolutely not a relevant issue. The method of measurement of volume is very approximate and in that case, the difference can be clearly attributed to the normal uncertainty of the measurement of urine volume"* (emphasis added by the Panel).

105. In light of the foregoing, the Panel is of the view that the 57 ml from the A sample of Ms. Chernova must be deemed to be sufficient for screening of substances on the WADA prohibited list, and thus no departure from the ISL or the IST has been established.

ii. Could a departure reasonably have caused the Adverse Analytical Finding?

106. In any event, the Panel emphasises that the fact that the volume of the A sample was 3 ml below the volume to which the IST refers, could not reasonably have caused the Adverse Analytical Finding (the presence of Bromantan in Ms. Chernova's urine sample).

F. Flaws in the internal chain of custody

a. The Appellant's arguments

107. The Appellant challenged the finding of the Appealed Decision stipulating that the provision of Article 5.2.2.3 of the ISL, and Article 5.2.3.3 of the ISL were breached. According to the Appellant, none of the requirements set forth in these provisions were violated.

108. First, the Appellant argued that there was no sign that the sample provided by Ms. Chernova was tampered with or not sealed.

109. Second, the Appellant stressed that while acknowledging the ISL's requirement that the Laboratory record any irregularities, the sample's volume must be deemed sufficient for testing purposes, and thus would not qualify as a condition that can impact the sample's integrity.

110. Third, the Appellant ruled out any possibility of the sample being contaminated, since (i) the Laboratory is regularly inspected; and (ii) the blank urine controls used by the Laboratory guarantee no contamination in the analytical process (should a contamination have occurred in the course of analytical process, the blank urine quality controls would also have tested positive for Bromantan, which was not the case in the present matter).

111. Lastly, the Appellant referred to the findings of the Expert Report, which, after examining the Laboratory documentation package, confirmed that the analyses were reliable, and that Ms. Chernova's sample tested positive for Bromantan.

b. Analysis and findings of the Panel

i. Departure from ISL or other international standard?

112. Article 5.2.2.3 of the ISL provides as follows:

"The laboratory shall observe and document conditions that exist at the time of receipt that may adversely impact on the integrity of a Sample. For example, irregularities noted by the Laboratory should include, but are not limited to:

- *Sample tampering is evident;*
- *Sample is not sealed with tamper-resistant device or not sealed upon receipt;*
- *Sample is without a collection form (including Sample identification code) or a blank form is received with the Sample;*
- *Sample identification is unacceptable. For example, the number on the bottle does not match the Sample identification number on the form;*
- *Sample volume is inadequate to perform the requested testing menu;*
- *Sample transport conditions are not consistent with preserving the integrity of the Sample for anti-doping analysis".*

113. Article 5.2.3.3 of the ISL provides as follows:

"The Aliquot preparation procedure for any Initial Testing Procedure or Confirmation Procedure shall ensure that no risk of contamination of the Sample or Aliquot exists".

114. Storage of samples. The Panel takes due account of the Expert Report's findings confirming that *"the laboratory documentation package is reporting sufficient information to understand how the final results were found. The sample was stored in fridge on its arrival and it is self-understood that that was the case during all time of the procedure, except during aliquoting the samples for extraction procedures"*. Therefore, the Panel is comfortably satisfied that the Laboratory documentation package does not indicate that the sample was tampered with, or unsealed.

115. Documenting the preparation of aliquots. Similarly, the Panel notes the views expressed in the Expert Report that: *"the description of the preparation of the aliquots is not requested to be in the laboratory documentation package by the ISL or any other Technical Documents. This is generally described in the lab SOPS (Standard Operating Procedures) which have been assessed by the National Accreditation Service. The Laboratory is accredited ISO-17025 by this service and also by WADA"*. Hence, the Panel does not find any departure from the ISL or other international standard in this regard.

116. Compliance with Article 5.2.2.3 of the ISL. Article 5.2.2.3 of the ISL essentially requires that the Laboratory observe and document conditions that exist at the time of the receipt that may impact on the integrity of the sample. The Panel reiterates that the ISL does not prescribe a minimum volume, but only that it be *"adequate to perform the requested testing menu"*. The Panel recalls its finding that Ms. Chernova's 57 ml A sample must be deemed to be sufficient for the screening of substances from the WADA prohibited list. Similarly, the Expert Report concludes that *"the 3 ml up to the regular 60 ml requested are not significant, can be counted within the uncertainty of the volume measurement and 57 ml are highly sufficient to perform the full menu if requested"* (emphasis added by the Panel). In light of the foregoing, the Panel does not accept that any departure from Article 5.2.2.3 of the ISL occurred.

117. Compliance with Article 5.2.3.3 of the ISL. Pursuant to Article 5.2.3.3 of the ISL, the aliquot preparation procedure for any initial procedure or confirmation procedure shall exclude any risk of contamination of the sample or aliquot. In the Panel's view, there is no departure from the Article 5.2.3.3 for the following reasons. First, and as a general observation, the Panel acknowledges that the accreditation service regularly inspects WADA-accredited laboratories to ascertain compliance with the latter provision. As noted in the Expert Report *"the main purpose of quality management of the Laboratory is to avoid any contamination process"*. Second, the Panel is persuaded by the Expert Report's conclusion that *"in the analysis described in the laboratory documentation package, the blank urine controls can guarantee that there is no contamination in the analytical process"* (emphasis added by the Panel). More specifically, should a contamination have occurred in the analytical process, the blank urine controls would also have tested positive for Bromantan. Since the blank urine sample was not positive, the risk of contamination can be excluded.

118. In summary, the Panel is comfortably satisfied that no credible departure from the ISL or other international standard is evident during the testing process of Ms. Chernova's sample, as reflected by the procedure described in the Laboratory documentation package.

ii. Could a departure reasonably have caused an Adverse Analytical Finding?

119. The Panel wishes to emphasise that, in any event, none of the alleged departures from the ISL or IST have been subsequently linked to a credible explanation of how the substance could have appeared in the sample of Ms. Chernova. In particular, the Panel notes the following:

120. First, Bromantan is a synthetic drug, and there is thus no way that a body can excrete it naturally. Second, there is generally no way that Bromantan can appear in a urine sample, even if the cap were opened, or otherwise not properly sealed, or if the readings in the Laboratory documentation package were erroneous. Third, there is no level below which Bromantan is

authorized, thus the simple presence of this prohibited substance is sufficient for an Adverse Analytical Finding. In this regard, the way that the urine sample is handled cannot cause Bromantan to suddenly appear. Lastly, the Expert Report confirmed that any alleged departure did not cause the prohibited substance to appear in the sample, since the test results showed no contamination: *"the blank urine controls can guarantee that there is no contamination in the analytical process"*, and *"in view of the results described in the full documentation package, it was absolutely correct for the laboratory to have reported an adverse analytical finding for Bromantan"*, thus *"based on our experience and on the facts explained above, we are convinced that the urine analysed is the one from a person having consumed Bromantan"*.

121. Therefore, the Panel is comfortably satisfied that, had the alleged departures from the ISL or other international standard occurred, *quod non*, these could not reasonably have caused a misreading of Ms. Chernova's sample.

G. Forged signature

a. The Appellant's arguments

122. The Appellant challenged the Appealed Decision's finding that the signature of the Laboratory's analyst, Ms. Sokolova (on worksheet 12 LDP work instructions for procedure P104 No. S304) was forged, thus infringing Article 5.2.6.6 of the ISL.

123. First, the Appellant argued that Ms. Sokolova's signature on pages 4 and 12 of the Laboratory documentation package, as well as on the specimen, look very similar, bearing in mind that a person's signature cannot always be identical.

124. Second, the Appellant referred to Ms. Sokolova's statement dated October 23, 2012, certifying that she personally affixed her signature on the following documents: (i) operating instructions for the procedure P104 package samples no 343; (ii) list of personnel involved in testing of sample package no. 343; and (iii) list of employees of the Laboratory, and sample of their personal signatures of February 15, 2012.

125. Third, the Appellant stressed that the theory of an analysis manipulation or of the presence of an unidentified intruder intervening in the analytical process is simply not credible, and is wholly unsubstantiated. Moreover, according to the Appellant, such "conspiracy" should be viewed in light of the surrounding circumstances, in particular referring to Ms. Chernova's repeated doping offences, and her attempt to avoid the consequences of such actions by implying there was unethical and illicit behaviour on the part of others, without any evidence.

b. Analysis and findings of the Panel

i. Could a departure reasonably have caused the Adverse Analytical Finding?

126. Article 5.2.6.6 of the ISL provides as follows:

> *"A single, distinct Test Report shall be generated to document the Adverse Analytical Finding(s) or Atypical Finding(s) of an individual Sample. The Laboratory Test Report shall include, in addition to the items stipulated in ISO/IEC 17025, the following:*
> - *Signature of authorized individual".*

127. At the outset, the Panel acknowledges Ms. Sokolova's statement certifying that the signatures in the Laboratory documentation package were affixed by her personally. The Panel also takes due account of the expert report No. 189, dated June 21, 2012, prepared by the Regional Assessment Agency LLC, for the purposes of the proceedings before the CCCAS, stipulating that *"the signature which image is in the line of «Termination Date and Time/Signature» in the operational instruction to r104 procedure No S304 dated 02.03.2012 and the signature, which image is in the line of «N.V. Sokolova/Research engineer» in the list of personnel who took part in testing, are made by different persons".*

128. However, in the Panel's view, the allegation of forgery lacks any credible motive. In particular, the Appealed Decision's reference to "the presence of an unidentified intruder" is purely theoretical, whilst the Panel does not deal in the realm of hypothesis, but with actual facts that could have reasonably caused a misreading of Ms. Chernova's sample analysis. The Panel emphasises that there is no further elaboration in either the Appealed Decision or the present Appeal proceedings regarding the correlation of the alleged forged signature to the appearance of the prohibited substance in Ms. Chernova's sample. To the extent that an allegation has been made that the substance was placed in the urine sample, this requires relevant and credible evidence. In the absence of such evidence, the Panel finds that any allegation of a forged signature could not have reasonably caused the Adverse Analytical Finding.

H. Anti-doping rule violation

129. In light of the foregoing, the Panel is comfortably satisfied that Ms. Chernova committed an anti-doping rule violation, namely that she tested positive for hydroxybromantan, a bromantan metabolite, listed in the 2012 WADA Prohibited list, under the class *"S6.a – Non Specified Stimulants".*

I. Determination of the sanction

a. The Appellant's arguments

130. First, the Appellant stressed that this is Ms. Chernova's second anti-doping rule violation.

131. Second, the Appellant emphasised that there are no mitigating circumstances to be considered.

132. Third, the Appellant argued that the manner in which Ms. Chernova sought to evade the consequences of her second anti-doping rule violation indicates that a maximum sentence would be appropriate.

b. Analysis and findings of the Panel

i. Applicable law

133. Clause VIII of the ADR provides as follows:

> *"An anti-doping rule violation in individual sports, in connection with an in-competition test automatically leads to disqualification of the result obtained in that competition with all resulting consequences, including forfeiture of all medals, points and prizes".*

134. Article 9.1.1 of the ADR provides as follows:

> *"An anti-doping rule violation occurring during or in connection with an event may, upon the decision of the ruling body of the event, lead to disqualification of all of the Athlete's individual results obtained in that event with all consequences, including forfeiture of all medals, points and prizes, except as provided in paragraph 9.1.2.*
>
> *Whereas paragraph VIII disqualifies the result in a single competition in which the Athlete tested positive, this paragraph may lead to disqualification of all results in all races during the event. Factors to be included in considering whether to disqualify other results in an event might include, for example, the severity of the athlete's anti-doping rule violation and whether the athlete tested negative in the other competitions".*

135. Article 9.1.2 of the ADR provides as follows:

> *"If the athlete establishes that he or she bears No Fault or Negligence for the rule violation, the athlete's individual results in the other competitions shall not be disqualified unless the athlete's results in competitions other than the competition in which the anti-doping rule violation occurred were likely to have been affected by the Athlete's anti-doping rule violation".*

136. Article 9.7.1 of the ADR provides as follows:

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

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

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

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

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

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

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

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

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

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

TRA (Trafficking or Attempted Trafficking and administration or Attempted administration): The anti-doping rule violation was or should be sanctioned by a sanction under paragraph 9.3.2".

ii. Second infraction

137. The Appellant provided evidence that Ms. Chernova had already been sanctioned for the First anti-doping rule violation with a two-year period of ineligibility (as of December 15, 2008) due to a positive test for metenolone. With reference to Article 9.7.1 of the ADR, the latter instance is classified as a standard sanction.

iii. Period of ineligibility

138. The Panel is now faced with the issue of determining an appropriate sanction for Ms. Chernova's Second anti-doping rule violation.

139. The Panel recalls in this regard that *"whatever the nature of the offence may be, […] the special circumstances of each case must be taken into account when determining the level of sanction"* (CAS 2000/A/218). The Panel further observes previous CAS jurisprudence finding an imposition of a lifetime ban on the athlete for a second anti-doping offence to be *"severe, but not disproportionate"*, *inter alia* emphasising that the athlete was not a first time offender (CAS 2002/A/383). Lastly, the Panel wishes to emphasise that *"the anti-doping rules are designed and intended to protect athletes who compete fairly, and punish those who do not. The latter should thus be prepared to face consequences when they transgress the rules"* (CAS 2006/A/1149 & CAS 2006/A/1211).

140. The Panel acknowledges that the Second anti-doping rule violation would otherwise be subject to a standard sanction, but for the First anti-doping rule violation. The Panel observes that, in such a case, Article 9.7.1 of the ADR sets out a range of sanctions from 8 years to a life time period of ineligibility. As for the applicable range, the latter Article specifies that *"the Athlete's or other Person's degree of fault shall be the criterion considered in assessing a period of Ineligibility within the applicable range"*.

141. Because Ms. Chernova did not submit any defense in this appeal, the Panel took into account Ms. Chernova's submissions and facts as summarized in the Appealed Decision. Therefore, in determining the appropriate sanction, the Panel takes due account of the following circumstances:

142. First, Ms. Chernova did not attempt to establish how the prohibited substance entered her system. The Panel recalls that in previous CAS case law, life time period of ineligibility was imposed *inter alia* due to athlete's failure to adduce specific evidence as to how the prohibited substance entered her body, as a requirement for finding of exceptional circumstances (CAS 2008/A/1585 & CAS 2008/A/1586).

143. Second, Ms. Chernova did not attempt to establish that she bears no fault or negligence, or no significant fault or negligence. The Panel again refers to previous CAS jurisprudence whereby *"exceptional circumstances in the case such that the athlete or other person bears no fault or negligence for the violation [could enable] the ineligibility sanction to be eliminated"* (CAS 2008/A/1585 & CAS 2008/A/1586). Moreover, the Article 9.7.1 of the ADR explicitly refers to *"athlete's degree of fault"* as a guiding criterion for determining an appropriate sanction.

144. Third, Ms. Chernova did not raise any other mitigating circumstance.

145. In light of the above, and with reference to Article 9.7.1 of the ADR, the Panel imposes on Ms. Chernova a lifetime period of ineligibility.

iv. Commencement of the period of ineligibility

146. According to the Article 9.10.1 of the ADR *"[…] the period of Ineligibility shall start on the date of the hearing decision providing for ineligibility or, if the hearing is waived, on the date Ineligibility is accepted or otherwise imposed"*. The Panel notes that there was no hearing. Therefore, the period of ineligibility shall start to run on the date on which this award enters into force.

v. Other ancillary orders

147. Pursuant to Clause VIII of the ADR, the Panel concludes that all competitive results obtained by Ms. Chernova in relation to the competition on February 29, 2012 shall be disqualified, with all resulting consequences, including forfeiture of all medals, points and prizes.

ON THESE GROUNDS

The Court of Arbitration for Sport decides that:

1. The Appeal filed by the World Anti-Doping Agency is admissible.

2. The decision rendered by the Court of Arbitration for Sport at the Chamber of Commerce and Industry of the Russian Federation, dated December 19, 2012, in the matter of Ms. Lada Chernova, is set aside.

3. Ms. Lada Chernova is sanctioned with a life-time period of ineligibility, starting on the date on which this award enters into force.

4. All competitive results obtained by Ms. Lada Chernova in relation to the competition on February 29, 2012 shall be disqualified, with all resulting consequences, including forfeiture of all medals, points and prizes.

(…)

7. All other or further claims are dismissed.