Ponkin I.V., Bogatyrev A.G., Redkina A.I. Critical analysis of R. McLaren's Report dated 16.07.2016

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Introduction

The subject of this critical analysis is the content of the Report "WADA Investigation of Sochi allegations", dated July 16, 2016 prepared by Richard McLaren (Richard H. McLaren), referred to as “Independent Person” (IP), (hereinafter – the Report, R. McLaren’s Report)[1].

The purpose of this critical analysis is to evaluate legal possibility and validity of using the Report “WADA Investigation of Sochi allegations” dated 16.07.2016, drawn up by Richard McLaren, completed at the request of the World Anti-Doping Agency (hereinafter – WADA), and submitted to the President of WADA, as a ground and justification for applying restrictive and repressive measures in respect of Russian athletes, sports organizations, and national teams, including as a ground and reason to ban the Russian Paralympics team from competing at the Rio 2016 Paralympics and a number of Russian athletes’ ban from competing at the 2016 Rio de Janeiro Olympics.

Fundamentally agreeing with R. McLaren’s viewpoint on the inadmissibility of the distribution and use of doping substances in sports, however, we have to note that the Report under study has a number of critical defects that make it impossible to see it as reasonably sufficient and unprejudiced. As this Report has already inflicted substantial damage to the entire Russian sports in general; as it has played its role in strengthening the ideologically motivated attempts to remove all the Russian athletes from the list of the participants in the Olympic Games 2016; as it has further provoked the politically and ideologically motivated demands on cancellation of World Cup 2018 in Russia, the relevance of the analysis of this Report and the assessment of the validity of its conclusions is obvious.

Page numbering for the quotations is performed according to the original document in English.

[1] 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>.

Main Part

1. Critical analysis of content of the R. McLaren's Report

1.1. Evaluation of the "investigative methodology" in the Report by R. McLaren

R. McLaren claims that he "*In doing so, the IP* ***has only made Findings in this Report that meet the standard of beyond a reasonable doubt***" (pp. 4–5).

However, in reality, a sufficient number of statements in the Report lead to sound and reasonable doubts. And it will be proved below.

First of all, it is the lack of the proper description and justification of the methodology applied in the Report which causes reasonable doubts. According to the statement on p. 2 of the Report, "*this Executive Summary describes the formation of the IP and sets out the Terms of Reference and a brief summary of the investigative methodology used*". However, the description of the "investigative methodology used" in the Report by R. McLaren is not represented, not in the summary or further.

Chapter 2 of the Report, "The IP Investigation Method", on reasonable grounds, is to be characterized as falsified because, in reality, it does not show or explain the investigative methodology. Section 2.1 "Introduction" is dedicated to the survey of the materials released through newspapers and television, having no relation to the actual description of the stated methodology. Section 2.2 "The Investigation Process" is overfull with acknowledgements by R. McLaren to some certain persons who assisted him, according to his statements, or those who he "kept informed" (below we will touch on this section). Section 2.3 "The Investigation Procedure" (1 page in total) brings the whole description of the procedure to the notion that there was evidence obtained from G. Rodchenkov; to empty declarations that G. Rodchenkov is "*truthful"* (p. 21), that he "*is a credible and truthful person*" (p. 21); to articulating the opinion that there is no sense and use in meetings with people residing on the territory of Russia (p. 22), and with Russian government officials (p. 22); to indicating that a number of materials were received from "*one important government representative*" (p. 22). Section 2.3 concludes with the text fragment, which makes sense to quote in full: "*All the allegations that were made have been followed up by the IP and Findings have been made along with revealing other evidence discovered during the course of the investigation. The allegations, which we find to have been established, attack the principle of clean sport and clean athletes which are at the very heart of WADA's raison d'etre*" (p. 22).

It further states: "*2.3.1 IP Findings.1. Dr. Rodchenkov, in the context of the subject matter within the IP mandate, was a credible and truthful person. 2. All other witnesses interviewed by the IP investigative team were credible. Their evidence was only accepted where it met the standard of beyond a reasonable doubt*" (p. 23). Section 2.4 is devoted to the description of the Taskforce of the International Association of Athletics Federations. The information provided to the Taskforce by R. McLaren is presumed as "*met the highest level of legal proof*" (p. 24). The rest of this section refers to the publication of R. McLaren's statement on the Canadian wire service.

It is clear that Chapter 2 of the Report, "The IP Investigation Method", in fact, gives no explanation or description of any methodology of collection, assessment, and analysis of the facts.

The Chapter has no indication and, certainly, no description of the logic and contents of the research activities carried out by R. McLaren personally or in cooperation with other parties, of the sequences of research activities and their stages, of the particular research methods applied. There is no description of the methods for checking and confirming the allegations, claims, and "accusations" made by the third parties and underlying R. McLaren's Report.

In general, almost no relevant information is given in the Report.

And that could only mean the following: there is no scientifically recognized methodology of objective research used, and the arguments of the Report were tailored to the politically and ideologically motivated conclusions written in advance. Further, we provide a lot of evidence to prove that.

As the only exception, in Chapter 2, which could formally be assessed as setting out the investigative methodology, the following text fragment can be specified: "*All other witnesses interviewed by the IP investigative team ... **Their evidence was only accepted where it met the standard of beyond a reasonable doubt***" (p. 23). But even in this case, the relevance of the statement tends to zero, as the well-known approach to proving in the Anglo-Saxon law, reflected in the lexical construction "requirements of the lack of reasonable doubts", in R. McLaren's Report turned into a rhetorical cover of unproven facts. This Report leaves not disclosed the most important - how exactly the above mentioned "evidences" were assessed, what instruments were used to verify their accuracy to meet the requirements of this standard.

Another more or less intelligible text is found in Chapter 1, "*The IP **conducted a number of witness interviews and reviewed thousands of documents**, employed cyber analysis, conducted cyber and forensic analysis of hard drives, urine*

sample collection bottles and laboratory analysis of individual athlete samples" (p. 5). But this information is insufficient. All this requires a detail disclosure. In particular – what exactly was the subject of "cyber-analysis" (from the quoted text of the Report it is impossible to understand whether such analysis was carried out by R. McLaren personally), if the Report talks mostly about opening the bottles and replacing their contents. We can assume that we are told about some printouts or screenshots of questionable forensic value, of obtained illegally, or, that can not be excluded, just fully fabricated, files of correspondence between some individuals. But this kind of Report should not and can not contain so many uncertainties.

According to the Report, the primary technique for the collection of key information, in fact, was the following: "*The IP and his investigators interviewed and personally met the principal witness, Dr. Rodchenkov… Dr. Rodchenkov is credible and truthful in relaying to me the testimony he gave which is the subject matter of this Report*" (p. 21).

It should also be noted that the implementation of the stated goals and objectives of the Report, obviously, could not avoid the on-site visit and conducting the works ("investigation") in place. The approach, realized contrary to what was said in the Report, is the brightest innovation in the offense investigation world practice. The unfairness and prejudice are obvious.

However, the Report stated that R. McLaren and his anonymous "investigative team" of unknown character and composition did not intend to conduct the proceedings on site, "*The IP* ***did not seek*** *to interview persons living within the Russian Federation*" (pp. 8, 22).

R. McLaren said: "*Therefore, I did not hesitate in coming to the conclusion that within the context of the subject matter that was my mandate he is a credible and truthful person****. I do not need to go further afield in assessing his credibility as it is beyond the scope of my inquiry***" (p. 21).

Assessment of the evidence reliability is an essential and integral part of any investigation (an investigation conducted by the investigating authority, journalistic investigation, etc.). This is obvious to anyone but, judging by the Report, not to R. McLaren.

The statement found in the Report: "***did not permit*** *compilation of data* ***to establish an antidoping rule violation***" (p. 4), in itself, deflates the findings of the Report.

If the facts had not been established, then, where did the rough invective conclusions of the Report come from?

There are so many lapses of this kind in the Report, that they turn it into a set of conjectures and eliminate any possibility to see it as a serious document that contains a compelling rationale of the findings noted.

Let us show more statements of that same kind:

"*it must be recognised that **we have only skimmed the surface** of the extensive data available*" (p. 4);

"*the compressed time frame in which to compile this Report **has left much of the possible evidence unreviewed***" (p. 25);

"*This Report **has skimmed the surface** of the data that is available or could be available*" (pp. 25–26);

"*the highly compressed timeline has meant that the IP investigative team has had to be selective*" (p. 4);

"***The precise method** used by the FSB to open the Sochi sample bottles **is unknown**. The IP experts conclusively established that the caps can be removed and reused later*" (p. 73);

*"The IP investigators **were not able to confirm** the presence of Dr. Rodchenkov's fingerprints or DNA on any of the B sample bottles*" (p. 73);

"*the IP **has not found communications** between FSB Blokhin and his superiors in the FSB chain of command, that is not surprising given that the FSB is a secret service organization*" (p. 59).

The question of, what, then, did R. McLaren and persons involved manage to establish and prove, in this case turns out to make no sense. The above quotes from the Report speak for themselves. To read the Report, really and truly, critical reasoning is an essential skill.

Most of the "evidence" is set out in the style of yellow press, "*was a simple but effective and efficient method for direction and control under the Deputy Minister of Sport to force the Laboratory to report any positive screen finding as a negative analytical result. **The disappearing positive!***" (p. 10); "*the Moscow Laboratory **was the final failsafe protective shield** in the State directed doping regime*" (p. 41).

This "disappearing" was realized, as stated in the Report, by the following: "*laboratory personnel **would falsify the screen result***" (p. 11). In practice, as stated in the Report, it was accomplished as follows: "***Through the efforts of the FSB, a method for surreptitiously removing the caps** of tamper evident sample bottles containing the urine samples of doped Russian athletes had been developed…*" (p. 12).

What kind of "*surreptitiously removing the caps*" method ("some method" as it is called in the Report) is meant is not made clear in the Report. Instead, it is

claimed that the use of such a method was confirmed, "*The IP has developed **forensic evidence** that establishes **beyond a reasonable doubt some method** was used to replace positive dirty samples during the Sochi Games*" (p. 12). "***Forensic examination of these bottles found evidence** of scratches and marks confirmed tampering*" (p. 17).

What kind of forensic examination data was obtained, what person (what persons) and of what qualification (what kind of confirmation of qualification was represented) were involved, and most important – on what grounds and using what materials was it carried out, – the Report is silent again.

In this Report, almost all the arguments have the following character: *some persons used some techniques, that have been confirmed somehow by some other persons, who applied some other methods as well, which was reported about by some witnesses*. It should be noted, that even yellow press authors try to write more clearly and convincingly.

The Report states: "*The IP investigation, assisted by forensic experts, has conducted its own experiments and **can confirm**, without any doubt whatsoever, that the caps of urine sample bottles can be removed without any evidence visible to the untrained eye*" (p. 12).

Common sense predetermines that the detection of the method for removing caps from sample bottles can not automatically, by itself, prove that this is exactly what was done in practice, specifically – by some Russian officials. But in the Report by R. McLaren requirements of common sense and logic are ignored so often that one can speak of illogicality as one of the original principles of the preparation of this Report.

The Report states: "*The FSB was intricately entwined in the scheme to allow Russian athletes to compete while dirty. The FSB developed a **method to surreptitiously open** the urine bottles to enable sample swapping*" (p. 13).

Obviously and logically that if R. McLaren witnessed a demonstration of a method of surreptitiously opening bottles by other persons, besides those unnamed FSB operatives, then this method if quite widely known.

The Report further states that "*A and B bottles would pass through **the "mouse hole" from the aliquoting room** inside the secure perimeter of the Sochi Laboratory **into an adjacent operations room**, outside the secure perimeter*" (p. 14); "*the quaint solution of passing dirty **samples through a mouse hole drilled** between the aliquoting room in the secure area of the laboratory and the adjacent "operations" room on the exterior of the secure area*" (p. 64). However, no evidence

of this hypothesis is given, the only prove is solely unsubstantiated allegations of G. Rodchenkov (or, closer to the truth, his story about his own illegal activities).

As the most vivid manipulative technique, used in R. McLaren's Report, we should highlight the following. G. Rodchenkov's illegal actions are listed: "*The Report has already referred to the doping program* ***using the athlete cocktail developed*** *by Dr.* ***Rodchenkov***" (p. 62), "***Rodchenkov*** *and laboratory staff then* ***adjusted*** *the clean urine with salt, diluted it with water*" (p. 44); "***Rodchenkov developed*** *a steroid cocktail optimized to avoid detection*" (p. 49). However, further in the Report those actions are extrapolated, the responsibility is transferred to the state, without any proof imputing the fault for all the illegal actions of G. Rodchenkov on the state, state authorities of the Russian Federation: "***The picture that emerges from all of the foregoing is an intertwined network of State involvement through the MofS and the FSB in the operations*** *of both the Moscow and Sochi Laboratories. The FSB was woven into the fabric of the Laboratory operations and the MofS was directing the operational results of the Laboratories*" (p. 60). And G. Rodchenkov himself is definitively removed out of this criminal scheme in a remarkable manner and showed as "*credible and truthful person*" (p. 21), because, allegedly, "*Laboratory was merely a cog in a State run machine, and not the rogue body of individuals that has alleged*" (p. 35).

This technique is not and could not be recognized as anything but irresponsible and unethical manipulation.

The Report states: "*The* ***veracity*** *of Dr. Rodchenkov's statements to The New York Times article* ***is supported by the forensic analysis of the IP which included laboratory analysis of the salt content of samples*** *selected by the investigative team*" (p. 15); "*The Laboratory analytical analysis has established that some samples had salt levels in excess of what can be found in a healthy human urine analysis, thereby confirming interview evidence that salt had been added*" (p. 75).

Thus, the following main arguments are presented in the Report by R. McLaren:

1). There were found micro-scratches on the bottles. Logically, there are reasonable questions about who and how can ensure that those micro-scratches had not been on the sterile bottles before collecting samples, while storing at the manufacturer's place, that those had not appeared at the primary sample collection stage, and who and how had checked it. But these questions are ignored in the Report, while many pages of the Report are devoted to the discussion of the scratches issue (pp. 45–48).

2). The samples revealed some variation in salt content that, in fact, is non-referential to the range of issues discussed in the Report and proves nothing.

The Report by R. McLaren repeatedly uses manipulative techniques that substantially depreciate the Report as a whole, and its conclusions in particular. The fact of the use of such techniques in the Report, in itself, proves its original bias, adaptation to create a deceptive line of arguments in favor of, in very deed, prearranged politically motivated conclusions.

In particular, we are talking about the Report containing too many "references to nowhere", referencing something supposedly available, but not indicated in the Report (similar to – "we have it, but we will not show it to you"):

In the text fragment of the Report under study: "*The IP* ***can confirm the general veracity of the published information*** *concerning the sample swapping that went on at the Sochi Laboratory during the Sochi Games*" (p. 6) – such promises that "*The IP* ***can confirm***", in fact, do not make sense. Those particular evidences would be relevant and would be of value, but they are not represented.

Excessive use (to the point and not to the point, always, too often) of lexical structures "without doubt", "beyond a reasonable doubt" (pp. 5, 6, 12, 23, etc.), known in legal documents of the Anglo Saxon law, cannot replace and substitute the expected relevant and convincing evidence in the Report by R. McLaren.

And in the absence of the latter, it looks just as a rhetorical cover for the absence of real evidence and relevant arguments. The declarations presented in abundance in the Report and not having convincing and evidentiary disclosure in the Report, such as: "*The IC exposed*" (p. 6), "*The IC Report detailed*" (p. 6), "*The outcomes of the IP add a deeper understanding*" (p. 6–7), "*The IC uncovered a system within Russia*" (p. 8) – do not add to the credibility of the Report.

R. McLaren states: "*in order to demonstrate that* ***we have hard credible evidence*** *we have chosen to publish selected portions of the evidence we have obtained*" (p. 26).

But in reality, further in the Report there is no relevant and convincing evidence given.

In the absence of relevant arguments, self-praising of this kind: "*however,* ***we are confident that what we have found meets the highest evidentiary standard and can be stated with confidence***" (p. 26) – doesn't just look unconvincingly, but also completely unserious.

This principal unsubstantiality of the Report expresses a grave lack of respect to its readers and also raises the question of faking of the findings in the Report.

The fact that R. McLaren himself named himself “independent person” and he was called so at WADA, absolutely does not mean that each of his words has to be taken on faith uncritically. Even if we assume, that, until now, Robert McLaren has been a model of crystal clear honesty and objectivity, then it would not allow him to avoid the obligation to prove his findings and explain how those have been obtained.

1.2. Evaluation of the stated objectives and the subject of the “investigation”, their conformity with the conclusions of the Report

The subject of the "investigation" by R. McLaren, as declared, are the “allegations” (also the word “testimony” is used) of G. Rodchenkov: “*On 19 May 2016 the World Anti-Doping Agency (WADA) announced the appointment of an Independent Person (IP) to conduct an investigation of the* ***allegations made*** *by the former Director of the Moscow Laboratory, Dr. Grigory* ***Rodchenkov***” (p. 2); “*The IP and his investigators interviewed and personally met the principal witness, Dr. Rodchenkov. I have concluded that Dr.* ***Rodchenkov*** *is credible and truthful in relaying to me the* ***testimony he gave which is the subject matter of this Report***” (p. 21).

However, according to the results of the “investigation”, it is obvious that such large-scale and radical conclusions couldn’t be made.

Yet this Report is called “WADA Investigation of Sochi allegations”. That is that the subject, in the title of the Report, is some "accusations" on the part of WADA.

Unreasoned statements of G. Rodchenkov and other persons (unnamed, except V. Stepanov), legally and actually, quite unreasonably are evaluated and positioned as “allegations”: “***All the allegations that were made have been followed up*** *by the IP and Findings have been made along with revealing other evidence discovered during the course of the investigation*” (p. 22). In what order, by whom specifically, within the framework of what procedure, and on what grounds these allegations were brought, – all these substantive points are simply ignored in the Report.

It is not possible to understand what exactly is the subject of the investigation in R. McLaren’s Report from the text of the Report, since it has too much ambiguity.

Thus, it is reasonable to talk about uncertainty of R. McLaren’s Report subject, predetermining unreliability and other critical drawbacks of this Report.

The third objective of the Report (the “third authority”): “*3. Identify any athlete that might have benefited from those alleged manipulations to conceal*

positive doping tests" (p. 3), in the same Report is disavowed: "*The third paragraph of the IP's mandate, identifying athletes who benefited from the manipulations, has not been the primary focus of the IP's work. The IP investigative team has developed evidence identifying dozens of Russian athletes who appear to have been involved in doping. The compressed timeline of the IP investigation* ***did not permit compilation of data to establish an antidoping rule violation****. The time limitation required the IP to deem this part of the mandate of lesser priority. The IP concentrated on the other four directives of the mandate*" (p. 4).

It is reasonable to talk about the defects of the other objectives set for the Report by R. McLaren.

In addition, the analysis of R. McLaren's Report leads to the conclusion about the absence of reference of the stated objectives and the subject of the Report to the findings of the Report.

1.3. Evaluation of the factual and other source base of R. McLaren's Report

1.3.1. G. Rodchenkov's statements as one of the sources of information in R. McLaren's Report base

The main source of information laid down in the Report base is declared to be the statements and materials provided by G. Rodchenkov.

Whereas, as for the materials presented by G. Rodchenkov, the whole idea reduces simply to indicate that such materials were transferred, in some form, in some volume (all that is abstract): "*Dr. Rodchenkov's public statements triggered the creation of the IP investigation. He cooperated with the investigation, agreeing to multiple interviews and providing thousands of documents electronically or in hard copy*" (p. 7).

No information on how to confirm the findings and verify the data shared by G. Rodchenkov, on examination and confirmation of the validity of the "documents" provided by him is given in the Report.

Just allegedly unsubstantiated conclusions about this person:

"*he has been truthful with the IP*" (p. 7);

"*Rodchenkov* ***provided credible evidence***" (p. 14);

"*Dr. Rodchenkov is* ***credible and truthful*** *in relaying to me the testimony… has been completely truthful in his interviews with me"* (p. 21);

"***Rodchenkov**, in the context of the subject matter within the IP mandate, **was a credible and truthful person***" (p. 23);

R. McLaren says about G. Rodchenkov and his statements and materials: "*Therefore, I did not hesitate in coming to the conclusion that **within the context of the subject matter** that was my mandate **he is a credible and truthful person***" (p. 21).

It seems that the only relevant information in this statement (if not in the whole Report) is - "not hesitate".

Attempts to convince that Rodchenkov's statements were proved by objective means look quite unconvincing:

"***The veracity of Dr. Rodchenkov's statements** to The New York Times article is supported by the forensic analysis of the IP which included laboratory analysis of the salt content of samples selected by the investigative team*" (p. 15). But nothing else in the Report in support of G. Rodchenkov's statements is found.

The abovementioned circumstances do not allow us to consider such information and materials relevant sources.

1.3.2. Information from newspapers and television as one of the information sources in the base of R. McLaren's report

It is said a lot in the Report that R. McLaren uses as true and verified information obtained through newspapers:

"*In the first part of May the American newsmagazine 60 Minutes and then The New York Times reported*" (p. 2);

"*means of concealing positive doping results than **had been publically described** for Sochi*" (p. 9);

*"The swapping occurred largely **as described in The New York Times** article*" (p. 14);

"*The veracity of Dr. Rodchenkov's **statements to The New York Times article**…"* (p. 15);

"***The first ARD documentary**[2] **aired** in early December of 2014*" (p. 16);

"*On 08 May 2016, **the American CBS newsmagazine, 60 Minutes, aired a story** of doping allegations occurring during the Sochi Games. During a segment of the 60 Minutes program, whistleblower, Mr. Vitaly Stepanov, a former employee of the Russian Anti-Doping Agency (RUSADA) … On the basis of recorded*

[2] For more details see: *Slobodtchikov V.I.* Critical analysis of the film "Doping – Top Secret: Showdown for Russia" ("Geheimsache Doping: Showdown für Russland") // <http://www.moscou-ecole.ru/lib/Slobodtchikov_Critical-analysis.pdf>.

conversations between Stepanov and the former Director of the WADA-accredited Moscow Anti-Doping Laboratory (the "Moscow Laboratory"), Dr. Grigory Rodchenkov ("Dr. Rodchenkov"), the ***broadcast claims that****…*" (p. 18);

"***The New York Times published the article****, "Russian Insider Says State-Run Doping Fueled Olympic Gold," on 12 May 2016* ***alleging****…*" (p. 18);

"*The IP has strong evidence that verifies and corroborates a substantial part of* ***The New York Times article***" (p. 61);

"*It was reported by The New York Times…*" (p. 64).

Such references (and in such quantities) are not just totally unconvincing, but convert the entire Report by R. McLaren into a number of speculations, a compilation of newspaper clippings and television transcripts, without giving any opportunity to assess the Report as a thorough and convincing analytical legal product.

Especially inappropriate are the references to newspapers and television in Chapter 2 of the Report, "The IP Investigation Method".

1.3.3. Materials from some certain "e-mails"

Another source stated was "*email evidence available to the IP*" (p. 38). The sources of these "e-mails" in the Report are not represented. Just as nothing is said about how the authenticity of this correspondence was confirmed and verified. This circumstance does not allow to consider such materials to be appropriate sources.

1.3.4. Other sources

According to the Report, "*the mandate was not limited to just the published allegations. The IP* ***examined other evidence*** *of what was transpiring in the Moscow Laboratory before and after the period of the Sochi Games*" (p. 6).

What exactly is "other evidence", in addition to the provided by G. Rodchenkov, the Report does not reveal. If we assume those described in Chapter 3, in this chapter, everything is equally vague, imprecise.

Another statement in the Report regarding the sources used: "*What the IP investigation adds to the bigger picture… With the additional evidence available to the IP, this Report provides facts and proof…*" (p. 9). Nothing is said about the kind of "new evidence" in the Report, as it has become traditional for the Report.

Reference in Exhibit 1 is written in newspaper style, the evidence presented in it does not have any proves.

In addition, it is stated in the Report that there was made an overview of the previous V. Stepanov's statements – "*Stepanov, a former employee of RUSADA did not participate in the investigation"* (p. 7). What statements by Stepanov were overviewed and what sources were used to obtain such statements (statements in the yellow press or sworn statements, any other), the Report is silent again.

The word "witnesses" is used repeatedly (pp. 5, 7, 21, 23, 27, etc.).

Testimonies of anonymous witnesses are claimed as another source of information contained in the Report base: "***There were other witnesses*** *who came forward on a confidential basis. They were important to the work of the IP investigation in that they provided highly credible cross-corroboration of evidence both viva voce and documentary that the IP had already secured.* ***I have promised not to name these individuals****, however I do want to thank them for their assistance, courage and fortitude in coming forward and sharing information and documents with the IP*" (p. 7–8).

What is the mechanism for granting the status of witnesses, evaluation, verification, and validation of information received from them, the Report is silent.

A little further, the Report talks about "other individuals": "*The IP interviewed a* ***number of other individuals*** *on a confidential basis. Some were interviewed at the request of the IP investigation team and others came forward voluntarily*" (p. 22).

Assessing the state as a whole and the public authorities, referring to non-existent in reality "anonymous witnesses" – this is a typical yellow press tool. Using such a tool any blame can be placed. And inappropriate for this kind of document pathetics determines the credibility of such rhetoric as even lower.

Another source of information, which is the basis for the arguments and invective evaluation, declared as the conclusions of the Report, is determined as "one important government representative", "*I also received, unsolicited, an extensive narrative with attachments from* ***one important government representative*** *described in this Report*" (p. 8, 22).

R. McLaren's Report does not give any explanation about the ways of findings and validation of the said by all those unnamed persons and information transmitted by them.

Just unfounded presumption: "***All other witnesses*** *interviewed by the IP investigative team* ***were credible***" (p. 23).

1.4. Assessing the adequacy of the terms of the declared “investigation” by R. McLaren and the proceedings based on the results of such an investigation report

On May 19, 2016, as stated in the Report, R. McLaren was appointed to conduct the “investigation”, and on July 16, 2016 the Report was ready. The Report repeatedly emphasizes that the time limits for the Report was 57 days (pp. 5, 8, 22).

At the same time, R. McLaren’s Report repeatedly accents expressed sorrow that the time was not enough, “*compressed timeline of the IP investigation did not permit*” (p. 4), “*the time limitation*” (p. 4), “*the highly compressed timeline has meant that the IP investigative team has had to be selective*” (p. 4), “*in the short time of 57 days that I was given to conduct this IP investigation*” (p. 22); “*the compressed time frame in which to compile this Report*” (p. 25).

Yet, R. McLaren declares that during this period he examined "thousands of documents" (!). What kind of documents are they, what is the total number of pages, silence again. The Report does not give any information about the nature and extent of the "review" of such documents by R. McLaren, in the sense - how he researched and evaluated, whether he read them in detail, examined or superficially viewed, or those documents were searched for R. McLaren by other individuals. Meanwhile, it is very important and relevant for the assessment of the Report by R. McLaren, substantive issue, as the study of the documents conducted by R. McLaren, in its content to evaluate them requiring the assistance of specialists with other than R. McLaren’s specialization, should result in the expression of doubt in the adequacy of understanding and assessment of such documents by R. McLaren.

Despite the apparent lack of time for work and the need to consider “thousands of documents”, however, the Report states that “*upon embarking on its investigation the IP* ***quickly found*** *a wider means of concealing positive doping results than had been publically described for Sochi*” (p. 9), that is, presumably, not yet having had time to get acquainted with all the "thousands of documents" referred to in the Report. That much luck? Or just conclusions had been written initially, and the fake arguments were adopted later? We believe - the second.

And this is despite the fact that, according to the statement in the Report, the first period of the reported 57 days was "less than a month" (p. 24) – it was “*early in the investigation*” (p. 24).

Thus, the stated period of the procedure of the claimed “investigation” by R. McLaren and proceedings based on the results of the investigation Report, considering the volume of the actual coverage of the subject-object area, reasonably

can be assessed as inadequate, objectively determining the defectiveness of the conclusions of the Report.

1.5. Evaluation of reasonability of engaging in the Report works of the other individuals

According to the Report by R. McLaren, "*Throughout the course of his mandate, the IP has personally reviewed all evidence gathered by* ***his independent investigative team***. *This Report was* ***prepared from the collective work of the IP's investigative team***. *The investigative process is outlined and the many significant aspects that were studied and analyzed ultimately provide evidence for findings of fact*" (p. 4).

What is this "investigative team", who authorized it? The fact of granting R. McLaren some authority does not predetermine and can not automatically prejudge granting the same power other persons. But the Report by R. McLaren, in most cases, does not specify who exactly those people are, what their professional qualification is, how it can be proved and verified (forensic experience, experience in sports law with experience in such cases - cases arising out of the facts of illicit distribution and using doping). In this case, there is no reason to assume that this was done unintentionally. Most likely, this is done to conceal the fact of absence in reality of such members of the investigative group, except R. McLaren, as well as those individuals who inspired this Report and in the advance written politically motivated conclusions of the Report.

Lack of opportunities to verify the statement in R. McLaren's Report that its "investigative team" was really independent and objective, also calls into question the validity of the Report as a whole.

More are mentioned as engaged in the "investigation" some (again anonymous) "forensic experts": "*the IP investigation, assisted by forensic experts, has conducted*" (p. 12). What "forensic experts" were engaged by R. McLaren, on what grounds, what is their qualification, what are the grounds to trust them, the Report is silent again.

It further states that there was made a "forensic analysis": "*The veracity of Dr. Rodchenkov's statements to The New York Times article* ***is supported by the forensic analysis****…*" (p. 15). What criminalists were engaged by R. McLaren, on what grounds, what is their qualification, what are the grounds to trust them, the Report is silent again. It indicates only some certain "*the London WADA accredited Laboratory*" (p. 15).

Then it is said: "*The IP **forensic examination** of these bottles **found** evidence of scratches and marks confirmed tampering*" (p. 17). Here the author of the Report does not make any efforts to explain anything about this "expertise".

Finally, on p. 19, the Report states about the existence and activities of some "*members of the IP investigative staff*" (reminder: independent person is R. McLaren himself).

But most importantly, who and on what grounds authorized all of these individuals to interfere in the issues, independently and arbitrarily grant themselves the authority?

Only on pp. 19-20 of the Report, R. McLaren deigned to partly list the persons included in the investigative team (another group of people or another name of the other parties to engage on the arbitrary grounds): "*Following that meeting, the IP acted quickly to pull together his investigative team. Included were: Chief Investigator Martin Dubbey, Montreal Anti-Doping Laboratory Director, Dr. Christiane Ayotte, lawyer and the IP Russian language support, Diana Tesic, WADA investigation department Mathieu Holz, Richard Young, Esq., two Western University Law students, Karen Luu and Kaleigh Hawkins-Schulz*".

Again, we note that R. McLaren does not bother to describe the professional and expert skills and experience of the above mentioned persons. With all due respect to those students (not school students, at least), however, let us express doubts about the relevance and adequacy of their skills and experience to work within the issue. One who studies the profession is not yet a professional in this field. Therefore, it is simply not serious.

Qualification, specialization, and experience of other (besides students) persons, the scope and content of the work accomplished by those persons in the provision of the Report by R. McLaren – all this remains hidden. And this fact does not allow to consider the findings of this group as relevant, reliable, fair, and convincing.

Just below, the Report states that specialists in the field of forensic medicine, cyber-specialists, and others were engaged. (p. 20). But who are they - once again - silence.

It is stated that R. McLaren was provided with some laboratory and assistance of its direct superior: "*Dr. David Cowan Director of the Drug Control Centre and the DNA analysis unit at Kings College, London ("DCC") provided the use of his laboratory and did the laboratory analytical work for the IP*". This is, perhaps, the only indication of engaging a distinct entity and its expert resources. But such an indication is not enough. It should be a detailed description of what resources were

involved in this laboratory, under what conditions, using assistance of what persons and with what professional qualification.

The reference contained hereinafter to some laboratory tests, almost all characterized by the absence of relevant specific information on these laboratories and the actions conducted in the provision of the Report.

Next, R. McLaren indicates another name of the other parties: "*experts involved in our team*" (p. 20).

Thus, to participate in the preparation of the Report and of the information used in it, R. McLaren invited in an unauthorized manner people with qualification which is not properly proved. R. McLaren, himself, systematically gets confused with the limits and status of the aggregate of such persons to be engaged, calling them in the text of the Report in many different ways.

Excessive breadth in vocabulary and style poses uncomfortable questions about the extremely low qualification of R. McLaren as a lawyer (in spite of his regalia), or about the possibility of writing the report by someone else having a very superficial understanding of law and on how to prepare this kind of documents, and Robert McLaren only gave his name to this Report.

2. Critical analysis (on formal grounds) of the R. McLaren's Report

As it has been shown in the previous studies (for more details see chapter 1)[3], the content of R. McLaren's Report has multiple significant drawbacks, including falsified evidence and unsubstantiated conclusions. As a result, provided the athletes' guarantee of rights are respected, and the objective and unbiased investigation principle is followed, this Report (the information and conclusions it contains) could not be regarded and acknowledged as reasonable grounds and adequate substantiation for taking some restrictive and repressive measures in respect of the Russian athletes, sports organizations and national teams.

[3] For more details see: *Botnev V.K.* Critical analysis of the Richard H. McLaren's Report // <http://www.moscou-ecole.ru/lib/Botnev_Critical-analysis_en.pdf>. *Botnev V.K.* Analyse du rapport annuel de R. McLaren du 16/07/2016 "L'investigation de l'AMA des allégations des athlètes russes de l'Olympiade de Sotchi de l'utilisation des produits dopants" // <http://www.moscou-ecole.ru/lib/Botnev_Conclusion_fr.pdf>. *Botnev V.K.* Analyse zum Bericht von R. McLaren vom 16.07.2016 // <http://www.moscou-ecole.ru/lib/Botnev_Analyse-Bericht-Mclaren.pdf>. *Ponkine I.V.* Conclusion concernant le Rapport de R. McLaren du 16.07.2016 // <http://www.moscou-ecole.ru/lib/Ponkine_Conclusion-Rapport-Mclaren.pdf>. *Ponkin I.V.* Analyse zum Bericht von R. McLaren vom 16.07.2016 // <http://www.moscou-ecole.ru/lib/Ponkin_Analyse-Bericht-Mclaren.pdf>.

However, apart from the significant content-related drawbacks, analysis of the R. McLaren's Report on formal grounds (for formal procedural reasons) revealed its critical formal defects caused by gross competence and procedural irregularities, which made it legally null and void. This Report did not and could not have any prejudicial value in addressing the issues on applying sanctions against the Russian athletes, however, this value was in fact unfoundedly assigned (given weight to) R. McLaren's Report by quite a number of international sports organizations, which gave the Report the status essentially similar to that of a judicial document, containing the established and proven facts. Moreover, the claimed prejudicialness in using the Report in this case was expressed in presuming not only that there was no need to prove the circumstances and facts, allegedly established and proven in R. McLaren's Report, but ultimately, in prohibiting (artificially creating the conditions of impossibility) to refute them in some legitimate way.

In what follows, we consider the most significant competence and procedural irregularities made in preparing R. McLaren's Report, which resulted in it being legally null and void in terms of reasonable grounds and substantiation for taking restrictive and repressive measures in respect of the Russian athletes and sports organizations.

2.1. Defective procedure of choosing the "investigation" subjects by the World Anti-Doping Agency

First of all, 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 the Report), and that "the investigation team", he is actually in charge of, is independent, unbiased and objective (the involvement of a great number of other persons in the preparation of the Report is pointed out many times in the Report), 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 analyzed 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 part[4]. Therefore, R. McLaren's participation in preparing the two mentioned reports by R. Pound's commission, means that it is unreasonable to regard R. McLaren an independent and impartial person.

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 the Report itself). 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 Sport[5]. 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.

Moreover, an undisputed critical formal drawback of R. McLaren's Report, making the entire Report formally unfounded and defective, is involving an uncertain number of third parties in drawing up this document, "*IP investigative team"* (p. 4, 5, 15, 19, 23, 31, 38, 87 etc.), without any guarantees of their impartiality, independence, appropriate qualification, and liability in case of possible falsification of the evidence they reveal. From the analyzed R. McLaren's Report, it is impossible to conclude on which grounds all persons involved in drawing up the report should be considered "independent".

The Report does 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

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[4] For more details see: *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 09.11.2015 // <http://www.moscou-ecole.ru/lib/Ponkin-Grebennikov-Kouznetsov_Critical-analysis.pdf>. *Ponkine 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 // <http://www.moscou-ecole.ru/lib/Conclusion-Rapport-Commission-Pound.pdf>. *Ponkin I.V., Grebennikow W.W., Kuznetsov M.N.* Befund über den Abschlussbericht der «unabhängigen Kommission» von R. Pound, R. McLaren u.a. von 09.11.2015 // <http://www.moscou-ecole.ru/lib/Abschlussbericht-Kommission-Pound.pdf>. Сфальсифицированные доклады: Юридический анализ докладов, выполненных по заказу Всемирного антидопингового агентства в 2015–2016 гг. в отношении российского спорта: Сборник / Консорциум специалистов по спортивному праву. – М.: Буки-Веди, 2016. – 66 с.

[5] 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>.

matter on WADA website[6]. The fact that R. McLaren was vested with some authorities does not mean that R. McLaren has the right to vest other persons with some of these authorities without WADA's approval.

Considering that R. McLaren himself was vested or actually unlawfully usurped a number of absolutely illegal powers on conducting the investigation, as it will be shown later, 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 Report, and fundamental defects in the arrangement of WADA activities on anti-doping investigations in general.

Therefore, presuming R. McLaren and the persons reported as "investigation" participants as "independent persons" does not have any compelling reasons. Consequently, a breach of the independence and fairness principle in R. McLaren's "investigation" shall be acknowledged.

2.2. World Anti-Doping Agency competence violation in vesting R. McLaren with unfoundedly and improperly extended "authorities" (in acknowledging such authorities of R. McLaren by the Agency by validating his Report)

The form of "investigation" conducted (or claimed to be conducted) by R. McLaren, the results of which were used to draw up the Report, 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, having the investigation or inquiry powers according to an interstate agreement or by law, to assist in the investigation, much fewer questions would have come up.

In R. McLaren's Report it is said that the "investigation" also covered "*thousands of documents electronically or in hard copy"* (p. 7), "*email evidence available to the IP* [7]" (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*

[6] 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>.
[7] Abbreviation "IP" in the Report means "independent person", i.e. R. McLaren (Author's note).

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 Report, could be ultimately possible only with the approval of an authorized government authority in the manner prescribed by law, as well as confirmation of the validity of such correspondence or information voluntarily provided by an individual to assist in third party investigations.

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 written in the Report, 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 in principle has no authorities, and is not entitled to invest any authority (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 the Report) with a wide range of investigation powers, which are much similar to those of government investigation bodies according to the law. In this case, there was an expressly wrongful, de facto, appropriation by R. McLaren of the authorities, similar to some of the government investigation bodies on conducting the investigation. Otherwise, nothing else can explain R. McLaren's actions, described in the Report, 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 R. McLaren's Report (as well as R. Pound commission's 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 Report.

According to Article 4 of the World Anti-Doping Agency Revised Statutes as of 2016[8], setting forth the regulatory basis of WADA activities (as well as the same formulation of this article in the revision of the above document as of 2014[9]) 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*», «*It may entrust the performance of all or part of its activities to third parties*».

However, the above regulation can be correctly and adequately interpreted only within the scope of WADA's authorities. At the same time, the World Anti-Doping Agency has no right to delegate the authorities to any person to an extent greater than its own. 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, regulate and allow the right to carry out any anti-doping investigations in any way. The Revised Statutes articles indicating the possibility to delegate certain authorities (giving some powers), address the assistance in fighting against doping offences (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 unreasonably 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 Report.

[8] 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.

[9] 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>.

2.3. Grave contradictions in "the investigative" techniques used in drawing up R. McLaren's Report and obtaining the results, which formed the backbone of the Report's conclusions, 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 procedures typical of just a single family legal systems, but also relevant for other legal family legal systems. Therefore, for example, the appeal of the Report's authors to the standard of a lack of reasonable doubt (given that the Report has no relevant evidence whatsoever), seems merely a convenient polemic "trick" for R. McLaren, rather than an expression of a fair and responsible attitude towards the Report's content.

It should be noted, that the methods not only unspecified in the World Anti-Doping Agency's regulatory 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 2016[10], specifying the legal framework, forms and procedural scope of WADA's activities (as well as the revision of this document as of 2014[11]), 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 Report.

Article 4 of the World Anti-Doping Agency Revised Statutes as of 2016[12] 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.

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[10] 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.

[11] 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>.

[12] 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.

The 2015 World Anti-Doping Code[13], in spite of presuming a special "flexibility" and "universality" by its authors (introductory section "Purpose, scope and organization of the World Anti-Doping Program and Code"), does not assume and allow applying the kind of methods, which, judging by the information provided in R. McLaren's Report, 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, which can serve as a regulatory foundation giving R. McLaren and the persons he involved in the investigation 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 and 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 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. The question about the grounds used by R. McLaren and his "investigation team" to actually perform many "investigative" activities, which can only be carried out as part of the jurisdictional state criminal procedure in the manner prescribed by the national legislation, remains unanswered.

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 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

[13] 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>.

investigation, as well as general standards and principles of conducting an offence investigation, including the legality principle and the principle of 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, 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 offence investigation rules and regulations.

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.

The possibility of prejudicialness, provided by the "*decision of court or professional disciplinary tribunal*", is mentioned only once in clause 3.2.4. However, from the articles of the 2015 World Anti-Doping 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.

Clause 3.2.5 of the 2015 World Anti-Doping Code indicates a possibility to consider an opinion of "*hearing panel in a hearing on an anti-doping rule violation"*. However, it is evident that this regulation does not apply to R. McLaren's Report.

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 Report, 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 (in this case WADA is important) status (including its competence scope) and national anti-doping organization status, determined by the World Anti-Doping Agency Revised Statutes as of 2016, but 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 the Report, 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 2015[14], which, according to the first paragraph of Article 1 of this document, is an integral part of the

[14] 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>).

World Anti-Doping Code, and is a mandatory International standard developed as part of the World Anti-Doping Program.

Clauses 5.1.1, 5.1.2 and a number of other provisions of the 2015 International standard for testing and investigations, specify a laboratory analysis technique. Clause 7.1 and a number of other provisions of the 2015 International standard for testing and investigations, indicate a doping test selection method. Clause 9.3.1 describes a way to deliver the selected doping tests and the accompanying documents ensuring their integrity, validity and safety.

Clause 4.8.4 and a comment to this clause, comment to clause 4.8.3, clause 5.1.2 of the 2015 International standard for testing and investigations, envision a possibility to obtain evidence in the ways other than laboratory analysis. 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 2015 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.

2.4. R. McLaren's Report from the perspective of international public law acts

The issue on co-relation (including the regulatory power hierarchy) between one's 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 International Convention against Doping in Sport dated 19.10.2005[15], the Anti-Doping Convention of Council of Europe dated 16.11.1989[16] and an Additional Protocol dated 12.09.2002 to the Anti-Doping Convention dated

[15] 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>.

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

16.11.1989[17]) is directly related to the considered Report and R. McLaren's investigation.

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, interpretation of normative acts relating to anti-doping activities, 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 report by the Agency is a vivid and grand-scale display of such WADA's inadequate position.

From the international public law perspective, the above position on concentrating the regulatory authorities, application of standards, offence investigation, and holding the offenders liable in one organization and such WADA activities on arranging the anti-doping investigation, in particular, in respect of Russian athletes, seem unreasonable, contain background for WADA to abuse its powers, 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 "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-

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

Doping Code[18], 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.

A number of the known conceptual documents (not mandatory for application) by international organizations (**Recommendation of the Committee of Ministers of the Council of Europe № R (84) 19 dated 25.09.1984 to member**

[18] 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».

states "European Anti-Doping Charter for Sports"[19] 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 Code[20].

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 Report, ab initio biased attitude and unfair motivation of the World Anti-Doping Agency's 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 16.11.1989[21], 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 organisations referred to in Article 4.3.c of the Convention*[22]*, **in***

[19] 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>.

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

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

[22] 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

accordance with regulations in force and with the provisions of national law *of the host country*".

That is, a specific government is responsible for assisting WADA in the checks according to the current legal regulations. However, no persons appointed by WADA or affiliated with WADA, had the right to perform arbitrary independent and self-regulatory investigative activities (in fact, with criminal procedure methods of preliminary investigation or inquiry) within the territory of a sovereign state (without any special approval on its side), 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.

By contrast, governments are entitled to legal regulation and interference with the international sports organizations' activities in case the national legislation is breached. For example, according to Article 19 of the **Council of Europe Convention on the Manipulation of Sports Competitions dated 18.09.2014**[23], 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 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***

doping controls required by the competent international sports organisations whether during or outside competitions».

[23] 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>.

part of this Convention. *The* ***Appendices as such do not create any binding obligations under international law for States Parties***".

Therefore, it is recognized that "*States Parties commit themselves to the principles of the Code*". However, the World Anti-Doping Code is not an integral part of the UNESCO International Convention against Doping in Sport dated 19.10.2005, and therefore cannot be regarded as an international public law document and source.

That is, 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.

Considering the above, one can reasonably conclude that from the perspective of international public law acts in this field, R. McLaren's Report is a private opinion, the legal effect of which does not exceed the legal effect of an individual statement in the media. R. McLaren's Report cannot be positioned and regarded as a document having legal (let alone, prejudiciary) effect. There are simply no legal and factual grounds for it.

2.5. R. McLaren's Report from the point of view of the International Paralympic Committee's regulatory acts

The decision of the International Paralympic Committee's Executive Board dated 07.08.2016 to suspend the Russian Paralympic Committee's membership, effective immediately and automatically leading to the ban of the Russian Paralympic athletes (the entire Paralympic team) from competing at the Rio 2016 Paralympics, was explained by the International Paralympic Committee by directly referring to R. McLaren's Report.

Unreasonable attachment of de facto prejudicial legal value to R. McLaren's Report by the International Paralympic Committee, and using this Report as a reason and justification for applying restrictive and repressive measures in respect of Russian athletes, sports organizations, and national teams, was a gross violation of regulatory procedures of the International Paralympic Committee itself. The above is reasoned, first of all, by the fact that the **International Paralympic Committee Constitution**[24] has no provisions, based on which this Committee is entitled to use the documents drawn up outside the scope of the established or allowed procedures by unauthorized bodies and persons, not supported by appropriate evidence, as

[24] IPC Constitution, December 2011 // <https://www.paralympic.org/sites/default/files/document/141113141030725_2014_10_01+Sec+i+chapter+1_0_IPC+Constitution.pdf>.

evidentiary foundation. Moreover, the anti-doping investigation procedure, which contains guarantees of athletes' rights enforcement in considering the above cases, ensuring honesty, impartiality and objectivity in considering these cases, is not duly regulated.

According to clause 9.1.3 of the International Paralympic Committee's Constitution, the national Paralympic committee's membership in the International Paralympic Committee can be terminated (by the decision of the International Paralympic Committee's General Assembly) if a member no longer complies with the requirements set forth in clauses 4.1.1 – 4.1.4 of the International Paralympic Committee's Constitution.

Clause 9.1.4 of the International Paralympic Committee's Constitution indicates that the decision on membership revocation "***premises a good cause which shall ... be given*** *if a member seriously prejudices the interests of the organisation or if the member is in breach of the IPC Constitution, bylaws, codes, rules and regulations*".

In accordance with clause 9.2.2 of the International Paralympic Committee's Constitution, the national Paralympic committee's membership can be suspended due to a failure to meet the requirements imposed on its members, and incompliance with the requirements of the regulatory acts specifying member responsibilities, as set forth in the International Paralympic Committee's Constitution.

Although the Constitution of the International Paralympic Committee does not specify the reason to acknowledge (confirm) the fact of such incompliance (violation) by the national Paralympic committee, and does not contain any provisions about the appropriate or allowed investigation methods, based on which such incompliance (violation) could be confirmed, general legal principles to be applied in the situation when the actions of a specific national Paralympic committee are evaluated to determine such incompliance, make unfounded accusations for weak reasons impossible. Anyway, a "good cause" specified in clause 9.1.4 of the International Paralympic Committee's Constitution shall be identified and provided as the grounds for making this decision.

Therefore, R. McLaren's Report under any circumstances cannot be regarded and positioned as exposing and proving that there are "*good causes*" to make the decision on suspending the Russian Paralympic committee's membership in the International Paralympic Committee, as well as proving that this Committee's member has made serious damage to the Organization's interests or violated the Constitution, bylaws, codes, rules and regulations of the International Paralympic

Committee (by implication of clause 9.1.4 of the International Paralympic Committee's Constitution).

It is important to note, that R. McLaren's Report does not contain any evidence whatsoever that the Russian Paralympians violated the anti-doping rules. The word "Paralympic" is only used twice (!) in R. McLaren's Report. The first time in the name of 2014 Paralympic Games in Sochi in a positive way (p. 11), and the second time in the note to the flow chart on p. 41, allegedly showing *"Number of Disappearing Positive Test Results by Sport Russian Athletes"*, that was obviously falsified because no relevant evidence of the information shown in this flow chart and the note to it were provided in this Report, number 35 («*Paralympic Sport – 35*») was only specified without proof.

That is, only one unsubstantiated mentioning of Russian Paralympians (unnamed persons who were charged with some 35 tests without specifying the persons they relate to and for which period of time) in R. McLaren's Report, has lead to an openly discriminating in respect of all Russian athletes-Paralympians, derisive and degrading for personal dignity of the Russian athletes-Paralympians decision of the International Paralympic Committee's Executive Board dated 07.08.2016.

According to the **Code of Ethics of the International Paralympic Committee as of 2016**[25], members of the Paralympic movement, also including the International Paralympic Committee, are subject to an ethical imperative of independence and impartiality (subclause IV of clause 2.2), the management of the International Paralympic Committee and its structural units are subject to ethical imperatives of impartiality (clause 10.1) and impermissibility of personal interest (clauses 10.3 and 10.4), unacceptability of conflicts of interests and power abuse (clauses 10.4 and 10.5), imperatives of honesty and fair practices (clause 11.3), as well as following the principles and ideals of the Paralympic movement (clause 10.6). Pursuant to clause 13.1 of the Code of Ethics of the International Paralympic Committee as of 2016, "*all relationships and activities with partners, supporters, and sponsors must be done in the spirit of promoting the Paralympic athletes and Paralympic sports in the true spirit of fair play and in compliance with the Paralympic values and ideals*".

Therefore, the decision of the International Paralympic Committee's Executive Board dated 07.08.2016 to suspend the Russian Paralympic Committee's membership, leading to an automatic ban of the Russian Paralympic athletes from competing at the Rio 2016 Paralympics, is in conflict with the provisions of clauses

[25] IPC Code of Ethics, April 2016 // <https://www.paralympic.org/sites/default/files/document/160502112749067_Sec+ii+chapter+1_1_IPC+Code+of+Ethics.pdf>.

2.2.1–2.2.3 of the International Paralympic Committee Constitution, and the provisions of clauses 13.1, 2.2, 10.1, 10.3–10.6, 11.3 of the 2016 International Paralympic Committee's Code of Ethics.

Considering the above, it is reasonable to conclude that from the point of view of the International Paralympic Committee's regulations, R. McLaren's Report is a private opinion, which in fact has the same legal value as a private statement in the media. R. McLaren's Report had no prejudicial or other legal value whatsoever in considering the issue on suspending the Russian Paralympic Committee's membership by the International Paralympic Committee's Executive Board dated 07.08.2016.

Conclusions

The Report of R. McLaren "WADA Investigation of Sochi allegations" dated 16.07.2016 is based on the information which, judging by the Report, was not brought by R. McLaren to verification and validation with the use of objective means. This Report does not contain any direct and unambiguous proves or evidence, it possesses a number of inconsistencies and exaggerations, applies a number of manipulative techniques. The Report contains a number of arbitrarily contrived and false claims. It is justifiably to recognize R. McLaren's Report as biased, unsubstantiated and, in significant part, falsified.

Richard McLaren's Report "WADA Investigation of Sochi allegations" dated 16.07.2016 is legally null and void. This Report cannot be legally and, in fact, reasonably used as a ground and justification for applying restrictive and repressive measures in respect of Russian athletes, sports organizations, and national teams, including as a ground and reason to ban the Russian Paralympics team from competing at the Rio 2016 Paralympics, and a number of Russian athletes' ban from competing at the 2016 Rio de Janeiro Olympics.

27.09.2016

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