

Ponkin I.V. Conclusion of 26.I.2018 on the IOC Disciplinary Commission's Report chaired by Samuel Schmid dated 02.XII.2017

Introduction

This Conclusion Report presents the results of the analysis of the Report of the IOC Disciplinary Commission chaired by Samuel Schmid, issued 02.12.2017, as presented to the IOC Executive Board¹, (hereinafter the Report, Schmid Report).

The goal of this Conclusion Report is an evaluation of the legal and factual justifiability of the statements, including the implications of the Schmid Report, as well as an evaluation of the legal potentiality and justifiability of using this Report as a basis and a justification of the IOC decision of 05.12.2017 to suspend the activities of the Russian Olympic Committee and to allow the participation of Russian athletes in 2018 Winter Olympics in PyeongChang only under a neutral (Olympic) flag and without the National Anthem, and after more rigorous compulsory selection (as compared to athletes from other countries), as well as a basis and a justification to apply extra restrictions (as related to those already implemented prior to December 2017) and penalties to Russian athletes², sports organizations, and national teams.

This Conclusion Report is referring to the original text of the above-mentioned Report (as published at the IOC official website in the English language) taking into consideration the available translation into the Russian language. Page numbers of the quotes cited follow the above-mentioned original of the Report.

In doing the analysis of the Schmid Report a great number of significant flaws were discovered, in many ways similar to those previously identified by a number of experts in the first McLaren Report of 16.07.2016 "WADA Investigation of Sochi Allegations "³ and in the second McLaren Report of 09.12.2016 " WADA Investigation

¹ IOC Disciplinary Commission's Report to the IOC Executive Board // <<https://stillmed.olympic.org/media/Document%20Library/OlympicOrg/IOC/Who-We-Are/Commissions/Disciplinary-Commission/IOC-DC-Schmid/IOC-Disciplinary-Commission-Schmid-Report.pdf>>. Information logged: 07.12.2016.

² It is important to emphasize that in this Conclusion Report we do not deal with cases of facts of the use of doping by individual Russian athletes as duly and properly proved by the authorized sports organizations in the cases where all due procedures had been followed with observance of the rights of all the individuals involved in the investigations as prescribed by the regulative documents.

³ 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>. Information logged: 22.07.2016. For a critical analysis see, e.g.: *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>>.

of Sochi Allegations "⁴ (hereinafter - McLaren Reports) to which the Schmid Report contains numerous references.

As will be demonstrated further, it is justifiable to declare the Schmid Report biased, evidence-lacking, based on blatantly false evidence and other invalid proofs, speculations, and misinterpretations of the meaning of the provisions of other materials.

Main Part

1. Key points (core statements) of the Schmid Report

The third, and last, section of the Schmid Report contains the quintessence of the positions reflected in this Report: "*The IOC DC confirms the seriousness of the facts, the unprecedented nature of the cheating scheme and, as a consequence, the exceptional damage to the integrity of the IOC, the Olympic Games and the entire Olympic Movement. The Russian officials admitted wrongdoing by individuals within Russian institutions but never "State doping support system". The IOC DC has not found any documented, independent and impartial evidence confirming the support or the knowledge of this system by the highest State authority*" (second, third, and fourth paragraph of clause 1 of subsection 3.1 – on p. 24). With all this in mind, however, the IOC Disciplinary Commission did place the responsibility on the State and the Russian Olympic Committee.

Moreover, the Schmid Report states the following demand: "*the Russian authorities are yet to accept Prof. Richard McLaren findings of a conspiracy involving individuals from the Ministry of Sport, CSP, RUSADA, FSB and the Moscow Laboratory to cover evidence of doping. As a consequence, RUSADA's compliance with the WADA Code is still pending*" (subsection 2.2.11 – last 2 paragraphs on p. 16).

This passage quotes the wrongful, legally and factually unfounded demand reproduced in the Schmid Report which was earlier declared by the World Anti-Doping Agency (WADA). This demand is not based on any regulatory documents of international organizations, nor on the norms of international treaties to which the Russian Federation is part. A demand stated by a non-governmental organization to the Government authorities of the Russian Federation to accept the findings of some arbitrary

⁴ 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>. Information logged: 15.12.2016. For a critical analysis see, e.g.: *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/wpcontent/uploads/2017/10/PonkinRedkina_2nd_McLaren_Report_2017.pdf>.

"investigation" that does not have any legal force is a perfectly voluntaristic and unfounded act that exceeds the legal boundaries of non-governmental organizations⁵.

2. Analysis of the evidence that laid the foundation for the assertions and conclusions of the Schmid Report

The Schmid Report has a number of internal aspects suggesting its partiality and bias. Above all, this is manifested in the biased selection of sources used as a basis for the Schmid Report, legally and factually unfounded assumption of justifiability, lending it the quality of prejudiciality, non-critical application⁶ of the statements taken from the McLaren Reports, as well as claims and materials of G. Rodchenkov, some media materials.

Although the Schmid Report says: "*IOC DC decided that the establishment of the facts and its subsequent conclusions should only be based upon documented, independent and impartial evidence*" (p. 24), in reality, nearly all the sources used in the Schmid Report are not trustworthy, in some respect, even falsified (most of them are based on unfounded or blatantly false allegations of G. Rodchenkov), or contain absolutely far-fetched statements taken from third party investigations lacking any direct bearing on the allegations to be proved.

The Schmid Report mentions the mission set before the IOC Disciplinary Commission: "*Thus the mission of the IOC DC was not to assess the value of the IP Reports⁷ but to establish the facts on the basis of documented, independent and impartial evidence*" (p. 4).

This mission, however, has internal contradictions: without assessing the McLaren Reports Samuel Schmid could not have fulfilled (was unable to fulfill) the task of "*establishing the facts on the basis of documented, independent and impartial evidence*", because to accept that the evidence (most of which was borrowed from McLaren Reports) is independent, impartial and documented, it is logically essential to

⁵ See: *Ponkin I.V., Redkina A.I.* 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 // <http://moscou-ecole.ru/wp-content/uploads/2017/12/Conclusion_WADA_decision_2017.pdf>.

⁶ Not only the materials and claims of various individuals that make up the basis of the Schmid Report have not been verified as to their trustworthiness and conformity with the requirements of formal logic, but the final text of the Schmid Report itself was not proofread, or examined for potential errors. For example, footnote 4 at the bottom of page 14 has the following text: "*“VL” are believed to be the initials of the First and Middle name of Mr Vitaly Leonid Mutko*". First, middle name and patronymic are different things (means of identification), second, V.L. Mutko's patronymic, "Leontyevich" is not a derivative of the name "Leonid" and cannot be reduced to this name.

⁷ The WADA Independent Person here is Richard McLaren.

have a well-founded belief that the McLaren Reports contain precisely such evidence (proofs), i.e. that the McLaren Reports are, on the whole, objective, well-founded, and authentic. Which means that it was logically imperative to have done the verification of the evidence listed in the McLaren reports which would also have resulted in assessing the reports on the whole. But as the Schmid Commission, as follows from the Schmid Report, did not double check all the assertions (even the most crucial ones) of the McLaren Reports which lay the foundation of the Schmid Report, then the mission of the IOC Disciplinary Commission to identify the facts by proceeding from the documented, independent and impartial evidence was, in our opinion, never accomplished.

The Schmid Report includes a statement that the Commission chaired by Samuel Schmid was put up to do "*the task of establishing the facts and granting the hearing required by Bye-law 3 to Rule 59. and by natural justice*" (p. 4), i.e. to hear the persons specified; "*In the respect of the basic principles of Natural Justice and as this was required by the IOC EB's decision on 19 July 2016, the right to be heard was offered to the Russian main actors directly or indirectly involved in the set-up of the system. This offer was made with the guarantee that the confidentiality of the information and explanations provided will be strictly respected*" (p. 5).

In reality, however, the delineation of the group of individuals to grant the opportunity to be heard, set out their positions and arguments was extremely biased. A significant share of individuals accused of doping abuse or promoting doping did not receive an invitation (to have their evidence heard). The number of such individuals, as follows from the WADA and IOC materials, is fairly large (athletes, trainers, sports organizations' representatives). Judging by the Schmid Report, only a few individuals had been heard, only a few mentions were made, but in most cases these are unspecified individuals identified as anonymous.

The Schmid Report makes references to (apart from materials collected from G. Rodchenkov and R. McLaren) the information, published by a number of journalists in the media and films which, by themselves cannot be a priori accepted as reliable evidence, but merely information that needs to be comprehensively verified.

We believe that the IOC Disciplinary Commission should have started with hearing, if possible, all the athletes of Russian Paralympic team (the entire national team) disqualified from the 2016 Paralympics and the athletes of the Russian Olympic team many of whom as a result of such "investigation" on absolutely speculative grounds without due examination of the incriminated violations and proper arguing through the accusations were subject to penalties and restrictions of their rights (disqualification from 2016 Olympics and others competitions, stripping of previously won Olympic medals, lifetime bans). The IOC Disciplinary Commission should have granted the right, and a real chance, to be heard to those who earlier investigated the crimes of G. Rodchenkov in

Russia as well. The Commission, however, heard, almost exclusively, only the individuals whose statements and speculations were in no contradiction to the distorted version of past and present events WADA deemed convenient. That is to say, the Disciplinary Commission adopted a consistent stance of prosecution having rejected the obligation to grant the right to be heard to those involved in the events examined who deny these accusations. Such actions of the IOC Disciplinary Commission indicate its obvious interest in corroborating one version as previously accepted by WADA and expressed in the McLaren Reports despite the available mass of facts and critical objections that prove and demonstrate the inadequacy, fallacy and even unreliability of many statements and conclusions in the McLaren Reports and a number of other materials used by the IOC Disciplinary Commission as sources of evidence.

On the other hand, the statement (as expressed in the quote above) on granting "*the guarantee that the confidentiality of the information and explanations provided will be strictly respected*" is, we believe, only a way of drawing attention away from the fact that invitations to be heard at a Disciplinary Commission session were not sent to the majority of individuals directly involved in the events under investigation. How can we talk here about adhering to the basic principles of natural justice if the application of those principles is clearly selective, biased and unfair?!

The reference in the Schmid Report to the application of **the basic principles of Natural Justice** in the activities of the IOC Disciplinary Commission is completely refuted by the fact of the deliberate refusal of the IOC to apply the presumption of innocence principle to a significant share of Russian athletes who faced the punitive measures by applying the principle of collective responsibility which clearly, directly and blatantly contradicts one of the bases of natural law, the principle of "**no punishment without guilt**".

It is clear that the decision to abandon the principle of the presumption of innocence of the Russian athletes was made by the IOC and not by the IOC Disciplinary Commission chaired by Samuel Schmid but this does not remove the responsibility from the IOC Disciplinary Commission.

Let us note here that, indeed, the legal institution of the so-called strict liability (presuming guilt upon a law infringement fact), but also for the mode of strict liability to be applied one needs an occurrence of specific conditions, strict liability cannot proceed from arbitrary, perfectly speculative premises and does not define the possibility of collective responsibility for the deeds of third parties.

2.1. Using documentaries and a newspaper article as sources of information and "evidence" in the Schmid Report

As sources of information and "evidence" the Schmid Report uses 2 documentaries as well as 1 newspaper article, in the New York Times newspaper of 12.05.2016 (pp. 11, 12, 30, etc. of the Schmid Report).

2.1.1. The ARD Programme

The Schmid Report claims: *"On 3 December 2014, the ARD broadcasted a programme named "Top-Secret Doping: How Russia makes its Winners", describing a sophisticated system to cover-up doping within the All-Russia Athletics Federation (ARAF). The allegations revealed in this program concerned primarily the IAAF. The documentary implicated a number of Russian athletics athletes, coaches and doctors, the RUSADA and the Moscow Laboratory. This programme was mainly based on the witness' statements made by Mr Vitaly Stepanov, former employee of the Moscow Laboratory, and his wife Mrs Yiulia Stepanova, elite Russian track and field athlete who was suspended for doping during two years from 2013 to 2015. Their statements were supported by secret footage and audio recordings"* (p. 9).

The passage quoted, as well as other parts of the Schmid Report does not say anything about whether the authenticity of the information and the conclusions demonstrated in the above-mentioned programme had been checked and confirmed, that is, the authenticity of the facts and allegations presented in the programme is, effectively, being presumed.

However, expert opinions and other criticizing publications on H. Seppelt's documentaries (ARD channel) are known that convincingly demonstrate the unreliability of a great number of statements presented in these documentaries⁸. Complete disregard of the existing well-founded criticisms of the H. Seppelt's documentaries by the authors of the Schmid Report proves the bias and partiality of said report.

2.1.2. Icarus - documentary by Bryan Fogel

⁸ See, for example: *Slobodtchikov V.I.* Critical analysis of 14.09.2016 of the "Doping – Top Secret: Showdown for Russia" («Geheimsache Doping: Showdown für Russland») of the German TV channel ARD; *Slobodtchikov V.I.* Critical analysis of the "Doping – Top Secret: Showdown for Russia" ("Geheimsache Doping: Showdown für Russland") documentary of the German television channel ARD // *Ponkin I.V., Grebennikov V.V., Kuznetsov M.N., Slobodchikov V.I., Bogatyrev 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>>.

The Schmid Report claims: "*Within this evolution of the system, the analysis of the evidence as well as the movie Icarus, shows that Dr Grigory Rodchenkov played a key role*" (p. 25).

The Schmid Report, then, goes on to claim the following: "*...The documentary Icarus... The two-hours documentary is an aggregation of filmed images of Mr Bryan Fogel's meetings, telephone and Skype conversations with Dr Grigory Rodchenkov, as well as of his personal experience of doping in connection with his participation in a famous amateur cycling competition. In particular, the documentary explained how Mr Bryan Fogel contacted Dr Grigory Rodchenkov to obtain doping products for his personal use and their usage protocol to avoid the risk of positive doping control results. All this is presented with the artistic approach of a filmmaker. The documentary does not reveal any major new elements of evidence than those published in the Final IP Report; it illustrates the scenario revealed by Dr Grigory Rodchenkov in the New York Times' press article in May 2016. However, the documentary shows Dr Grigory Rodchenkov insisting on the importance of the doping programme in Russia, mentioning in particular that during the Olympic Games Beijing 2008 two thirds of the Russian athletes, as well as half of the Russian athletes who participated in the Olympic Games London 2012, were doped. He also confirmed the importance of his participation in the set-up of the methodology/technology of the doping system in Russia*" (subsection 2.2.8 on p. 12–13).

But, if this documentary, as the Schmid Report authors claim, "*does not reveal any major new elements of evidence than those published in the Final IP Report; it illustrates the scenario revealed by Dr Grigory Rodchenkov*" then this documentary cannot be viewed as a standalone source of any information and evidence related to the issue in question.

The extract taken from the Schmid Report, and other parts thereof, does not mention anything about whether the authenticity of the information and conclusions presented in said documentary have been verified and confirmed, that is to say, the authenticity of the information and invectives presented in this documentary are being presumed.

The evaluation of this documentary, emphasized in the Schmid Report, as a repetition in artistic manner of what has already been said in the McLaren Reports suggests that reproducing in the Report the contents of the fragments of the above-mentioned documentary and making references thereto is not only completely perfunctory but is meaningless as a standalone source of information, including evidence.

It should be noted that in the above quote the speculative statement of G. Rodchenkov that "*during the Olympic Games Beijing 2008 two thirds of the Russian athletes, as well as half of the Russian athletes who participated in the Olympic Games*

London 2012, were doped" is presumed and presented as established and proven fact, yet the Report contains no evidence of the truth of this statement. A little later we will discuss the fixation of using such manipulative technique in the Schmid Report.

2.2. The McLaren Reports as the main source of information and "evidence" at the foundation of the Schmid Report

As follows from the Schmid Report, this Report is based in many ways on the two McLaren Reports, even more so, R. McLaren was directly involved in the preparation of the Schmid Report: "*Prof. Richard McLaren then provided a strong support helping the IOC DC to finalise its analysis of the independent evidence such as the EDP on which the two IP Reports are based*" (p. 5).

On the other hand, the Schmid Report states: "*The mandate of prof. Richard McLaren was neither to establish evidence of anti-doping rules violations by individual athletes nor to provide evidence of a level being able to stand legal challenges in Court*" (p. 5).

However, if the statements and conclusions in the Report are not supported by evidence, then it is a manipulative technique of substituting fact with opinion and then they are no more than unfounded assertions, speculations and fantasies.

Very significant for the understanding of the essence of the Schmid Report is a clause (de facto, confession) that no demands to provide such a level of evidence (that is, their high quality) – "*being able to stand legal challenges in Court*" – were ever intended to be applied to the work of R. McLaren nor to the evidence presented by him in his WADA report. This clause means that during the preparation of his reports of the violation of anti-doping rules R. McLaren was not guided by any compulsory requirements, standards that would be directed at ensuring legal procedures of investigation and ensuring the flawless quality of the evidence and proof. Due to lack of (or disregard to) such demands WADA had no grounds to take "on faith", without thorough double-checking, the statements and conclusions contained in the McLaren Reports, but should have instead adopted a more thoughtful and rigorous attitude to the findings of McLaren's scrutinies rather than ignore numerous critical remarks concerning the conclusions of the McLaren Reports (they appeared in the media and in the Internet a short while after the reports were published and were sent to IOC and WADA by their authors) the existence of which the IOC and WADA senior officials could not have helped noticing.

The above-mentioned statement in the Schmid Report that "*Richard McLaren was... not to provide evidence of a level being able to stand legal challenges in Court*" proves the justifiability and legitimacy of the statements made by the critics of R.

McLaren of it being inappropriate, unfounded, and illegal for WADA to actually lend prejudicial character to the statements and conclusions of R. McLaren.

Prejudiciality as de facto attributed to the statements and conclusions of the McLaren Reports (that is, recognizing their significance as proven, authentic facts that do not need to be additionally substantiated or verified) shows (taking the above-mentioned statement of S. Schmid into account) that the WADA representatives responsible for the preparation of the examination, at a WADA session, of the questions (related to the doping allegations towards the Russian Olympic athletes in Sochi), committed actions that possess properties of grave official malfeasance because prior to the publication of the Second McLaren Report said WADA representatives could not help knowing of the existence of grave problems related to insufficient proof of the statements and conclusions of the McLaren Reports, but did not do anything to prevent potential negative consequences.

Of the First McLaren Report of 16.07.2016⁹ the following is said in the Schmid Report: *"After two months of investigation, Prof. Richard McLaren published his Preliminary Report on 16 July 2016. **The IOC DC strongly recommends a thorough reading of this Report, which is very comprehensive.** According to this Preliminary Report, the following elements could be highlighted: After having conducted a number of witness interviews, reviewed thousands of documents (electronically or in hard copy) provided by Dr Grigory Rodchenkov and conducted cyber, forensic and biological analysis, the IP confirmed the general veracity of the declaration by Dr Grigory Rodchenkov. These investigation sources showed an effective and efficient method named "Disappearing Positive Methodology" (DPM), enabling the Moscow Laboratory to report positive screen findings as a negative analytical results after the decision was taken on who would benefit from the cover-up"* (first half of subsection 2.2.6 on p. 11).

In reality, none of this **was duly accomplished** (the analysis of the McLaren Reports allows to declare this with certainty anyway)¹⁰ while the claims themselves to carry out such investigations constituted a gross violation of the WADA competence, an arbitrary appropriation of authorities by R. McLaren.

⁹ 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>. Information logged: 22.07.2016.

¹⁰ This conclusion was motivated in: 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>>.

Of the Second McLaren Report of 09.12.2016¹¹ the following is said in the Schmid Report: "*The Final Report by the IP, Prof. Richard McLaren, published on 9 December 2016, confirmed the key findings of the Preliminary Report regarding an organised system. **The IOC DC strongly recommends a thorough reading of this Report, which is very comprehensive.** The highlight of this Final Report is the publication of a part of the documents in Russian language transmitted to Prof. Richard McLaren by Dr Grigory Rodchenkov (edp 1 to 1225). This documentary evidence was retrieved from hard drives and backups of Dr Grigory Rodchenkov's computer. This electronic data has been authenticated by an official and professional verification. **It is understood that the IP decided to publish only the most relevant parts of the documented evidence**" (first half of subsection 2.2.7 on p. 12).*

In reality, not only the authenticity of this electronic data was not duly confirmed in the McLaren Reports) "by an official and professional verification", but, even more so, a number of materials presented by R. McLaren as documents and evidence, could not have been confirmed or refuted in principle, as the data quoted are non-referential, i.e. devoid of direct bearing on the statements (assumptions, assertions) to be proved¹².

The quote provided deals with the confirmation of the authenticity of the copies of documents passed from G. Rodchenkov to R. McLaren. On the other hand, as far as it is possible to understand from the McLaren Reports, the assertion is to authenticate only that it was G. Rodchenkov's correspondence (from his computer). But the verification and authentication of the contents of the correspondence itself was never carried out. That is to say, it is evident that there was no verification of whether the individuals whose names were quoted as parties in the correspondence with G. Rodchenkov (names and surnames of Russian athletes and sports officials) indeed wrote those e-mails to G. Rodchenkov and replied to his e-mails, or whether all this correspondence (submitted by G. Rodchenkov) was forged by G. Rodchenkov himself, his accomplices or other individuals.

The declarative statement in the quote taken from the Schmid Report that the Second McLaren Report was "comprehensive" is not at all backed by the contents of the

¹¹ 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>. Дата фиксации информации – 15.12.2016.

¹² This conclusion was motivated in: *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/wpcontent/uploads/2017/10/PonkinRedkina_2nd_McLaren_Report_2017.pdf>.

Second McLaren Report itself and does not prove the authenticity and plausibility of its conclusions.

The above-mentioned McLaren Reports of 16 July 2016 and 9 December 2016, as was demonstrated in detail and comprehensively proved in examinations conducted earlier by a number of experts and researchers¹³ had numerous significant defects. Both McLaren Reports were based on the information which, judging by their contents, was not subjected by R. McLaren to verification and authentication using objective means. The above-mentioned reports do not quote a single direct unambiguous evidence while the reports in question had many inconsistencies and distorted information, many of their assertions were based on using manipulative techniques (substitution of fact with opinion, thesis substitution), they contained a number of falsified evidence and unsubstantiated assertions and conclusions, arbitrarily devised and false conclusions, as a result of which the McLaren Reports can be justifiably called biased and unfounded, in their considerable part - falsified. Should the principles of objectivity and impartiality have been observed in the course of the investigation, the McLaren Reports (data and

¹³ See, for example: *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/wpcontent/uploads/2017/10/PonkinRedkina_2nd_McLaren_Report_2017.pdf>. *Katz R.* WADA Is «Broken» And Should Be Replaced // <<https://www.forbes.com/sites/rkatz/2016/09/13/wada-is-broken-and-should-be-replaced/>>. – 13.09.2016. *Katz R.* Silence Of The Arbitrators: Grounds For Russian Olympic Ban Have Not Yet Been Published // <<https://www.forbes.com/sites/rkatz/2016/09/04/silence-of-the-arbitrators-grounds-for-russian-olympic-ban-have-not-yet-been-published>>. – 04.09.2016. *Katz R.* Russian Complaints About McLaren Report On Alleged State-Sponsored Doping Have Merit // <<https://www.forbes.com/sites/rkatz/2016/08/30/russian-complaints-about-mclaren-report-on-alleged-state-sponsored-doping-have-merit/>>. – 30.08.2016. *Ponkin I.V.* A critical analysis of the report of Robert McLaren dated 16.07.2016. Un contributo critico sulla metodologia adottata nel rapporto che ha determinato l'esclusione della Russia dalle Paraolimpiadi // Diritto Penale Contemporaneo. – 4 ottobre 2016. <<https://www.penalecontemporaneo.it/d/4988-a-critical-analysis-of-the-report-of-robert-mclaren-dated-16072016>>. *Sterling R.* Open Letter to the World Anti Doping Agency and International Olympic Committee Regarding the McLaren Report and the Politicisation of Doping in Sports // <<https://truepublica.org.uk/contributor-news/rick-sterling-open-letter-world-anti-doping-agency-international-olympic-committee-regarding-mclaren-report-politicisation-doping-sports/>>. – 28.03.2017. See, in addition: The conclusion of the head of the department of social legislation of the Institute of Legislation and Comparative Law under the Government of the Russian Federation, Ph.D. N.V. Putilo from January 2017 to the reports of R. McLaren from 16.07.2016 and from 09.12.2016, as well as numerous comments by A.N. Peskov, for example: Doping and politics: Moscow must react to the pressure of the West // <<https://rueconomics.ru/212335-doping-i-politika-moskva-dolzha-otreagirovat-na-davlenie-zapada>>. – 10.12.2016.

findings contained therein) could not (and cannot) be viewed and accepted as sufficient basis and foundation to make decisions to enforce restrictions and penalties to Russian athletes, sports organizations, and national teams. That is why, in terms of law and actual fact, it is unfounded and unlawful of WADA to demand that the Russian Ministry of Sports (as well as the Russian Olympic Committee and RUSADA) have to “accept” (acknowledge for themselves and recognize proof, fairness, and authenticity) the findings of the "investigation" (reports) of R. McLaren (to agree with the statements and conclusions of these reports). Besides, the above-mentioned demand (proceeding first from WADA, then from the International Olympic Committee) towards Russian authorities and organizations to accept the findings of the "investigation" (conclusions of the reports) of R. McLaren ("expressing agreement with the findings of the investigation"), presented as one of the crucial conditions to make the decision to cancel the suspension (resume the activities) of the Russian Olympic Committee and RUSADA and to cancel a number of restrictions and penalties imposed on Russian athletes, sports organizations, and national teams, is a completely unlawful claim, as, in its essence, it is an artificial and arbitrary type of violation devised by WADA (and supported by the International Olympic Committee) – "*refusal to accept the findings of an investigation*", for committing which (the refusal) the Russian Olympic Committee and Russian athletes and coaches would effectively face an additional restriction, not prescribed by any statutes of IOC nor, indeed, common sense. In other words, Russian sports organizations and the Ministry of Sport had to deal with an ultimatum: "to accept the authenticity of the findings of the WADA-led investigation" (there being no objective reasons to do so), otherwise the penalties and restrictions would not be removed or reduced. Thus, there is an attempt to compensate an effective absence of direct evidence for the conclusions of the McLaren reports, other crucial defects of those reports, by forcing Russian sports organizations and the Ministry of Sport to admit having done the actions incriminated to them by the McLaren Reports. Apart from significant substantive deficiencies, formal analysis of the McLaren Reports reveals their critical formal defects caused by gravest competence and procedural violations committed during their preparation, as a result of which both McLaren Reports should be acknowledged as legally void. The McLaren Reports did not, and could not, have any prejudicial strength when the International Olympic Committee (as well as the International Paralympic Committee) was dealing with the questions of enforcing restrictions and repressive measures on Russian athletes, yet it was this meaning and those legally relevant features which a number of international sports organizations endowed, de facto unjustifiably, the McLaren reports with, as a result of which those reports were, in essence, given the status similar to that of

a judicial document that contains facts duly identified and proved in the course of due procedures, the facts that do not need any subsequent substantiation in court¹⁴.

It is important to note, that the prejudicial character of the McLaren Reports, as declared and recognized by WADA, was, in their subsequent application in this case, expressed in the eventual statement (presumption) of not only the lack of judicial need to prove facts and conclusions allegedly identified and allegedly proved in the McLaren Reports, but also in the artificial creation of conditions that make it impossible to refute the findings contained in the McLaren Reports in any legitimate way, i.e. a system that impedes protection and restoration of the violated rights of athletes and sports organizations accused of illegal use of doping has been de-facto created¹⁵.

The Schmid Report declares: "***A large part of the EDP is constituted of emails exchanged by Dr Grigory Rodchenkov with people from other Russian entities under the responsibility of the Ministry of Sport, such as the CSP, RUSADA, Moscow Laboratory and staff of the Ministry of Sport. Some of these emails have attachments such as spreadsheets/lists related to doping control or information on athletes' biological profile. The EDP is also constituted of athletes' scheduled tests results, athletes' pre-departure testing prior to international events, athletes' washout schedules, list of athletes taking prohibited substances ("Sochi Duchess list"), architectural drawings of the Sochi Laboratory etc. The EDP also includes the forensic and biological analysis prepared in the UK by a forensic expert at the IP's request. In all these email exchanges produced, many names in the address bar (from, to and cc) have been blacked out by the IP in order to protect the confidentiality of these persons. For this reason, prof. Richard McLaren was unable to share with the IOC DC the original messages. As a consequence, the IOC DC is not able to confirm who was really aware of the information exchanged in the various emails***" (first two paragraphs of subsection 2.2.9 on p. 13).

¹⁴ For further details, 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/wpcontent/uploads/2017/10/PonkinRedkina_2nd_McLaren_Report_2017.pdf>. *Ponkin I.V., Redkina A.I.* 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 // <http://moscou-ecole.ru/wp-content/uploads/2017/12/Conclusion_WADA_decision_2017.pdf>.

¹⁵ Ibid.

The statement that "*the IOC DC is not able to confirm who was really aware of the information exchanged in the various emails*" proves that the IOC DC was aware and admitted the possibility, and a significant enough probability that the correspondents in the e-mail exchange with G. Rodchenkov (identified in the copies of materials submitted by him to R. McLaren) could easily have been completely different persons from those whose names were stated as addressees and addressers of the e-mails. It therefore follows that the above-mentioned copies of messages (correspondence) exchanged via e-mail are not authentic and reliable evidence for the accusatory conclusions of the McLaren Reports.

As concerns the statement in the Schmid Report claiming that: "*forensic and biological analysis prepared in the UK by a forensic expert at the IP's request*" was performed, then, taking into account that R. McLaren himself overreached his competence (authority) in the most outrageous way and the competence of WADA, as well as the fact that R. McLaren's authority did not extend to provide "evidence of a level being able to stand legal challenges in Court", we believe it to be important which were the significant conditions to conduct such analysis: which methods were used, what was the qualification of experts, and above all, on what grounds did they conduct such analyses and did they have the right to do it? A logical question ensues: how exactly are the results of those analyses related to Russian athletes, Russian sports organizations, and national teams?

Taking this into account, as well as multiple significant critical remarks to the findings of the McLaren Reports made by many experts, including those from Russia, we think it well-founded and logical to make a case that the Schmid Report itself is, in the significant part of its allegations and conclusions, unfounded and unreliable, as it is based on the statements from the McLaren Reports which have not been duly proved. Moreover, the intent of the Schmid Report authors, so we believe, might be to deliberately ignore the convincing evidence, as expressed by a great number of experts, of unfoundedness, lack of evidence and reliability of the statements and conclusions of the McLaren Reports.

2.3. Allegations and materials of G. Rodchenkov as a source of information and "evidence" as the basis of the Schmid Report.

The Schmid Report was, to a considerable degree, based on the statements and materials of G. Rodchenkov, including, indirectly, through the use of statements from the McLaren Reports which were based, in their turn, significantly on the statements and materials of G. Rodchenkov, on other materials, which, in their turn, were based on the statements and materials of G. Rodchenkov. The declared "evidentiary disclosure package" (*EDP*) is mostly the information submitted by G. Rodchenkov.

Generally speaking, witness testimony is an important means of proof, irrespective of the person of the witness, but in cases when the main, and virtually the only witness (the only confirmed one, anyway) is a person who is, to a considerable degree, legally interested that the situation would be resolved in a specific way and one of the important actors who personally committed violations, the testimony of such person should necessarily be subjected to comprehensive analysis and validity check by a number of methods, i.e. they should be confirmed by other evidence apart from the witness reports (of this particular person) and if such evidence is submitted by the witness himself it must be verifiably reliable, demonstrate unambiguously the facts to be proved without any details that would cause objectively justifiable doubt. These common rules, however, were defiantly and violently ignored in both the McLaren and the Schmid Reports.

Subsection 2.2.5 of the Schmid Report says: "*On 12 May 2016, the New York Times published the declarations made by Dr Grigory Rodchenkov who fled Russia on 17 November 2015. He revealed a new level of doping in Russia, in particular the **manipulation** of the sample bottles, which notably affected the anti-doping control during the Olympic Winter Games Sochi 2014*" (p. 11). Let us emphasize that its text is given in section 2.2 "Information at the disposal of IOC DC", i.e. the above declarations of G. Rodchenkov are presented as a source of information and "evidence" at the heart of the Schmid Report.

The above quote from the Schmid Report deals with the declarations of G. Rodchenkov about manipulations committed by a certain individual. As came to be known later it was he himself who committed such manipulations over a long period of time which he himself admitted.

It is essential to note that the person of G. Rodchenkov himself in the Schmid Report received very negative evaluation in moral terms as a person willingly taking part in the crimes ways of committing which he had himself designed. For example, referring to the First Pound-McLaren Report the Schmid Report claims: "*This Report exposed not only the existence of an extensive use of doping products by Russian athletics athletes, but also a deeply rooted culture of doping and cheating involving doctors, coaches and laboratory personnel, as well as the financial exploitation of some of the athletes who had to pay in order to access the doping "programmes" and/or to "cover" the positive results allowing them to continue to participate in international competitions. One of the major actors identified was Dr Grigory Rodchenkov, director of the Moscow Laboratory; he was at the heart of doping activities and of the positive drug tests cover-up; he had direct access within the Ministry of Sport to request funds for the laboratory equipment... In his position he was not only accepting but also requesting money in order to execute the concealment of positive tests of Russian athletics athletes*" (p. 10).

This quote reveals the attitude of the Schmid Report authors to G. Rodchenkov. It is quite telling that the gravest allegations towards G. Rodchenkov as stated in the Final Report (No. 1) of the Commission chaired by Richard W. Pound (First Pound-McLaren Report) of 09.11.2015¹⁶ are not questioned in the Schmid Report. That is, the Schmid Report effectively recognizes the validity of the stated allegations of the First Pound-McLaren Report towards G. Rodchenkov.

The Schmid Report claims: "*some exchanges illustrate the involvement of Dr Grigory Rodchenkov in the decision process: discussion on the best formula to tamper with the samples, i.e. addition of salt and dilution linked with gravity*" (second paragraph on p. 15, in subsection 2.2.9).

That is, the Schmid Report claims on multiple occasions (in line with the First Pound-McLaren Report) that G. Rodchenkov himself committed criminal acts; furthermore, he himself was the mastermind behind this criminal scheme. This means that all the evidence obtained from G. Rodchenkov needs to be verified for their authenticity using objective methods.

The Schmid Report declares: "*Following the transmission of these new elements and within the framework of a criminal investigation, the US authorities included Dr Grigory Rodchenkov in their Witness Protection Programme*" (p. 11). Let us note, however, that the very fact of including G. Rodchenkov in the Witness Protection Programme cannot, by itself, constitute enough grounds to proclaim that all evidence provided by G. Rodchenkov are unbiased, made in good faith, and reliable.

The Schmid Report then goes on to claim: "*In addition to the email exchanges, the great number of documents, lists and excel spreadsheets produced by Dr Grigory Rodchenkov, were the basis of the samples selection for the forensic and biological analysis. The IOC DC understood that only a limited number of the emails and documents, transmitted by Dr Grigory Rodchenkov, were made public by prof. Richard McLaren*" (paragraphs four and five from the top of p. 15 in subsection 2.2.9).

¹⁶ The Independent commission Final Report № 1, November 9, 2015 // <https://wada-main-prod.s3.amazonaws.com/resources/files/wada_independent_commission_report_1_en.pdf>. Дата фиксации информации – 01.10.2016. Критический разбор см. в: *Понкин И.В., Гребенников В.В., Кузнецов М.Н.* Заключение по Итоговому отчёту «независимой комиссии» Р. Паунда, Р. Макларена и др. № 1 от 09.11.2015 [*Ponkin I.V., Grebennikov V.V., Kouznetsov M.N.* Critical analysis of the Final Report by the “Independent Commission” of R. Pound, R. McLaren and others dated 09.XI.2015 / *Ponkin I.V., Grebennikov V.V., Kouznetsov M.N.* Conclusion concernant le Rapport de la «Commission indépendante» de R. Pound, R. McLaren, etc. du 09.11.2015] // *Ponkin I.V., Grebennikov V.V., Kouznetsov 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. – М.: Buki-Vedi, 2016. – 230 p. <<http://moscou-ecole.ru/wp-content/uploads/2016/12/Book2016.pdf>>.

But if the "evidence" presented earlier by R. McLaren turned out to be unreliable or unfounded for other reasons, then it is highly likely that some other materials "saved" by him might turn out to be equally useless.

Inclusion in the Schmid Report of seemingly neutral passages from the McLaren Reports or reviews thereof is, we believe, done to create an impression of the authenticity of the McLaren Reports.

The Schmid Report states: "*At the end of October 2017, WADA's Independent Intelligence and Investigations Department acquired new intelligence concerning the former Moscow Laboratory, i.e. an electronic file **which was likely** the Laboratory Information Management System (LIMS) database of the Moscow Laboratory. This LIMS contains the testing data for the period between January 2012 to August 2015. **The Report of WADA on the analysis of these new findings will be published as soon as all the elements have been analysed.** WADA, Intelligence and Investigation Department, verified the authenticity of the database to ensure that **it has not been manipulated.** In a confidential Interim Report, the Head of the WADA Intelligence and Investigation Department noted he was sufficiently satisfied the electronic file is an authentic copy of the Moscow Laboratory LIMS, as the database was subject to a rigorous authentication process"* (last paragraph on p. 15 and first paragraph on p. 16 in subsection 2.2.10).

Even if one is to assume that such verification and authentication of the database mentioned have been performed (meaning that it is really the database of the Moscow Anti-Doping Laboratory) the possibility of its falsification by G. Rodchenkov himself and his accomplices (possibly, over an extended period of time) is for some unclear reason being completely ignored. Criminal experts not only in Russia but also in the USA know a great number of similar cases of database forgery.

But even if all happened as the authors of the Schmid Report attempt to persuade, it only confirms the guilt of G. Rodchenkov himself and his accomplices in committing their unlawful acts, but it does not prove deliberate involvement of the Russian athletes in this, nor does it prove, as claimed by R. McLaren, the existence of a hypothetical systematic large-scale criminal conspiracy of a number of government authorities of the Russian Federation (the Ministry of Sport, the Russian FSB) to assist systematic violation of the anti-doping rules and conceal such violations.

2.4. Anonymous sources

Similarly to the McLaren Reports, the Schmid Report claims that it based on an "enormous amount of information", yet at the same time the composition of this amount is not specified or clarified. The Report does not indicate which part of the materials from this amount has a direct bearing on the issues examined in the Report, nor specifies how the IOC DC checked (verified) such information: "*Since its creation in July 2016, the*

IOC Disciplinary Commission gathered an enormous amount of information; some of this information was transmitted confidentially. In order to avoid differentiation between confidential and non-confidential information, the IOC DC took the decision not to publish any of these elements as it would not be appropriate to publish only a part of the documentation upon which the IOC DC's conclusions are based" (p. 5).

*"The IOC DC analysed **all the information at its disposal, those confidential as well as those in the public domain.** This part of the report summarises the IOC DC's findings and analysis of these various elements" (p. 9).*

*"The IOC DC understands, from **one of the witnesses**, that this is due to the fact that during this period the Russian members of staff were mainly using their mobile devices to communicate, i.e. short text messages and phone calls" (p. 13).*

*"The IOC DC noted from oral **witnesses** that there was an evolution around 2011–2012: prior to this time, individual athletes were required to purchase doping products and/or to pay to cover-up their individual test results, when it seems that, as part of the scheme during the Olympic Winter Games Sochi 2014, the programme covered the costs of the manipulation of the doping tests" (p. 25).*

"The analysis of the documented, independent and impartial elements, including those confidentially transmitted to the IOC DC" (p. 24).

In reality the Schmid Report's authors use references to the materials of G. Rodchenkov, H. Seppelt, and R. McLaren that contain a great number of unreliable data misrepresented as evidence. Yet, at the same time, the Schmid Report contains findings on the criminal activities of G. Rodchenkov.

2.5. Materials of expert organizations without references to the objects and subjects of the examinations done, grounds for conducting thereof

"The University of Lausanne, School of Criminal Justice (ESC-LAD) was mandated to conduct the forensic analysis and the Lausanne University Hospital (CHUV) to carry out the biological analysis" (p. 5); "The results of the ESC-LAD forensic analysis as well as the CHUV biological analysis (detailed below) confirmed the existence of the tampering system during the Olympic Winter Games Sochi 2014" (last paragraph of subsection 2.2.9 on p. 15).

It should be noted that the authors of the Report evade the answer to a number of unavoidable, logic-based questions: 1) what is the connection between the materials submitted for the examination and the action of Russian athletes; 2) does the fact of discovering the facts of removing the caps of the bottles containing urine samples of Russian athletes deemed to be impossible to remove without the assistance of the producer of the bottles imply a logically, legally, or practically well-founded conclusion that it was the staff of the Russian Anti-Doping Agency or Russian persons acting with

permission and upon instruction of the chief staff of the Russian authorities or the Russian Olympic Committee who did so; 3) what are the guarantees of the absolute impossibility of any other individuals (apart from the staff of Russian organizations authorized to handle the athletes' samples) committing the manipulations with sample bottles containing urine samples at various stages of storing and handling these sample bottles? It therefore follows that the "investigation" conducted by Samuel Schmid is not complete, nor comprehensive (as well as the "investigations" of R. McLaren).

3. Analysis of the methodology used by the authors of the Schmid Report during its preparation

3.1. Arbitrariness of the "investigation" methods used by the authors of the Schmid Report

The Schmid Report claims: "*The IOC DC reminds that it has no investigation power similar to the one of the Law Enforcement Agencies. Thus it is dependent on the information available in the public domain, the elements published by the IP and the information shared voluntarily by the persons concerned*" (p. 5).

In other words, the IOC Disciplinary Commission while admitting that it lacked the scope of authority required to conduct the investigation (which the Law Enforcement Agencies have) declares that in the course of preparing the Report it used information received from three directions: data from the public domain sources, data published by R. McLaren and the information voluntarily shared by some (mostly anonymous) individuals.

The fact that the IOC DC uses public domain information without its verification or authentication (there is nothing in the Schmid Report that suggests proper verification of this information by the authors of the Report) cannot be deemed an acceptable, let alone, relevant investigation technique.

It is quite clear that the IOC DC, through acts of negligence and irresponsibility (having possibly done so deliberately) ignored manifold evidence of unreliability, significant deficiency of the McLaren Reports including those available in the public domain and did not take any steps to analyze, assess, and account for the objections and critical remarks from Russian sports organizations and responses to them¹⁷.

We believe that it is due to the application of these incorrect methods of investigation and preparation of the Schmid Report such results are obtained of which it is being said: "*this report presents a synthesis of the findings rather than a listing of all the elements reviewed*" (p. 5).

¹⁷ See references to criticisms of the McLaren Reports above.

3.2. Speculations in the Schmid Report:

The Schmid Report resorts to speculations on multiple occasions.

For example, it claims: "*The significant number of emails exchanged, as well as the chronology of the information exchanged within these emails, demonstrate the direct link between both Dr Grigory Rodchenkov, Mrs Natalia Zhelanova, Mr Alexey Velikodniy and the Vice-Minister Mr Yuri Nagornykh. Even though these EDP do not include any messages sent directly by the Vice-Minister, it is impossible to conclude that he was not aware of the system in place. Similar conclusions can be reached regarding Mrs Natalia Zhelanova*" (second part of the paragraph in the middle of p. 14).

The quote above clearly demonstrates the speculation that the individuals mentioned were involved in illegal activities without any authentication of the earlier declarations of G. Rodchenkov regarding this, on which this assumption is based.

Another speculation has been identified in the following passage from the Schmid Report. "*In one exchange of emails between Dr Grigory Rodchenkov and Mr Alexey Velikodniy regarding a footballer, Mr Velikodniy mentioned that "the decision is with VL for consideration and approval (YD is going to see VL today)". This single reference cannot be considered sufficient to prove personal involvement of the then Minister of Sport. This analysis was confirmed by Prof. McLaren during the press conference on 9 December 2016: Answering a question by a journalist regarding Mr Vitaly Mutko, Prof. Richard McLaren answered: "Your question about Mr Mutko was: did he know? Information is provided to the ministry and like any hierarchical organisation it flows upwards in the organisational structure. So I would think that the information came to him through the ministry. But it was the deputy minister who was in charge of the process I described. I don't have any direct evidence as to whether he knew or didn't know. I have met with him, I have discussed the matter with him, he didn't indicate to me that he knew". No independent and impartial evidence has contradicted this declaration*" (paragraphs of subsection 2.2.9 on the second half of p. 14 and at the very beginning of p. 15).

R. McLaren's words "*I would think*" (including in his replies at press conferences) is a way to express his opinion, instead of reporting facts, in such phrasing that would give McLaren a chance, in case of any criticism of his statements, to reply that it was merely his opinion of which he was convinced. This manipulative technique of misrepresenting opinion as fact is frequently used in debates but it is completely inappropriate in such sort of documents as a report of the investigation of anti-doping regulations abuses.

Any reasonable person would have no difficulty in understanding that the fact that any administrative body is a hierarchically organized structure does not necessarily

imply that the head of an administrative body has to know about all the actions of each of his subordinates, including unlawful actions, nor does it imply that if the chief officer does not act to stop such unlawful actions (unbeknownst to him), it means that he covers up such actions.

The statement of total awareness of an organization's chief officers of all the actions of their subordinates is plainly a speculation.

R. McLaren's argument that none of the "independent and impartial evidence" examined by him contradicts the statement that the information on doping abuse by a great number of Russian athletes was delivered to V.L. Mutko is an obvious example of a logical fallacy in rhetoric reasoning. The claims of "non-contradiction" are far from being sufficient for the statement quoted. The assertion that the Moon circles around the Earth, for example, is likewise in no contradiction to R. McLaren's claim that Minister of Sport V.L. Mutko was aware of the scale of the doping abuse in the Russian sport yet it cannot be used to support it as these statements lack a common frame of reference. Nor have any convincing evidence of the reliability of G. Rodchenkov's statements of the heads of the Russian Ministry of Sport and the Russian Olympic Committee being involved in the doping abuse cover-up been submitted.

The lexical construction "*it seems that*" suggests speculation: "*The IOC DC noted from oral witnesses that there was an evolution around 2011-2012: prior to this time, individual athletes were required to purchase doping products and/or to pay to cover-up their individual test results, when it seems that, as part of the scheme during the Olympic Winter Games Sochi 2014, the programme covered the costs of the manipulation of the doping tests*" (p. 25).

3.3. Use of manipulative techniques in the Schmid Report

The Schmid Report claims: "*The IOC DC has not found any documented, independent and impartial evidence confirming the support or the knowledge of this system by the highest State authority*" (p. 24).

But, in that case, on what grounds are real or imaginary unlawful actions of the group of individuals (linked to G. Rodchenkov) extrapolated onto senior officials in the Government (as well as the Russian Olympic Committee) and on that basis a conclusion is being made of the obligatory character of the collective responsibility of Russian athletes? Every year an enormous number of athletes from the USA, Germany, UK and other countries of the world are disqualified for illegal doping abuses. Yet there must be someone who supplies such doping substances, ensures their application and covers up these practices. Yet nobody uses this to draw conclusions about personal involvement in ensuring the use of doping and the guilt of the senior government officials in those countries who are engaged in dealing with the sports issues, and the need to disqualify all

the athletes from that country who participate in international competitions in their respective sports.

The Schmid Report, however, clearly spells out that the criminal scheme was allegedly built, at least, with the knowledge of the senior officials of the Russian Ministry of Sport: *"The detailed analysis of the e-mail exchanges attached to the IP Reports, allows to confirm the involvement of a number of individuals within the Ministry of Sport and its subordinated entities, such as CSP, VNIIFK, RUSADA, Moscow and Sochi Laboratories. All the independent and impartial evidence as well as the results of the forensic and biological analysis confirm this conclusion. Nevertheless, the independent and impartial evidence do not allow the IOC DC to establish with certitude either who initiated or who headed this scheme. On many occasions, reference was made on the involvement at the Minister of Sport's level, but no indication, independent or impartial evidence appeared to corroborate any involvement or knowledge at a higher level of the State"* (pp. 25–26).

That is, even the Head of the IOC DC Samuel Schmid shows that he understands how far-fetched and weak his argumentation is and makes a reservation that *"the independent and impartial evidence do not allow the IOC DC to establish with certitude either who initiated or who headed this scheme"* yet he still puts forward his speculations that the criminal scheme was allegedly built, at least, with the knowledge of the senior officials of the Russian Ministry of Sport.

Another striking example of manipulation is a passage from the Schmid Report in which the speculations about the involvement of the Russian Ministry of Sport in the systemic large-scale conspiracy of a number administrative bodies of the Russian Federation (Russian Ministry of Sport, Russian FSB) to assist severe systematic infringements of the anti-doping regulations and cover-up of those infringements are based on the following: *"The IOC DC noted the evolution in the wording used by Prof. Richard McLaren. The "State-run system" was amended to "An institutional conspiracy existed across summer and winter sports athletes who participated with Russian officials within the Ministry of Sport and its infrastructure, such as the RUSADA, CSP and the Moscow Laboratory, along with the FSB for the purposes of manipulating doping controls"* (last paragraph of subsection 2.2.7 on p. 12); *"This assertion is confirmed by Prof. Richard McLaren's change of wording in his Final Report: in his Preliminary Report, he considered the existence of a "State-dictated failsafe system", including the activity of the Moscow Laboratory operating "under State directed oversight and control of its anti-doping operational system"; but, in his Final Report, he amended the wording to: "An institutional conspiracy existed across summer and winter sports athletes who participated with Russian officials within the Ministry of Sport and its infrastructure, such as the RUSADA, CSP and the Moscow Laboratory,*

along with the FSB for the purposes of manipulating doping controls”” (last paragraph of clause 8 of subsection 3.1 – p. 26).

The above passage from the Schmid Report makes use of a manipulative technique of misrepresenting opinion as fact.

R. McLaren did indeed change the wording of his conclusion yet even in that wording his conclusion was not proved either.

And besides, such transformation betrays the lies behind the First McLaren Report whose author, when faced with well-founded criticism, started to hastily amend, clean up the wording of its assertions and conclusions to eliminate the legal vulnerabilities. This further confirms that in his first report R. McLaren presented a number of unsubstantiated and false statements and conclusions, that is, he had lied.

Involvement of individual corrupt officials (which, it seems, might happen in any country) in a conspiracy (even if it had really existed) does not imply, nor prove, the existence of a State-run and systemic criminal conspiracy of a number of administrative bodies of the Russian Federation (the Russian Ministry of Sport, the FSB) to assist severe systematic infringement of the anti-doping regulations and cover-up of such infringements.

It must be admitted that the references in the Schmid Report to false allegations made by R. McLaren do characterize the very Schmid Report accordingly.

The existence, as it turns out to be, of, at least, one (but a grave one; in reality - many more) false statement among key conclusions of the McLaren Report leads to logically inevitable serious questions to it, as well as questions to the authors of the Schmid Report, to be specific: on what grounds do they presume, in effect, the prejudicial character of the McLaren Reports despite the fact that they contain critical errors identified in the Schmid Report itself.

Subsection 2.4 "Observations made by representatives of the Russian authorities" (pp. 21–23) is deliberately presented in such a way as to create an impression that the Russian authorities allegedly indirectly and implicitly accepted the "fact" of the existence of a State-run system - a systemic large-scale criminal conspiracy of a number of administrative bodies of the Russian Federation (the Russian Ministry of Sport, the FSB) to assist severe systematic infringement of the anti-doping regulations and cover-up of such infringements.

The Schmid Report also contains cases of blatantly twisting the facts: "*at the time they fully trusted Dr Grigory Rodchenkov who was then respected by everybody and highly regarded*" (p. 22). The universal respect to G. Rodchenkov, and the recognition of his authority is completely out of the window.

It is also important to point out that the meaning of regrets expressed by the above-mentioned representatives of the Russian authorities regarding the problems of the

Russian system of counteracting doping (and every country faces such problems to some degree), including the failure to prevent and curtail the criminal activities of G. Rodchenkov, is deliberately substituted (distorted) in the Schmid Report - by way of interpreting said declarations as if they confirmed the conclusions of the Schmid Report regarding the Russian sports (see clause 12 of subsection 3.2 - p.27).

It has been discovered that the Schmid Report makes use of references to future events yet to happen.

Especially illustrative in terms of revealing the lack of objectivity in the Schmid Report are references in it to some future events represented as substantiation of the findings of the Report although those events had not yet occurred, their time of occurrence, probability and contents are unknown, undefined. This would also be one of the techniques to manipulate the mind of the reader of the report.

For example, it is being stated: "**WADA is currently analysing all these data, prioritising these analysis through a target group of samples having presumptive Adverse Analytical Findings (AAF). The head of WADA, Intelligence and Investigation Department, already considers that these new elements "strongly support the existence of Programme of protection for Russian athletes. A key feature of that Programme was the complicity of the Moscow Laboratory and the DPM and Sample Swapping practices. While the LIMS data is not in itself a sufficient evidence to establish an anti-doping rule violation of "Use", it is nonetheless credible evidence that can be used to complement other evidential holdings". The Final Report by WADA on the analysis of all these presumptive AAF will be published at a later date. In the view of the results of the analysis to be carried out by WADA, possible individual consequences will have to be taken by the competent International Federation and/or the appropriate authorities. WADA has already organised a meeting with the IFs in order to provide support on the understanding of this new evidence. The IOC DC notes that the preliminary findings given on these new independent and impartial evidence confirm the existence of a systemic doping scheme in Russia**" (last 5 paragraphs of subsection 2.2.10 on p. 16).

Let us note, that for the purposes of proof, it is not the subjective opinion of a specific individual that matters, but the existence of convincing evidence. Otherwise, a manipulative technique of misrepresenting opinion as fact becomes apparent.

And besides, the above-mentioned quote (and a few other passages) from the Schmid Report clearly demonstrates the use of a technique of building-up (piling-up) an array of continuous layers of falsified and, as the argument progresses, even more falsifiable information. This quote attracts attention by the words of some "final report" which, so pledge the authors of the Schmid Report, will be published "at a later date", and the analysis, "*to be carried out by WADA*", while the conclusions are being drawn on the basis of, among other things, references to some future events yet to happen and the

results of which cannot be known at present: "*In the view of the results of the analysis to be carried out by WADA*" (p. 16).

In the Report, by way of amassing a single array of data on accusing Russian athletes of doping abuse, including H. Seppelt programmes on ARD and a number of newspaper articles (whose authors presented no evidence for their allegations), the Pound-McLaren reports based on the above; based on all of those and, besides, again on the unfounded allegations of G. Rodchenkov, McLaren Reports, and finally the Schmid Report based on all of the above. Effectively, an hierarchically built pyramid of lies is being constructed. None of the materials above was completely trustworthy, nor has been duly founded. None of the materials above, should they have been considered as part of civil, criminal or administrative proceedings (or in any arbitration proceedings in any other area except sports), would have been taken into account in full by the court as authentic, nor entered into the case files as all those materials contain irreparable critical defects - defects of proof, logical errors, defects of corroborability of the declared sources.

On the other hand, each subsequent material not only effectively presumes the truth and well-foundedness of the preceding conclusions and arguments (reports, accounts, newspaper articles, interviews, films, etc.), but also amplifies the preceding materials by their own evaluations of them, which gives the preceding materials a semblance (appearance) of rigorous and reliable evidence.

It is important to note that, in the Schmid Report, there are significant distortions of probabilistic statements contained in the McLaren Report, i.e. statements that are assumptions (with a certain degree of probability). By way of notional transformation the probabilistic statements equipped with references to the source, the McLaren Report, become, in the Schmid Report, absolutely proved facts presented in definitive and unequivocal manner. In other words, if R. McLaren in the wording of some of his findings in his reports used the vocabulary expressing the probabilistic nature of said findings, then in (chronologically subsequent) the Schmid Report, in relation to the McLaren Reports, categorical remarks had already been spoken to convince the readers that the findings of the McLaren Reports are unconditionally unequivocal, authentic, duly substantiated and confirmed by facts.

As an example one could cite a specific system of marking the outgoing e-mails presented in the Schmid Report as clearly confirmed and the one that demonstrably existed.

"The email system is based on three phases:

– the first phase – email transferring the 7-figures number of the test with its results including the substance found;

– second phase – email adding the athletes number, the capital letter A plus 4 figures, in order to allow the identification of the athlete concerned, sometimes including the competitions results and/or the athletes' nationality;

– third phase – email including the decision “Save” or “Quarantine”, with sometimes reference to the Vice-Minister as being part of the decision" (p. 14).

Authors of the Schmid Report attempt as best they can to bleach and justify, disguise the critically significant failures of the McLaren Reports (speculations, inconsistencies, manipulations): "*After discrepancies in the unofficial English translations of the EDP published on 9 December 2016 were noticed, WADA requested an official English translation of all these EDP, which was published in May 2017. The IOC DC's analysis is solely based on this official English translation*" (p. 12).

In reality, it was not the "discrepancies" that were identified in the McLaren Reports, but the most outrageous errors, direct lies, manipulations, and speculations.

It is obvious that the chosen carefully falsified version of the large-scale systemic doping abuse by the Russian athletes (with involvement of the State authorities) is being in every possible way artificially complemented by means of the latest speculations that lend a veneer of reliability to the McLaren Reports, the Schmid Report, and their findings.

For example, the existence of a gap between 20.01.2014 and 02.03.2014 in the allegedly referential and allegedly verified e-mail correspondence (lack of "correspondence" material in this period) is explained in the Schmid Report in the following manner: "*The IOC DC understands, from one of the witnesses, that this is due to the fact that during this period the Russian members of staff were mainly using their mobile devices to communicate, i.e. short text messages and phone calls*" (second half of the third paragraph of subsection 2.2.9 on p. 13).

What is the concrete basis for this conclusion? What exactly did yet another anonymous individual say, what was the basis of his assumptions? What gives us the reason to believe that evidence to be true? The Schmid Report does not explain any of that, presumably due to the fact that the authors of this Report had other tasks on their minds.

Together with the account of speculations, unreliable information and unfounded conclusions, the Schmid Report includes true statements to conceal the lies behind them and serve this potpourri to the readers of the Report.

To give the Schmid Report the appearance of authenticity it is filled to the brim with textual passages of irrelevant information (references to abstract matters) that do not make any point at all in the context of this Report, such as:

– background information on the Russian sports authorities (first six paragraphs of subsection 2.1.1 on p. 6, first paragraph of subsection 2.1.2 on p. 7, first paragraph of

subsection 2.1.3 on p. 7, greater part of subsection 2.1.4 on p. 7, greater part of subsection 2.1.5 on p. 7 and many others),

- list of individuals mentioned in the McLaren's Reports (last paragraph on p. 6, second half of subsection 2.1.2 on p. 7, end of subsection 2.1.3, end of subsection 2.1.4 on p. 7, end of subsection 2.1.5 on p. 7, end of subsection 2.1.6 on p. 8, etc.),

- short referential overviews of the McLaren Reports without any criticism, verification or authentication thereof (subsection 2.2.2 on pp. 9-10),

- references to ongoing criminal investigations carried out by national law enforcement agencies (for example, in France, as part of the proceedings not related to the Russian sports – second paragraph of subsection 2.2.3 on p. 10).

It is the creation of the appearance of authenticity, the provision of facts for the Report in question, that, we believe, is the purpose of the above-mentioned textual passages of this Report.

In the conclusion of the Schmid Report we find the dramatic build-up of emotions, a tragic tone not substantiated by anything in the Report itself and the materials on which this Report is based:

"Due to the extreme gravity of the allegations" (p. 24);

"The IOC DC confirms the seriousness of the facts, the unprecedented nature of the cheating scheme and, as a consequence, the exceptional damage to the integrity of the IOC, the Olympic Games and the entire Olympic Movement" (p. 24);

"...confirm a widespread culture of doping in Russia, affecting numerous sports for a long period of time" (p. 24).

Yet even these remarks had no proper substantiation and confirmation in the Schmid Report.

Conclusions

The Report of the IOC Disciplinary Commission chaired by Samuel Schmid issued 02.12.2017 and presented to the IOC Executive Board is characterized by significant irreparable failures, clearly pronounced insufficiency of evidence and the anecdotal character of most of its statements, by the use of manipulative techniques; it is, to a considerable degree, based on unverified and unreliable information, contains some inconsistencies, a great number of speculations and arbitrarily constructed and false allegations. As a consequence of which said Report can, on the whole, be deemed biased, unsubstantiated and unreliable, its conclusions unfounded and at odds with facts.

The Schmid Report cannot have prejudicial implications for the purpose of making the decisions by IOC and WADA to enforce restrictions and punishment to Russian athletes, sports organizations, and national teams.

Taking the above-mentioned arguments into account, the findings of the Schmid Report are to be declared legally void and, by implication, said Report cannot be applied as a legally and factually relevant basis and validation to enforce restrictive measures and punishment upon Russian athletes, sports organizations, and national teams.

26.I.2018

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