ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President:	Mr Ercus Stewart SC, Senior Counsel in Dublin, Ireland
Arbitrators:	Hon Dr Annabelle Bennett AC SC, Former Judge in Sydney, Australia
	Prof Massimo Coccia LL.M., Professor and Attorney-at-law in Rome, Italy
Ad hoc clerk:	Ms Stéphanie De Dycker, Attorney-at-law in Lausanne, Switzerland

between

Ms María Guadalupe González Romero, Mexico
Represented by Mr Andrés Charria Sánez and Mr Victor A. Delgado Jaramillo, Attorneys-at-law, Bogotá, Colombia

- Appellant -

and

International Association of Athletics Federations, Monaco
Represented by Mr Ross Wenzel and Mr Anton Sotir, Attorneys-at-law, Lausanne, Switzerland

- Respondent -

I. PARTIES

1. Ms María Guadalupe González Romero is an international-level race-walker of Mexican nationality (the "Appellant" or the "Athlete").

2. The International Association of Athletics Federations (the "IAAF" or the "Respondent") is the international federation governing athletics worldwide, whose registered seat is in Monaco.

II. FACTUAL BACKGROUND

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

A. Background of the dispute

4. On 17 October 2018, the Appellant underwent an out-of-competition anti-doping control (the "ADC").

5. The analysis of the Appellant's A-sample revealed the presence of Epitrenbolone, a metabolite of Trenbolone. The Laboratory test report includes the following note: "*level roughly estimated to 1ng/ml*".

6. Trenbolone is a non-specified anabolic androgenic steroid prohibited at all times under S1.1 of the 2018 WADA Prohibited List (the "Prohibited List").

7. On 16 November 2018, the Athletics Integrity Unit ("AIU") notified the Appellant on behalf of the IAAF of the adverse analytical finding ("AAF") in her A-sample and provisionally suspended the Appellant with immediate effect.

8. In a letter of 23 November 2018, the Appellant stated that the only explanation for the AAF was her consumption of contaminated meat in the days prior to the doping test. The Appellant also requested the analysis of the B-sample.

9. The analysis of the B-sample confirmed the presence of the metabolite of Trenbolone. On 3 December 2018, the AIU informed the Appellant of this result.

B. Proceedings before the IAAF Disciplinary Tribunal

10. On 10 December 2018, the AIU sent the Appellant a notice of charge for violations of Articles 2.1 and 2.2. of the 2018 IAAF Anti-Doping Rules ("ADR"). On 17 December 2018, the Appellant confirmed that she did not admit the charge, stating in that she had eaten contaminated meat, including liver, picaña and "*tacos al pastor*". On 21 December 2018, a procedure against the Appellant was launched before the IAAF Disciplinary Tribunal. On 17 April 2019, a hearing was held in London, United Kingdom, at which the Appellant was legally represented, and witnesses for the IAAF and the Athlete were

examined and cross-examined.

11. On 9 May 2019, the IAAF Disciplinary Tribunal found the Appellant to have committed an anti-doping rule violation ("ADRV") and declared her ineligible for a period of four years starting from the date of notification of the award (the "Appealed Decision"). The period of provisional suspension that had already been served by the Appellant, i.e. the period since 16 November 2018, was credited against the total period of ineligibility to be served. In addition, the results achieved by the Appellant from (and including) 17 October 2018 were disqualified with all related consequences, including forfeiture of medals, points and prize money.

12. The essence of the Appealed Decision was as follows:

"[...] *there was no dispute that the analysis by the accredited laboratory in Montreal of the Mexico sample collected from the Athlete on 17 October 2018, showed the presence of the banned substance.* [...] *Pursuant to Article 2.2.1 ADR, it is each athlete's personal duty to ensure that no Prohibited Substance enters his or her body and that no Prohibited Substance is "used".* [...] *Upon consideration of all the evidence* [...], *an ADR [violation] by reason of "Presence" is established to the Disciplinary Tribunal's satisfaction.* [...] *The Athlete's explanation of how the substance entered her system related to the ingestion of meat. However, this explanation together with the evidence produced by the Athlete is not convincing. The Athlete provided contradicting versions of events during the proceedings, which are themselves contradicted by the evidence provided, some of which was fabricated.* [...] *The declaration of Professor Ayotte* [...] *illustrated that, considering the amount of meat the Athlete had eaten, it was not possible that the trenbolone found in her body came from contaminated meat, due to the fact that its concentration in her Sample was too high. [T]he Athlete has not established on a balance of probabilities that the ADR was not intentional. Without providing reliable evidence as to how the substance got into her system the only inference that can be drawn by the Panel is that she more than likely knew, or reasonably should have known, of the risks and that she knew, or reasonably should have known, that her conduct might constitute or result in an ADR* [violation]. *The evidence* [...] *does not warrant a reduction of the mandatory period of Ineligibility pursuant to Article 10.2.1ADR.* [...]"

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

13. On 7 June 2019, the Appellant filed a Statement of Appeal with the Court of Arbitration for Sport ("CAS") against the Respondent with respect to the Appealed Decision in accordance with Article R47 of the Code of Sports-related Arbitration (2019 edition) (the "CAS Code"). In her Statement of Appeal, the Appellant requested that the present proceedings be submitted to a sole arbitrator.

14. On 19 June 2019, the Respondent informed the CAS Court Office that, in its view, the present proceedings should be referred to a panel comprised of three arbitrators.

15. On 26 June 2019, the Appellant confirmed her agreement with the Respondent's proposal that the case be heard by a three-member panel.

16. On 22 June 2019, the Appellant timely filed her Appeal Brief in accordance with Article R51 of the CAS Code.

17. On 26 August 2019, the Respondent timely filed its Answer further to Article R55 of the CAS Code.

18. On 27 June 2019, the Appellant informed the CAS Court Office that she nominated as arbitrator the Hon Dr Annabelle Bennett AC SC, former Judge in Sydney, Australia.

19. On 9 July 2019, the CAS Court Office noted the nomination by the Respondent of Prof Massimo Coccia LL.M., Professor and Attorney-at-law in Rome, Italy, as arbitrator.

20. On 16 July 2019, Prof Coccia provided a disclosure to the Parties, who were reminded that pursuant to Article R34 of the CAS Code, a challenge must be brought within seven days after the grounds for challenge had become known.

21. On 24 July 2019, the CAS Court Office advised the Parties that no challenge had been filed against Prof Coccia within the time limit prescribed in Article R34 of the CAS Code.

22. On 21 August 2019, in accordance with Article 54 of the CAS Code and on behalf of the Deputy President of the CAS Appeals Arbitration Division, the CAS Court Office informed the Parties that the Panel appointed to decide on the present proceedings was constituted as follows:

President:	Mr Ercus Stewart, Senior Counsel/Barrister in Dublin, Ireland
Arbitrators:	The Hon Dr Annabelle Bennett AC SC, former Judge in Sydney, Australia
	Prof Massimo Coccia LL.M., Professor and Attorney-at-law in Rome, Italy

23. On 3 September 2019, the CAS Court Office invited the Parties to provide a copy of the entire case file from the first instance proceedings, including transcripts or recordings of the hearing held on 17 April 2019 in London, United Kingdom, and the parties' submissions.

24. On 9 September 2019, the Respondent sent to the CAS Court Office a copy of the hearing bundle from the first instance proceedings and the recording of the hearing of 17 April 2019, as well as the authorities referred to in the Respondent's Answer.

25. On 17 September 2019, after consultation with the Parties further to Article R57 of the CAS Code, the CAS Court Office informed the Parties that the Panel had decided to hold a hearing. On 1 October 2019, the CAS Court Office informed the Parties that the hearing would be held on 11 November 2019 in Lausanne, Switzerland.

26. On 11 October 2019, the CAS Court Office: (i) informed the Parties that the Panel preferred that the Athlete appear in-person at the hearing; (ii) requested the Appellant to provide a witness statement for each of her witnesses; and (iii) invited the Respondent to comment on the Appellant's request that the witnesses appear by video-conference. Finally, the Parties were invited to provide a hearing bundle in preparation of the

hearing, including the identification of the precedents/case law relied upon and what they claim arises from each case.

27. On 16 October 2019, the CAS Court Office invited both Parties to send to the CAS Court Office the statements of evidence of any witnesses they intended to rely upon or intended to call to give evidence at the hearing. On 17 and 18 October 2019, the Parties provided the names of the persons who would be attending the hearing. The Respondent indicated that its witnesses would be available by video-conference.

28. On 22 October 2019, the CAS Court Office informed the Parties that Ms Stéphanie De Dycker, Attorney-at-law in Satigny, Switzerland, had been appointed as *ad hoc* Clerk to assist the Panel.

29. On 26 October 2019, the Appellant sought to submit new evidence and confirmed the participation of her witnesses by video-conference. On 29 October 2019, the CAS Court Office invited the Respondent to provide any comments on the Appellant's request to submit new evidence and requested the Parties to sign and return the Order of Procedure. On the same day, the Respondent indicated to the CAS Court Office that it objected to the submission of the additional evidence as requested by the Appellant.

30. On 5 November 2019, the CAS Court Office acknowledged receipt of the Parties' hearing bundles.

31. On 5 and 6 November 2019, the Parties sent to the CAS Court Office their respective signed copies of the Order of Procedure. The Appellant also sent a copy of the witness statement for each of her witnesses on 6 November 2019.

32. On 8 November 2019, the Friday before the hearing on Monday 11 November 2019, the Appellant sent the complete witness statement of Ms Arteaga. The Appellant also informed the Panel that she had filed a criminal complaint in Mexico against two of the witnesses that were to be called by the Respondent at the 11 November 2019 hearing, alleging that they had made false declarations in legal proceedings.

33. A hearing was held in Lausanne on 11 November 2019. In addition to the Panel, Ms Kendra Magraw, CAS Counsel, and Ms De Dycker, *ad hoc* Clerk, the following persons attended the hearing:

For the Appellant:	Ms María Guadalupe González Romero, Athlete; Mr Esteban Santos, Trainer (who did not give evidence); Mr Andrés Charria, Counsel; Mr Victor Delgado, Counsel; Mr Daniel Dueñas, Legal Clerk; and Mr José Puente, Interpreter.
For the Respondent:	Mr Ross Wenzel, Counsel; Mr Anton Sotir, Counsel; Ms Olympia Karavasili, Athletics Integrity Unit; and Ms Malicia Utanya, Interpreter.

34. The following witnesses gave evidence before the Panel:

- Dr Viridiana Silva (by telephone);
- Mr Fernando Cabrera (by video); and
- Ms Fabiana Baltazar (by video).

35. The Appellant also made an oral statement to the Panel, which is summarized below, together with the other witness testimony. The Appellant and all witnesses were informed by the President of the Panel of their duty to tell the truth, subject to the sanctions of perjury under Swiss law. The Parties and the Panel had the opportunity to examine and cross-examine the Appellant and the witnesses.

36. The Parties thereafter were given a full opportunity to present their case, submit their arguments/submissions and answer the questions posed by the Panel. At the end of the hearing, the Parties confirmed that they were satisfied with the hearing and as to their right to be heard, and that they had no objection as to the composition or constitution of the Panel. The Appellant was allowed to make a final statement after the conclusion of all of the evidence and submissions, in which she again apologised to the Respondent.

37. On 17 April 2020, the Appellant wrote to the CAS Court Office in order to draw the Panel's attention to the recently-rendered award in *CAS 2019/A/6313 Jarrion Lawson v IAAF* (the "Lawson case"), in which, according to the Appellant, *"some facts may be useful for the Panel in their debate for rendering the final award on our arbitration*".

38. On the same day, the CAS Court Office invited the Appellant to specify "*what she is submitting with respect to CAS 2019/A/6313 Award and how she believes such Award* 'may be useful for the Panel'".

39. On 22 April 2020, the Appellant provided the reasons why she considered that the *Lawson* case was useful to the Panel.

40. On 23 April 2020, the CAS Court Office invited the Respondent to comment on the Appellant's position regarding the *Lawson* case.

41. On 30 April 2020, the Respondent sent to the CAS Court Office its comments on the Appellant's emails of 17 April and 22 April 2020, as well as the *Lawson* case.

IV. THE PARTIES' SUBMISSIONS

42. The following summary of the Parties' positions and submissions is illustrative only and does not necessarily comprise each and every contention put forward by the Parties. The Panel, however, has carefully considered all of the submissions made by the Parties, even if no explicit reference is made in what immediately follows.

A. The Appellant's Submissions

43. The Appellants' submissions may be summarized as follows:

- The CAS has jurisdiction to decide on the present matter based on Article 13.2.2

of the ADR, since the Appellant is an international-level athlete. The present appeal is admissible since it was initiated within the time limit as provided under Article 13.7.1 of the ADR.

- Trenbolone is rarely used as a doping substance in professional sports and, when it is used, it is in the context of sports based on power rather than endurance. In addition, in CAS jurisprudence, AAFs with Trenbolone have always been found in combination with other related substances – never on its own.
- Moreover, Trenbolone is a performance-enhancing substance used in certain countries, including Mexico, in the framework of cattle farming. CAS jurisprudence has acknowledged the fact that, as a result of cattle farming, it is perfectly possible to find meat contaminated with steroids of any kind. In Mexico, the fact that national governmental authorities have issued maximum residue limits acknowledges the fact that Trenbolone is commonly used in cattle farming in Mexico.
- The Appellant's sample analysis states the level of the substance found in the Appellant's urine is "*roughly estimated to 1ng/ml*", which is consistent with an ingestion of contaminated meat. In addition, Trenbolone commonly comes in a dose equivalent to 100mg/ml, which is a much higher concentration than that found in the Appellant's body.
- The residue found in the Appellant's body, as well as the presence of this substance alone and in such a minor concentration at a time when the Appellant was not competing, in a country where cattle are commonly raised with Trenbolone, should lead the Panel to conclude that the substance found in the Appellant's system comes, on a balance of probabilities, from the intake of contaminated meat. This is what happened to the Appellant, who in the days prior to the sample collection ingested various sorts of Mexican tacos, including "*tacos de loganiza*" and "*tacos de mixiote*" but not "*tacos del pastor*" as she claimed in the proceedings before the IAAF. As a result, the Appellant did not commit any fault or negligence as provided under Article 10.4 of the ADR, and, consequentially, the period of ineligibility of the Appellant should be eliminated.
- In addition, although not raised at the first instance procedure/hearing, the WADA protocols were breached by the Doping Control Officers ("DCOs") in the present case, as one of them, the chaperone, signed the doping control form ("DCF") but was not present at the time of the sample collection. Further, such a person, being the spouse of the other DCO present, would have been in a situation of conflict of interest had she been present. Such irregularities, given their importance, should invalidate any AAF. The Appellant accepted that, despite her claims of irregularity, she was not alleging any interference, compromise or tainting of the sample collection.
- The Appellant's conduct was unintentional since, by eating the said tacos on the days prior to the sample collection, she did not know that she was, or could be, engaging in conduct that triggered an ADRV, nor did she know there was a significant risk that her conduct might trigger an ADRV. As a result, on this basis, the period of ineligibility should be reduced to two years.
- In addition, the Appellant did not commit any fault or negligence, so that the period of ineligibility should be eliminated based on Article 10.4 of the ADR.

Alternatively, if the Panel reaches the conclusion that the Appellant bears fault or negligence, the period of ineligibility should be reduced pursuant to Article 10.5.1 of the ADR, based on the fact that such fault or negligence was not significant. The Appellant was unaware that the tacos she had eaten on the days prior to the sample collection were contaminated with any prohibited substance, including Trenbolone, and such tacos could have led to an AAF on an anti-doping procedure.

- Finally, the Appellant submits that the applicable sanction should be reduced based on the principle of proportionality, taking into account the fact that it is her first AAF and the alleged irregularities of the sample collection procedure.

44. In her Appeal Brief, the Appellant requested the Panel to decide as follows:

1. *"To admit the present Statement of Appeal on behalf of the Appellant,*
2. *To set aside the decision taken by the IAAF,*
3. *To declare that the Appellant has not incurred in any infraction to the Anti-Doping regulations,*

3.1. If Request No. 3 is not granted in full, the appellant requests a significant reduction of the Ineligibility period on the basis that, as will be demonstrated, she committed no fault or negligence or no significant fault or negligence or no intention, all of the above according to proportionality principle."

45. The testimony of the Appellant at the 11 November 2019 hearing can be summarised as follows:

- The Appellant is an international-level race-walker of Mexican nationality and a member of her country's military. She started her career as a professional race walker in 2013. She won, *inter alia,* the silver medal at the 2016 Olympic Games in Rio de Janeiro in the 20 km Race Walk competition. During her career, she has undergone multiple ADCs, both in-competition and out-of-competition. Before the ADC in this case, she had never tested positive. This ADC occurred at a moment when she was out-of-competition; she had no other competitions planned for 2018 and was about to start her preparation for the next competition in April 2019.
- At the hearing, the Appellant said that she received a message on her telephone on 16 October 2018 from Mr Cabrera, the DCO, informing her that she was due for the ADC on the next day. She met with the DCO on 17 October 2018 at the headquarters of the Mexican Olympic Committee after a light training. She first underwent the blood examination and later the urine sample collection.
- The Appellant said that she was only able to provide a complete urine sample on the third attempt because she was not hydrated enough to provide a full urine sample until she drank more liquid. Doctor Andrea Resendiz was present at the premises and accompanied the Appellant to the toilet for her urine sample collection. The Appellant said that she signed the DCF, which included reference to Ms Baltazar as chaperone, without reviewing the DCF and that the DCO indicated to Dr Resendiz that it was not necessary for her to sign the DCF. The Appellant said that Ms Baltazar, whom she later discovered was the DCO's

spouse, was not present that day. The Appellant said that she had seen Ms Baltazar only once, after another ADC, when Ms Baltazar had taken a picture of her with the DCO and her son.

- The Appellant was informed of the results of the ADC by her coach, who had in turn been informed by the President of her Federation. She also received a notification dated 16 November 2018 from the Athletes Integrity Unit ("AUI"). The Appellant said that she did not understand the positive result, since she had been training as usual. She investigated the prohibited substance reportedly found in her body, i.e. Trenbolone, because she did not know about it and realized that she had been contaminated by the food that she had ingested.
- The Appellant then sought legal advice from the National Commission of Athletes. With the help and assistance of Mr Daniel Moncayo from the National Commission of Athletes, she drafted, and submitted, a letter dated 23 November containing her reply to the letter of 16 November 2018 from the AUI (the "Reply"). In the context of the preparation of her Reply, she had mentioned to Mr Moncayo that she had eaten certain types of tacos on the days prior to the ADC; however, Mr Moncayo added to her Reply, which she then sent, that she also had eaten "*beef filet with vegetables*" and a "*meat cut at a restaurant (Picaña) 200 grams approximatively*", which she later admitted was not truthful. At the time, she said, she was under pressure to send her Reply within the time limit indicated in the letter of 16 November 2018 and did not recall exactly what she had eaten prior to the ADC. In addition, she did not mention in her Reply some of the tacos she had eaten on the days prior to the ADC because she thought that they did not contain beef. She said that she had mentioned that she had eaten "*tacos al pastor*" in her Reply because she thought that they did contain beef, although she accepts that the Reply mentions "*5 tacos al pastor (marinated pork in chili sauce, with tortillas)*". Later on, she said, she recalled having eaten three different types of tacos in the days prior to the ADC, including sausage and beef tacos ("*tacos de longaniza*" and "*tacos de mixiote*"). She did not rectify her statement before the IAAF Disciplinary Tribunal because her legal counsel at the time did not agree to her doing so.
- The Appellant stated that she genuinely and expressly accepts that she lied and presented and relied upon fabricated documents before the IAAF Disciplinary Tribunal. She explained that her former legal counsel explained to her that this was the only way to defend herself and that there were no other options for her. The Appellant expressed her sincere apologies and her regrets to the Respondent and to the Panel.

46. Dr Viridiana Deyanira Silva Quiroz, who was heard as a witness for the Appellant at the 11 November 2019 hearing, confirmed her written witness statement, which can be summarized as follows:

- Dr Silva is a doctor specializing in Sports Medicine. She is the Head of the Medical Services and Applied Sciences at the Mexican Olympic Committee. She confirmed that she was not giving evidence or opinion as an expert, and was in fact not an expert, but was rather giving factual evidence. She indicated that, to her knowledge, the concentration of Epitrenbolone found in the Athlete's body is consistent with meat contamination. She referred to the case of the Mexican Tennis Player Ms Marcela Zacarías, who had a concentration of 0.6 ng/ml of

Epitrenbolone, which was found consistent with meat contamination.

- She stated that the maximum half-life of Trenbolone is 8 to 12 hours after ingestion, that the maximum excretion peak period is between 24 and 72 hours after ingestion, and that the highest concentration of Trenbolone in urine is observed between 6 to 12 hours after ingestion. She confirmed that she had not reviewed scientific studies regarding Trenbolone specifically and reconfirmed she was not giving evidence or opinion as an expert witness.

47. Ms Adriana Arteaga, who was not examined or cross-examined at the hearing, provided a written witness statement, which can be summarized as follows:

- Ms Arteaga has worked as a nutritionist since 2013 and has been working with the Athlete since September 2017. She attested that the explanation that the Athlete gave as to how the prohibited substance entered her body is plausible and consistent with the reality in Mexico. To this end, she referred to (i) the level of concentration of the prohibited substance and (ii) the type of substance found in the Athlete's body, as well as to (iii) the Athlete's meals with the tacos eaten prior to the sample collection.
- The Respondent's counsel did not cross examine Ms Arteaga, and submitted that her written statement of evidence was irrelevant.

B. The Respondent's Submissions

48. The Respondent's submissions may be summarized as follows:

- The Respondent accepts CAS jurisdiction and the admissibility of the present appeal. The Respondent noted that the Appellant does not dispute the results of the urine sample analysis.
- With respect to the alleged departure from the International Standard for Testing and Investigations ("ISTI"), the Appellant lacks any credibility, as during the course of the hearing procedures the Appellant has provided at least three contradictory sets of facts with respect to her consumption of contaminated meat on the days prior to the sample collection, and provided false and fabricated evidence in the first instance proceeding.
- In addition, the Appellant did not raise the alleged irregularities or violations concerning the ADC/testing/DCF before the IAAF Disciplinary Tribunal, nor is there any adequate evidence of the alleged absence of Ms Baltazar during the sample collection. Further, the fact that Ms Baltazar was married to a DCO does not constitute a deviation from the ISTI. The Appellant did not seek to call evidence from, or say that she had tried to contact or call, the person whom she alleged was present (as chaperone). Finally, the Appellant, an experienced athlete, signed and accepted the DCF.
- Based on the applicable jurisprudence, the Appellant must demonstrate the origin of the prohibited substance on the "balance of probability" standard, by providing actual evidence as opposed to mere speculation. In the present matter, the Athlete has failed to provide information about what meat and the amount of meat contained in the tacos she said that she ate on the days prior to the sample collection, or as to how the meat that she consumed would have resulted in the

level of Trenbolone detected in the sample. In any event, the concentration of Trenbolone in the sample was too high to be consistent with the amount of meat allegedly consumed by the Athlete.

- As a result, the Athlete did not demonstrate that the ADRV was not intentional and, consequently, the appropriate period of ineligibility is four years. In light of the fact that the Appellant failed to demonstrate the origin of the prohibited substance, the ADR provisions requiring a finding of No Significant Fault or Negligence are not applicable.
- Therefore, the decision at the first instance should be upheld in full and the appeal dismissed.

49. The Respondent requests the Panel to decide as follows:

"*The appeal of the Athlete is dismissed.*

The IAAF is granted a significant contribution to its legal and other costs."

50. The testimony of Mr Cabrera, DCO, who was called on behalf of the Respondent at the 11 November 2019 hearing, confirmed his written witness statement, which can be summarized as follows:

- Mr Cabrera is an experienced DCO with the Mexican *Comisión Nacional de Cultura Física y Deporte* ("CONADE"). On 17 October 2018, he carried out an out-of-competition doping control at the Mexican Olympic Committee premises in Mexico City for the Athlete. He was accompanied by his spouse, Ms Baltazar, who acted as a chaperone in order to observe the provision of the urine sample by the Athlete. On that day, he explained, he and his wife entered the building of the Mexican Olympic Committee at the same time. He signed the logbook at the entrance for himself and on behalf of his spouse. He said that it is common that not every individual who enters the building signs the entry logbook. Mr Cabrera confirmed that for the ADC, he was alone with the Athlete and Ms Baltazar. Mr Cabrera indicated that he always followed the ISTI. In particular, he indicated that Ms Baltazar accompanied the Athlete to the toilet for the urine sample collection. Ms Baltazar then signed the DCF to confirm that the urine sample collection had been conducted in accordance with the relevant procedures. Mr Cabrera completed the DCF with the Athlete. The Athlete signed the DCF and he gave her a copy of it. Mr Cabrera indicated at the hearing that he and his spouse had been trained by CONADE. In response to a question from the Appellant's counsel, he stated that he did not consider that he was in a situation of conflict of interest by appointing his spouse as chaperone.

51. The testimony of Ms Baltazar who, at the hearing, confirmed her written witness statement, can be summarized as follows:

- Ms Baltazar indicated that from 2005 to 2011 she was working with CONADE and was regularly assisting in ADCs as a chaperone, and that she had received adequate training. Since she left her position with CONADE, she still occasionally assists her husband as a chaperone for ADCs.

- She indicated that on 17 October 2018, she accompanied her husband to the office

of the Mexican Olympic Committee for the ADC of the Athlete, whom she had assisted in testing a few times before. In response to a question from the Appellant's counsel, she stated she did not know Dr Resendiz. She confirmed having been present during the urine sample collection process. Ms Baltazar confirmed that the urine sample collection process had been conducted in accordance with the relevant procedures, and that she signed the DCF.

V. JURISDICTION

52. The question whether CAS has jurisdiction to hear the present dispute must be assessed on the basis of the *lex arbitri*. As Switzerland is the seat of the arbitration and not all Parties are domiciled in Switzerland, the provisions of the Swiss Private International Law Act ("PILA") apply, pursuant to its Article 176.1. In accordance with Article 186 of PILA, the CAS has the power to decide upon its own jurisdiction ("*Kompetenz-Kompetenz*").

53. Pursuant to Article R27 of the CAS Code:

"*These Procedural Rules apply whenever the parties have agreed to refer a sports-related dispute to CAS. Such reference may arise out of an arbitration clause contained in a contract or regulations or by reason of a later arbitration agreement (ordinary arbitration proceedings) or may involve an appeal against a decision rendered by a federation, association or sports-related body where the statutes or regulations of such bodies, or a specific agreement provide for an appeal to CAS (appeal arbitration proceedings).*

Such disputes may involve matters of principle relating to sport or matters of pecuniary or other interests relating to the practice or the development of sport and may include, more generally, any activity or matter related or connected to sport."

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

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

An appeal may be filed with CAS against an award rendered by CAS acting as a first instance tribunal if such appeal has been expressly provided by the rules of the federation or sports-body concerned."

55. In addition, the Appellant relies on Article 13.2.2 of the ADR, which states as follows:

"*In cases arising involving International-Level Athletes or Athletes Support Persons or involving International Competitions, a decision may be appealed exclusively to CAS.*"

56. The Panel notes that the Appellant is an international-level athlete as provided under the ADR and that the Appealed Decision qualifies as a decision subject to appeal under Article 13 of the ADR. The jurisdiction of the Panel was confirmed at the hearing and by both Parties' signature of the Order of Procedure issued by the CAS Court Office.

57. Therefore, the Panel confirms that it has jurisdiction to decide on the present appeal proceeding.

VI. ADMISSIBILITY

58. Pursuant to Article R49 of the CAS Code:

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

59. Article 13.7.1 of the ADR provides as follows:

"The *deadline for filing an appeal to CAS shall be 30 days from the date of receipt of the decision in question by the appealing party. Where the appellant is a party other than the IAAF, to be a valid filing under this Article 13.7.1, a copy of the appeal must be filed on the same day with the IAAF. Within 15 days of the deadline for filing the statement of appeal, the appellant shall file its appeal brief with CAS and, within 30 days of receipt of the appeal brief, the respondent shall file his answer with CAS.*"

60. In the present appeal proceeding, both the Statement of Appeal and Appeal Brief were filed within the time limit.

61. Therefore, the Panel finds that this appeal is admissible.

VII. APPLICABLE LAW

62. Pursuant to Article R58 of the CAS Code:

"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."

63. The Panel further notes that Article 13.9.5 of the ADR 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."

64. The Panel shall therefore apply the ADR in the present matter, and subsidiarily Monegasque law.

VIII. MERITS

65. The issues in dispute in this proceeding are:

A. Whether the Appellant committed an ADRV and, if answered in the affirmative;

B. What are the consequences of such ADRV?

A. The ADRV

66. Article 2 of the ADR defines an ADRV as Doping, which is in turn defined as "*the occurrence of one or more of the following (each an "Anti-Doping Rule Violation"):*

> ***"2.1 Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample***
>
> *2.1.1 It is each Athlete's 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 Article 2.1.*
>
> *2.1.2 Sufficient proof of an Anti-Doping Rule Violation under Article 2.1 is established by any 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 analyzed; or, where the Athlete's B Sample is analyzed 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; or, where the Athlete's B Sample is split into two bottles and the analysis of the second bottle confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the first bottle.*[...]"

67. None of the Parties dispute the results of the ADC, i.e. that both the A- and the B-sample tested positive for Epitrenbolone in a "*level roughly estimated to 1ng/ml*".

68. It is further undisputed that Trenbolone is a prohibited substance under the Prohibited List under the category S.1a Exogenous Anabolic Androgenic Steroids, and that the Appellant did not have a Therapeutic Use Exemption for the metabolite of Trenbolone found in her body.

69. What is disputed between the Parties in this appeal is whether the ADC was conducted in full compliance with the ISTI and the consequences of such irregularities, if established, on the existence of an ADRV. The Appellant submits that by appointing his spouse as a chaperone, the DCO was in a situation of conflict of interest.

70. In addition, the Appellant alleged that, although she had signed the DCF, Ms Baltazar was not present at the ADC. Referring to CAS jurisprudence, the Appellant contends that such procedural irregularities are so fundamental to the just and effective operation of the doping control system that fairness demands that any departure should

automatically invalidate any AAF. She submits that in circumstances where an athlete is held to strict liability, the same should apply to the mandated doping control system.

71. In response, the Respondent relied on the testimonies of Mr Cabrera and Ms Baltazar, in which they confirmed their presence at the ADC and challenged the argument that by appointing his spouse as chaperone, the DCO put himself in a situation of conflict of interest. Moreover, the Respondent contends that, by signing the DCF, the Appellant confirmed that the process of the ADC was regular and is therefore estopped from claiming any violation of the ISTI, unless there is evidence of manipulation of the records or fraud or such similar fact. The Respondent observed, and the Appellant agreed, that these arguments were not made at first instance hearing and were first raised only in this appeal.

72. The Panel first notes that the Parties disagree as to the existence of procedural irregularities in the ADC as well as on the consequence of such alleged irregularities. Secondly, the Appellant does not argue that her urine sample was sabotaged or compromised as a result of the asserted absence of the named chaperone, or as a result of the presence of another person as alleged by the Appellant. Furthermore, the Panel notes that Epitrenbolone is a metabolite of Trenbolone, so there would be difficulties in establishing that any contamination during the course of the ADC could explain the existence of the metabolite in the Athlete's body.

73. After examination of the evidence and submissions on this matter, the Panel is of the view that the Appellant's claim on this basis must be dismissed. The Panel has accepted the evidence called by the Respondent concerning the ADC, including the DCF. The witnesses called by the Respondent, who are respectively a trained and experienced DCO and chaperone, gave evidence to the Panel of the way in which the ADC was conducted. Both confirmed their physical presence at the ADC and stated that the ADC was conducted appropriately. The Appellant, in turn, raised the contention for the first time in the present proceedings that it was another person, Dr Resendiz – who did not sign the DCF – who was present as chaperone, rather than Ms Baltazar. That is, the alleged procedural irregularities were never raised by the Appellant at or before the first instance hearing, despite the fact that the Appellant is an experienced athlete who had undergone several ADCs prior to the 17 October 2018 ADC. In addition, there was no other persuasive evidence corroborating these allegations and submissions made by the Appellant. The Panel notes that Dr Resendiz was not called to give evidence and there was no explanation of this failure. As a result, the Panel finds that there is no sufficient evidence to support the assertion of irregularity of the ADC or departure from the ISTI.

74. As submitted by the Respondent, CAS panels have consistently held that by signing a DCF, an athlete is estopped from claiming violation of the ISTI at a later stage, short of evidence of manipulation of the records, or fraud, or any similar fact (*CAS 2003/A/493*, para 1.33; *CAS 2012/2779*, para 202; *CAS 2010/A/2277*, para 4.9). Thus, by signing the DCF, the Appellant confirmed her approval and satisfaction with the ADC process. The fact that she only raised the allegation of irregularity in this appeal does not lend support to her allegations of fraud.

75. For the sake of clarity and completeness, the Panel wishes to make the following additional comments. In the Panel's view, and although it does not make any finding of

fact as to whether Ms Baltazar was indeed at the 17 October 2018 ADC, even if Mr Cabrera acting as DCO had appointed his spouse as a chaperone, he would not have put himself in a situation of conflict of interest in the outcome of the sample collection, as prohibited under Article 2.4 of the WADA Urine Sample Collection Guideline. Indeed, as long as they both are independent from the Athlete – which was not contested by the Appellant – the DCO and the chaperone have no specific interest in the outcome of the sample collection and there is no conflict of interest nor any risk of conflict of interest established arising solely from the fact that they are married. In any event, no submission or evidence pointed to any consequence of the alleged conflict of interest on the sample collection or the AAF.

76. Finally, the Panel is not convinced by the Appellant's submission that any irregularity, be it ever so minor, should invalidate an AAF, nor that the alleged procedural irregularities (which the Panel does not accept) in the present matter are so fundamental that they should invalidate the AAF. The Panel notes that several CAS panels have invalidated an AAF for procedural irregularity where the evidence established significant departures from the ISTI, such as the violation of the athlete's right to attend the opening and analysis of his/her B-sample (*CAS 2002/A/385*; *CAS 2008/A/1607*; *CAS 2010/A/2161*; *CAS 2014/A/3487*). However, as was stated by the panel in *CAS 2014/A/3487*, there must be "*an appropriate balance between the rights of the athletes to have their samples collected and tested in accordance with the mandatory testing standards, and the legitimate interest in preventing athletes from escaping punishment for doping violations on the basis of inconsequential or minor technical infractions of the IST*" (*CAS 2014/A/3487*, para 156). In the Panel's view, the facts asserted by the Appellant, even if proved, namely that the identity of the chaperone indicated on the DCF is wrong, or that the DCO and the chaperone are spouses do not of themselves, and in the context of the whole of the evidence, constitute a fundamental irregularity to the ISTI such as would invalidate the AAF of the Appellant in this appeal.

77. The Panel concludes that the Appellant committed an ADRV within the meaning of Article 2.1 of the ADR and that there are no circumstances that would invalidate such finding.

B. Sanctions

78. Having found that the Appellant committed an ADRV, the Panel now moves to examining the consequences that must be drawn from such finding. In particular, the Panel refers to Article 10.2 of the ADR which provides as follows:

"The period of Ineligibility imposed for an Anti-Doping Rule Violation under Article 2.1 that is the Athlete or other Person's first anti-doping offence shall be as follows, subject to potential reduction or suspension pursuant to Article 10.4, 10.5 or 10.6:

10.2.1 The period of Ineligibility shall be four years where:

(a) The Anti-Doping Rule Violation does not involve a Specified Substance, unless the Athlete or other Person establishes that the Anti-Doping Rule Violation was not intentional. [...]

10.2.2 If Article 10.2.1 does not apply, the period of Ineligibility shall be two years. [...]"

79. Moreover, the Panel notes that pursuant to Article 10.2.3 of the ADR "*Intentional is meant to identify those athletes or other persons who cheat. The term, therefore, requires that the Athlete or other Person engaged in conduct that he knew constituted an Anti-Doping Rule Violation or knew that there was a significant risk that the conduct might constitute or result in an Anti-Doping Rule Violation and manifestly disregarded that risk.*"

80. Based on CAS jurisprudence, in order to demonstrate that the ADRV was not intentional, the athlete must demonstrate how the substance entered his/her body, on the basis of the "balance of probability" standard (e.g. *CAS 2017/A/5248*, para 55; *CAS 2017/A/5295*, para 105; *CAS 2017/A/5335*, para 137; *CAS 2017/A/5392*, para 63; *CAS 2018/A/5570*, para 51).

81. The Appellant admitted freely before the Panel, and in her Appeal Brief, that she had not told the truth at the hearing in first instance before the IAAF Disciplinary Tribunal, that her evidence had been falsified, and that documents and evidence were fabricated. The Appellant apologised for her conduct and for what she had said and done before the IAAF Disciplinary Tribunal, but said that she was following advice of her then-legal team.

82. The Panel emphasises that in this appeal proceedings, different counsel represented the Appellant. The Panel has taken into account the Appellant's statement, her evidence in chief and her cross-examination before this Panel, her different answers, explanation and defence to the charge, and her apologies.

83. However, the Appellant has not established on the balance of probabilities, and has not overcome the burden of proof, to explain how the substance entered her system so as to persuade the Panel to reach a decision different to that of the IAAF Disciplinary Tribunal at first instance. The Appellant's explanation and the evidence produced in this appeal was not convincing. Following consistent CAS jurisprudence, mere allegation that the AAF was the result of the ingestion of contaminated meat is insufficient. CAS panels have consistently held that "*the athlete must provide actual evidence as opposed to mere speculation*" (*CAS 2014/A/3820*; *CAS 2010/A/2230*; *CAS 2014/A/3615*; *CAS 2016/A/4676*). The Appellant did not produce any evidence whatsoever as to the origin of the prohibited substance: she did not produce any evidence to support her alleged ingestion of tacos, nor of the amount of meat contained in such tacos, nor of the concentration of prohibited substance in the meat contained in such tacos, nor of the origin of the meat allegedly supplied to the street taco stands where she claims to have eaten those tacos (by comparison, cf. the kind of evidence provided in *CAS 2011/A/2384-2386* by an athlete claiming that his ADRV derived from contaminated meat). In this respect, the evidence that Mexican National Authorities accept that Trenbolone is used in the cattle farming industry, including through the issuance of Maximum Residue Limits, is not sufficient. In addition, the Appellant's evidence before the Panel was, again, not consistent with her letter of 23 November 2018 in which she set out her first explanation, at a time when her memory should have been much clearer, being so close in time to the ADC.

84. The Appellant did not call expert or factual evidence with respect to the provenance of

the tacos said to have been ingested. The Respondent submitted that the evidence contained in the witness statement of Ms Arteaga was not relevant and, for that stated reason, did not cross-examine her. The Appellant did not provide sufficient explanation of the relevance of Ms Arteaga's evidence, nor was it sufficient to explain the origin of the prohibited substance. The Appellant's other witness, Dr Silva, was cross-examined, but her evidence did not assist the Panel. Further, the Respondent referred to its unrebutted expert evidence of Dr Christiane Ayotte provided, and relied upon, in the first instance hearing. Dr Ayotte's expert evidence was that the level of Trenbolone found in the Athlete's sample could not be explained even by the large amounts of liver, which the Athlete then asserted at first instance (but no longer asserts) that she had consumed. It was accepted as fact by both Parties that liver is prone to retain Trenbolone in larger concentrations than other types of meat, thus provoking a higher level in the urine of its metabolite. As the Athlete now concedes that she did not consume liver but only some meat, which could not contain Trenbolone at the same high levels as liver, *a fortiori*, the level of Trenbolone could not be explained, in the absence of any supporting data, by the consumption that the Athlete now asserts.

85. The Appellant acknowledged that she gave false evidence at the first instance before the IAAF Disciplinary Tribunal as to the consumption of liver and now admits that fabricated evidence and documents were produced on her behalf before the IAAF Disciplinary Tribunal. She now relies on a polygraph test, commonly known as "lie detector test", that she had taken prior to this hearing. The Respondent contests the admissibility, and reliability, of this test. In this case the Panel does not accept that such test is reliable to establish the truthfulness of the Appellant's latest version of the facts. In previous CAS awards, such tests have been found inadmissible (see for instance: *CAS 99/A/246*, paras 14.1.1, 4.5 ff; *CAS 96/A/156*; *CAS 2008/A/1515*, para 119; *CAS 2017/A/4954*, para 128). Even if such a test were admissible, the Panel is of the view that in this case it would not assist the Appellant to overcome the requisite burden of proof to establish how the Trenbolone was in her body.

86. The Panel notes that in the recent CAS award (*CAS 2019/A/6313 Lawson v IAAF*) brought to the Panel's attention by the Appellant, another CAS panel decided that an athlete who tested positive for Trenbolone was able to meet his burden of proving that the AAF was caused by the consumption of contaminated meat. However, in the Panel's view, there are important and numerous differences between the present matter and the *Lawson* case. First, the athlete in the *Lawson* case clearly explained, from the beginning of the disciplinary proceedings against him, the type of meat he had eaten, in what quantity, the name of the restaurant and the exact time of the lunch when the meat was consumed, and he exhibited evidence in support of his claims, such as a restaurant receipt, bank account records confirming the purchase of lunch in that restaurant, and text messages setting up the lunch meeting at that restaurant. By contrast, in the present case, as set out above, the Appellant provided no such evidence but rather provided evidence that was later conceded to be fabricated, Second, the athlete in the *Lawson* case precisely identified the part of the animal that he had eaten, such part being where steroids could have been accidentally injected. There is no such evidence nor was this point even argued by the Appellant in the present matter. Third, the athlete in the *Lawson* case provided concrete evidence in support of his explanation as to the source of the AAF, *inter alia*: results of a (negative) hair analysis conducted by Dr. Pascal Kintz, expert evidence contradicting the expert opinion adduced by the Respondent; pictures

of the packaged meat received by the restaurant; and an affidavit from the restaurant co-owner as to the origin and type of the meat consumed by the athlete. By contrast, in the present matter, as explained above, the Appellant did not produce any evidence whatsoever as to the origin of the prohibited substance nor contradict the expert opinion provided in the first instance proceedings by Professor Christiane Ayotte for the Respondent. Finally, the Panel notes that the Appellant's credibility in the present matter was irreparably tainted by her admitted lies and fabricated evidence, whereas the athlete's credibility in the *Lawson* case was an important factor for the panel in that case to decide that the athlete's AAF was unintentional.

87. Based on the above considerations, the Panel finds that the Appellant did not demonstrate, on the balance of probabilities, how the substance entered her body nor otherwise demonstrate that she acted unintentionally. As a result, the conclusion must be that the ADRV was intentional.

88. In other terms, and again in contrast to the *Lawson* case, the facts and evidence before this Panel do not allow the Appellant to pass through that "*narrowest of corridors*" left to athletes in situations where they cannot prove the source of the prohibited substance (*CAS 2016/A/4534*) and, thus, compel the Panel not to consider the Appellant's case one of those "*rarest cases*" (*CAS 2016/A/4919*) where such passage is possible.

89. The Panel therefore upholds the decision of the IAAF Disciplinary Tribunal and the sanction imposed. The Appellant has not established any reason to depart from the mandatory sanction of four years.

90. The above Panel's findings exclude any elimination of the sanction based on No Fault or Negligence, or a reduction of the sanction based on No Significant Fault or Negligence or any other ground. The Panel confirms the Appealed Decision and finds that a period of ineligibility of four years shall be imposed on the Appellant.

91. Moreover, the Panel notes that Article 10.8 of the ADR states as follows:

> "*In addition to the automatic Disqualification, pursuant to Article 9, of the results in the Competition that produced the Adverse Analytical Finding (if any), all other competitive results of the Athlete obtained from the date the Sample in question was collected (whether In-Competition or Out-of-Competition) or other Anti-Doping Rule Violation occurred through to the start of any Provisional Suspension or Ineligibility period shall be Disqualified (with all of the resulting consequences, including forfeiture of any medals, titles, ranking points and prize and appearance money), unless the Disciplinary Tribunal determines that fairness requires otherwise.*"

92. The Panel finds that, pursuant to Article 10.8 of the ADR, the Appellant's results shall be disqualified between 17 October 2018 and 16 November 2018 with all resulting consequences including the forfeiture of any titles, awards, medals, points, prizes and appearance money.

IX. COSTS

93. This proceeding falls under Article R65.2 of the CAS Code, which provides:

"*Subject to Articles R65.2, para. 2 and R65.4, the proceedings shall be free. The fees and costs of the arbitrators, calculated in accordance with the CAS fee scale, together with the costs of CAS are borne by CAS.*

Upon submission of the statement of appeal, the Appellant shall pay a non-refundable Court Office fee of Swiss francs 1,000.— without which CAS shall not proceed and the appeal shall be deemed withdrawn.

[…]"

94. Article R65.3 of the CAS Code reads as follows:

"*Each party shall pay for the costs of its own witnesses, experts and interpreters. In the arbitral award and without any specific request from the parties, the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such contribution, the Panel shall take into account the complexity and the outcome of the proceedings, as well as the conduct and financial resources of the parties.*"

95. Article R65.4 of the CAS Code provides as follows:

"*If the circumstances so warrant, including whether the federation which has rendered the challenged decision is not a signatory to the Agreement constituting ICAS, the President of the Appeals Arbitration Division may apply Article R64 to an appeals arbitration, either ex officio or upon request of the President of the Panel.*"

96. Having taken into account the outcome of the arbitration, the conduct of the Parties in the arbitration, and their respective financial resources, the Panel decides that a contribution in the amount of CHF 2,000 towards the Respondent's legal fees and other expenses incurred in connection with the present proceedings shall be awarded.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal of María Guadalupe González Romero is dismissed.

2. The decision rendered by the International Association of Athletics Federations Disciplinary Tribunal on 9 May 2019 is confirmed.

3. The award is pronounced without costs, except for the Court Office fee of CHF 1,000 (one thousand Swiss Francs) paid by the Appellant, which is retained by the Court of Arbitration for Sport.

4. María Guadalupe González Romero shall pay to the International Association of Athletics Federations a contribution in the amount of CHF 2,000 toward its legal fees and expenses incurred in connection with the present proceedings.

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

Seat of arbitration: Lausanne, Switzerland
Date: 2 July 2020

THE COURT OF ARBITRATION FOR SPORT

Ercus Stewart
President

Annabelle Bennett
Arbitrator

Massimo Coccia
Arbitrator

Stéphanie De Dycker
Ad hoc Clerk