

# **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**

## **Introduction**

The subject of this critical analysis is the Final report (No. 1) dated 09.11.2015 by the Commission (referred to as the “Independent Commission”) consisting of: the Independent Commission President Richard W. Pound, Independent Commission Members Richard H. McLaren and Günter Younger, WADA Chief Investigations Officer Jack Robertson, “Independent Commission Investigation Staff” David Tinsley, Martin Dubbey, Brian Talay, Nick Connon, Greg Kitsell, Gabriella Re, “Investigative Report Co-ordinator” Diana Tesic<sup>1</sup> (hereinafter – the Pound and McLaren Report). According to page i (the page preceding page 2 of the analyzed Report), the Commission was set up by the President of the World Anti-Doping Agency (WADA). According to page 3 of the Pound and McLaren Report, on December 16, 2014 WADA announced the names of the “Independent Commission” members: Mr. Richard W. Pound, Q.C., former President of WADA, Professor Richard H. McLaren, law professor and longstanding CAS arbitrator, and Mr. Gunter Younger, Head of Department Cybercrime with Bavarian Landeskriminalamt (LKA). Terms of Reference of the “Independent Commission” was published on January 16, 2015. This document was submitted to the President of WADA.

Analysis of the Pound and McLaren Report provided the necessary and sufficient reasons to believe that this document has multiple critical drawbacks and, therefore, cannot be considered justified and objective. This critical analysis, prepared using the investigation results, describes the most significant critical drawbacks of the Pound and McLaren Report.

The critical analysis was drawn up using the original text of the Pound and McLaren Report, considering its translation into Russian available to the authors (the translation was done by a third party). Page numbering referring the quotations provided is accomplished as consistent with the original document in the English language.

## **Main findings**

### **1. Assessment of the legal effect of the Pound and McLaren Report**

According to the Pound and McLaren Report, the purpose of the investigation by the “Independent Commission” was: *«to conduct and direct an unbiased and independent investigation»* (p. 4).

However, the fact that Richard Pound (the head of the “Independent Commission”, whose report is the subject of the current study) is a former President of the World Anti-Doping Agency, does not allow to regard him as an independent person

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<sup>1</sup> The Independent commission Final Report № 1, November 9, 2015 // <[https://wada-main-prod.s3.amazonaws.com/resources/files/wada\\_independent\\_commission\\_report\\_1\\_en.pdf](https://wada-main-prod.s3.amazonaws.com/resources/files/wada_independent_commission_report_1_en.pdf)>.

in full, as well as the commission he leads – as independent. From the analyzed Pound and McLaren Report, it is impossible to understand on what grounds one can regard all persons involved in drawing up the Report to be “independent”.

Based on the analyzed Pound and McLaren Report, this “Independent Commission” was given a mandate to establish whether: *«1. There have been any breaches of processes or rules (Code and International Standards) by any signatory to the Code. This includes RUSADA and IAAF, but not exclusively as there may be other National Anti-Doping Organizations (NADOs) or International Federations (IFs) also requiring such inquiry. 2. There has been any breach of the International Standard for Laboratories (ISL) by any accredited laboratory, including the laboratory in Moscow. 3. There have been any breaches of anti-doping rules by athletes, coaches, trainers, doctors and other members of any athlete entourage. This includes officials within and outside any organization who might have been complicit in such breaches. 4. There is sufficient evidence that might lead to sanction processes pursued under the World Anti-Doping Code against any individual or any organization (IC Terms of Reference, January 2015)»* (p. 3–4).

Analysis of the Pound and McLaren Report jointly with the “Independent Commission. Terms of Reference” dated 16.01.2015<sup>2</sup> and a number of regulatory documents of the World Anti-Doping Agency gives the necessary and sufficient grounds to conclude that this document, on its own terms, has no legal effect (its legal effect is null and void) as grounds to take restrictive and repressive measures in respect of Russian sports organizations and athletes. This conclusion is reinforced, inter alia, by the following arguments.

In view of the recent events relating to the Russian Paralympians, it should be noted, that the word “Paralympic” (or its derivatives) is not even once mentioned in the Pound and McLaren Report.

## **2. Evaluation of the “Investigation method” used in the Pound and McLaren Report**

A significant drawback of the Pound and McLaren Report, which dramatically decreases its validity and objectivity, is the lack of the appropriate description and rationale behind the utilized approach. The description, trying to pass off as the applied method, (for example, in sections 1.4 «Brief Summary of the IC Investigation Methodology» (p. 4–6), 4.3 «Investigative Methodology» (p. 67–69), 11.5 «Investigation: Methodology» (p. 130–131)) has very little force.

This can only mean that no objective investigation method acknowledged by science was actually used, and the main conclusions made in the Pound and McLaren Report were politically and ideologically motivated and written in advance. And then, some arguments were used to fit the required framework. In what follows, we will provide the necessary and sufficient evidence of the above.

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<sup>2</sup> Independent Commission. Terms of Reference // <<https://wada-main-prod.s3.amazonaws.com/wada-independent-commission-terms-of-reference-2015-jan-en.pdf>>; <<https://www.wada-ama.org/en/resources/independent-commission-terms-of-reference>>. January 16, 2015

In particular, one of the most convincing confirmations is the following independent conclusion of the Pound and McLaren Report: «*Many tests that the laboratory has conducted should be considered highly suspect*» (p. 13, 197, 278). Like this - “many tests”. During what time, which athletes were tested, how many athletes were tested? How many athletes exactly were tested, what does “many” mean? What does “highly suspect” mean? It appears that for the authors of the Pound and McLaren Report, all of these are just “trifles”, which they just ignored. Too much freedom in vocabulary and style of the Pound and McLaren Report brings up the uncomfortable issue about very low qualification of this document’s authors.

The above circumstances question the feasibility and objectivity of the Pound and McLaren Report as a whole.

### **3. Assessment of the validity of conclusions made in the Pound and McLaren Report about the system, where the Russian authorities illegally encourage the Russian athletes to use doping en masse, and about a large-scale concealment of these facts by the Russian authorities**

One of the main conclusions drawn by the Pound and McLaren Report is that there is a system, where the Russian authorities illegally encourage the Russian athletes to use doping en masse and conceal these facts on a large-scale, despite this conclusion is somewhat veiled. This makes it necessary to assess the quality and volume of evidence used to make such a conclusion in this document.

In reality, careful analysis of the Pound and McLaren Report does not allow identifying and confirming this conclusion as valid.

Here are the most vivid quotations:

«*Moscow laboratory director Rodchenkov had direct access to the Minister for purposes of funding requests for laboratory equipment*» (p. 15, 271, 281).

«*Russian law enforcement agencies were involved in the efforts to interfere with the integrity of the samples*» (p. 27, 104, 293).

«*Regardless... statement that RUSADA acts independently, although financed by the Ministry, the IC has serious doubts that it is truly independent*» (p. 27, 191, 293).

«*...there is more influence than structurally indicated by the Ministry of Sport*» (p. 27, 191, 293). It is absolutely inconceivable how the government authority’s “influence” can depend on its organizational structure (not legal status and functions, its authorities and public administration model established in this country and this field of public relations, but the organizational structure). However, such “arguments” are typical for the Pound and McLaren Report.

The Sports Ministry of the Russian Federation is accused of the fact that it did not react (in the way assumed by the Pound and McLaren Report’s authors) to the German television channel ARD documentary: «*...Minsport would allow RUSADA, as the subject of several of the allegations in the ARD documentary, to investigate itself. ... Minsport did nothing to investigate the serious allegations of criminal conduct on the part of Russian sport officials*» (p. 27–28, 270, 293–294). «*The IC finds that a fair and unbiased investigation into the ARD and other allegations is not possible when an*

*implicated party is conducting the investigation. The lack of vigorous oversight by Minsport suggests that Minsport may be attempting to conceal the de facto relationships it has with RUSADA» (p. 267).*

However, it is unreasonable to qualify precarious, containing deliberate misrepresentations and false information documentaries directed by H. Seppelt as a strong reason for an obligation to carry out some check-ups; and the denial to conduct examinations basing on these films cannot be regarded as something in favor of the analyzed conclusion drawn by the Pound and McLaren Report.

Here are some more quotations:

*«The Moscow laboratory is not operationally independent from RUSADA or the Ministry of Sport. Its impartiality, judgment and integrity were compromised by the surveillance of the FSB within the laboratory during the Sochi Winter Olympic Games» (p. 14, 212, 280).*

*«RUSADA’s activities are stated to be in close cooperation with and supported by the Russian Ministry of Sport, Tourism and Youth Policy of the Russian Federation and in cooperation with the Center of Sport Training of the Russian National teams» (p. 176).*

*«The IC was further informed, in confidential statements, that there are close relationships between senior members of RUSADA and the Ministry of Sport» (p. 268).*

*«Furthermore, the repeated statements, by various unrelated witnesses of influence over the Moscow laboratory and RUSADA, the apparent lack of oversight into the RUSADA investigation and the refusal to engage law enforcement to investigate the alleged criminal acts of ARAF reflect poorly on Minsport and the discharge of its responsibility for proper governance in Russian sport» (p. 268).*

*«While Ms. Zhelanova, maintained that the Moscow laboratory and RUSADA are wholly independent from Minsport, throughout the course of this investigation various sources have asserted that this “independence” exists on paper only and that, in fact, Minsport exerts a strong influence over both the Moscow laboratory and RUSADA» (p. 267).*

*«...laboratory personnel and athletes reported that the Ministry of Sport asserted influence over the Moscow laboratory. When the IC asked who instructs the laboratory to manipulate particular samples, laboratory personnel stated, “there is no need [to know the names] because the instructions are directly from the Ministry of Sport...” Moscow laboratory personnel made statements to the IC investigative staff during these interviews specifying that there exist “external interferences” with the analytical operations of the laboratory. These reported external influences are not, however, restricted to verbal direction from the Ministry of Sport, but have manifested themselves in the physical presence of state actors inside the laboratory. Specifically, Moscow laboratory personnel have reported, under confidentiality, regarding the continued presence of the Russian security (FSB)» (p.195–196).*

*«Russia’s sports minister, Vitaly Mutko, also denied that Russia had a more egregious doping problem than any other country» (p. 58).*

«Activities are stated to be in close cooperation», «reflect poorly on», «asserted influence over», «exerts a strong influence over», «denied» – all of this is absolutely vague, pointless and unconvincing.

Regarding the Russian Federal Security Service (FSB) officers, they are not directly related to the Sports Ministry of the Russian Federation, which, in its turn, is not responsible for them. Moreover, the repeated references to mysterious “FSB agents” in the Pound and McLaren Report look unconvincing.

Basically, for the most part, the same person is mentioned: «*The IC investigation uncovered information of Russian State interest and influence within the Moscow laboratory. For example, a laboratory staff member reported that an FSB agent regularly visits the Moscow laboratory. The IC sources within the laboratory identified the FSB agent as Evgeniy Blotkin/Blokhin. Sources reported that Moscow laboratory Director Rodchenkov was required to meet with Evgeniy Blotkin weekly to update him on the “mood of WADA”*» (p. 196). A theory, that this real or imaginary FSB representative (acting on his own or as part of the organized group) may abuse his power or may be a corrupt official, is not even assumed in the Pound and McLaren Report. The following relationship is presumed – if there is an FSB agent, the whole country is guilty. However, this is far too forced and unconvincing.

Concerning “FBS influence”, no relevant evidence is provided. It is only dogmatically stated that these facts occurred (as if everything is already definitely proven in a necessary and appropriate way, which is not true in reality): «*The reported presence of the security services (FSB) within the laboratory setting in Sochi and at the Moscow laboratory, actively imposed an atmosphere of intimidation on laboratory process and staff, and supported allegations of state influence in sports events. The direct interference into the laboratory’s operations by the Russian State significantly undermines the laboratory’s independence*» (p. 12, 278).

Therefore, the claims against the Russian sport and government lodged in the Pound and McLaren Report are of vague and unconvincing nature. It is impossible to draw upon any specific information from the Pound and McLaren Report.

The statement repeated three times is somewhat more specific: «*...there was direct intimidation and interference by the Russian state with the Moscow laboratory operations*» (p. 14, 212, 280), and the following assertion: «*Many individuals were unwilling to speak candidly regarding relationships between Minsport, RUSADA and the Moscow laboratory out of fear for reprisals*» (p. 28, 270, 294). However, no evidence or even clear description of the situation with intimidation and threats (except for speculations) is provided in the Pound and McLaren Report.

We would like to point out that in the foregoing we have provided an exhaustive number of quotations, which can, in some way, be related to the conclusion about the Russian authorities’ role in real or imaginary mass doping misconducts. Nevertheless, it is obvious that the quoted parts of the Pound and McLaren Report do not contain any evidence.

In addition to the provided quotations, the analyzed document has some neutral information, for example, about the status of the Ministry of Sport of the Russian Federation, its responsibilities, etc. (p. 265 and others), the contents of the official

contracts made by the Ministry of Sport of the Russian Federation (p. 265–266, 269, 312, and others). Some recommendations are given to the Ministry of Sport of the Russian Federation and the Russian Federation in general (probably, to the Government of the Russian Federation) (p. 317–319).

However, no clear, let alone, significant confirmations to the analyzed conclusion made in the Pound and McLaren Report are available.

Consequently, all the “proof” of the conclusion that there is a system, where the Russian authorities illegally encourage the Russian athletes to use doping en masse and conceal these facts on a large-scale, are reduced to speculations, doubts, abstractions or non-reference statements (like the described correlation between the structural organization of the Ministry of Sport of the Russian Federation and its influence, about abstract relations between the Ministry and the other anti-doping activity coordinators) in the Pound and McLaren Report.

At the same time, it should be noted, that the Pound and McLaren Report clearly states that its authors could not prove that the Ministry of Sport of the Russian Federation is involved in the real or imaginary mass doping misconducts described in the Pound and McLaren Report:

*«The IC was unable to corroborate allegations of direct influence by Minsport on the activities of RUSADA and the Moscow laboratory»* (p. 28, 270, 294).

*«The IC was unable, however, to corroborate some of the more general statements such as: “the Ministry of Sport decides which of the athletes get banned or not,” that were made by independent sources»* (p. 267).

*«The IC has not been able to corroborate claims that actual operational interference occurs with the direct involvement of Minsport, but concludes that the extent of the pressures and influence are such that it is not credible to believe that Minsport was unaware that such activities were occurring. An observation of concern to the IC in this context is that Minsport has been completely passive in the matter of inquiring into the allegations made against RUSADA»* (p. 267).

The above quotes of the Pound and McLaren Report are very important admissions by the authors of that document, which negate any possibility whatsoever to interpret the Pound and McLaren Report as allegedly proving the existence of the system, where the Russian authorities (in particular, represented by the Ministry of Sport of the Russian Federation and its officials) illegally encourage Russian athletes to dope en masse and conceal these facts on a large-scale.

Additionally, it should be pointed out, that statements like “impossible to believe” and “concern is raised in this context”, are repeatedly found in the analyzed document, and that anything can be found in it except for specific relevant proof.

This points out to bias of the “Independent Commission”. In this case, it is not surprising that according to the Pound and McLaren Report, *«...at some point there was an apparent change in the public relations strategy of the Russian government. Whatever the catalyst, it became apparent that the tone and frame of public statements issued by the Russian government evolved significantly from the beginning of the investigation until shortly before the completion of this Report»* (p. 57).

It should also be noted, that Grigory Rodchenkov is named as the main guilty party many times in the Pound and McLaren Report (p. 278–279 and others). However, the attempts to link him with the government (as the claimed accomplice and/or customer of illegal activities) look totally unjustified and unconvincing, and no evidence of this is given.

Moreover, the possibility and validity of any references to G. Rodchenkov whatsoever in the Pound and McLaren Report as a source of information (p. 13, 204, 205, 210 etc.) are convincingly rebutted by extremely negative assessments of G. Rodchenkov given in the Pound and McLaren Report, which describes him as not credible person (p. 13, 204, 279), organizer, aider and abettor, an integral part of illegal activities violating anti-doping rules (p. 12, 13, 15, 25, 116, 200, 202, 212, 213, 278, 279, 280, 291), corrupt official, bribe taker, and blackmailer (p. 13–15, 25, 141–142, 199–202, 212–213, 279–280, 291).

Considering the above, the conclusions of the Pound and McLaren Report about the existence of the system, where the Russian authorities illegally encourage Russian athletes to use doping en masse and conceal these facts on a large-scale, shall be considered unsubstantiated.

#### **4. Assessment of assertions made in the Pound and McLaren Report about the examinations and ensuring that the documents and information used by the “Independent Commission” are valid**

Only rarely (in some places) the analyzed Pound and McLaren Report says that certain documents and information were checked for validity: *«The evidence provided by whistleblowers must be reliable. In addition to the integration of verbal evidence with documentation and corroboration by other witnesses, an assessment of credibility needs to be made, since it is possible, based on examples in the past, that any allegations of doping will be fiercely contested. The IC has interviewed the principal whistleblowers in this investigation. **The IC is satisfied that their statements are credible and the other supporting evidence has been tested for authenticity**»* (p. 8).

However, this is clearly not enough. References to various unidentified sources cannot be acknowledged as an evidence-based case. In addition, it is not enough to mention that the validity was checked. Some explanation of the techniques and their extent should be provided. Nevertheless, the Pound and McLaren Report is silent on this point.

The following explanation looks unconvincing: *«The IC has turned over considerable data and information to Interpol that tends to demonstrate criminal conduct on the part of certain individuals and organizations. Until the proper authorities have decided whether to lay criminal charges, **the IC will not make public the contents of that chapter of the Report, so as not to interfere with the ongoing investigations regarding such conduct**»* (p. 9).

*«As with any investigation of sensitive issues, the IC also had to bear in mind issues related to the personal security of witnesses, the potential of conflicts of interest*

*and the ongoing challenge of assessing the credibility of the evidence coming to its attention»* (p. 67).

The quoted parts of the Pound and McLaren Report sound only as “tricks” intended to rhetorically disguise, cover-up the actual lack of competent evidence. Even if one assumes and admits that the Pound and McLaren’s “Independent Commission” has some proof “for the future”, “secret evidence”, which cannot be publicly disclosed now, for some reason, this cannot change the conclusion on poor legal quality and general lack of proof of the Pound and McLaren Report, because this was the text (as it looks today) used to make the decisions leading to extremely negative consequences for the Russian athletes.

Such principal lack of proof in the Pound and McLaren Report shows gross disrespect for its readers, and raises the question about fabrication of this document’s conclusions.

From the fact that the commission headed by R. Pound is called “independent” by WADA, it absolutely does not mean, that each word of this commission shall be taken for granted, and that the commission itself is released from the obligation to prove its conclusions and explain the way they were made.

## **5. Evaluation of the factual basis and other sources of the Pound and McLaren Report**

### **5.1. Vague wording of statements about the factual basis and other sources of the Pound and McLaren Report**

The Pound and McLaren Report claims about: “*reviewed all evidence*” (p. 4), “*evaluating technical evidence*” (p. 5); “*evidence handling*” (p. 6); “*analysis of evidence*” (p.5), “*assessment of factual evidence*” (p.5), “*analysis and corroboration of evidence*” (p.66–67), “*audio and video evidence*” (p.10, 22, 119, 288), “*scientific evidence*” (p.10), “*strong corroborating evidence*” (p.13, 15, 202, 213, 278, 280), “*sufficient corroborated evidence*” (p.15, 215, 281). The word “evidence” is used in the Pound and McLaren Report many times. However, in most cases the claim about available evidence remains merely an unsubstantiated, unsupported statement.

At the same time, it is typical for the Pound and McLaren Report to portray and presume anything as “evidence”, whereas the appropriate, relevant evidence of the scale of doping use by the Russian athletes and the Russian authorities’ role in these misconducts is absolutely insufficient in the Pound and McLaren Report.

The attempts to understand from the analyzed the Pound and McLaren Report, what exactly the “Independent Commission” investigated, are unsuccessful. It all comes to indistinct narration of very different things:

*«The IC conducted numerous interviews and reviewed thousands of documents, employed cyber analysis, studied and reviewed Athlete Biological Passport (ABP) profiles, conduct of athletes and officials, adherence to monitoring and reporting guidelines and possible Code violations. Through interviews and **analysis of evidence**,*



*IC investigators developed a comprehensive understanding of the culture and patterns of conduct within Russian athletics» (p.4–5).*

Herein, the actions (“conduct of athletes and officials”, “adherence to guidelines”, “Code violations”) are mixed with objects (*thousands of documents*”; “Athlete Biological Passports”), with investigation methods (“employed cyber analysis”). Such misdescription usually means either very poor professional qualification of the authors or, on the contrary, trying to disguise the lack of real facts and relevant evidence.

In addition, the answers to the following questions are essential: who and why did the “Independent Commission” “interview”? What documents exactly did the “Independent Commission” study; how were these documents obtained; how were they evaluated and validated; how and to what extent were they studied? Nevertheless, it is impossible to find the answers to these questions in the analyzed Pound and McLaren Report.

“Thousands” unidentifiable “documents” (p.4, 5, 67 and others) and abstract “evidence”, never described in detail, are repeatedly mentioned in the Pound and McLaren Report (p.5 and others).

The same unconvincing compilation is provided in the next text fragment of the analyzed document: *«The IC investigation focused principally on the following areas: The ARD Documentary released in December 2014. This documentary included damaging witness statements and incriminating video and voice recordings alleging widespread cheating, doping and corruption; Reviews of thousands of documents and the interviews of numerous witnesses with the objective of proving or disproving these allegations; Execution of the Cyber investigative phase assisted greatly in confirming many of the allegations, links and associations; Evaluating technical evidence; Audit of testing facilities, laboratories and monitoring methods, including conduct of laboratory officials and interference with independence; Evidence handling, custody and integrity issues regarding athlete tests; Regulatory authorities – monitoring protocols and possible variations; Athlete statements – including compliance and failure to cooperate with investigators; Detection of corruption that enabled positive analytical results to be not acted upon; Detection of corruption in the form of payments to medical officials and coaches for doping supplies and instructions on use of doping substances and methods; Potential criminal liability; Evidence of enticement by coaches and other officials, including medical, for athletes to engage in doping practices; Detection of corruption in the form of prior notice as to when and where out-of-competition doping controls would take place; Corruption of games organizing officials to enable national competitions where “green lanes” were in place to enable athletes to compete “dirty” thereby enabling them not to disrupt their doping regimes; Corruption of officials and extortion from athletes to cover-up positive tests; and, Findings and Recommendations» (p. 5–6).*

Semantically vague wording and making things deliberately obscure cannot replace and make up for the expected relevant and convincing evidence. In the lack of the later, it all looks like a mere rhetorical cover-up, disguise of the lack of actual facts and relevant evidence.

The clearly inappropriate pathetic of the Pound and McLaren Report, like the statements about “*global nature of the investigation*” (p.68), also aims to conceal the lack of relevant evidence.

Multiple conflicts of evidence given by the persons involved in the testimony do not make the Pound and McLaren Report more convincing either. For example, «*The interviews of Vitaly Stepanov provide contradictory information on the activities of DCOs*» (p. 102); «*The IC has contradictory evidence as to the quality and level to which the second laboratory is equipped. As a result, no findings are possible*» (p. 215).

## **5.2. The so-called “whistleblowers”**

As the most important source of information used in the Pound and McLaren Report are declared the evidences given by anonymous witnesses, the “*whistleblowers*”. This issue is addressed in section 1.5 (p.7–8). In particular, it is said that: «*Readers will note that considerable evidence in this investigation has been provided by or obtained from persons who have the status of what are commonly referred to as “whistleblowers”. As such, some discussion regarding whistleblowers is appropriate*» (p. 7).

However, no specific information is available in this section of the Pound and McLaren Report, only general, abstract discussion about hard luck of the whistleblowers and why the «*fight against doping in sport is properly characterized as a fight*» (p.7).

Evidence “*on a confidential basis*” is discussed in the Pound and McLaren Report on p.15, 205, 216, 281. The document describes “*Confidential Witness #1*” and “*Confidential Witness #2*” including the information provided by them (sections 13.6.3 and 13.6.4, p.200–201). Assertions and opinions with reference to information provided by the «*confidential witnesses*» are also found on p.15, 215, 216, 281 and some other parts of the Pound and McLaren Report.

Moreover, it is claimed that some conclusions of the R. Pound’s “*Independent Commission*” are made based on the evidence of the person whose details were not passed to the “*Independent Commission*” itself “*because of confidentiality considerations*”: «*The IAAF provided IC investigators with the following information, which it had obtained from an active DCO in Russia. Although the source of the information is known to the IAAF, the personal details of the source have not been passed to the IC because of confidentiality considerations*» (p. 103).

Referring to non-existent “*anonymous witnesses*” in evaluating the country as a whole and government authorities is a typical “*trick*” employed by yellow press. This tactics can be used to accuse anybody of anything. This “*trick*” makes it absolutely impossible for the persons coming under dishonest attacks to vindicate their honor and dignity, prove that these dishonest invectives are false.

No information about the way the information provided by the whistleblowers can be checked and validated is available in the Pound and McLaren Report.

These circumstances do not allow regarding this information as a proper and valid source.

### 5.3. “Evidence” provided by the Russian athletes

Section 9.4 of the Pound and McLaren Report says: *«In the course of the investigation, the IC noted that with respect to the 53 identified athletes of interest, the information provided within ADAMS was only partially complete. A total of 35 athletes provided email addresses; 18 did not. 19 athletes were found to have provided telephone numbers. Investigators wrote to the 35 athletes with registered email addresses requesting an interview, in an effort to question athletes regarding the ARD allegations... **Of the 35 athletes with whom the IC attempted to establish contact, 23 did not reply to any of the aforementioned email contact requests. 3 athletes replied “conditionally” stating that they wished to view the questions in advance or set some form of precondition before engaging in the IC interviews. The high percentage of non-responses and conditional responses created considerable doubt as to the athletes’ willingness to be open and candid during the proposed interviews and the IC drew the inference that the athletes were being directed to not respond to interview requests. The remaining 9 athletes were considered for interview. 2 of these athletes were interviewed via Skype, while one was contacted and interviewed via telephone. The unsuccessful multiple follow-up attempts to contact athletes..., ultimately created greater suspicion of Code violations within the group»** (p. 100).*

Judging by the quoted text fragment on p.100 of the Pound and McLaren Report, out of 53 Russian athletes chosen by the “Independent Commission”, members of the commission managed to talk to only 3, that is, less than 6 percent of the initial sampling size. Consequently, there are no grounds to say that this sampling has any referential meaning, even though 53 athletes is a very small part of the total number of the Russian high performance sport athletes.

At the same time, it should be noted, that the expected and logical refusal of the athletes to make excuses and give any comments in connection with false, slanderous documentaries directed by Hajo Seppelt, aired by the German television channel ARD, is absolutely misconstrued, misrepresented by the Pound and McLaren Report as a would-be indirect proof of the alleged guilt of the Russian athletes. The thing that Hajo Seppelt’s documentaries unfairly disgracing the Russian sport can be reasonably perceived by the Russian athletes as willfully false, offensive, and slandering is not even conceded by the Pound and McLaren Report. However, the Pound and McLaren Report’s theory, that mass refusals by the Russian athletes to answer the questions of strangers (some allegedly independent commission), pursuing the unknown goals, are due to the fact that the Russian athletes are guilty of something and are trying to conceal this guilt, does not hold up against criticism, shows bias of the “Independent commission”, and is in no way substantiated in the Pound and McLaren Report. Therefore, it is obvious that the Pound and McLaren Report uses another manipulative ‘trick’ of replacing fact with opinion.

A number of the Russian athletes, who provided some information to the “Independent Commission” is given in the Pound and McLaren Report. However, as

previously stated, no information about how this information was checked and validated is available in the analyzed document.

#### 5.4. Documentaries aired by the German television channel ARD

The Pound and McLaren Report repeatedly mentions the documentaries directed by Hajo Seppelt aired by the German television channel ARD as a source of information.

For example: «*On 03 December 2014, the German television channel ARD aired the documentary “Top Secret Doping: How Russia makes its Winners”, alleging the existence of a sophisticated and well established system of state-sponsored doping within the All-Russia Athletics Federation (ARAF), the governing body for the sport of athletics in Russia, recognized as such by the responsible international federation (IF), the International Association of Athletics Federations (IAAF)*» (p. i).

Regarding the information voiced in this documentary as “assumptions” is further evolved in the Pound and McLaren Report into a positive assertion (or at least an attempt to shape the opinion) that the invectives in respect of the Russian sport and athletes shown in the documentary are true and valid.

«*While this investigation was prompted by revelations and allegations stemming from the ARD documentary, the evidence uncovered was not restricted to the topics covered by the ARD documentary*» (p. 5).

«*The IC investigation focused principally on the following areas: The ARD Documentary released in December 2014. This documentary included damaging witness statements and incriminating video and voice recordings alleging widespread cheating, doping and corruption...*» (p. 5).

«*The ARD documentary alleges that ... provided banned substances to Russian athletes and participated in a conspiracy to cover up athletes’ positive tests in exchange for a percentage of their winnings*» (p. 218).

«*The Independent Commission (IC) was created by decision of the World Anti-Doping Agency (WADA) President following allegations of Russian “state sponsored” doping violations reported by the German television channel ARD in December 2014 in its documentary “Top-Secret Doping: How Russia makes its Winners”. Following the ARD documentary, global media reporting inferred that unprecedented levels of doping violations were occurring within a complicit network of Russian coaches, athletes and regulatory officials, which appeared to be in defiance of competitive rules, established regulatory controls and, in some cases, criminal law*» (p. 65).

The statement: “...global media reporting inferred” (p.65) demonstrates that the accusations of the Russian sport are unfounded and superficial, and once again proves the lack of actual evidence of mass doping use by the Russian athletes and illegal involvement of government authorities alleged by the Pound and McLaren Report, because using a notorious manipulative “trick” of replacing fact with opinion is obvious here. It is evident, that performing illegal acts is not the same as writing about the alleged illegal acts (even by infamous “global” journalists).

Manipulation techniques are used not only in the quoted fragment of the Pound and McLaren Report, but also in its other parts. The fact of using these “tricks” in the Pound and McLaren Report, significantly devalues the document as a whole, and its conclusions, convincingly proves its initial bias, focus on creation of the illusion of argumentation of the actually politically motivated conclusions made up in advance.

Moreover, the release of another documentary, regardless of the degree of its substantiality (provided that no techniques and procedures validating the information set forth therein are available), was announced and used as a basis to expand the authorities of the “Independent Commission”: «*The Terms of Reference were expanded in August 2015 following a second broadcast by ARD*» (p. 4).

These allusions dramatically degrade the quality of the Pound and McLaren Report and its credibility, making it absolutely impossible to consider the Report as a convincing and well-founded analytical legal document.

### **Conclusions**

The Final Report No. 1 dated 09.11.2015 of the “Independent Commission” chaired by Richard W. Pound (Independent Commission Members also include Richard H. McLaren, Günter Younger, and others), is characterized by multiple critical drawbacks, which do not allow qualifying it as valid, well-founded and objective (including due to using manipulation techniques). The Report is based on hypotheses, misrepresentations, information, which, judging by the Report’s text, was not checked and validated by objective means, does not contain any direct, definite evidence and relevant proof of the main conclusions drawn in the Report. It is reasonable to consider this document preconceived, bias, unsubstantiated, and fabricated in its essential part.

Analysis of the Pound and McLaren Report in connection with the document “Independent Commission. Terms of Reference” dated 16.01.2015, and a set of regulatory documents of the World Anti-doping Agency provides appropriate and sufficient grounds to conclude that this document, on its own terms, has no legal meaning (its legal effect is null and void), and no restrictive and repressive measures in respect of the Russian sports organizations and athletes can be taken based on it.

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