

Conclusion on the legislative and factual grounds of WADA's decision of 16.11.2017 on the refusal to declare compliance status of RUSADA with the Code by the reason of "non-acceptance" of R. McLaren's "outcomes of investigation" (reports) by the Ministry of Sport of the Russian Federation, RUSADA, and the Russian Olympic Committee

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On November 16, 2017, at the meeting of the Foundation Board of the World Anti-Doping Agency (hereinafter referred to as –WADA), the decision not to declare the compliance status of RUSADA with the Code (not to prolong the powers of RUSADA)¹ was made.

By that time, RUSADA had fulfilled almost all the requirements of the "Roadmap"², but the World Anti-Doping Agency declared that there were two more key requirements (criterion), without which WADA refused to accredit RUSADA, – until the moment when "Russia complies with" the two requirements (criterion) of the "Roadmap" in relation to RUSADA. Those are the following requirements:

– the persons responsible for fight against doping have to accept publically "reported outcomes of the Investigation" by R. McLaren, that is his reports of July 16, 2016, and December 9, 2016, and their conclusions (by clause 1 of part 2 of the "Roadmap", the list of the persons, from whom it will be required, include: RUSADA, the Ministry of Sport of the Russian Federation, and the Russian Olympic Committee);

– the Russian Government must provide access for appropriate entities to the stored urine samples in the Moscow Laboratory, these samples are sealed off due to a Federal investigation (this second reason is not considered in the present conclusion)³.

And, WADA, as a position of principle, demands from RUSADA, the Ministry of Sport of the Russian Federation, and the Russian Olympic Committee acceptance of existence of the arrangement between authorities in organizing and realizing of the illegal assistance of the Russian authorities to the mass use of doping by Russian

¹ WADA Foundation Board takes important decisions that will significantly strengthen the Agency and the future of clean sport // <<https://www.wada-ama.org/en/media/news/2017-11/wada-foundation-board-takes-important-decisions-that-will-significantly>>.

² On August 2, 2017, WADA published the "Roadmap", which include the requirements which had to be fulfilled by RUSADA for accreditation renewal. In the Roadmap, in particular, it is specified that, at the time of its adoption, 19 requirements had been already fulfilled, 12 – subject to fulfill (RUSADA: Roadmap to compliance//<https://www.wada-ama.org/sites/default/files/2017-08-02_rusada_roadmaptocompliance_en.pdf>).

³ WADA Foundation Board takes important decisions that will significantly strengthen the Agency and the future of clean sport // <<https://www.wada-ama.org/en/media/news/2017-11/wada-foundation-board-takes-important-decisions-that-will-significantly>>; WADA in possession of new intelligence from Moscow Laboratory / The World Anti-Doping Agency // <<https://www.wada-ama.org/en/media/news/2017-11/wada-in-possession-of-new-intelligence-from-moscow-laboratory>>.

athletes and large-scale concealment of such facts by the Russian authorities, including falsifications of doping tests, of participation in such arrangement between authorities directly of the Ministry of Sport of the Russian Federation and the Federal Security Service of the Russian Federation.

Introducing to RUSADA and the Russian Olympic Committee of the requirement of acceptance of R. McLaren's "outcomes of investigation" stated in his reports has no sense and is absurd as the subject, which does properly possess judicial powers, can not recognize the guilt of the state (represented by the Ministry of Sport of the Russian Federation and the Federal Security Service of the Russian Federation), the existence of which is declared by R. McLaren in his reports.

Further, we will consider the mentioned requirements of to the Ministry of Sport of the Russian Federation.

So, on November 16, 2017, WADA refused to renew the powers of the RUSADA for the reason (the first of the two stated above) of "non- acceptance" by the Ministry of Sport of the Russian Federation of the Report of July 16, 2016 "McLaren Independent Investigations Report into Sochi allegations"⁴ and the Second Report of December 9, 2016 "McLaren Independent Investigations Report into Sochi allegations"⁵ prepared by Richard H. McLaren, called as the "Independent person" (IP), according to the appeal of WADA and sent to the President WADA (respectively, hereinafter referred to as – the First Report and the Second Report, jointly – R. McLaren's Reports). Currently, on WADA's site, these reports are treated as the uniform report in two parts.

The research of the specified WADA's decision of 16.11.2017 based on the formal bases shows both, its legal (i.e. based on the legal norms, including standards of international treaties and conventional principles and norms of international law), and its extra-legal normative (regarding observance of the provisions of WADA's regulations) insolvency and groundlessness, and also its factual groundlessness, owing to **the underwritten reasons predetermining the factual impossibility of performance (proceeding from common sense and the standard of behavior of an reasonable person) and aprioristic legal impracticability (under no circumstances) of WADA's requirement about "acceptance" by the Ministry of Sport of the**

⁴ McLaren Independent Investigations Report into Sochi allegations // <<https://www.wada-ama.org/en/resources/doping-control-process/mclaren-independent-investigations-report-into-sochi-allegations>>; <https://wada-main-prod.s3.amazonaws.com/resources/files/20160718_ip_report_final3.pdf>.

⁵ WADA Statement regarding conclusion of McLaren Investigation // <<https://www.wada-ama.org/en/media/news/2016-12/wada-statement-regarding-conclusion-of-mclaren-investigation>>; <<https://www.wada-ama.org/en/resources/doping-control-process/mclaren-independent-investigation-report-part-ii>>; <https://www.wada-ama.org/sites/default/files/resources/files/mclaren_report_part_ii_2.pdf>.

Russian Federation of R. McLaren's "outcomes of investigation" (reports) (actually, the same reasons make it impossible to "accept" R. McLaren's "outcomes of investigation" (reports) by RUSADA and the Russian Olympic Committee):

1) existence of strong reasons for acceptance of the specified R. McLaren's reports as prejudiced, unsubstantiated, and, in their essential part, forged⁶;

2) absence of legal sense in implementation of WADA's requirement about "acceptance" by the Ministry of Sport of the Russian Federation of R. McLaren's "results of investigation" (reports), non-envisaging by WADA's regulations and other, applied in this field, regulations, of the opportunity and the order of representing by WADA of the requirement about such "acceptance" and the procedure of such "acceptance";

3) defectiveness of the order of selection and appointment of the "investigation" executors by the World Anti-Doping Agency which predetermined, as a result, the legal and factual groundlessness of presuming of R. McLaren and the uncertain circle of unauthorized persons which were engaged by him (according to him) (with the qualification not verified in relation to the mentioned reports) as "independent and impartial";

4) gross violation by the World Anti-Doping Agency of its competence in providing R. McLaren with unreasonable and spontaneously broad "powers" and giving to his reports of the legal status similar to the legal status of the court decision, i.e. attributing to the mentioned reports of prejudice features;

5) the worst contradiction to the existing WADA's regulations of the "investigation" techniques which were applied at preparation of R. McLaren's reports and by means of which, the results, which became the basis for the conclusions of the specified reports, were received;

6) legal negligibility and obvious deficiency of R. McLaren's reports in terms of international public legal acts.

⁶ See: *Ponkin I.V., Grebennikov V.V., Kuznetsov M.N., Slobodchikov V.I., Bogatirev A.G., Botnev V.K., Redkina A.I.* Juridical analysis of the WADA reports against the Russian sports in 2015–2016 / Analyse juridique des rapports de l'AMA contre le sport russe en 2015–2016 / Edited by I.V. Ponkin / Consortium of professionals in sports legislation. – M.: Buki-Vedi, 2016. – 230 p. <<http://moscou-ecole.ru/wp-content/uploads/2016/12/Book2016.pdf>>. *Ponkin I.V., Redkina A.I.* Second falsified McLaren's Report: Juridical analysis / Deuxième rapport falsifié de McLaren: Analyse juridique / Consortium of professionals in sports legislation. – M.: Buki-Vedi, 2017. – 110 p. <http://moscou-ecole.ru/wp-content/uploads/2017/10/PonkinRedkina_2nd_McLaren_Report_2017.pdf>. Also see the numerous works of A.N. Peskov and Ron Katz.

For the above-mentioned reasons, such "acceptance", in case it happened, a priori, would be legally fictitious, and its legal consequences would be legally insignificant (political consequences artificially created, of course, would be quite considerable).

Further, the conclusion provides, in detail, the most essential competence-based and procedural violations committed at preparation of R. McLaren's reports, the consequence of which is their legal negligibility in respect of justification of application of restrictive and other sanctions measures concerning Russian athletes and Russian sports organizations and the national teams.

Falsification of R. McLaren's reports and lack of the grounds for providing them with prejudice features

The specified R. McLaren's reports of July 16, 2016 and December 9, 2016, as it is in detail shown and proved in the researches which were earlier carried out by us and other experts⁷, possessed numerous essential shortcomings. Both R. McLaren's reports were based on the information which, judging by their contents, was not seen by R. McLaren as subject to checking and confirmation of reliability. No direct unambiguous evidence and proofs are given in the specified reports, but thus the reports possessed a number of disagreements and stretches, many of their statements were based on application of manipulative techniques (substitution of the facts by an opinion, substitutions of the thesis, etc.), they contained a number of forged proofs and unproven statements and conclusions, randomly far-fetched and false arguments owing to which, it is reasonable to recognize R. McLaren's reports as prejudiced and unsubstantiated, in their essential part – forged. As a result, at appropriate observance of the principles of objectivity and impartiality at investigation, the specified R. McLaren's reports (data and conclusions containing in them) could not (and can not) be considered and admitted as the sufficient bases and justifications for adoption of any decisions on application of restrictions and punishments in relation to Russian athletes, sports organizations, and the national teams.

⁷ See: *Ponkin I.V., Grebennikov V.V., Kuznetsov M.N., Slobodchikov V.I., Bogatirev A.G., Botnev V.K., Redkina A.I.* Juridical analysis of the WADA reports against the Russian sports in 2015–2016 / Analyse juridique des rapports de l'AMA contre le sport russe en 2015–2016 / Edited by I.V. Ponkin / Consortium of professionals in sports legislation. – M.: Buki-Vedi, 2016. – 230 p. <<http://moscou-ecole.ru/wp-content/uploads/2016/12/Book2016.pdf>>. *Ponkin I.V., Redkina A.I.* Second falsified McLaren's Report: Juridical analysis / Deuxième rapport falsifié de McLaren: Analyse juridique / Consortium of professionals in sports legislation. – M.: Buki-Vedi, 2017. – 110 p. <http://moscou-ecole.ru/wp-content/uploads/2017/10/PonkinRedkina_2nd_McLaren_Report_2017.pdf>.

Therefore the requirement of WADA concerning "acceptance" (recognition and acceptance of validity, justice, and reliability) by the Ministry of Sport of the Russian Federation (and equally by the Russian Olympic Committee and RUSADA) of the results of R. McLaren's "investigation" (reports) (to agree with the statements and conclusions of the reports) is legally and factually unreasonable and illegal.

Besides essential substantial shortcomings, in the analysis of R. McLaren's reports based on the formal grounds, their critical formal defects were revealed as owing to the worst competence-based and procedural violations committed by their preparation, therefore it is necessary to recognize both R. McLaren's reports as legally insignificant. R. McLaren's reports had no and could not have prejudice value in the issues of application of restrictions and repressive measures in relation to Russian athletes, but such value, de facto, was unreasonably attributed to R. McLaren's reports by a number of international sports organizations which gave to these reports, in fact, the status similar to the status of a judicial document keeping the facts established and proved in an appropriate procedural order. And the prejudice of R. McLaren's reports declared and recognized by the World Anti-Doping Agency at their use in this case was expressed in presuming of not only the absence of legal need to prove the circumstances and the facts which are allegedly established and allegedly proved in R. McLaren's reports, but, as a matter of fact, and in de facto ban (artificial creation of the conditions for impossibility) of any of their denial in any legitimate order⁸.

Absence of legal sense in implementation of WADA's requirement concerning "acceptance" by the Ministry of Sport of the Russian Federation of R. McLaren's "outcomes of investigation" (reports), non-envisaging of WADA's regulations and other regulations, applied in this field, of the opportunity and the order of introducing by WADA of the requirement concerning such "acceptance" and the procedure of such "acceptance"

The requirement concerning "acceptance" by the Russian side of R. McLaren's "investigation" blatantly violating the limits of the powers provided by the World Anti-Doping Agency (which, in principle, was capable to provide) , and who, in fact, forged the both reports which, then, were legally unreasonably admitted and repeatedly applied as the documents possessing prejudice value, is essentially absurd and deprived of necessary and sufficient legal grounds and legal validity.

Such procedure, such action as "acceptance" by an official representative of any

⁸ Ibid.

state (or government body) of the results of a certain investigation (report, etc.) or expression of "consent" with such results is not provided in the World Anti-Doping Code 2015, and also the Code does not contain the norms proving the grounds for introducing by the World Anti-Doping Agency of the requirement concerning the specified acceptance to representatives of any state, the National Olympic Committee, the national anti-doping authority.

In this case, it is necessary to apply directly the terminology used in the decision of the Foundation Board of WADA of November 16, 2017 and in the above-mentioned "Roadmap"⁹. The persons responsible for fight against doping (which include RUSADA, the Ministry of Sport of the Russian Federation, and the Russian Olympic Committee), were required **to accept** publically with R. McLaren's "results of investigation" (or that is identical within the meaning, **to recognize** them).

In the original texts of the specified decision of the Foundation Board of WADA and the "Roadmap", the verb "to accept" is used to stand for this term which has several meanings and can be translated into Russian as "to agree" (with something) or as "to recognize" (something), and even as "to approve" (for example, the document).

It is important to note that the meaning of this term in the formulation stated above, without any explanations, does not give any instructions concerning the procedure of such acceptance (consent).

The World Anti-Doping Code 2015¹⁰ does not provide an opportunity to find out the meaning of this term in the context of the decision of WADA of 16.11.2017 and the requirements in the specified "Roadmap", and also to understand legal value and legal consequences of the action under this term.

In the World Anti-Doping Code 2015, the words with the root "accept" are used for more than 50 times, including, in the name of its part 4 "Acceptance, compliance, modification, and interpretation".

Terms with the root "accept" are used in the World Anti-Doping Code 2015, generally, in the following meanings:

– acceptance or consent of the athlete or another person with a complex of various rules, such as anti-doping rules, rules of sports, etc. (the preamble to the mentioned document);

⁹ On August 2, 2017, WADA published the "Roadmap", which include the requirements which had to be fulfilled by RUSADA for accreditation renewal. In the Roadmap, in particular, it is specified that, at the time of its adoption, 19 requirements had been already fulfilled, 12 – subject to fulfill (RUSADA: Roadmap to compliance//<https://www.wada-ama.org/sites/default/files/2017-08-02_rusada_roadmaptocompliance_en.pdf>).

¹⁰ World Anti-Doping Code 2015 / The revised 2015 World Anti-Doping Code is effective as of 1 January 2015 // <<https://www.wada-ama.org/sites/default/files/resources/files/wada-2015-world-anti-doping-code.pdf>>.

- acceptance by the athlete of the decision on the provisional suspension passed concerning him/her (clause 7.3, comment to clause 7.9);
- acceptance by international law, in general, existence of certain freedoms and principles (comment to clause 8.1);
- acceptance of the sports sanction (clause 10.11, clause 10.11.2, clause 10.11.3.2, clause 10.11.3.4);
- acceptance of bids for the Olympic Games (clause 20.1.8)
- the mechanism (a legal method) of accession to the International Convention against Doping in Sport of UNESCO of 19.10.2005 (clause 20.3.11, clause 20.6.6, article 22, clause 23.5.1);
- acceptance by the sports organization, state, other signatories of application of the World Anti-Doping Code to them (article 12, clause 15.2, article 23, clause 23.1.1, clause 24.5).

It is obvious that in the considered situation when the Ministry of Sport of the Russian Federation, RUSADA, and the Russian Olympic Committee are demanded "to accept" the R. McLaren's results of "investigation", only the latter of the listed above meanings of this term is conditionally applied to this situation.

Clause 23.1.1 of the World Anti-Doping Code 2015 containing the term "accept" is formulated as follows: "the following entities shall be Signatories accepting the Code: WADA, the International Olympic Committee, International Federations, the International Paralympic Committee, National Olympic Committees, National Paralympic Committees, Major Event Organizations, and National Anti-Doping Organizations. These entities shall **accept** the Code by signing a declaration of **acceptance** upon approval by each of their respective governing bodies".

As for the meaning of this term that concerning participation of the state in the International Convention against Doping in Sport of UNESCO of 19.10.2005, article 36 of this Convention provides that that **acceptance**, as well as ratification, approval or accession to it by member states of UNESCO is to be carried out according to their corresponding constitutional procedures.

In each of the above cases, a particular, quite clearly identified procedure which (in case of the decision "about acceptance") is to be realized, including, according to the domestic legislation of the state. Besides, in the specified situations called by this term, acceptance of the documents, in preparation of which highly qualified specialists participate, including representatives of the states, and procedures of their development are transparent, is assumed. For example, if talking about the World Anti-Doping Code, that, according to its norms on the order of modification of it, the states are invited to participation in the corresponding procedures (according to clause 23.7.1).

Fundamentally different situation – with preparation of R. McLaren's reports, at the solution of the organizational issues connected with providing R. McLaren and his group with the powers and the order of actions. It is known that R. McLaren and his group's "investigation", the result of which are the two reports, was carried out without following any established and coordinated with the state rules for the investigation procedure. I.e., actually, R. McLaren's "investigation" is accomplished with randomly and voluntaristically chosen and realized methods, without legal grounds of their application and without any guarantees of the rights of persons, whose rights could be violated owing to carrying out this "investigation".

It is obvious that R. McLaren's reports are neither the judgment, nor the decision of the body provided with investigative and judicial powers, and are a private opinion, similar to journalistic investigation. Thus that fact that they were initiated by WADA, does not make these reports to become the reports of the Agency. It is some kind of "outsourcing".

The World Anti-Doping Code 2015 in any form does not contain the bases, does not provide, and does not stipulate an opportunity, an obligation, conditions and the mechanism of commission by the state represented by the government body of executive power (and equally - commission by the National Olympic Committee or the national anti-doping authority) of "acceptance" ("expression of the consent with") of the results of a certain investigation, as commission of the action having certain legal consequences, equally as does not provide power (right or obligation) of WADA to claim such "acceptance".

It is important to emphasize that in the other documents of WADA, for example, in the Model Rules for National Anti-Doping Organizations¹¹, the considered term is applied only with the above meanings.

It is also appropriate to note that the draft of the International Standard for Code Compliance by Signatories (Version 2.0 of September 1, 2017, has not come into force yet)¹² contains some other meanings of the term "to accept", according to the context. So, except the meanings which were already specified earlier, in the formulation of clause 23.5.5 of the draft of the specified document, the term "acceptance" is used in the meaning of acceptance by the signatory of the WADA Code of the consequences of acceptance of its non-compliance to this document and the

¹¹ 2015 Model Rules for National Anti-Doping Organizations // <<https://www.wada-ama.org/en/resources/world-anti-doping-program/2015-model-rules-for-national-anti-doping-organizations>>.

¹² Proposed International Standard for Code Compliance by Signatories (ISCCS) – Version 2.0 // <<https://www.wada-ama.org/en/resources/code-compliance/proposed-international-standard-for-code-compliance-by-signatories-isccs>>.

conditions of regaining compliance with the Code. In a similar meaning, this term is used in clause 6.3.2 of this document. However in the specified projected document, the procedure of this sort is not settled in any way, but thus in it, it is supposed that the relevant party will have to agree with the decision of WADA, but not with the third-party opinion of the individual involved and randomly made "investigation" without observance of any regulating norms.

Deficiency of the order of selection and appointment of the "investigation" performers by the World Anti-Doping Agency

It should be noted, that there are strong indications putting in question the statement that R. McLaren is, in WADA documents' terms, "an independent person" (a lexical structure regularly used in R. McLaren's reports), and that "the investigation team", he is actually in charge of, is independent, unbiased and objective (the involvement of an undetermined number of other persons in the "investigation" and preparation of the reports is pointed out many times in both reports), because R. McLaren has previously taken part in the work of the so-called "Independent Commission" chaired by Richard W. Pound, who has been the President of the World Anti-Doping Agency. Therefore, a clear long-time relation between R. McLaren and WADA is observed in the period prior to drawing up the first Report. The reports by R. Pound's commission dated 09.11.2015 and 14.01.2016 were characterized by multiple critical drawbacks, which did not allow regarding them as duly valid and objective (including due to applying manipulation techniques). These reports were based on speculations, misrepresentations, information which, judging by the reports content, had not been objectively checked and validated, did not contain any sufficient direct relevant evidence of the main conclusions made in the reports. Consequently, it is reasonable to consider these reports as lacking objectivity and as partial, unsubstantiated, and falsified in a substantial part¹³.

In addition, the fact that R. McLaren had been an arbitrator of the Court of Arbitration for Sport (Lausanne, Switzerland) for many years (this is also mentioned in

¹³ For more detail see: *Ponkin I.V., Grebennikov V.V., Kuznetsov M.N., Slobodchikov V.I., Bogatirev A.G., Botnev V.K., Redkina A.I.* Juridical analysis of the WADA reports against the Russian sports in 2015–2016 / Analyse juridique des rapports de l'AMA contre le sport russe en 2015–2016 / Edited by I.V. Ponkin / Consortium of professionals in sports legislation. – M.: Buki-Vedi, 2016. – 230 p. <<http://moscou-ecole.ru/wp-content/uploads/2016/12/Book2016.pdf>>. *Ponkin I.V., Redkina A.I.* Second falsified McLaren's Report: Juridical analysis / Deuxième rapport falsifié de McLaren: Analyse juridique / Consortium of professionals in sports legislation. – M.: Buki-Vedi, 2017. – 110 p. <http://moscou-ecole.ru/wp-content/uploads/2017/10/PonkinRedkina_2nd_McLaren_Report_2017.pdf>.

his reports). In particular, on repeated occasions since 1998, he had been a member of the ad hoc divisions for the Olympic Games of the Court of Arbitration for Sport¹⁴. This means that he cannot (could not) act as an impartial investigator and expert, because, in actual fact, there was a conflict of interest in this case: R. McLaren is a person conducting the investigation, and at the same time, he is one of the representatives of the sports arbitration (judicial) community.

Thus, R. McLaren's participation in preparation of the two specified reports of R. Pound's Commission, and also his previous work as the arbitrator of the Court of Arbitration for Sport, give the grounds to consider untrue the statement that R. McLaren is an independent and impartial person concerning carrying out the anti-doping investigation described in his reports.

It also should be noted an undisputed critical formal drawback of R. McLaren's reports, making the reports formally unfounded and defective – namely, involvement an uncertain number of third parties in drawing up this reports, "*Independent Person investigative team*", without any effective and legally binding guarantees of their impartiality, independence, appropriate qualification, and liability in case of possible falsification of the evidence they reveal.

R. McLaren's reports do not mention members of the "*IP investigative team*", nor does it provide information about how it was formed, applicant selection, qualification of its members and their responsibilities, or whether these persons were approved by WADA. Only brief, very unspecific information is provided on this matter on WADA website¹⁵. The fact that R. McLaren was vested with some authorities does not automatically mean that R. McLaren has the right to vest other persons with some of these authorities without WADA's approval. It is impossible to find out from R. McLaren's reports and other published documents what provides the grounds to recognize all the persons engaged by him in preparation of the reports as "independent".

Considering that R. McLaren himself was vested or actually unlawfully usurped a number of absolutely illegal powers on conducting the "investigation", the legal evaluation of this whole situation indicates significant drawbacks in the "investigation" procedure arrangement, and, based on the results of it, R. McLaren's reports, and fundamental defects in the arrangement of WADA activities on anti-doping investigations in general in this situation.

Therefore, presuming R. McLaren and the persons reported as "investigation" participants as "independent persons" does not have any compelling and sufficient

¹⁴ Prof. Richard H. McLaren (1945) / CAS // <<http://www.tas-cas.org/en/arbitration/list-of-arbitrators-general-list.html?GenSlct=2&AbrSlct=3&MedSlct=4&nmIpt=McLaren>>.

¹⁵ WADA Names Richard McLaren to Sochi Investigation Team // <<https://www.wada-ama.org/en/media/news/2016-05/wada-names-richard-mclaren-to-sochi-investigation-team>>.

reasons. Consequently, a breach of the independence and fairness principle in R. McLaren's "investigation" shall be acknowledged.

Gross violation of its competence by the World Anti-Doping Agency at providing R. McLaren unreasonably and widely with the "powers" and when giving to his reports the legal status similar to the legal status of the decision of a judicial authority, i.e. attributing to the mentioned reports of prejudice features

The form (procedures) of "investigation" conducted by R. McLaren, the results of which were used to draw up the reports, indicate significant WADA competence violations (acting far outside the area of competence) both by R. McLaren, appointed by WADA to carry out the "investigation", and WADA itself.

If the World Anti-Doping Agency had delegated some authorities on the investigation to some legitimate international intergovernmental authority, or contacted a national state authority or an intergovernmental authority, having the investigation or inquiry powers according to respective agreement or by law, to assist in the investigation, much fewer questions would have come up.

In the First R. McLaren's Report it is said that the "investigation" covered "*thousands of documents electronically or in hard copy*" (p. 7), "*email evidence available to the IP*" (p. 38). It is stated that "*The IP investigative team has reviewed and date-validated hundreds of email communications; digital media communications*" (p. 31), that "*The IP... employed cyber analysis, conducted cyber and forensic analysis of hard drives*" (p. 5), that "*digital data review and analysis, including restoration of deleted data*" were carried out (p. 20).

However, access to a third party email correspondence and its analysis, seizure of hard drives and their "cyber analysis", many other methods described as used in the "investigation" in R. McLaren's reports, as well as confirmation of the validity of such correspondence, could be ultimately possible and legitimate only with the approval of an authorized government authority in the manner prescribed by law. Otherwise, access to these emails (interception of digital media communications, breaking of private email correspondence) via hacking, or voluntarily provided by some third parties is illegal.

Involving an uncertain number of people to obtaining the above information by R. McLaren, as clearly stated in his reports, is an additional circumstance confirming illegitimacy of his activities in performing the investigation to this extent.

The status of the World Anti-Doping Agency implies that this Agency has no authorities (and is not entitled) to invest any entity established by the Agency (like "the independent commission" chaired by R. Pound, which provided the reports dated

09.11.2015 and 14.01.2016, or an involved "independent person", R. McLaren, or "the investigation team" mentioned in his reports) with a wide and arbitrary range of investigation powers, which are much similar to those of governmental investigation bodies and law enforcement authorities according to the law. We believe that there was an expressly wrongful, de facto, appropriation by R. McLaren of the authorities, similar to some of the governmental investigation bodies on conducting the investigation. Otherwise, nothing else can explain R. McLaren's actions, described in the reports, with the materials documenting email correspondence between some parties, with computer hard drives, involvement of third persons to take part in his "investigation" on absolutely arbitrary reasons and undefined conditions.

If R. McLaren actually illegally appropriated the authorities similar to those of the government investigation body himself at his own initiative, attaching such legal (in fact, prejudicial) significance to mentioned reports by the World Anti-Doping Agency, is a gross WADA competence violation ignoring these gross violations. In this case, WADA is fully responsible for its decisions, which relied on the conclusions made in R. McLaren's reports.

According to Article 4 of the World Anti-Doping Agency Revised Statutes as of 2016¹⁶, setting forth the regulatory basis of WADA activities (as well as this article in the revision of the above document as of 2014¹⁷) WADA is entitled to "*set up working parties, commissions or working groups, on a permanent or ad hoc basis, in order to accomplish its tasks*", as well as "*may entrust the performance of all or part of its activities to third parties*".

However, the above article can be correctly and adequately interpreted and implemented only within the scope of WADA's authorities. The World Anti-Doping Agency has no right to delegate the authorities to any person to an extent greater than it legitimately owns. For example, it does not have the right to vest with an authority on making a search, seizure of documents, etc., in this case – the authority to access third parties' email correspondence without their consent.

Besides, neither Article 4, nor other articles of the World Anti-Doping Agency Statutes as of 2016, do not fix the bases for carrying out and entitle to carry out any anti-doping investigations in any arbitrary way. The Statutes articles indicating the possibility to delegate certain authorities (giving some powers), address the assistance in

¹⁶ Constitutive instrument of foundation of the World anti-doping agency, April 2016 // <https://wada-main-prod.s3.amazonaws.com/resources/files/new_statutes_-11_april_2016.pdf>. Publication date August 30, 2016.

¹⁷ Constitutive instrument of foundation of the World anti-doping agency 2014 // <<https://wada-main-prod.s3.amazonaws.com/resources/files/WADA-Revised-Statutes-4-July-2014-EN.pdf>>.

fighting against doping (including in cooperation with the governments), reinforce ethical principles, etc.

Having the ability to cooperate with the governments on fighting doping, and, at the same time, no necessary authorities to conduct the required full-scale investigation, WADA did not opt for cooperation with the authorized Russian government bodies in investigating doping misconducts. Instead, it immediately biased presumed unfair practices of the Russian sports officials and inaction of the Russian government. At the same time, without contacting other countries law enforcement agencies (for example, USA, to investigate the unlawful activities of the former Head of the Moscow Anti-Doping Laboratory G. Rodchenkov, staying in this country since January 2016), WADA tried to investigate the situation in the "alternative" (as a result, illegal) ways. This indicates a biased and unfair approach used by the World Anti-Doping Agency in case of R. McLaren's reports regarding the methods applied.

Grave contradiction of "the investigative" methods used in drawing up R. McLaren's reports to the current WADA regulatory documents

Since R. McLaren's "investigation" contains grave accusations, having significant consequences, against many people and Russian government authorities, it seems reasonable to demand its full compliance with the fundamental standards for conducting such investigations, first of all, universal international standards, not only the legal principle typical of just a single family legal systems, but not relevant for other legal family legal systems. Therefore the appeal of R. McLaren's reports, for example, to standard of the lack of a reasonable doubt (besides that, in his reports in general there are no relevant proofs, but there are present number of statements, obviously demanding proof) is treated as nothing more than a legally incorrect polemic technique (substitution of the proof with the reference to absence of a doubt), than manifestation of conscientious and responsible attitude to the contents of the reports.

It should be noted, that the methods not only unspecified in the World Anti-Doping Agency's regulatory documents and not provided by these documents, but also far beyond the scope of the possible allowed activities, based on WADA competence (including authorities) set forth in the relevant regulatory documents, were used in R. McLaren's "investigation".

The World Anti-Doping Agency Revised Statutes as of 2016¹⁸, specifying the legal framework, forms and procedural scope of WADA's activities (as well as the revision of this document as of 2014¹⁹), does not imply and allow this range of discretion and freedom to choose the "investigative" methods, as the ones used in preparing R. McLaren's reports.

Article 4 of the World Anti-Doping Agency Revised Statutes as of 2016²⁰ contains unclear statements on the investigation means. According to this article, the World Anti-Doping Agency has the right to use a wide range of means, both available and created by it, consult with any sports and other organizations. However, this principle should only be interpreted within WADA competence.

The 2015 World Anti-Doping Code²¹, in spite of presuming a special "flexibility" and "universality" by its authors (in section "Purpose, scope and organization of the World Anti-Doping Program and Code"), does not assume and allow applying in the investigation the kind of methods, which, judging by the information provided in R. McLaren's reports, were utilized by him and the persons he involved in "the investigation", including related to violating the secrecy of correspondence and other legal guarantees of confidential data protection.

Let us analyze the provisions of the 2015 World Anti-Doping Code to find if the provisions are available therein, giving the right to use the investigation methods (techniques), which allow accessing confidential information, owned by third parties, without the approval of the authorized government authorities or permission of these individuals, who legally own (who are addressees and senders) of the relevant messages or information, including the data contained on the relevant digital media (computer hard drives, etc.).

Clause 2.10.2 and a comment to Article 2.10 of the 2015 World Anti-Doping Code of 2015 indicate the possibility of criminal and disciplinary investigations, but these shall be conducted out of WADA or national anti-doping organization's jurisdiction, that is, not by WADA.

¹⁸ Constitutive instrument of foundation of the World anti-doping agency, April 2016 // <https://wada-main-prod.s3.amazonaws.com/resources/files/new_statutes_-11_april_2016.pdf>. Publication date August 30, 2016.

¹⁹ Constitutive instrument of foundation of the World anti-doping agency 2014 // <<https://wada-main-prod.s3.amazonaws.com/resources/files/WADA-Revised-Statutes-4-July-2014-EN.pdf>>.

²⁰ Constitutive instrument of foundation of the World anti-doping agency, April 2016 // <https://wada-main-prod.s3.amazonaws.com/resources/files/new_statutes_-11_april_2016.pdf>. Publication date August 30, 2016.

²¹ World Anti-Doping Code 2015 / The revised 2015 World Anti-Doping Code is effective as of 1 January 2015 // <<https://wada-main-prod.s3.amazonaws.com/resources/files/wada-2015-world-anti-doping-code.pdf>>.

The investigation methods (techniques), which the World Anti-Doping Agency or a national anti-doping organization is allowed to use, are set forth in Article 5 "Testing and investigations" and clause 3.2 "Methods of establishing facts and presumptions" of Article 3 "Proof of doping", and in a number of other articles of the 2015 World Anti-Doping Code:

- testing by laboratory analysis (clause 5.1.1 and subclause "a" of clause 5.1.2);
- admission obtaining method (clause 3.2), including "*athlete's admissions*" himself/herself and "*credible testimony of third persons*" (comment to Article 3.2);
- any other "*reliable means*" (clause 3.2).

The phrase "*any reliable means*" shall be interpreted (construed) in relation to the World Anti-Doping Code's principles and other standards of anti-doping investigation, as well as general standards and principles of conducting an offence investigation, including principles of legality and human rights observance.

Therefore, the scope of "any reliable means" concept (i.e. the entirety of possible investigation methods covered by this concept) in respect to the anti-doping investigation, has limits, boundaries, which can be rather clearly and unambiguously expressed.

Consequently, a person authorized by WADA, conducting an anti-doping investigation, does not have the right to choose and apply any investigation method, including an information gaining method, at his own discretion, without following the above principles.

One can rightfully argue, that "*any other reliable means*" mentioned in clause 3.2 of the 2015 World Anti-Doping Code, shall mean investigation methods (techniques) set forth in this Code's regulations directly, as well as other methods (techniques), complying with the competence of WADA and the World Anti-Doping Code's principles, other anti-doping investigation standards, and general rules and offence investigation principles.

Although, according to clause 3.2.1 of the 2015 World Anti-Doping Code, "*analytical methods or decision limits approved by WADA after consultation within the relevant scientific community and which have been the subject of peer review are presumed to be scientifically valid*" (i.e. scientific validity of WADA methods is presumed), in reality, analytical techniques, including counseling and examination, can be lawfully used only to the extent corresponding to WADA competence scope.

It should also be noted, that some issues of applying the investigation techniques, related to laboratory testing, are regulated in clauses 3.2.1, 3.2.2 and 3.2.3 of the 2015 World Anti-Doping Code.

Thus, the legal grounds of the factual implementation by R. McLaren and his "investigation team" of "investigative" actions which can be implemented only within

jurisdictional state criminal trial in the order established by the national legislation (or international law), were absent, the specified actions were carried out randomly, out of any legal regulation.

Concerning the quality of prejudice features of R. McLaren's report attributed to it by the statements of WADA's officials, we will note the following.

The possibility of prejudicialness, provided by the "*decision of court or professional disciplinary tribunal*", is mentioned in the 2015 World Anti-Doping Code only once in clause 3.2.4. However, from the articles of the mentioned Code it does not follow that such decision of court or a disciplinary tribunal, having a prejudicial value, could have been replaced (displaced) merely by a private opinion of some person, including "an independent person" authorized to conduct an investigation in accordance with WADA's decision.

According to clause 19.2 of the 2015 World Anti-Doping Code, "*relevant anti-doping research may include, for example sociological, behavioral, juridical and ethical studies*", however, interpreting the quoted provision in relation to clause 19.1 and considering the introductory word "*relevant*" in the quoted phrase, indicates that only the actions to provide and develop the anti-doping activities, specified in clause 19.1, as a whole, not specific investigation, are meant: "*Anti-doping research contributes to the development and implementation of efficient programs within Doping Control and to information and education regarding doping-free sport*".

Clause 5.1.2 of the 2015 World Anti-Doping Code, specifying the reason for mandatory investigation, should be pointed out:

" (a) *in relation to Atypical Findings and Adverse Passport Findings, in accordance with Articles 7.4 and 7.5 respectively, gathering intelligence or evidence (including, in particular, analytical evidence) in order to determine whether an anti-doping rule violation has occurred under Article 2.1 and/or Article 2.2; and*

*(b) in relation to other indications of potential anti-doping rule violations, in accordance with Articles 7.6 and 7.7, **gathering intelligence or evidence (including, in particular, non-analytical evidence) in order to determine whether an anti-doping rule violation has occurred under any of Articles 2.2 to 2.10***".

"*Non-analytical evidence*" set forth in clause 5.1.2, do not mean any investigation methods chosen at one's own discretion. It is reasonable to argue that this means using the set of methods including expressly specified in the 2015 World Anti-Doping Code, as well as other investigation techniques corresponding to WADA competence, and general principles and main guarantees of the anti-doping investigation (including the guarantees of athletes' rights for an objective, impartial investigation).

Clause 5.2 "scope of testing" of the 2015 World Anti-Doping Code is not referential for the issue of regulatory basis of investigation methods used in drawing up R. McLaren's reports, because this clause only relates to athlete testing.

Clause 5.8.1 of the 2015 World Anti-Doping Code sets forth the authorities of WADA and national anti-doping organizations "*obtain, assess and process anti-doping intelligence from all available sources*", but in connection with fulfilling the following goal – "*to inform the development of an effective, intelligent and proportionate test distribution plan, to plan Target Testing, and/or to form the basis of an investigation into a possible anti-doping rule violation (s)*".

This provision is not referential, i.e. does not relate to regulating specific investigations, and, consequently, to R. McLaren's "investigation" and third parties involved by him, who actually at their own discretion appropriated unlimited and uncontrolled authorities on accessing restricted data (confidential information), and such activities of R. McLaren and these individuals cannot be validated and justified based on it.

Clause 5.8.3 of the 2015 World Anti-Doping Code sets forth the authorities of WADA and national anti-doping organizations: "*investigate any other analytical or non-analytical information or intelligence that indicates a possible anti-doping rule violation (s), in accordance with Articles 7.6 and 7.7, in order either to rule out the possible violation or to develop evidence that would support the initiation of an anti-doping rule violation proceeding*".

Articles 7.6 and 7.7 of the 2015 World Anti-Doping Code are absolutely non-referential to the activities on obtaining confidential data by R. McLaren and the third parties involved by him as part of the "investigation", and therefore such activities of R. McLaren and these individuals cannot be validated and justified based on it.

Clause 5.8.3 makes it clear, that the scope of anti-doping investigations and possible investigation techniques is limited, and thus, such activities of R. McLaren and these individuals cannot be validated and justified based on it.

According to clauses 20.3.6 and 20.4.4, and other provisions of the 2015 World Anti-Doping Code, an anti-doping organization has "*authority to conduct an investigation*", but this right is significantly limited not only by WADA status (including its competence scope) and national anti-doping organization status (in this case WADA is important), determined by the World Anti-Doping Agency Revised Statutes as of 2016, but by the set of methods specified in the 2015 World Anti-Doping Code.

Therefore, taken the above into account, it is reasonable to assert that by performing the activities described or briefly partially addressed in his reports, as part of the "investigation", R. McLaren grossly violated clause 19.4 "Research practices" of the

2015 World Anti-Doping Code, according to which "*anti-doping research shall comply with internationally recognized ethical practices*". In particular, the principles of objectivity, fairness, honesty were grossly violated.

Clause 5.5 "Testing requirements" of the 2015 World Anti-Doping Code refers to an International standard for testing and investigations as of 06.09.2016, that came into effect January 2017²², which, according to the first paragraph of Article 1 of this document (and its version of 2015²³), is an integral part of the World Anti-Doping Code, and is a mandatory International standard developed as part of the World Anti-Doping Program.

Comment to clause 11.1.1, clause 12.1.1 of 2016 International standard for testing and investigations envision a possibility to obtain evidence in the ways other non-analytical methods. Nevertheless, these cases refer to the methods relating to WADA competence to be interpreted in relation with the general content of this document.

Consequently, the provisions of the 2015 World Anti-Doping Code and the 2016 International standard for testing and investigations cannot be regarded as a regulatory ground and justification of the activities performed by R. McLaren and the persons he involved within "the investigation".

Therefore, R. McLaren and the persons he involved as part of "the investigation", did not have the right to use the above methods and a number of other techniques in their "investigation", and the results obtained in this way (claimed to be obtained) are legally null and void.

Legal negligibility of R. McLaren's reports in terms of international public law acts

The issue on co-relation (including the regulatory power hierarchy) between own regulatory acts (*lex sportiva*) of an international sports organization (for example, the 2015 World Anti-Doping Code, the World Anti-Doping Agency Revised Statutes as of 2016, etc.) and the international public law enactments (for example, UNESCO

²² International Standard for Testing and Investigations // <https://www.wada-ama.org/sites/default/files/resources/files/2016-09-30_-_isti_final_january_2017.pdf>.

²³ International Standard for Testing and Investigations // <<https://wada-main-prod.s3.amazonaws.com/resources/files/WADA-2015-ISTI-Final-EN.pdf>>. Since January 2017: International Standard for Testing and Investigations, 2017 is effective (International Standard for Testing and Investigations // <https://wada-main-prod.s3.amazonaws.com/resources/files/2016-09-06_-_isti_-_january_2017_final.pdf>).

International Convention against Doping in Sport dated 19.10.2005²⁴, the Anti-Doping Convention of Council of Europe dated 16.11.1989²⁵ and an Additional Protocol dated 12.09.2002 to the Anti-Doping Convention dated 16.11.1989²⁶) is directly related to the considered R. McLaren's investigation and his reports.

The conflict around WADA activities today is based on the fact that the World Anti-Doping Agency carries out de-facto unlawful actions aimed at the absolute dominance (in fighting doping in sport) and concentration of monopolistic, exclusive authorities on normative regulation in the field of anti-doping activities, interpretation (presumed as authentic and subject to obligatory acceptance) of normative acts in mentioned field, anti-doping investigations, implementation of quasi-judicial powers on making the decisions on athletes and other persons being guilty in doping misconducts. The Agency also encroaches in the sphere of state public authority powers relating to investigations in this field, and strives to ensure a hierarchically higher position of its decisions in respect of government jurisdiction. Involving R. McLaren as "an independent person" to conduct the investigation on doping use by Russian athletes and the approval of R. McLaren's reports by the Agency is a vivid and grand-scale display of such WADA's inadequate position.

From the international public law perspective, the position of WADA on concentrating the regulatory authorities, offence investigation, and holding the offenders liable in one organization and particular WADA activities on arranging the anti-doping investigation in respect of Russian athletes, Russian sports organizations and teams seem unreasonable, contain background for WADA to abuse its powers in the future, and cannot be regarded legally correct and legitimate.

Moreover, WADA's position and activities are expressed through the actions of the Agency itself and the involved persons, which form a latent distributed subject system. WADA claims that it only investigates doping misconducts, and does not suspend, disqualify and ban anybody. "Independent commissions" and "independent persons" under WADA or acting at WADA's request, claim that they only make conclusions (without any recommendations and requests), and the International Olympic Committee and the International Paralympic Committee state that they only "make their decisions" **based on actual acknowledgment** (first of all by the World Anti-Doping Agency) **of the prejudicial value of documents received from these**

²⁴ International Convention against Doping in Sport 2005, Paris, 19 October 2005 // <http://portal.unesco.org/en/ev.php-URL_ID=31037&URL_DO=DO_TOPIC&URL_SECTION=201.html>.

²⁵ Anti-doping Convention, Strasbourg, 16.11.1989 // <http://www.coe.int/t/dg4/sport/Source/CONV_2009_135_EN.pdf>.

²⁶ Additional Protocol to the Anti-Doping Convention // <<https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/188>>.

"independent commissions" and "independent persons", as well as information and conclusions as reliable and adequately proven.

Considering that the World Anti-Doping Code was approved by the World Anti-Doping Agency (WADA) Foundation Board, which is an international non-government organization, at the same time governments were usually not among WADA founders, and governments cannot be the parties signing the World Anti-Doping Code²⁷, such system of regulating government anti-doping activities has been created at an international (inter-governmental) level, which includes a number of international normative legal acts, which are simultaneously effective with the acts by WADA and other international sports organizations.

According to **UNESCO International Convention against Doping in Sport dated 19.10.2005**, imposing great many obligations on the member governments relating to fight against doping in sports, and binding the member states to follow the World Anti-Doping Code rules (in particular, Articles 3 and 4), **the supreme authority under this Convention is the Conference of Parties** (Articles 17, 18, 28–32). As follows from the Convention's provisions, this body can also carry out certain monitoring functions helping to achieve the Convention goals. The World Anti-Doping Agency is conferred with, and thus has only an advisory status under this authority (Conference). At the same time, the governments only support WADA's mission and assist it (Article 14, clauses "a" and "d" of Article 16), including financially (Article 15, clause 3 of Article 17), cooperate with it (clause "c" of Article 3, Article 26).

The Anti-Doping Convention dated 16.11.1989 has established that **the supreme authority under this Convention is the Monitoring Group** (Articles 10–12). Under this Convention, the governments, parties of the Convention, set up or encourage setting up of one or several anti-doping monitoring laboratories, assist the sports organizations in accessing this laboratory in another member state (clause 1 of Article 5), take measures in fighting doping misconducts in sport (a number of articles), encourage anti-doping checks (clause 3 of Article 7, etc.), "co-operate closely on the matters covered by this Convention and shall encourage similar co-operation amongst their sports organisations" (clause 1 of Article 8).

The above Conventions do not contain any regulations providing the World Anti-Doping Agency or its appointed or affiliated persons with the grounds and abilities to appropriate any extra-territorial jurisdictional investigative authorities at their own discretion.

²⁷ Note to Article 22 of the 2015 World Anti-Doping Code: "Most governments cannot be parties to, or be bound by, private non-governmental instruments such as the Code. For that reason, governments are not asked to be Signatories to the Code but rather to sign the Copenhagen Declaration and ratify, accept, approve or accede to the UNESCO Convention".

A number of acting in this sphere recommendatory (not obligatory for application) documents (**Recommendation of the Committee of Ministers of the Council of Europe № R (84) 19 dated 25.09.1984 to member states "European Anti-Doping Charter for Sports"**²⁸ etc.) do not contain any provisions, which could serve as the basis to appropriate unlimited and arbitrary authorities relating to anti-doping investigation by the World Anti-Doping Agency or its appointed or affiliated persons, either.

It should also be noted that according to the explanation posted on the UNESCO website, UNESCO and WADA are partners in fighting doping in sport. UNESCO is responsible for implementing the International Convention against Doping in Sport and therefore mostly cooperates with governments. WADA works with sports associations (International Olympic Committee, International Paralympic Committee, international sports federations, etc.), as well as anti-doping organizations to provide the compliance with the World Anti-Doping Code²⁹.

WADA also has the opportunities to contact government authorities about its activities.

The fact that the World Anti-Doping Agency did not use the above international legal and organizational procedures to carry out a qualified investigation on doping misconducts, indicates WADA's impartiality and unfair practices in case of R. McLaren's reports, ab initio biased attitude and unfair motivation of the WADA administration in choosing the ways to achieve the set goal – to check the condition of the anti-doping system in Russia, and validate the offence information published in the media.

According to clause 3 of Article 1 of the Additional protocol dated 12.09.2002 to the Anti-Doping Convention dated 16.11.1989³⁰, the member states "*shall similarly recognise the competence of the World Anti-Doping Agency (WADA) and of other doping control organisations operating under its authority to conduct out-of-competition controls on their sportsmen and women, whether on their territory or elsewhere... Any such controls shall be carried out, in agreement with the sports*

²⁸ Recommendation № R (84) 19 of the Committee of ministers to member states on the "European Anti-Doping Charter for sport" / Adopted by the Committee of Ministers on 25 September 1984 at the 375th meeting of the Ministers' Deputies // <<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=603979&SecMode=1&DocId=683378&Usage=2>>.

²⁹ UNESCO and WADA // <<http://www.unesco.org/new/en/social-and-human-sciences/themes/anti-doping/unesco-and-wada/>>.

³⁰ Additional Protocol to the Anti-Doping Convention // <<https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/188>>.

*organisations referred to ... Convention*³¹, ***in accordance with regulations in force and with the provisions of national law of the host country***".

That is a particular state has an obligation of assistance in carrying out WADA's examinations, but thus any checks are carried out in coordination with the sports organizations according to the relevant provisions of the national legislation of the organizing country. But any appointed by the WADA persons or persons, affiliated with the WADA, had no right to run in the territory of the sovereign state (without special authorization from its party) any independent and voluntary investigative actions (basically, by criminal procedure techniques of preliminary investigation or inquiry), since these persons did not represent any legitimate intergovernmental or national public authority, authorized to conduct investigative activities by law or according to an international agreement.

On the contrary, the states have the right to carry out legal regulation and, in case of violation of the national legislation, to interfere with the activity of international sports organizations when violation is committed in the territory of the conferred state and the power to investigate crimes and other offenses were not legally transferred to the international and (or) other authorities operating in the sphere of counteraction to doping. For example, according to Article 19 of the **Council of Europe Convention on the Manipulation of Sports Competitions dated 18.09.2014**³², each party has the right to take legal and other measures, which may be required to establish the jurisdiction in respect of corruption crimes, including, if such crime is committed in the respective country or by one of its citizens, or a person permanently residing on its territory. According to Articles 22 and 23 of the said Convention, the parties have the right to take legal and other measures to apply the sanctions including the restraint of liberty, on the persons guilty of committing these corruption crimes, which can lead to extradition according to internal legislation.

It should also be noted, that clauses 1 and 2 of Article 4 "Relationship of the Convention to the Code" of the UNESCO International Convention against Doping in Sport dated 19.10.2005 (considering the definition of clause 6 of Article 2) set forth the relationship (including the regulatory hierarchy) between the provisions of Convention itself and the provisions of the World Anti-Doping Code: "*1. In order to coordinate the implementation, at the national and international levels, of the fight against doping in*

³¹ Subclause "c" of clause 3 of Article 4 of this Convention states that the member States should "encourage and, where appropriate, facilitate the carrying out by their sports organisations of the doping controls required by the competent international sports organisations whether during or outside competitions".

³² Council of Europe Convention on the Manipulation of Sports Competitions of 18.09.2014 // <<http://www.coe.int/ru/web/conventions/full-list/-/conventions/rms/09000016801cdd7e>>.

sport, States Parties commit themselves to the principles of the Code as the basis for the measures provided for in Article 5 of this Convention. Nothing in this Convention prevents States Parties from adopting additional measures complementary to the Code. 2. The Code and the most current version of Appendices 2 and 3 are reproduced for information purposes and are not an integral part of this Convention. The Appendices [to the Code – author's note] as such do not create any binding obligations under international law for States Parties".

Proceeding from fixing in the above international treaty that the World Anti-Doping Code is not an integral part of the International Convention against Doping in Sport of UNESCO of 19.10.2005, and considering that the specified Code is not an international treaty, it is necessary to conclude that the World Anti-Doping Code is not a source of international public law, and the provisions of this Code and the decisions accepted by any authorities only on its basis can not be considered definitely mandatory for the states.

According to the UNESCO International Convention against Doping in Sport dated 19.10.2005, its regulatory status is higher than that of the World Anti-Doping Code, that is not an international Treaty.

In view of the above, it is reasonable to approve the following:

1) in terms of international law, R. McLaren's "investigation" accomplished under the WADA's order is a private investigation, the legal value of which, in itself, does not exceed legal value of any private investigation as it is executed by the person which is not provided with the state powers to carry out the investigation according to the standards of the legislation (and thus R. McLaren was not and could not be provided with any powers which are based on the norms of international law). The outcomes of R. McLaren's "investigation" stated in his reports, in itself, do not possess any legal status and can not, in itself, attract any legal consequences concerning the rights and freedoms, the legal status of the persons concerning which the specified "investigation" was made or which were in one way or another mentioned by the specified "investigation";

2) providing R. McLaren's reports and the conclusions containing in them with legal, especially – prejudice, meaning by means of acceptance of these reports by the World Anti-Doping Agency (as containing proved, reasoned and true results of the "investigation" which is carried out by R. McLaren) – is an illegal action of WADA, made without any sufficient international legal bases fixed in the acts of international law, contradicts the conventional principles and norms of international law. Thus the specified proving of R. McLaren's "outcomes of investigation" (reports) with prejudice value is not reasonable in terms of the regulations of the World Anti-Doping Agency.

Conclusions.

1. Owing to legal negligibility of the outcomes of "investigation" stated in Richard McLaren's reports of 16.07.2016, "McLaren Independent Investigations Report into Sochi allegations" and of December 9, 2016 "McLaren Independent Investigations Report into Sochi allegations", and also owing to the lack of the legal importance of the specified reports which is based on the norms of international law, the specified outcomes of R. McLaren's "investigation" (reports) can not be appropriate and can not be considered appropriate (in terms of the law) bases and justification of making decisions on application of restrictive and other sanctions measures concerning Russian athletes and Russian sports organizations, and the national teams. Therefore the decision of the Foundation Board of the World Anti-Doping Agency of 16.11.2017 not to declare compliance status of RUSADA with the Code (not to prolong the powers of RUSADA) on the basis (for the reason) of "non- acceptance" by the Russian Federation of the mentioned R. McLaren's reports, and until such "acceptance" – they are to be considered as legally unreasonable and insignificant, contradicting the regulations of the World Anti-Doping Agency, the conventional principles, and the norms of international law, and also a number of acts of international law.

2. The requirement of the World Anti-Doping Agency to the Russian persons responsible for fight against doping (the Ministry of Sport of the Russian Federation, and also RUSADA and the Russian Olympic Committee) to express the public consent with the results of R. McLaren's "investigation", that is to recognize the specified conclusions containing in his reports (as proved, fair, and reliable), in terms of view of international law, is legal fiction and it is not proved either by norms of international law or by the regulations of the World Anti-Doping Agency itself.

26.11.2017

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