

**IN THE MATTER OF PROCEEDINGS BROUGHT UNDER THE ANTI-DOPING RULES
OF THE INTERNATIONAL ASSOCIATION OF ATHLETICS FEDERATIONS**

Before:
THE HON. ROBERT DÉCARY, QC (*Chair*)

BETWEEN:

International Association of Athletics Federations (IAAF)

Anti-Doping Organisation

-and-

Artyom Denmukhametov

Respondent

DECISION OF THE DISCIPLINARY TRIBUNAL

Introduction

1. This is not a typical doping case. The Athlete, Artyom Denmukhametov ("the Athlete"), is clean; he has never failed a doping test. He is charged with what is called doping by 'Prohibited Association' in violation of Article 2.10 of the International Association of Athletics Federations' Anti-Doping Rules ("the Rules" or "IAAF Rules"), an anti-doping rule that came into effect in January, 2015. The Charge is that the Athlete trained with a coach who was himself banned for life for violation of the Rules.

The Parties

2. The Claimant, the International Association of Athletics Federations ("IAAF"), is the International Federation governing the sport of Athletics worldwide. It has its registered seat in Monaco. In accordance with Article 16.1 of the Rules, the Claimant has established an Athletics Integrity Unit ("AIU" or "the Integrity Unit") whose role is to protect the integrity of Athletics, including fulfilling the IAAF's obligations as a Signatory to the World Anti-Doping Code ("the Code"). The Claimant has delegated its authority to implement the Rules to the Integrity Unit. In the within reasons reference is made interchangeably to the IAAF and to the AIU.
3. The Respondent ("the Athlete") is a 26-year track athlete (sprint, in particular 400m) from Russia. He studied engineering. The Coach he is alleged to have associated with is Vladimir Kazarin (the "Coach"). Kazarin has been banned for life pursuant to a CAS Award dated 7 April 2017 for possessing, administering and trafficking in Prohibited Substances (in CAS 2016/A/4480). The Athlete has never used a prohibited substance. He has been tested 36 times (26 urine tests, 4 blood tests, and 6 blood passport tests). He has never tested positive.

The Proceedings

4. On 14 June 2019, a Notice of Charge was issued to the Athlete by the AIU pursuant to Article 8.4.1 of the Rules. The Athlete was charged with an anti-doping rule violation in connection with a Prohibited Association with a coach banned for life within the meaning of Article 2.10 of the Rules. The Notice of Charge set out *inter alia* (i) the detailed facts and supporting documentation and evidence upon which the AIU intended to rely in order to establish the Athlete's Prohibited Association with the Coach and (ii) the Consequences that the AIU was seeking *viz.* a disqualification of the Athlete's competitive results from the date of the violation, a two-year period of ineligibility and the public disclosure of the violation. The Athlete was provisionally suspended from the date of the Notice of Charge.

5. The Athlete admitted the Prohibited Association violation set out in the Notice of Charge in a Statement sent to the IAAF by email on 27 June 2019. In the same Statement, however, the Athlete signalled his intent to dispute the Consequences within the context of a hearing before this Tribunal. This Tribunal was established by the IAAF pursuant to Article 8.1 of the Rules. I was appointed by the Chairperson of the Disciplinary Tribunal as Chair and sole arbitrator of this Panel. My appointment was unopposed. The jurisdiction of the Tribunal with respect to the subject-matter of the case and its jurisdiction with respect to the parties involved were recognized by both parties.
6. The proceedings moved along on the basis that the Athlete had admitted that he was aware that his coach had been banned for life and that he challenged only the sanctions to be imposed upon him. A preliminary meeting via telephone conference was held on 19 July 2019 to set the date of the hearing of the case and the related procedural requirements. A hearing of the case via video-conference was scheduled for October 7, 2019. On July 24, 2019, a *pro bono* counsel was appointed to represent the interests of the Athlete.
7. On 19 August 2019, counsel for the Athlete sought an amendment to the Athlete's response to the Notice of Charge. The Athlete now denied the Charge itself, not only its Consequences, in the following terms:

"With the benefit of legal advice, the Athlete now understands that his admission of the charge incorporates an admission that he received written notice [from] an Anti-Doping Organization or by WADA in accordance with Article 2.10.2 of the IAAF Rules... Such written notice was not given to the Athlete... The Athlete will admit that he did train with the Coach after the Coach lifetime disqualification. However, at no point was he advised in writing of the consequences, in accordance with Article 2.10.2, before the Notice of Charge was served... "

8. On 22 August 2019, the IAAF replied to the request for amendment as follows:

"Whereas it would be open to the AIU to object to the change of plea on formal grounds, it will not do so. This notwithstanding, the AIU wishes to express its disappointment at the line of defence that will apparently be pursued...In these circumstances, the IAAF must reserve the right to bring a Tampering charge against

the Athlete [Article 2.5 of the Rules] (which carries a four year period of ineligibility) and seek consolidation of the two charges before the Disciplinary Tribunal."

9. As I see it, the Athlete now admits that he trained with the Coach and that he knew the Coach had been suspended for life, but he argues that the allegation of violation suffered from fatal defects that vitiate it. In reality, the Athlete, while recognizing that he knew all along that he was training with a coach banned for life, now submits that in any event the Tribunal just cannot even get to the merits of the case since the violation should never have been alleged because Article 2.10 never came into play.
10. In the circumstances I have allowed the Athlete to change his plea and I have granted counsel on both sides more time to file their written submissions. I assumed, wrongly as it turned out, that the AIU would forthwith issue a new Notice of Charge alleging Tampering, that the Athlete would file a new request for a hearing before the Disciplinary Tribunal, that the parties would suggest to the Chairperson of the Tribunal to appoint me as Chair to determine the second charge and that, as Chair of the two matters and with the consent of both parties, I consolidate the two. The date set for the hearing was not moved. It was premature, of course, to make plans at that stage to deal with a hypothetical Tampering charge.
11. Nothing of the sort was done. On October 1, 2019, six days before the date scheduled for the hearing and after another short extension of time consented to by the Athlete's counsel, the IAAF filed its Reply, in which it successively addressed the Prohibited Association charge and the Tampering issue. As I was concerned as to whether the Tribunal or myself as the Chair had jurisdiction with respect to an argument based on an alleged violation (Tampering) which had not been the object of a Notice of Charge and with respect to which the Athlete, of course, had not filed any response, I raised the issue with Counsel. Both counsel filed written submissions. On 3 October 2019 I decided that the Tribunal had no jurisdiction with respect to the Tampering charge, with reasons to follow. Here are these reasons.

Reasons for Decision on the jurisdictional issue

12. The Proceedings before the Tribunal are regulated by Article 8 of the Rules. They are quite simple. The Integrity Unit of the Association sends "a written notice" ("a Notice of Charge") to the Athlete with copies to the Chairperson of the Disciplinary Tribunal and to the Anti-Doping Organisations set out in Article 14.1.2 (Article 8.4.1). Anti-Doping Organisations listed in Article 14.1.2 are National Anti-Doping Organisations (in this case the Russian Anti-Doping Agency ("RUSADA") and WADA. According to the Definitions, a National Anti-Doping Organisation is "The entity(ies) designated by each country or territory as possessing the primary authority and responsibility to adopt and implement anti-doping rules..."
13. The Athlete may "respond to the Notice of Charge", challenge the Charge and/or the Consequences and ask the Disciplinary Tribunal to determine the Charge and/or Consequences at a hearing conducted in accordance with Article 8 (Article 8.4.3). On receipt of a request for a hearing from an Athlete, "the Chairperson of the Disciplinary Tribunal shall appoint one (1) or three (3) members of the Disciplinary Tribunal to hear and decide the alleged violation(s) set out in the Notice of Charge" (Article 8.5.1). Upon being appointed to a Panel of the Disciplinary Tribunal for a particular matter, "each member must provide a declaration to the parties, disclosing any facts or circumstances known to them that might call into question their impartiality or independence..."(Article 8.5.3) It is at that point that the Panel "shall have all powers necessary for, and incidental to, the discharge of its responsibilities, including (without limitation) the power, whether on the application of a party or of its own motion: (a) to rule on its own jurisdiction..." (Article 8.6.1 (a)).
14. There is, in my view, no authority whatsoever for a Panel in a given matter to bypass these basic requirements. I am not even sure that the Chairperson of the Tribunal would have himself such authority. It is true that Article 8.6.2 states that "Any procedural rulings may be made by the Chairperson of the Disciplinary Tribunal or the Chair of a Panel alone", but this Article, in my view, only applies when there is already a proper case before the Tribunal. In any event, to dispense a claimant from sending a Notice of Charge or a respondent from making a request for a hearing would not amount to "procedural rulings" within the meaning

of that Article. And of course the Tribunal could not dispense the Claimant from sending, as required by Article 8.4.1, a copy to "the Anti-Doping Organisations set out in Article 14.1.2". I am comforted in my interpretation of the Rules by the fact that the IAAF itself, in its email dated 22 August 2019, where it agreed to the Athlete's withdrawal of guilty plea, had acknowledged the need "to reserve the right to bring a Tampering charge against the Athlete", a right it has not exercised so far.

15. In its written submissions dated 3 October 2019, which included another request for adjournment of the hearing, the IAAF proposed that "The IAAF Reply be considered as the Notice of Charge (with respect to the Tampering violation)". That would require the Tribunal to ignore the Rules or to totally circumvent them. That cannot be. I had a real case to deal with and I was not prepared to adjourn the hearing on the basis of a virtual case.
16. In the circumstances, therefore, I decided to proceed with the appeal on 7 October 2019, the date originally set out weeks ago, and to hear submissions solely with respect to the Prohibited Association charge. Should the IAAF wish to issue a new Notice of Charge alleging Tampering before or following my award in this matter, it is at liberty to do so; if it does so and should there be a challenge with respect to that alleged violation of Article 2.5, the parties could probably ask the Panel appointed to hear that matter to file in that matter the record filed in this case.

The hearing

17. The hearing was held via a video-conference on 7 October 2019. Various statements, documents, pictures and videos had already been filed. Three witnesses, who were in Russia, testified: the Athlete himself and two persons who were called by the IAAF and who had filed witness statements: Mr Leonid Ivanov, Head of the Investigations Department of the Russian Anti-Doping Agency ("RUSADA"), and Mr Vladislav Yurievich Svintsov, a representative for the team of Russian athletes, including the Athlete, from the Sverdlovsk region, who attended the 2018 Russian Athletics Championships. They all testified in Russian and their testimonies were translated by an official interpreter located in the

Tribunal secretariat's office in London. I heard the appeal from my residence in Gatineau, Quebec, Canada. Counsel were in the Tribunal secretariat's office in London. It was agreed by counsel that the rest of the hearing would be conducted in English, without translation into Russian. The Athlete came back at the end of the hearing to say a few words to the Tribunal.

The pleadings

18. As previously noted, the Athlete admitted the Charge right from the start. It is only when a pro bono counsel was appointed to represent him that he withdrew his plea. He had until then only questioned the Consequences specified in the Notice of Charge.

19. In his Brief, the Athlete's principal argument is that for a charge of Prohibited Association under Article 2.10 to be made, the conditions set out in Article 2.10.2 must first have been met and that they were not. Excerpts of the Brief read as follows:

2. The Athlete denies the Charge on the ground that he has never been advised in writing by an Anti-Doping Organization of Vladimir Kazarin's (the "Coach") disqualifying status and the potential Consequences of continued association. As further set out below, such a written warning is a necessary condition for an allegation of Prohibited Association to be made out. That condition is simply not satisfied here and it follows that there has been no violation.

3. The Athlete does not dispute that:

3.1. He was aware that the Coach had been banned from officially training athletes (though for the avoidance of doubt the athlete believed that the Coach could train him unofficially); and

3.2. He trained with the Coach after the Coach was banned for life by the Court of Arbitration for Sport ("CAS").

4. However, none of this alters the only question for the Tribunal, which is whether the Athlete was advised in writing by an Anti-Doping Organization with jurisdiction

over him, or by WADA, of the Coach's disqualifying status and the potential Consequences of associating with the Coach, as required by the [Rules].

20. Even though the Brief had stated that the "only question before the Tribunal" was that of the insufficiency of the Notice of Charge, it ended up raising, albeit very briefly, an alternative argument, i.e. the severity of the consequences:

"Strictly in the alternative, the Athlete asserts that if, contrary to his primary case, a violation has occurred, then he is not at fault, alternatively not at a significant fault."

21. Most of the Athlete's arguments (paragraphs 24 to 46) are indeed devoted to the principal issue; the alternative issue is dealt with from paragraph 47 to paragraph 52. I will of course deal with the alternative argument only if I find the principal argument not founded.

22. On the other hand, in its Reply, the IAAF argues, in para. 3, that:

"despite admitting that he associated with the Coach in circumstances when he knew that he was banned for life, the Athlete has put forward a highly technical defence which, in essence, contends that he was not adequately warned about the Prohibited Association".

23. The IAAF goes on to argue that in any event, on the facts of the case, there was actually a written notification sent to the Athlete in conformity with the requirements of Article 2.10.2.

Principles of interpretation

24. The various episodes of alleged Prohibited Association between the Athlete and the Coach on which the AIU relies took place in October 2018, November 2018 and April 2019. I shall come back to them later in these reasons. The relevant IAAF Anti-Doping Rules effective from 6 March 2018 applied to the 2018 episodes; those effective from 1 January 2019 applied to the 2019 episode. As the 2018 IAAF Rules and the 2019 IAAF Rules are identical in all material respects, the Tribunal will refer, for the sake of convenience, solely to the 2018 IAAF Rules with

respect to the merits of this matter. In accordance with the principle of *tempus regit actum*, the 2019 IAAF are applicable to procedural matters.

25. When interpreting the Rules, the starting point is Article 20:

20. Interpretation

20.1 These Anti-Doping Rules are sport rules governing the conditions under which sport is played. Aimed at enforcing anti-doping principles in a global and harmonized manner, they are distinct in nature from criminal and civil laws, and are not intended to be subject to or limited by any national requirements and legal standards applicable to criminal or civil proceedings. When reviewing the facts and the law of a given case, all courts, arbitral tribunals and other adjudicative bodies should be aware of and respect the distinct nature of these Anti-Doping Rules implementing the Code and the fact that these rules represent the consensus of a broad spectrum of stakeholders around the world as to what is necessary to protect and ensure fair sport.

20.2 These Anti-Doping rules shall be interpreted in a manner that is consistent with the Code. The Code shall be interpreted as an independent and autonomous text and not by reference to the existing law or statutes of any Signatory or government. The comments annotating various provisions of the Code and the International Standards shall be used to interpret these Anti-Doping Rules.

26. I pause here to note that even though Article 20.3 directs the Tribunal to interpret the Rules "in accordance with Monegasque law", Counsel did not refer the Tribunal to any Monegasque law.

27. Also, when interpreting the Rules, the Tribunal should take into consideration principles of interpretation which have been established in the case law. It is well settled that sport arbitrators, even though they are not bound by previous awards, will seek a degree of uniformity in their interpretation of the Rules in order to maintain consistency and predictability in the development and application of sport law. (see *CAS 2008/A/1545, Anderson v.IOC, at para.53 to 55*)

28. One of the best recognized principles of interpretation is that of clarity and predictability. As observed by a CAS Panel in *CAS 2004/A/725, United States Olympic Committee v. IOC and IAAF*, at para. 20:

"The rationale for requiring clarity of rules extends beyond enabling athletes in given cases to determine their conduct in such cases by reference to understandable rules. As argued by the Appellants at the hearing, clarity and predictability are required so that the entire sport community are informed of the normative system in which they live, work and compete, which requires at the very least that they be able to understand the meaning of rules and the circumstances in which those rules apply".

29. Reference may also be made to the seminal award in *CAS 1994/A/129, USA Shooting & Q. v. Union Internationale de Tir*, at para.34:

"The fight against doping is arduous, and it may require strict rules. But the rule-makers and the rule-appliers must begin by being strict with themselves. Regulations that may affect the careers of dedicated athletes must be predictable..."

30. The Athlete suggests that before one can even think of interpreting a rule there must be some ambiguity in the rule; absent ambiguity, the suggestion goes, there is no need for interpretation and clear words should simply be given their plain meaning. As logical as this suggestion seems to be on paper, it is in my view a clever but useless play with words. To say that a rule is clear can be argued to be, in itself, an interpretation of that rule. Clarity, as was seen above, is one of the principles of interpretation. And even if a rule is found to be clear, the issue will likely arise as to whether the rule should in a given case be interpreted literally or liberally.

31. I will therefore proceed with the interpretation of Rule 2.10 to find out what it precisely means.

Interpretation of Article 2.10

32. The relevant portions of Article 2.10 are as follows:

2.10 Prohibited Association

2.10.1 Association by an Athlete or other Person subject to the authority of an Anti-Doping Organization in a professional or sport-related capacity with any Athlete Support Person who:

- (a) if subject to the authority of an Anti-Doping Organization, is serving a period
- (b) of Ineligibility; or [...]

2.10.2 For the avoidance of doubt, this Article 2.10 applies even when the Athlete Support Personnel's disqualifying conduct occurred prior to the Effective Date. **In order for this provision to apply, however, it is necessary that the Athlete or other Person has previously been advised in writing by an Anti-Doping Organization with jurisdiction over the Athlete or other Person, or by WADA, of the Athlete Support Personnel's disqualifying status and the potential Consequence of prohibited association and that the Athlete or other Person can reasonably avoid the association.** The Anti-Doping Organization shall also use reasonable efforts to advise the Athlete Support Personnel who is the subject of the notice to the Athlete or other Person that the Athlete Support Athlete may, within 15 days, come forward to the Anti-Doping Organization to explain that the criteria described in Articles 2.10.1(a) and 2.10.1(b) do not apply to him or her. **(my emphasis)**

2.10.3 The burden shall be on the Athlete or other Person to establish that any association with Athlete Support Personnel described in Article 2.10.1(a) or 2.10.1(b) is not in a professional or sport-related capacity.

33. Article 10.3.5 is also relevant:

10. Sanctions on Individuals

10.3.5 For violations of Article 2.10, the period of ineligibility shall be two years, subject to reduction down to a minimum of one year, depending on the Athlete or other Person's degree of fault and other circumstances of the case.

34. Article 2.10 was recently added to the list of Doping Violations in the Rules. It made its way into the revised World Anti-Doping Code, and in the Rules, in 2015. It came into effect in January 2015. The events in this case are therefore to be

seen in the perspective of a violation, the significance of which is still untested and has not yet made its way to arbitral interpretation. Sport organisations as well as athletes are trying to understand and cope with a rule that is still in its infancy. The Rule's novelty may explain in a large measure some of the misunderstandings, as we shall see, that plague this file, whether coming from the Athlete or from the sport organisations involved, i.e. the IAAF, the RusAF and RUSADA.

35. For Article 2.10 to come into play where an athlete is charged with Prohibited Association with an ineligible coach, there has to be between the athlete and the coach an "association...in a professional or sport-related capacity".
36. The word "association" is not defined in the Rules, except to the extent that it is limited to activities which are undertaken "in a professional or sport-related capacity" -"à titre professionnel ou sportif" in the French text- and these last words are not defined either. It is the working relationship which is meant to be prohibited, not a mere personal relationship. The question then becomes, when is a relationship a working one, what kind of interaction between the athlete and the coach is needed? For example, the Athlete claims that Kazarin was not "officially" training him. Is that a relevant distinction? This case, *prima facie*, falls in the category of a sport-related activity. I see no indicia which would allow me to make a distinction between an official capacity and an unofficial one. One is either coaching, or not. I do not accept the distinction put forward by the Athlete. I note that Article 2.10.3 establishes a presumption that the alleged association is in a professional or sport-related capacity in accordance with Article 2.10.1(a) and Article 2.10.1(b) and imposes on the athlete the burden to prove otherwise. That burden, in my view, has not been satisfied by the Athlete and I will pursue the analysis on the basis that we are dealing here with an association in a sport-related capacity. It is significant, however, that there is no such presumption in favor of the Claimant and no such burden against the Athlete with respect to the determination of whether the conditions set out in Article 2.10.2 have been met.
37. The emphasised words in Article 2.10.2 are obviously at the heart of the interpretation and application of Article 2.10. While the word "provision" is used -and it is rarely used in the Rules- rather than the word "Article", it clearly is an

encompassing expression which, in context, must be the equivalent of "Article". The same may be said of the word "disposition" used in the French text.

38. The meaning of the words, in my view, is inescapable. "In order for this provision to apply, however, it is necessary that ..." a series of conditions have first to have been met. The words "it is necessary that" -"il est nécessaire que" in the French text- are as clear as they are unusual and exceptional. They do not appear to have been used anywhere else in the Rules, which is an additional reason to give them their first, natural meaning. In a legal world, words like "Article 2.10 does not apply unless the following conditions have been met" would probably have been used. Perhaps the words are equivalent to the word "shall", which is used later in Article 2.10.2. Be that as it may, as is directed by Article 24.3, "The Code shall be interpreted as an independent and autonomous text and not by reference to the existing law or statutes of the *Signatories* or governments." Clearly the use of the words "it is necessary that" means that what follows are conditions precedent, or conditions *sine qua non*. Unless each and all of these conditions are met, no Notice of Charge can be said to have been validly issued with respect to a Prohibited Association Violation. The conditions can be said to be inherent in the Violation; they are not mere procedures. It is wrong to qualify, as Counsel for the IAAF does, the argument raised by the Athlete as a "highly technical defence". Quite to the contrary, the Athlete's defence goes to the very existence of the Violation.
39. This interpretation is consistent with the special nature of Article 2.10. Prohibited Association, when applied to an athlete, is a Violation that essentially was added to the list of Violations in the Rules not because the athlete has otherwise committed a Violation, but because somebody else has. The new Violation rule was in that sense added to protect even further the athlete from bad influence in imposing on him or her an obligation to be more careful in his or her choice of coaches. In that sense the new Violation sends a clear signal to athletes not to associate with persons who are or were advocating cheating. But the Drafters did not want athletes to be the innocent victims of a rule introduced in the Code to protect them even further from doping temptations. Absent objective tests such as those referred to in the traditional, more common Violations and where test results can be the foundation of presumptions against the alleged "violator" or of burdens

imposed upon him or her, Article 2.10.2 is meant to achieve some objective degree of certainty that the alleged "violator" -the athlete- had been personally made aware, in a precise way, of what he or she was doing and of the consequences of his or her actions. Personal knowledge is in that sense irrelevant.

40. In effect Article 2.10.2 is an exception to the principle set out in Article 1.8 that "All Athletes...shall be responsible for knowing what constitutes an Anti-Doping Rule Violation under these Anti-Doping Rules..." In other words, Article 2.10.2 imposes a particular burden on the Athletics Integrity Unit: once the "professional or sport-related capacity" has been confirmed, the AIU has to make sure, before issuing a Notice of Charge, that the athlete has been made aware, personally, in the way described in the Article, that what he or she was doing could result in a violation and that specific consequences ensue. This interpretation may result in some athletes who knew very well what they were doing escaping being charged, but this is what the drafters of the Rules have decided and it is not for an arbitrator to question the clear intention of the drafters. To use the words of Article 20.1, the Rules are the result of "the consensus of a broad spectrum of stakeholders around the world".

41. There appears to be an implicit obligation imposed on the Athletics Integrity Unit to personally warn the athlete concerned. It results from the words used to describe the obligation, further up in Article 2.10.2 with respect to the obligation imposed on the AIU to advise the coach concerned, only to "use reasonable efforts". The difference in the words used is striking. Reasonable efforts would not be sufficient when it comes to the notification given to the athlete. It is clear, from the facts of this case, that this is how the AIU interprets its obligation to advise the Athlete: in Order No.37 (dated 25 June 2018, which we shall examine later), the Russian Athletics Federation requires "a written acknowledgement" from each athlete, and in the very recent email, dated September 3, 2019, the Russian Anti-Doping Agency ("RUSADA") asks every athlete "to send a signed application for familiarization with paragraphs 2.1 - 2.10 of the Rules...by September 6, 2019." Order No.37 even goes further than Article 2.10.2 in that it requires written acknowledgment from coaches also. I am not suggesting, however, that an athlete could avoid being charged with Prohibited Association by simply ignoring the

attempts made to reach him or her: in that sense reasonable efforts to advise might well in a given case prove sufficient.

42. What are these *sine qua non* conditions set out in Article 2.10.2? There are four, in my view.
43. The first condition is that the Athlete must "have been previously advised in writing". This is a strong requirement, as compared, for example, as we have just mentioned, with the obligation imposed in the last part of Article 2.10.2 on the Anti-Doping Organisation to "use reasonable efforts to advise [the Coach]..." The notice must have occurred earlier than the incident reproached and it must have been in writing. An oral notice will not suffice. Absent a written notice personal knowledge by the athlete would not suffice. A written collective notice, in my view, would satisfy the requirement, provided of course that there was evidence that the athlete was made aware of the notice. The form of the written notice is not specified; it may vary depending on the context; there should be no formalism here. There is no requirement that there be only one, comprehensive notice; the notice in writing, for the purposes of Article 2.10, can be a combination of written notices.
44. The second condition is that the notice be given by "an Anti-Doping Organisation with jurisdiction over the Athlete [...], or by WADA". An "Anti-Doping Organisation" is defined, in the Definitions, as "A Signatory that is responsible for adopting rules for initiating, implementing or enforcing any part of the Doping Control process. This includes, for example, the International Olympic Committee, other Major Event Organisations that conduct Testing at their Competitions, the IAAF, WADA and National Anti-Doping Organisations". National federations such as the RusAF which are members of the IAAF but are not a Signatory, are not anti-doping organisations within the meaning of the Article. On the other hand, the Russian Anti-Doping Agency ("RUSADA"), which is a Signatory, is clearly a National Anti-Doping Organisation within the meaning of the definition of National Anti-Doping Organisation as it is an entity, in Russia, "possessing the primary authority and responsibility" in anti-doping matters. The list of the WADA Code Signatories includes RUSADA but does not include the RusAF. The Drafters were therefore clearly excluding national federations which were neither a Signatory nor

the primary authority in anti-doping matters in their respective countries. Whatever the purpose of the drafter was in excluding national federations that did not come within the very specifically drafted definitions and rules, it is not within the authority of an arbitrator not to apply that exclusion.

45. The third condition is that the notice be "of the [Coach]'s disqualifying status" and "of the potential Consequence of prohibited association". "Consequence", used in the singular form, has the wide meaning given to the word, used in the plural form, in the Definitions. It refers, in my view, at least to one of the first two of the four Consequences identified in the definitions, e.g. Disqualification and Ineligibility. The expression "disqualifying status" is not an apt one when applied to a coach. "Disqualification", as defined in the Definitions, applies only to Athletes. What is meant, obviously, is that the Notice be of the coach's ineligibility.
46. The fourth condition is that the notice be such that the Athlete "can reasonably avoid the association" -*puisse raisonnablement éviter l'association*- in the French text. This last condition is, with respect, poorly phrased. It seems to say that in the Notice the Anti-Doping Organisation must give the athlete the possibility to reasonably avoid the association. That fourth condition was not addressed by either Counsel and I shall refrain from commenting on it, except to say that it confirms that the conditions set out in Article 2.10.2 are athlete-protection oriented.

The facts

47. It is important at this stage to describe the chain of events in the relevant periods, as they appear from various documents, statements and testimonies:
 - a) The Athlete started to train full time in February 2012 with coach Vladislav Shiryayev, who coached an athletics team called Team Sputnik. That meant the Athlete was from then on entitled to a regular salary from the government.

- b) The Athlete first met Kazarin in 2015 while training with Team Sputnik. Kazarin was another Team Sputnik coach well known for training some of the best athletes in Russia. Kazarin and his wife Natalya Khrushcheleva, a former champion now also a coach with Team Sputnik, agreed to coach the Athlete. From 2015 onwards the Athlete trained with Shirayayev, Kazarin and Khrushcheleva. The Athlete was in awe of Kazarin and would never question his training methods.
- c) The Athlete trained with Kazarin in January 2017. A German TV channel broadcasted a documentary in which the Athlete was seen to train with Kazarin. At that time no one asked the Athlete to comment on the event.
- d) On 7 February 2017, the IAAF was advised that RusAF had posted on its website a notice which stated in relevant parts as follows (Hearing Bundle, p.29):

"We appeal to all athletes, coaches and support personnel to follow the Verification Criteria, otherwise RusAF will not get reinstated to IAAF membership. We explain again that disqualified or suspended athletes and coaches may not and must not stay, coach and train (even at their own expense) at the facilities or physical culture and sports organizations of the Russian Federation, as well as at overseas facilities, where athletes of Russian National Team have training events, These facts seriously undermine all of the reforms and make it impossible for RusAF to be reinstated to IAAF Membership."

"All-Russian Athletics Federation reminds about the importance of anti-doping rules compliance, disqualification rules and exclusion of association with disqualified coaches."

"The presence of a disqualified coach at the official training place of the athletes may be considered as a violation of the All-Russian anti-doping rules by the athletes and coaches in accordance with paragraph 2.10 "Prohibited association." The sanction for this violation is a period of ineligibility from 1 year to 2 years."

- e) On 7 April 2017, Kazarin was banned for life by the IAAF following a final hearing before the Court of Arbitration for Sport (CAS). CAS issued a press release on the same day. The Coach has at all times since then been listed on the IAAF's Global List of Ineligible Persons on the IAAF or AIU website. The Athlete learned of Kazarin's lifetime ban at that time.
- f) From April 2017 to the end of 2017, the Athlete attended roughly eight training camps where Kazarin worked with both Team Sputnik and other athletes. As "all the athletes continued to train with Kazarin, [he] did not think anything of it." (Hearing Bundle, p.14)
- g) In early 2017, the Athlete applied to the IAAF Doping Review Board for Neutral Athlete status, which was the only way for him to compete in international events since the RusAF had been suspended from the IAAF. His application was refused on 20 June 2017 on the basis that he "continued to cooperate with VS Kazarin despite the life time ban of the coach".
- h) The RusAF carried out an investigation for the IAAF around September 2017 to investigate suspicions that Kazarin was breaking his lifetime ban and working with athletes. The Athlete was unaware of that investigation and denies the IAAF's allegation that RusAF had at the time specifically warned him and asked him to be more careful in his communications with disqualified coaches.
- i) In early 2018, the Athlete applied again for Neutral Athlete status. On March 27, 2018, the Athlete received the following email from RusAF:

"We ask you to confirm in writing, signed with your date, that you do not have a professional relationship with V.S Kazarin. This is necessary so that the federation can vouch for you before the IAAF. At the same time, we inform you that if you continue professional cooperation with Kazarin, this will negatively affect the restoration of the RusAF. Upon receipt of written confirmation from you, your documents will be sent to the IAAF." (Hearing Bundle, p. 329)

The Athlete adds in his 10 September 2019 written statement that "I did not understand this to mean (and I was not told) that I was prohibited from being coached by Kazarin. I only thought that it may delay the RusAF's reinstatement." The Athlete asked Kazarin to help him answer this message. Kazarin told him to write the following response: "I do not have any professional relationship with V.S. Kazarin". The Athlete submitted this answer in a signed statement to the President of the RusAF on 30 March 2018. The Athlete comments in his written statement as follows: "I believe my statement was true because Kazarin had been training me in an unofficial capacity since 2017 (my official coaches were Shyyayev and Khrushcheleva) and I did not think this was a "professional relationship". Naturally, i was also very anxious for my second application to be successful. I also understood that this is what RusAF wanted me to say." All of the above was confirmed by the Athlete in a part of his testimony which I find credible.

j) The Athlete attended another training camp with Kazarin between 4 and 25 May 2018. Some RUSADA investigators were present. Kazarin told the athletes to deny that he was training them if they were asked. On 24 May 2018, Mr Ivanov, the Head of Investigations for RUSADA, entered the Athlete's room after he had finished his urine test. Mr Ivanov asked him whether he had seen Kazarin at the training camp. As directed by Kazarin, the Athlete answered that he had not. At the end of the meeting, as he was leaving, Mr Ivanov told the Athlete "Let's keep this quiet". I heard the testimony of both the Athlete and Mr Ivanov on this issue. Mr Ivanov was very confused and could not really remember what had happened. I believe that the Athlete's version is the one that best recollects that meeting.

k) On 25 June 2018, the RusAF issued administrative Order 37. The Order reads as follows:

"Russian Athletics Federation

Order No. 37

25 June 2018

Moscow

On April 2018 the RUSADA employees found the coach V.M. Chegin, who had been banned for life for violations of the anti-doping rules, at the stadium used as a training camp of the Russian national athletics team in Karakol (Kyrgyzstan. The reinstatement of the RusAF in the AIIF has been adversely affected by the presence of the disqualified coach at the athletes' training camp and has resulted in suspension of the following [5] race walking athletes:[...]

The following professional have been currently disqualified:

V. Chegin, A.,Melnikov, V.Kazarin, S. Portugavov (lifetime disqualification)

V. Mokhev - 10-year disqualification (until 22.12.2016)

Ye. Yevsyukov - 4-year disqualification (until 28.12.2020)

L. Fedoriva - 4-year disqualification (until 19.09.2020)

V. Kolesnikov - 4-year disqualification (until 20.08.2018)

V. Volkov - 4-year disqualification (until 03.08.2021)

The mere presence of a disqualified coach at the official training camp may be regarded as a violation by athletes or coaches of paragraph 2.10 (Illicit Cooperation) of the Russian National Anti-Doping Rules. This violation is punishable with the disqualification for 1 to 2 years.

In order to prevent similar violations in future, I hereby order:

1. *The head coach of the Russian national athletics team Yu.M. Borzakjovskiy to communicate this order and paragraph 2.10 of the Russian National Anti-Doping Rules to all athletes and coaches of the Russian national team against written acknowledgment, and to submit the acknowledgment list by 1 August 2018.*

2. *The RusAF Anti-Doping Coordinator Ye.V. Ikonnikova to inform the regional athletics federations and regional executive authorities of the need to control the disqualification of coaches, to arrange for anti-doping activities involving athletes and coaches with regard to the anti-doping policies, and to submit the relevant action plan by 10 July 2018.*

3. *The regional athletics federations to monitor the compliance by coaches with the disqualification terms and conditions, and to prevent the illicit cooperation between disqualified personnel and athletes or coaches.*

I will be solely in charge of monitoring the execution of this order.

(signed) President D.A. Shlyakhtin"

l) On 13 July 2018, the Athlete was granted Neutral Athlete status by the IAAF Doping Review Board.

m) On 19 July 2018, the Athlete attended the Russian National Championships to compete in the 400m event. In view of the major importance for the IAAF's case of some of the events that allegedly happened at that time, I will spend some moments on the evidence relating to these events.

48. The IAAF relies first on the "witness statement" of a technical official, Tatiana Goncharenko, a person working at track and field events. She explains that on 18 July 2018, the day before the beginning of the Championships, she was present at a technical meeting attended by representatives of the various regional teams. At that meeting, she states, a representative of RusAF, Yuriy Borzakovskiy, "explained that there was a RusAF Order that warned athletes not to associate with a number of banned coaches. He also instructed the representatives of the

various regional teams to advise their athletes about the Order and to inform them that they would be required to sign a form acknowledging the Order in the call room before their respective races/events."

49. She adds that it was her responsibility to supervise the call room and that the following day, technical officials in the call room explained to the athletes *"that, by signing the form, the athletes were acknowledging the contents of a RusAF Order, which warned them not to associate with any of the banned coaches."* She goes on saying that her primary duty and the duty of technical officers was performing call room procedures *"and not to collect signatures or to explain the Order"*. *"There were copies of the Order on the desk when the athletes were signing the acknowledgement form so that they could read it if they had not already done so."* She ends her statement in expressing surprise that Artyom Denmukhametov claimed that when he signed the form he did not know that it related to an Order regarding banned coaches but thought rather that it was a mere pre-race administration form. *"I find this surprising for a number of reasons, including the following: (i) First, the athletes should have been told in advance by their team representatives about the order and that they would be required to sign a form to acknowledge it; (ii) Second, the technical officials told the athletes (who came into the call room in small groups) what the form and the Order related to before they signed."* (Hearing Bundle, p. 282). Ms Goncharenko was expected to testify at the hearing; she did not. I am referring to her statement, not to rely on it as it makes no sense of what happened in the call room when compared to the oral testimonies of Mr Svintsov and of the Athlete, but simply to illustrate the position advanced by the IAAF. Mr. Borzakosvskiy did not testify.

50. The IAAF also relies on the witness statement of Vladislav Yurievich Svintsov, who testified at the hearing. He was the representative for the team of athletes from the region where the Athlete was coming from. He confirms the facts as stated by Ms Goncharenko with respect to the meeting on 18 July 2019. He adds: *"on the same day at the technical meeting, I told the athletes in the Sverdlovsk team (including the Athlete) about the Order and that they would be asked to sign a form to acknowledge its contents. I specifically told them that if they associated with the relevant coaches, it would be an anti-doping rule violation that could*

result in them being banned themselves." (Hearing Bundle, p.286) At the hearing, he stated that, contrary to what he had written in his statement, he had met the Athlete the day after the reunio, that he had not met him in the call room and that he had met him after the race.

51. The Athlete, in his witness statement, wrote the following: *"While warming up shortly before the start of my heat, I was called into a separate room, along with around seven or eight other athletes. A RusAF official entered the room (who I understand was called Tatiana Goncharenko). We were told by Ms Goncharenko to sign a form. Some of the athletes asked what the form was and why we had to sign it. Ms Goncharenko told us that if we did not sign we would not be allowed to compete. We had to write our names, sign and date the form. As far as I can recall, all of the other athletes from my heat did so. The form refers to a RusAF order (**Order 37**) and Article 2.10 of the IAAF Rules. I did not notice that at that time I simply filled the form as asked. I assumed it was necessary for the race administration. I did not know what Order 37 or Article 2.10 was at the time. I was not provided with a copy of Order 37, the IAAF Rules, or any other document. They were not read out to the athletes or explained in any way. We were not told where to access any document. I was not told about Article 2.10 of the IAAF Rules or any consequences of breaching Article 2.10. I was ready for my event. I had warmed up and was about to go out onto the track. I simply signed the form so that I could compete in the race. I did not think about this after the event."*

52. In his testimony, the Athlete basically repeated what he had written in his witness statement. He was however confused when asked to explain what it was some of the other athletes had asked and it is hard to believe that he did not know anything about Order 37 when he signed the form. The fact is, however, and it is confirmed by the testimony of Mr Svinstov, that the Athlete was not informed of Order 37 by the regional representative, as was supposed to be done, before the race. The Athletes were in the call room 5 to 7 minutes before the race. It was the first time ever such a request for an acknowledgement of some sort was made in a call room. It was clearly made in quite a rush and amateur fashion. It is not surprising that the Athlete paid little attention to it.

53. On 6 August 2018, the IAAF Doping Review Board wrote to the RusAF and asked "for an explanation from both the Athlete and RusAF on the footage shown in the [January 2017] video" (Hearing Bundle p. 109). The Athlete consulted Kazarin, who told him to write in the statement that he was not training with him in the video and that he had no professional relationship with him.

54. On 7 August 2018, the Athlete wrote a statement in which he says that he had not trained with Kazarin at that time, that he had "no professional relations with V.S. Kazarin" and that "his current coaches are N.P. Chruscheleva and V.A.S. Shirayev.)" (Hearing Bundle p.114)

55. In a letter dated 9 August 2018, RusAF supported the application in these terms: *"[The Athlete] was never spotted in the company of disqualified coaches after the events shown in the film. He did not violate any anti-doping rules, all his tests were taken without any problems, and all his samples were always negative. Moreover, in June 2018 the athletes submitted the written confirmation of not being in touch with V. Kazarin to the RusAF".* (Hearing Bundle, p.110)

56. [REDACTED]

57. Between 17 October and 24 November 2018, the Athlete attended another training camp, where he again trained with Kazarin. On 30 October 2018, after the completion of a urine test, he was taken aside into a separate room by Mr Ivanov. Mr Ivanov told him that "he knew everything" about Kazarin and that he should confess that Kazarin was in the area at that moment. Mr Ivanov told him he had to

complete a form, which he did. The Athlete claims that everything he wrote was dictated by Mr Ivanov. *"For each sentence in the statement, first Mr Ivanov asked me a question and I answered. Then he dictated what I should write, changing my answers in a way that he said was more proper and official for the statement, but which usually made them more definite. I was careful in what I said to Mr Ivanov because Kazarin had told me never to acknowledge training with him in any written declaration and I did not want to have my neutral athlete status revoked."* In the statement, he wrote, *inter alia*, the following: *"I train at the training camp by myself, there is no coach at the training camp. I am not acquainted with [sic] Kazarin V.S. Since October 17, 2018, I have not met him...I did not see Kazarin V.S. at the training on October 29, 2018...I have been explained that participation of previously disqualified for life, coach Kazarin...[in] my sport preparation is violation of the sport anti-doping rules - prohibited association. I don't use prohibited substances and methods in my preparation."* (Hearing Bundle, p.332)

58. Here again, in his witness statement, the Athlete *"accept[s] that large parts of this statement were untrue...I wrote the statement on the understanding that this is what Mr Ivanov wanted me to write and I followed his instructions (as well as Kazarin's previous instructions) without question. I suspected that Mr Ivanov must have known that I had been training with Kazarin...but he did not challenge me on this. I do not know why. However, at the time, I assumed that this might be because RUSADA's job would be made easier if they could ignore Kazarin's activities, and so a statement of this kind suited them. As I said, Mr Ivanov amended my answers to indicate that Kazarin had no connection to the training camp and that there was nothing to report on his activities."* The Athlete ends up stating: *"[Mr Ivanov] said I could be disqualified but he did not mention any specific rule and I did not understand what he meant. I did not think to ask again I just did what I was told... At no point did Mr Ivanov or any other person from RUSADA discuss with me what would happen if I violated an anti-doping rule. We did not discuss Order 37 or any previous statement I had made."* (Hearing Bundle, p. 333)

59. In mid-November 2018, the Athlete attended another training camp, where he again was coached by Kazarin. Upon his return home at the end of the camp, he

received from RUSADA, by email, a list of questions. On the advice of Kazarin he answered, on 29 November 2018: *"I am a little acquainted with Kazarin...I know how he looks like. I don't know the details about the disqualification. I did not receive any official notification. And no information about any consequences was not conveyed... He did not participate in the training processes. In my opinion, the only reason of his presence on any presumed day, could be the family ties with Kuscheleva... He was present at the trainings, but rarely"*. (Hearing Bundle, p.366)".

60. [REDACTED]

61. In April 2019, the Athlete again trained with the Coach in another training camp.

62. The Athlete has not participated in any competition or prohibited activity since his Provisional Suspension, on 14 June 2019.

63. On 3 September 2019, the Athlete received a circular email from RUSADA, addressed to all members of all Russian national sports teams. It attaches a notification setting out Article 2.10 and an acknowledgment form which the recipients must print, sign and return to RUSADA. This was the first time the Athlete has ever received or heard of this kind of email. This notification reads as follows (Hearing Bundle p. 369):

"Dear athletes and sportswomen!

In connection with the increasing incidence of information regarding association by Russian Athletes and Athletes' Staff with Disqualified Trainers and Doctors, the anti-doping agency informs you that, according to the RusAF anti-doping rules approved by order of the Ministry of Sports of Russia dated August 9, 2016 No. 947,

Doping is defined as the **commission of one or more violations** of the Rules given in **paragraphs 2.1 - 2.10 of the Rules**.

Clause 2.10 of the Rules defines the responsibility of the athlete and the athlete's personnel for the Prohibited Association.

- a. The association of an athlete or other person with any Athlete Support Person is prohibited, where the athletics personnel:
- b. Is serving a suspension for an anti-doping rule violation;
- c. Has been indicted during a criminal, disciplinary or professional investigation, or found guilty of participating in actions that would be recognized as a violation of anti-doping rules, if Code-compliant rules had been applicable to this person Acting as a front or intermediary for an individual described in previous paragraphs.

The **standard period of disqualification** for this type of violation of the Rules is **two years**.

For the purposes of applying this paragraph of the Rules, it is necessary that the athlete or other person earlier were warned in writing about the status of the disqualification of the Athlete Support Person and possible consequences of prohibited association, as well as the fact that the athlete or other person must take reasonable steps to avoid such association.

The burden of proving the fact that any association with an Athlete Support Person described in subparagraph 2.10.1 or 2.10.2 of the Rules, is not of a professional or sports related nature, is assigned to an athlete or other person.

An up-to-date list of athletes who have violated anti-doping rules, and the sanctions imposed by the All-Russian Sports Federations, **can be found on theRUSADAwesite:**<http://rusada.ru/doping-control/disqualifications/>

We ask you to send a signed application for familiarization with **paragraphs 2.1 - 2.10 of the Rules** to email Valeriya.German@rusada.ru **by September 6, 2019.**

sincerely,

Russian Anti-Doping Agency "RUSADA"

Deputy General Director [signature] M.A. Pakhnotskaya"

[the emphasis in the original]

The burden of proof

64. Pursuant to Article 3.1, the burden is on the IAAF to establish that an Anti-Doping Violation Rule has been committed. "The standard of proof shall be whether the IAAF has established the commission of the alleged...Violation to **the comfortable satisfaction of the hearing panel** bearing in mind the seriousness of the allegation that is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond reasonable doubt." (my emphasis)

Whether the burden of proof has been met

The first condition: personal notice in writing to the Athlete

65. The purpose and importance of a written notice is obvious. The consequences for an athlete of an association with a banned coach are very severe and can end with a very substantial punishment, such as a 2-years period of ineligibility. It is imperative that an athlete should be provided with a comprehensive written warning before an Article 2.10 Violation can be alleged. The only written warning alleged by the IAAF in this case is with respect to Order 37. There is no evidence that the Athlete was ever provided with a copy of Order 37, that he was shown a copy of the Order or that Order 37 was read to him. The other warning alleged by the IAAF is that of Mr Ivanov, on 30 October 2018, whose credibility is much questioned by the Tribunal, and in any event it was not a written warning.

Mr Ivanov appeared to be ill at ease and lacked focus as he was seen chatting on the side with someone else in the room. He could not even explain how he ended up signing a statement which was all written in English, a language he does not understand, and he could not remember any Russian version of the document being shown to him. He even admitted having "familiarized himself" with a document he could not even understand. He recognized he never gave a written warning to the Athlete and that it was not "in his remit" as Chief Investigator to do so.

66. This has not been an easy decision for me to take with respect to this first condition. The fact that the burden of proof was borne by the IAAF was a major consideration. The Athlete made some contradictory statements. I believe he knew or should have known that he was playing with fire in maintaining his coaching relationship with Kazarin. But Article 10.2.1 is clear and demanding: the Athlete must be personally warned in writing and the evidence on that point is far from being satisfactory. Indeed, I find the little evidence brought forward by the IAAF very weak. Its two witnesses did not impress me; to the contrary, I found them evasive, confused; their recollection of events was so imperfect that it became suspect.

67. My understanding of the evidence, including the testimonies of the two IAAF witnesses and of the Athlete, is that in these early years of the application of the Prohibited Association Anti-Doping Rule and in the aftermath of the McLaren Report, the Russian Athletics Federation and the Russian Anti-Doping Agency were more concerned with the Russian Athletics Federation's reinsertion in the IAAF family and with the effect on that reinsertion of the presence of suspended coaches in training camps, than they were with the risks incurred by the athletes because of that very presence. (see, for example, Order 37 and Facts d) and i)). There was, for example, no evidence at all with respect to the measures the Russian organisations were taking, if any, to prevent banned coaches from attending training events. With respect to the Athlete in the present case, they had known from the very beginning, way back in 2017, that he was training with Kazarin. Yet they never seriously warned him that he could be suspended, perhaps because he was a clean athlete and was remaining clean, drug-wise, despite his

association with the Coach and they have always accepted, if not encouraged his false statements despite their actual knowledge of his association with a suspended coach.

68. I do believe the Athlete when he says that he made the statements that were expected from him because he was intimidated by the Russian athletics authorities and by Kazarin. I do believe the Athlete when he says that he did not think that unofficial training was a violation of the Rule; after all, he was led to believe, for two years, that his association with Kazarin, the husband of one of his official coaches, was acceptable to the Russian athletics authorities which could have availed themselves of Article 2.10 much earlier than they did had they really believed that there was a Prohibited Association. The Athlete was very conscious of his clean status; he had obtained his Neutral Status with the support of the RusAF; he would not, in my view, have risked putting it in jeopardy had he known that what he was doing would likely result in his ineligibility. I find that he was never seriously warned about that possibility, which is the very purpose of the conditions set out in Article 2.10.2.

69. I find, on the paucity of evidence put forward by the IAAF, that the first condition has not been met.

The second condition: notice given by an Anti-Doping Organization

70. Order No. 37 emanates from the Russian Athletics Federation, which is not an Anti-Doping Organization as defined in the Rules. The President of RusAF even says in the Order that he *"will be solely in charge of monitoring the execution of this order."* This is clearly not what the Drafters of the Rule had in mind, whatever their reason for doing so; it is, in fact, the opposite. The second condition has not been met.

The third condition: notice given of the disqualifying status of the coach and the potential Consequence

71. Article 2.10.2 requires notification of the coach's "disqualifying status". Order No.37 expressly refers to the "lifetime disqualification" of Mr Kazarin. The use of the concept of "disqualification" is an inapt one when applied to a coach, because "disqualification" is a term which is only used, in the Definitions, with respect to an athlete's results. Be that as it may, the confusion arises from the wording of Article 2.10.2 itself and Order 37 at worst reproduces that confusion. I conclude that this part of the Third Condition is met.

72. Order No. 37 expressly states: *"The mere presence of a disqualified coach at the official training camp may be regarded as a violation by the athletes or coaches of paragraph 2.10 (Illicit Cooperation) of the Russian National Anti-Doping Rules. This violation is punishable with the disqualification for 1 to 2 years."* The IAAF submits that because "Consequence" is used in a singular form in Article 2.10.2, reference to one of the Consequences is enough to satisfy the requirements of the Article, and disqualification is one of those consequences. It is true that disqualification is on the list, indeed it is the first on the list. But "disqualification" refers essentially to the invalidation of the results achieved by an athlete and is not the worst of the consequences listed, especially should the athlete not be a very successful one. If only one reference to a consequence is sufficient, it should be, in my view, a reference to the worst possible scenario for an athlete and that worst scenario is "ineligibility". However, Article 2.10.2 itself refers to "the [Coach]'s disqualifying status", I am prepared to find that in practice the words "disqualification for 1 to 2 years" in Order 37 refer to "ineligibility for 1 to 2 years" and that this is how athletes would interpret it. It is indeed how the Athlete interpreted it in paragraph 2 of his Brief when he referred to the Coach's "disqualifying status".

73. The third condition has therefore been met.

74. In the end, I conclude that some of the requirements set out in Article 2.10.2 of the Rules for the application of Article 1.2 have not been met and that no Notice of Charge of an alleged Anti-Doping Violation under Article 2.10 should have been issued by the AIU against the Athlete. In the circumstances I have no other choice but to decide that the Charge should be dismissed.

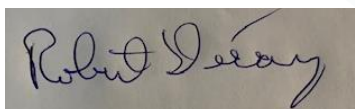
75. In view of my conclusion with respect to the principal argument raised by the Athlete, I need not address his alternative argument.

Decision

76. In view of the above, the Disciplinary Tribunal:

- a. finds that the requirements in Article 2.10.2 of the IAAF Anti-Doping Rules for the application of Article 2.10 have not been met;
- b. concludes that the Notice of Charge with respect to an alleged Anti-Doping Rule Violation under Article 2.10 of the Rules which was sent to Artyom Denmukhametov is invalid;
- c. decides that Artyom Denmukhametov has not committed the alleged Violation;
- d. makes no Order as to costs.

77. Pursuant to the requirements of Article 8.9.2 (d) of the Rules, the Tribunal hereby informs that this decision may be appealed to CAS by the parties in this proceeding in accordance with Article 13 of the Rules.



Robert Décaray QC

21 October 2019



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