

Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2016/A/4480 International Association of Athletics Federations (IAAF) v. All Russia Athletics Federation and Vladimir Kazarin

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Mr Jacques Radoux, référendaire at the European Court of Justice, Luxembourg
Arbitrators: Mr Lars Hilliger, attorney-at-law in Copenhagen, Denmark
Mr Ken Lalo, attorney-at-law in Gan-Yoshiyya, Israel
Ad hoc Clerk: Mr Tom Asquith, barrister in London, United Kingdom

in the arbitration between

International Association of Athletics Federations (IAAF), Monaco

Represented by Mr Ross Wenzel and Mr Nicolas Zbinden, attorneys-at-law with Kellerhals Carrard, Lausanne, Switzerland

Claimant

and

Vladimir Kazarin, Russia

Represented by Mr Artem Patsev, attorney-at-law with Clever Consult, Moscow, Russia

First Respondent

and

All Russia Athletics Federation, Russia

Second Respondent

I. PARTIES

1. The International Association of Athletics Federations (“IAAF”) is the world governing body for track and field, recognized as such by the International Olympic Committee. One of its responsibilities is the regulation of track and field, including, under the World Anti-Doping Code (“WADC”), the running and enforcing of an anti-doping programme.
2. The All Russia Athletics Federation (the “First Respondent” or “ARAF”) was the governing body for the sport of athletics in Russia.
3. Mr Vladimir Kazarin (the “Second Respondent” or “Trainer”) is a Russian athletics coach, training short, middle and long-distance runners.

II. FACTUAL BACKGROUND

4. Below is a summary of the relevant facts and allegations based on the parties’ written and oral submissions, pleadings and evidence adduced. Additional facts and allegations found in the parties’ submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.

A. Yulia Stepanova

5. Yulia Stepanova (“Ms Stepanova”) was born on 3 July 1986 in Kursk, Russia. She is a professional athlete of Russian nationality, specialising in the 800m. In the period from 2013 to 2014, Ms Stepanova secretly recorded a number of conversations that she had with Russian athletes and Athlete Support Personnel, including the Trainer.
6. Ms Stepanova made those recordings available to Mr Hajo Seppelt, a German journalist. Mr Seppelt used some of those recordings to produce a documentary alleging widespread doping in Russian athletics. The documentary was broadcasted on 3 December 2014.

B. The IAAF’s investigation into the Trainer

7. On 7 August 2015, the IAAF wrote to the ARAF stating that there was evidence that the Trainer had, over a course of years, been involved in procuring and providing prohibited substances to athletes training under him (the “IAAF Charge Letter”).
8. The IAAF Charge Letter enclosed a statement from Ms Stepanova (“Stepanova Statement”).
9. On 24 August 2015, the Russian Anti-Doping Agency (“RUSADA”) responded to the IAAF saying, among other things, that the Trainer denied the allegations.
10. Also on 24 August 2015, the IAAF wrote to RUSADA stating that in light of the Trainer providing only a general denial of allegations, the IAAF would, in accordance with IAAF Rule 38.2, provisionally suspend the Trainer from participating in any Competition or activity in Athletics pending resolution of the case. The IAAF asked RUSADA to immediately communicate the suspension to the Trainer.

11. On 8 September 2015, the Trainer requested a hearing and denied his guilt.
12. On 29 September 2015, the IAAF asked WADA for its consent to the Trainer's case being heard directly by the Court of Arbitration for Sport ("CAS"), in Lausanne, Switzerland, in accordance with IAAF Rule 38.19. On the same day, WADA provided that consent.
13. On 2 October 2015, the IAAF wrote to the ARAF and RUSADA to request their consent to the Trainer's case being heard directly at CAS in accordance with IAAF Rule 38.19. On 4 March 2016, the ARAF and RUSADA provided the requested consents.
14. On 26 November 2015, the ARAF's membership of the IAAF was suspended.
15. On 13 January 2016, the IAAF wrote to the Trainer saying that his case would be referred to the CAS.

C. The Stepanova Statement

16. In the present part of the award, the Panel only sets out the core parts of the Stepanova Statement, on which the IAAF relies. Their truth is vigorously contested by the Trainer and their contents do not form part of any kind of agreed background. However, the Panel refers to them at this stage because they provide a relevant context to the submissions made by the parties.
17. The key parts of the Stepanova Statement provide, in summary, as follows:
 - i. Ms Stepanova's first running coach was Vladimir Mokhnev. She started working with the Trainer in 2012 after the Olympic Games in London. Ms Stepanova could not compete in those games due to an injury.
 - ii. The Trainer provided her with similar performance-enhancing drugs to those which she had used with Mr Mokhnev, including, for example, Oxandrolone and EPO. However, the Trainer was surprised she had not been taking Human Growth Hormone, which he said would yield an additional boost and improve competition results.
 - iii. In November 2012, Ms Stepanova was about to start using Oxanabol and Primobol tablets. She also found out that she was likely to be sanctioned in connection with her Athlete Biological Passport ("ABP"). Her understanding is that Mr Melnikov had told the Trainer not to train her for the 2013 winter season until it was clear whether she would be sanctioned or not. Although she already had the tablets, the Trainer told her to stop taking them due to concerns about the ABP.
 - iv. On 8 February 2013, Ms Stepanova had a meeting with the Trainer and Mr Melnikov at the offices of the Russian Olympic Committee (the "ROC") and ARAF. Ms Stepanova made an audio recording of this meeting. Mr Melnikov said that he had received papers from the IAAF about problems with Ms Stepanova's ABP.
 - v. The Trainer joined the meeting after around twenty minutes and asked whether, in view of the attack by bodies such as the IAAF and WADA on Russian athletes which Mr Melnikov had referred to, he should stop giving his athletes drugs. He

also suggested that the Russians should send people to find out more information about the ABP. Mr Melnikov responded that it was certainly clear that EPO could no longer be used. At the end of the meeting, she was given papers to sign in order to accept her sanction for the abnormalities in her ABP.

- vi. On 16 March 2013, Ms Stepanova met with the Chief Investigative Officer of WADA, Mr Jack Robertson, in Istanbul. Ms Stepanova handed Mr Robertson three plastic bottles containing pills and two packets from a company called British Dragon labelled “Primobol Tablets” and “Oxanobol Tablets”. She had been given these by the Trainer but was then advised to stop using them once concerns arose over her ABP. She also handed over a diary detailing her use of prohibited and non-prohibited substances.
- vii. On 10 November 2014, Ms Stepanova met with the Trainer at his room in the Kapriz Hotel during a training camp in Cholpon Ata (Kyrgyzstan). The Trainer advised Ms Stepanova to use Oxandrolone and Primabolan and not testosterone or Human Growth Hormone. He also said she could take a little EPO in the early stages of preparation but that she had to make sure that there were no doping controls at that time so that she would not move outside of the detection limits.
- viii. The Trainer also told Ms Stepanova that he would give her ten pills of Oxandrolone, which she should take between 12 and 22 November 2014. He said it would take about 40-45 days for the drugs to clear her system so that she would be “clean” by the beginning of January 2015. He then changed his mind and said she could in fact take 15 pills until 27 November 2014 and she would be clean by 10 January 2015.
- ix. Ms Stepanova asked if any of the drugs were only detectable for 20 days. The Trainer said that Primabolan was detectable for the shortest length of time and even Primabolan took about 30-35 days to become non-detectable due to improvements in science. Ms Stepanova took 15 Oxandrolone pills. The Trainer also provided her with syringes and other equipment. Ms Stepanova secretly recorded this meeting with two mobile telephones, one for video and one for audio.
- x. On 19 November 2014, Ms Stepanova met with Ms Mariya Savinova, a Russian 800m runner, at Ms Savinova’s house. During their conversation, Ms Savinova said that the Trainer (who was also Ms Savinova’s coach) had given liquid alcohol-based Oxandrolone to “Kat’ka” to prepare her for the European Championships. “Kat’ka” was a reference to Ekaterina Poistogova who was the only athlete coached by the Trainer who competed at the Zurich 2014 European Championships. This conversation was also secretly recorded with two devices, one for audio the other for video.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

- 18. On 4 March 2016, the IAAF filed its Request for Arbitration against the Trainer with the CAS. The IAAF asked for this Request to be considered as its Statement of Appeal and Appeal Brief for the purposes of R47 and R51 of the Code of Sports-related Arbitration (the “Code”) and in compliance with IAAF Rule 38.19. In its Request for Arbitration, the IAAF nominated Mr. Ken Lalo as arbitrator.

19. On 29 March 2016, the Trainer nominated Mr. Lars Hilliger as arbitrator. That same day, the ARAF was requested to state any objection it may have to the Trainer's nomination of Mr. Hilliger as arbitrator. No such objection was filed.
20. On 22 April 2016, the Trainer filed his Answer in accordance with Article R51 of the Code. The ARAF neither filed an Answer nor sought its dismissal from this procedure as it had done in other similarly-situated procedures before the CAS. At no time did the IAAF voluntarily dismiss the ARAF from the procedure. The Panel therefore notes their inclusion in the procedure accordingly, although the ARAF did not have an active participation in this arbitration.
21. On 3 May 2016, the IAAF, upon reviewing certain translations of transcripts provided by the Trainer, suggested the appointment of an independent expert by the CAS to check the accuracy of the transcripts.
22. On 7 May 2017, the Trainer objected, *inter alia*, to the IAAF's request to appoint an independent expert to translate the various transcripts of the recordings.
23. On 27 May 2016, the CAS Court Office, on behalf of the President of the Appeals Arbitration Division and in accordance with Article R54 of the Code, informed the parties that the Panel to hear the case had been constituted as follows: Mr Jacques Radoux, President of the Panel, Mr Ken Lalo and Mr Lars Hilliger, arbitrators.
24. On 29 May 2016, the IAAF filed transcripts and translations of the 10 and 19 November 2014 conversations, along with (1) a table setting out alleged differences between the parties' translation of the 19 November 2014 conversation; and (2) translations of excerpts of the 21 October 2014 conversation. The IAAF requested that:
 - i. The material differences in the competing versions of the 19 November 2014 conversation be submitted to an independent interpreter in advance of the hearing;
 - ii. The correct recording of the 10 November 2014 conversation be admitted (with the Trainer given the chance to file a transcript/translation of that recording; any material differences could then be submitted to an independent interpreter in advance of the hearing); and
 - iii. The Panel rely on the IAAF's translation of the 21 October 2014 conversation. Subsidiarily, the Panel should submit the IAAF's translation to an independent interpreter for verification in advance of the hearing, with specific instructions regarding audio enhancement.
25. On 3 June 2016, the Trainer noting that (1) the IAAF had still not produced full transcripts or translations of the relevant conversations, only excerpts; (2) the IAAF failed to say who prepared the transcripts. The Trainer should have a right to question that person who had worked on these transcripts; (3) the translations were second degree derivative evidence; (4) it was not possible to compare "competing versions" because the IAAF had not disclosed full versions. Contrary to the IAAF's assertion that the Trainer had not provided a version of the 21 October 2014 conversation, the Trainer had in fact done so; (5) given that the 21 October 2014 conversation was the IAAF's principal evidence, it was still unclear why any differences could not be dealt with *ex tempore* at the hearing; (6) the second version of the 10 November 2014 conversation had been submitted too late. The lateness could not be attributable, as the IAAF alleged, simply to

the relevant person at the IAAF not speaking Russian as the videos were shot at different locations that could be identified without speaking Russian; (7) the Trainer reiterated the proposal of having a Russian native speaker attending and testifying at the hearing. In conclusion, the Trainer asked the Panel to dismiss the IAAF's requests in its 29 May 2016 letter.

26. On 25 July 2016, the Panel retained the services of Mr Andrei Dolgov to provide translation services, including independent translations of the disputed text and written extracts of the conversations between the parties.
27. On 26 August 2016, the Panel instructed Mr Dolgov to provide independent translations of various passages in advance of the hearing.
28. On 16 September 2016, the CAS sent to the parties Mr Dolgov's translations.
29. On 22 September 2016, the parties signed and returned the order of procedure in this arbitration procedure.
30. On 22 September 2016, a hearing took place at the CAS Court Office. The Panel was assisted by Mr Brent J. Nowicki, Managing Counsel, and Mr Tom Asquith, *ad hoc* Clerk, and joined by the following participants:

For the IAAF:

Mr Ross Wenzel and Mr Nicolas Zbinden (counsel) (in person)
Ms Yuliya Stepanova (witness) (by skype)

For the Trainer:

Mr Artem Patsev (counsel) (in person)
Mr Vladimir Kazarin (the Trainer) (by skype)
Ms Maria Mysik (interpreter) (by skype)

31. At the inception of the hearing, the parties confirmed that they had no objection to the constitution of the Panel. At the conclusion of the hearing, the parties confirmed that their right to be heard has been fully respected.

IV. SUBMISSIONS OF THE PARTIES

A. The IAAF's submissions

32. In its Request for Arbitration, the IAAF requested the following relief:
 - i. *CAS has jurisdiction to decide on the subject matter of this dispute;*
 - ii. *The Request for Arbitration of the IAAF is admissible;*
 - iii. *Mr Vladimir Kazarin is found guilty of an anti-doping rule violation in accordance with Rule 32.2(f)(ii), Rule 32.2(g) and/or Rule 32.2(h) of the IAAF Rules;*
 - iv. *A lifetime period of ineligibility is imposed upon Mr Vladimir Kazarin, commencing on the date of the (final) CAS Award. In the event that a shorter than lifetime period of ineligibility is imposed, any period of provisional*

suspension imposed on, or voluntarily accepted, by Vladimir Kazarin until the date of the (final) CAS Award shall be credited against the total period of ineligibility to be served;

v. *Any arbitration costs are borne entirely by the Respondents;*

vi. *The IAAF is awarded a significant contribution to its legal costs.*

33. The IAAF's submissions, in essence, may be summarized as follows:

- The statement of Ms Stepanova and her recordings show that the Trainer has admitted to working with a variety of prohibited substances including EPO, Human Growth Hormone, Oxandrolone and Primabolan.
- The three bottles which Ms Stepanova provided to Mr Robertson had been analyzed by the Salt Lake City Laboratory and revealed (as per Mr Robertson's statement) that:
 - a. Bottle A contained tablets of Oxandrolone, Dehydrochlormethyltestosterone and Mestanolone;
 - b. Bottle B contained tablets of Metenolone Acetate; and
 - c. Bottle C contained tablets of Oxandrolone.
- The two packets from British Dragon were described by Mr Robertson as follows:
 - a. Containing a white pill residue and labelled "*Oxanabol Tablets, Oxandrolone Tablets, 10mg. Tablet count 50, Anabolic Hormone for the promotion of constructive anabolism of proteins*".
 - b. Empty and labelled "*Primobol Tablets, Methenolone acetate 50mg, Tablet count 30, Anabolic Hormone for the promotion of constructive anabolism of proteins*".
- Overall, the evidence for the Trainer's anti-doping rule violations was overwhelming and certainly sufficient for any Panel to be comfortably satisfied that the Trainer committed anti-doping violations including the Administration and Trafficking of prohibited substances. He acted in breach of 2014 IAAF Rules 32.2(f)(ii) (possession), 32.2(g) (trafficking) and 32.2(h) (administration).
- Oxandrolone, Dehydrochlormethyltestosterone, Mestanolone and Methenolone Acetate are anabolic steroids prohibited under s.1.1 of the Prohibited Lists from 2012 until 2014. EPO and Human Growth Hormone are prohibited under s.2 of those lists. They are all prohibited In- and Out-of-Competition and are non-specified substances for the purposes for the 2014 IAAF Rules.
- Pursuant to 2014 IAAF Rule 40.3(b), the period of ineligibility should be a minimum of four years unless 2014 IAAF Rule 40.5 applied, in which case the period could be reduced. That Rule could however not apply because there had been no 1) lack of fault or negligence or of significant fault or negligence in

respect of the anti-doping rule violation, 2) admission of the violation in the absence of other evidence or 3) provision of substantial assistance.

- In light of the Panel's discretion as to the length of the sanction, it is right to apply, by analogy, the aggravating circumstances described in 2014 IAAF Rule 40.6:

“(a) ...the Athlete or other Person committed the anti-doping rule violation as part of a doping plan or scheme, either individually or involving a conspiracy or common enterprise to commit anti-doping rule violations; the Athlete or other Person used or possessed multiple Prohibited Substances or Prohibited Methods or used or possessed a Prohibited Substance or Prohibited Method on multiple occasions; a normal individual would be likely to enjoy performance-enhancing effects of the anti-doping rule violation(s) beyond the otherwise applicable period of Ineligibility; the Athlete or other Person engaged in deceptive or obstructing conduct to avoid the detection or adjudication of an anti-doping rule violation. For the avoidance of doubt, the examples of aggravating circumstances referred to above are not exclusive and other aggravating factors may also justify the imposition of a longer period of Ineligibility.”

- The importance of multiple violations is reiterated by 2014 IAAF Rule 40.7(d)(i) which provides that *“the occurrence of multiple violations may be considered as a factor in determining aggravating circumstances”*.
- Athlete Support Personnel owe an even higher duty than athletes themselves to the integrity of the anti-doping system (*USADA v Block*, AAA decision, 17 March 2011, paragraphs 9.3 and 9.5). In very serious cases, a lifetime ban may be appropriate [*WADA v Jamaludin et al & MAF* (CAS 2012/A/2791, paragraph 8.2.22)]. The Trainer was evidently at the helm of a doping scheme, involving a number of athletes training under him. A lifetime ineligibility period would be the only appropriate sanction. And according to 2014 IAAF Rule 40.10, the period of ineligibility should commence on the date of the CAS Award.

B. The Trainer's submissions

34. In his Answer, the Trainer requested the following relief:

- This Answer deemed admissible;*
- The IAAF's Request for arbitration shall be rejected;*
- The claims raised by the IAAF shall be dismissed;*
- The IAAF shall bear the entirety of the arbitration costs;*
- The IAAF is ordered to pay Mr. Vladimir Kazarin a contribution towards the legal and other costs incurred by him in the framework of this proceeding, in an amount to be determined at the discretion of the Panel.*

35. The Trainer's submissions may be summarized as follows:

- The Stepanova Statement was a short narration of alleged conversations along with some unfounded allegations. Accordingly, the Trainer would address the

audio and visual recording themselves. Those recordings must be authentic, accurate, without amendment and sufficiently comprehensible. The speakers must be identified.

- The transcripts provided by the IAAF were not reliable and should not be relied upon.
- As to the 8 February 2013 conversation between Ms Stepanova, the Trainer and Mr Melnikov, the context is important. The conversation was a difficult one because Ms Stepanova was being asked to sign an acceptance of sanction form. It is normal for someone speaking to such athletes to try to reassure them, by saying they were not at fault and that they will be able to return to athletics. The conversation had nothing to do with doping issues.
- As to the 10 November 2014 conversation between Ms Stepanova and (allegedly) the Trainer, Ms Stepanova had been acting strangely since arriving at the training camp. She was keen to talk about doping with everyone and tried to induce people around her to use words like “Oxandrolone”. She would say the words quietly, so that people around her would be forced to repeat them more loudly. People would make jokes with her, referring to Oxandrolone at the table rather than salt. In this conversation on 10 November, the Trainer had given Ms Stepanova some benign drugs to help her baby who was ill. One of these was Oxadol. The Trainer referred to it as Oxandrolone but only as a joke.
- The 19 November 2014 conversation allegedly between Ms Stepanova, Ms Savinova and Mr Farnosov contains multiple hearsay. Pursuant to Article 6 of the European Convention of Human Rights, such statements should be excluded because they lack conventional indicia of reliability. This conversation has nothing to do with doping issues. Further, the party who allegedly made the first admission (the Trainer) has kept denying ever making it.
- The recordings and excerpts of transcripts relied upon by the IAAF do not constitute strong evidence or even clear and convincing evidence of Administration or Attempted Administration of a Prohibited Substance or Prohibited Method.
- Ms Stepanova’s diary is cannot be relied on, because it originates from Ms Stepanova herself. Also, at this time, the Trainer did not know her.
- Mr Robertson’s evidence is irrelevant because he does not know how Ms Stepanova obtained the pills which were then handed to him.
- The WADA Independent Commission’s First Report dated 9 November 2015 should not be considered as evidence in this case. It does not establish any new relevant facts. It is based mostly on hearsay.
- The ARD documentary aired on 3 December 2014 is hearsay and should not be used as evidence in legal proceedings.
- Ms Stepanova is a well-known cheater and doper. It is incredible to consider that she has now become a principled anti-doping activist. She is motivated by money

and the fear of having to repay prize money. Ms Stepanova and her family are in financial difficulty. She also wanted to use the “*co-operation and substantial assistance scheme*” to have a chance to compete again and, thus, make a living.

- Ms Stepanova had clearly signed a statement prepared by someone else. It did not reflect her real recollection and opinion.

V. JURISDICTION

36. The 2016 IAAF Rules, which are applicable because the Request for Arbitration was filed on 4 March 2016, expressly permit anti-doping rule violation cases to be filed directly with the CAS as a sole instance adjudicatory body. In this regard, IAAF Rule 38.19 provides as follows:

“Cases asserting anti-doping rule violations may be heard directly by CAS with no requirement for a prior hearing, with the consent of the IAAF, the Athlete, WADA and any Anti-Doping Organisation that would have had a right to appeal a first hearing decision to CAS.”

37. In this case, ARAF was suspended and all relevant stakeholders provided the necessary consent for the case to be heard by CAS in accordance with Rule 38.19.
38. In the light of the foregoing, the Panel finds that CAS has jurisdiction in this procedure. In addition, both parties confirmed CAS jurisdiction by execution of the order of procedure.

VI. PROCEDURAL ISSUES

39. Each party prepared its own transcripts and translations of the recordings which Ms Stepanova provided. They did not agree with the content of each other’s respective transcripts and translations. Accordingly, the Panel instructed an independent translator, Mr Dolgov, to prepare translations of the recordings. The Athlete was content to accept the translations prepared by Mr Dolgov. The IAAF, however, took issue with these translations, contending that the Panel should itself listen to the recordings where appropriate. Further, the IAAF was assisted by a Russian Interpreter at the hearing in order to provide further translations of the submitted recordings.
40. The Panel considered the parties’ respective translations, as well as their respective objections (both to the counterparty’s translations and those provided by Mr Dolgov) and decided to rely on Mr Dolgov’s translations and his supplementary testimony during the hearing concerning the disputed text between the parties. It should also be noted that while the Panel relies on Mr Dolgov’s translation, the differences between Mr Dolgov’s translation and those prepared by the parties are not material to the Panel’s decision. The Panel further considered non contested parts of the translations provided by the parties in general and by the Trainer in particular

VII. APPLICABLE LAW

41. The present procedure is based on IAAF Rule 38.19. Further, it follows from IAAF Rule 38.3 that in a case directly referred to CAS “*the case shall be handled in accordance*

with CAS rules (those applicable to the appeal arbitration procedure without reference to any time of limit for appeal)”.

42. Thus, the provisions of the Code applicable to the appeal arbitration procedure are applicable in the present procedure.

43. Article R58 of the Code provides as follows:

The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.

44. IAAF Rule 42.23 provides as follows:

In all CAS appeals involving the IAAF, CAS and the CAS Panel shall be bound by the IAAF Constitution, Rules and Regulations (including the Anti-Doping Regulation). In the case of any conflict between the CAS rules currently in force and the IAAF Constitution, Rules and Regulations, the IAAF Constitution, Rules and Regulations shall take precedence.

45. This case is not an appeal. However, the purpose of the direct appeal to CAS is to shortcut the otherwise applicable procedure. The substantive outcome of the shortcut should not differ from the outcome of the otherwise applicable procedure. Therefore, Rule 42.23 must apply by analogy.

46. Pursuant to IAAF Rule 42.24, the governing law shall be Monegasque law. However, the IAAF rules in question are to be interpreted in a manner harmonious with other WADC compliant rules.

47. Rule 30.1 of the IAAF Rules states that “*the Anti-Doping Rules shall apply to the IAAF, its Members and Area Associations and to Athletes, Athlete Support Personnel and other Persons who participate in the activities or Competitions of the IAAF, its Members and Area Associations by virtue of their agreement, membership, affiliation, authorisation or accreditation*”. The definition of “*Athlete Support Personnel*” includes coaches, trainers or managers working with an athlete participating in, or preparing for, competitions of athletics.

48. The IAAF’s case alleges that the Trainer’s anti-doping rule violations occurred between 2012 and 2014. It submits that the IAAF Rules in force between 2012 and 2014 were similar, in all material respects, in regard to violations and sanctions. Further, according to IAAF, “*the substantive aspects of this appeal shall, subject to the possible applications of lex mitior, be governed by the anti-doping regulations in force at the time of the alleged violation*”. Thus, IAAF argues that the 2014 IAAF Rules should apply.

49. The Trainer submitted that the procedural aspects of the case are to be governed by the 2016 IAAF Rules and that the substantive issues are to be governed by the 2013 IAAF Rules, taking into account *lex mitior* principles.

50. Given that both parties agree on the application of the *lex mitior* and considering that the alleged violations took place until 2014, the Panel holds that the substantive aspects of the present procedure are to be governed by the 2014 IAAF Rules.
51. The Trainer emphasised to the Panel that pursuant to 2016 IAAF Rules 33.1 and 33.2, the burden of proving that an anti-doping rule violation had occurred was on the IAAF. As to the standard of proof, the Panel had to be comfortably satisfied that the alleged violation had occurred, bearing in mind the seriousness of the allegation being made. The standard is greater than a mere balance of probability but less than proof beyond reasonable doubt.
52. In his written submissions, the Trainer argued that the highest standard of proof had to be surmounted and that the IAAF had to prove its case “*beyond reasonable doubt*”, given the very serious nature of the allegations and given the lifetime period of ineligibility sought by the IAAF. However, in his oral submissions, the Trainer’s Counsel submitted that the proper test was a little less than “*beyond reasonable doubt*” and much higher than “*the balance of probabilities*”.
53. Regarding this aspect, the Panel adheres to the well-established CAS jurisprudence and holds that the relevant test is that the Panel must be comfortably satisfied before making a finding of an anti-doping rule violation against the Trainer.

VIII. EVIDENCE

A. Evidence relied on by the IAAF

54. The IAAF primarily relied upon the Stepanova Statement, corroborated by the audio and video recordings made by her and her testimony during the hearing, as well as the statement of Mr Robertson.
55. The IAAF referred to Rule 33.3 of the 2016 IAAF Rules which provides that anti-doping rule violations may be proven by any reliable means “*including, but not limited to, admissions evidence of third persons, witness statements, experts’ reports, documentary evidence and conclusions drawn from longitudinal profiling*”.

B. Oral evidence of the Trainer

56. The IAAF asked the Trainer to explain part of the conversation dated 10 November 2014 in which reference had been made to the use of Human Growth Hormone. The Trainer said he might have used such hormones on animals, perhaps mice. He said that he used to work at the Pedagogical Institute, where he studied physiology.
57. When asked if he had used EPO on mice, the Trainer said that his entire conversation with Ms Stepanova on 10 November 2014 had been conducted in a humorous way. He said that he held this conversation just to get rid of her.
58. The Trainer was asked if he was surprised when Ms Stepanova told him that she had gone to see Dr Portugalov and had taken EPO. He said it was Ms Stepanova’s decision to take pills from Dr Portugalov, not his. He admitted he had not reported it to anyone.
59. The Trainer’s case was that when he referred to Oxandrolone, he was in fact giving Oxadol to Ms Stepanova. He said that he did so, because Ms Stepanova was sleeping

badly at night, as her child was ill and kept her awake. Oxadol, he said, helped people sleep.

60. When confronted by the IAAF and advised that Oxadol is an analgesic and has nothing to do with sleeping, the Trainer said that he was talking about Donormyl and that he knew Oxadol was an analgesic. She suffered from pain, he said. The Donormyl was for sleeping. He could not explain why (on 10 November 2014) he suggested that each tablet was 10mg. He said he knew about how many milligrams each pill contained. He also could not explain why he referred to a period of 40-45 days before the pills would work their way out of Ms Stepanova's system. He simply said Ms Stepanova was being obtrusive and he wanted to get rid of her. That was why they talked about doping. He denied that the pills in the video looked like Oxandrolone pills.

Questions from the Panel

61. The Trainer confirmed that when the Russian team went to a training camp, a team doctor would attend. He was asked why Ms Stepanova would come to him rather than to the team doctor for pain relief and sleeping pills. The Trainer replied that because she was under his coaching, she came to him first.

C. Evidence of Ms Stepanova

62. Ms Stepanova said it was true that at the training camp in November 2014 her child was ill. However, she sought help from the team doctor and not from the Trainer. It was the team doctor who gave her painkillers.
63. She confirmed that the three plastic bottles containing pills and two packets from a company called British Dragon labelled "Primobol Tablets" and "Oxandrolone Tablets" came from the Trainer.
64. Ms Stepanova confirmed that she was given pills by the Trainer in 2012 while at the Hotel Caprice in Kyrgyzstan. She further reconfirmed that the Statement was made by her and that the stated facts and events took place as described.

IX. MERITS

A. The Anti-Doping Rule Violations

65. The IAAF asserts that the Trainer breached Rules 32.2(f)(ii), 32.2(g) and 32.2(h) of the 2014 IAAF Rules.
66. Rule 32.2(f)(ii) of the IAAF Rules forbids "*Possession by an Athlete Support Personnel In-Competition of any Prohibited Method or Prohibited Substance or Possession by an Athlete Support Personnel Out-of-Competition of any Prohibited Method or Prohibited Substance which is prohibited Out-of-Competition in connection with an Athlete, Competition or training, unless the Athlete Support Personnel establishes that the Possession is pursuant to a TUE granted to an Athlete in accordance with Rule 34.9 (Therapeutic Use) or other acceptable justification.*"
67. Possession is defined by the 2014 IAAF Rules as "*[t]he actual, physical possession or the constructive possession of a Prohibited Substance or Prohibited Method (which shall*

only be found if the Person has exclusive control over the Prohibited Substance / Method or the premises in which a Prohibited Substance / Method exists)”.

68. Rule 32.2(g) of the IAAF Rules prohibits the “*Trafficking or Attempted Trafficking in any Prohibited Substance or Prohibited Method*”.
69. Trafficking is defined by the 2014 IAAF Rules as “[t]he selling, giving, transporting, delivering or distributing of a Prohibited Substance or Prohibited Method (either physically or by an electronic or other means) by an Athlete, Athlete Support Personnel or any other Person to any third party...”
70. Rule 32.2(h) prohibits the “*Administration or Attempted administration to any Athlete In-Competition of any Prohibited Method or Prohibited Substance, or administration or Attempted administration to any Athlete Out-of-Competition of any Prohibited Method or Prohibited Substance that is prohibited Out-of-Competition or assisting, encouraging, aiding, abetting, covering up or any other type of complicity involving an anti-doping rule violation or any Attempted anti-doping rule violation.*”
71. According to the IAAF, “*Administration*” was not defined in the 2014 IAAF Rules but is defined in the 2016 IAAF Rules, as follows:

“Providing, supplying, supervising, facilitating or otherwise participating in the Use or Attempted Use by another Person of a Prohibited Substance or Prohibited Method. However, this definition shall not include the actions of bona fide medical personnel involving a Prohibited Substance or Prohibited Method used for genuine and legal therapeutic purposes or other acceptable justification and shall not include actions involving Prohibited Substances which are not prohibited in Out-of-Competition Testing unless the circumstances as a whole demonstrate that such Prohibited Substances are not intended for genuine and legal therapeutic purposes or are intended to enhance sport performance.”

B. Discussion of the evidence

The evidence taken into account by the Panel

72. In reaching its decision, the Panel accepted into evidence the Stepanova Statement as well as the corroborating audio and video recordings made by Ms Stepanova.
73. In this regard, the Panel recalls that the admittance of means of evidence is subject to procedural laws. In the present procedure, as the seat of the CAS is in Switzerland, Swiss Private International Law Act (the “PILS”) is, *inter alia*, applicable. Pursuant to Article 184(1) PILS, “[t]he arbitral tribunal shall take evidence.” Further, it is constant CAS jurisprudence that, besides article 184(1) PILS, “[l]e pouvoir de la Formation de statuer sur l’admissibilité de la preuve est repris dans le Code TAS (cf. l’Article R44.2). Il découle de l’Article 184 alinéa 1 LDIP (ainsi que des articles du Code TAS) que la Formation dispose ainsi d’un certain pouvoir d’appréciation pour déterminer la recevabilité de la preuve (Kaufmann-Kohler/Rigozzi, *op. cit.*, no 478)” (TAS 2009/A/1879, para. 36 of abstract published on the CAS website). Finally, the power of the arbitral tribunal related to the taking of evidence is only limited by “*procedural public policy*”, the procedural rights of the parties, and, where necessary, by the relevant sporting regulations (DE LA ROCHEFOUCAULD, *The Taking of Evidence Before the CAS*, CAS Bulletin 2015/1, p. 29).

74. Given that, as the Trainer argued himself, the 2016 IAAF Rule govern the admittance of evidence, the Panel has to refer to Rule 33(3) of these rules, which provides: *“Facts related to anti-doping rule violations may be established by any reliable means, including but not limited to admissions, evidence of third Persons, witness statements, expert reports, documentary evidence, conclusions drawn from longitudinal profiling such as the Athlete Biological Passport and other analytical information.”*
75. Considering the very large scope of means of evidence that the Panel could admit as evidence, the Panel considers that recordings such as those submitted by the IAAF are means of evidence in the sense of the 2016 IAAF Rules and if considered by the Panel to be reliable, the Panel can rely on them for the purpose of establishing facts related to an anti-doping violation.
76. Concerning the Trainer’s argument that the recordings are illegal and therefore inadmissible, it has to be recalled that even illegally obtained evidence may be admissible if the interest to find the truth prevails (Art. 152, 168 Swiss Code of Civil Procedure; HAFTER, Commentary to the Swiss Code of Civil Procedure, 2nd ed., para. 8). According to the Swiss Federal Tribunal and the European Court of Human Rights (“ECHR”), the courts shall balance the interest in protecting the right that was infringed by obtaining the evidence against the interest in establishing the truth. If the latter outweighs the former, the courts may declare a piece of evidence admissible for assessment even though it was unlawfully acquired (BERGER / KELLERHALS, International and Domestic Arbitration in Switzerland, 3rd ed., p. 461).
77. In this regard, a CAS panel has already applied these principles in a doping-related arbitration and has, in substance, held that the efficient battle against doping constitutes not only a private interest of the association in question but also a public interest, as it follows from the conventions to which Switzerland is a contracting state. Thus, the interest underlying the fight against doping can be preponderant over the individual’s interest, might it be an athlete or athlete support personnel, in not having illicitly obtained evidence admitted in an arbitral procedure concerning an alleged anti-doping rule violation (TAS 2009/A/1879, para. 69-74 of abstract published on the CAS website).
78. This balancing test set out by the Swiss Federal Tribunal, and applied by the CAS, is in line with the jurisprudence of the ECHR (see i.e. K.S and M.S v. Germany, no. 33969/11, ECHR 2016-V, 6 October 2016, and case law cited).
79. In the present case, the Panel considers, first, that the recordings done by Ms Stepanova could not have been obtained by any other means than the ones chosen by her. Second, the recordings were made by a whistle blower in order to denounce widespread doping practices in Russian athletics. Third, given that doping undermines the level playing field of all competing athletes and constitutes a threat to the values that competitive sport stands for, the interest in discerning the truth concerning the doping practices in Russian athletics was of the outmost importance. Fourth, the fight against doping is of a public interest.
80. In light of these considerations, the Panel finds that, even if the recordings were to be qualified as illicit, the interest in discerning the truth must prevail over the interest of the Trainer that the recordings are not used against him in the present proceedings.
81. Furthermore, no evidence was produced that under Russian law such recordings were illegal. This was merely stated by Coach’s counsel. The Panel further notes that the

recordings were not made by Ms Stepanova in her capacity as some sort of a “secret agent” for WADA or the IAAF, but rather on her personal initiative to accuse widespread doping in Russian sport. Clearly, Ms Stepanova acted as a “whistle-blower”.

82. Thus, the Panel comes to the conclusion that the recordings of Ms Stepanova’s conversations are admissible as evidence in the proceedings at hand (in the same way, CAS 2016/O/4504, para 78).
83. The Panel has chosen to rely on the translations prepared by the independent translator, Mr Dolgov, where there was any conflict between the parties’ proposed translations. Otherwise, the Panel relied on the translations provided on behalf of the Trainer.
84. In particular, the Panel considered the translation of the 8 February 2013 conversation provided on behalf of the Trainer where Mr Melnikov, in the presence of the Trainer, is cited as saying:

“First of all, wait a second, listen to me. Let’s do it this way. This is the system. We have faced it and it is quite real what it can lead us to, for only spring 2012, when first allegations were published, when Svetlana was found guilty of an anti-doping rules violation and so on. Neither I, nor we have seen these diagrams before. We had no idea of the situation, we took it for granted. There were no problems with urine test results. Do you remember when last winter we didn’t let you take part in competition for as long as your [...] When we realized the consequences, when we started to take measures to make your parameters normal, till they came normal, till your red blood cells increased, do you remember that?”

[...]

Ok, just a minute. That’s why I’ll do my best. You know, there are some situations in life, which do not depend on us. Even dealing with your case, it’s not your fault, it’s ours, unfortunately, the fault is partially yours and partially ours, it does not make anything easier, but let me explain. You see, the regulatory authorities treat us at least as strangers, for them we have always been the most dirty and dishonest. And they do all those things intentionally. Some of our athletes are now involved in the disciplinary proceedings, but they haven’t even touched erythropoietin. But still they try to find something on them. We keep trying to defend ourselves where there is a single chance for that... Unfortunately, in your case it was too late to change anything, when we finally got the facts straight. The real situation was concealed from us [...]”

The evidence of Ms Stepanova and the Trainer

85. In the view of the Panel, the Trainer was unable to undermine the evidence provided by Ms Stepanova in her testimony and examination. The questioning of Ms Stepanova was limited and did not establish any material flaws in her evidence. It is evidence which the Panel accepted and relies on in arriving at its conclusions.
86. By contrast, the Panel rejected parts of the Trainer’s testimony. More particularly, the Panel does not consider it plausible that Ms Stepanova would have asked the Trainer, instead of the team doctor, for medication for her baby. Further, the pills the Trainer pretends to have given Ms Stepanova, i.e. Oxadol, do not look anything like the ones he can be seen as giving to Ms Stepanova in the video recording. Moreover, he referred to pills of 10mg when conversing with Ms Stepanova about the pills he was giving her whereas Oxadol is commercialized in 30 mg pills.

C. Decision on liability

87. The Panel is comfortably satisfied that the Trainer is guilty of having been in Possession of multiple Prohibited Substances in the sense of Rule 32.2 (f) of the IAAF Rules, of Trafficking multiple Prohibited Substances in the sense of Rule 32.2 (g) of the IAAF Rules, and of Administration of multiple Prohibited Substances in the sense of Rule 32.2 (h) of the IAAF Rules. While applying the text set out in the 2014 IAAF Rules, the Panel is content to adopt the definition provided by the 2016 IAAF Rules (see above). In particular, the Panel is comfortably satisfied that the Trainer supplied at least Ms Stepanova with Prohibited Substances which he had in his Possession and gave her clear instructions when to take them and in what dosage in order to avoid detection in doping control tests. The Trainer colluded with other highly ranked Athlete Support Personnel, i.e. Mr Melnikov, to assist, encourage and abet athletes to commit anti-doping rule violations by taking prohibited substances. The Panel further considers that the Trainer has been involved in the doping practices over a long-time period, given that he participated at the meeting of 8 February 2013 and that he supplied various Prohibited Substances to Ms Stepanova on 10 November 2014.

D. Decision on sanction

88. Rule 40.2 of the 2014 IAAF Rules provides for a two-year period of ineligibility for a first violation of Rule 32.2(f) *“unless the conditions for eliminating or reducing the period of Ineligibility as provided in Rules 40.4 and 40.5, or the conditions for increasing the period of Ineligibility as provided in Rule 40.6 are met...”*.
89. Rule 40.3(b) of the 2014 IAAF Rules provides: *“For violations of Rule 32.2(g) (Trafficking or Attempted Trafficking) or Rule 32.2(h) (Administration or Attempted Administration of a Prohibited Substance or Prohibited Method), the period of Ineligibility imposed shall be a minimum of four (4) years up to lifetime Ineligibility unless the conditions in Rule 40.5 are met. An anti-doping rule violation involving a Minor shall be considered a particularly serious violation and, if committed by Athlete Support Personnel for violations other than Specified Substances referenced in Rule 34.5, shall result in lifetime Ineligibility for such Athlete Support Personnel. In addition, significant violations of Rules 32.2(g) or 32.2(h) which may also violate non-sporting laws and regulations, shall be reported to the competent administrative, professional or judicial authorities.”*
90. First, the Panel agrees with IAAF that neither Rule 40.4, on elimination or reduction of period of ineligibility for specified substances under specified circumstances, nor Rule 40.5, on elimination or reduction of ineligibility based on exceptional circumstances, are relevant in the present case.
91. Second, the Panel recalls that CAS jurisprudence makes it clear that a sanction imposed on an athlete or on Athlete Support Personnel must respect the principle of proportionality. This is particularly so where – like in the present case – the applicable rules regarding the extent of the sanction allow some flexibility. In such case, the sanction imposed must be in line with the seriousness of the offence (CAS 2008/A/1513, Hoch, para 8.8.2).
92. As to the seriousness of the offence, the Panel notes that given its findings, the offence is of the most serious nature. Indeed, the Trainer is held liable for several separate

offences set out in Rules 32.2 (f), (g) and (h) of the 2014 IAAF Rules and this for multiple Prohibited Substances and over a considerable period of time.

93. Further, the Panel observes that according to CAS jurisprudence “*deceptive and obstructive actions by coaches or managers aimed at covering up systematic and widespread doping practices of a serious nature may lead to the highest possible sanction, i.e. a life ban*” (CAS 2012/A/2791).
94. The Panel considers that this conclusion is, a fortiori, valid in a case where a coach, trainer or other Athlete Support Personnel is not just covering up a systematic and widespread doping practice but is at the helm of these practices. The Panel shares the view that in some cases Athlete Support Personnel may bear an even higher responsibility than the athletes themselves in respect of doping, considering the influence they usually exert on their athletes (CAS 2016/O/4504, para. 144). In this case it was made clear by the evidence adduced that the Coach orchestrated, along with others, the long standing scheme to “*prepare*” athletes using various prohibited substances over a period of time. It was also made clear that the Coach had a substantial influence over athletes of the Russian national athletics team and that he was encouraging the use of prohibited substances and not only turning a blind eye to their usage.
95. In the present case, it is not contested that the Trainer was a long-time senior athletics coach for the national team and therefore had an influence on many athletes. He was in a position of trust and high regard, not only for his athletes, but for a nation.
96. The Panel holds that the following factors have to be considered as aggravating circumstances: the Trainer committed multiple offences; he has made no admission of guilt; he showed no remorse for his actions; he provided no assistance to the anti-doping authorities; he contributed, with others, to create a culture in Russian athletics whereby athletes felt compelled to dope in order to compete and he colluded with other highly ranked Athlete Support Personnel to further the doping culture in Russian athletics.
97. Thus, his offence should result in the highest possible sanction. In this regard, the Panel recalls that according to CAS jurisprudence, a lifetime period of ineligibility could be considered both justifiable and proportionate in doping cases even if the ban is imposed for a first violation (CAS 2008/A/1513, para. 8.8.3 and CAS 2016/O/4504, para. 146). The panels in these cases considered a lifetime ban only to be justified where the seriousness of the offence was most extraordinary.
98. The Panel fully agrees with this reasoning and is of the opinion that, in the present case, the offences committed by the Trainer are of the most extraordinary seriousness. Indeed, given his high position as senior trainer of the Russian national athletics team, which led, according to the Trainer’s own admission, him to work with many of the Country’s and the world’s best athletes, i.e. Olympic and World Champions. This led to a close collaboration with Mr Melnikov who, as a highly ranked employee of the state-funded institution in charge of the athletic training of all Russian national teams, was also a central figure in the widespread use of doping in Russian athletics. So in this role and as the evidence unquestionably demonstrates, the Trainer must be considered as one of the “ringleaders” of the doping practices among Russian athletics.
99. In light of all of these considerations, the Panel finds that a lifetime period of ineligibility for the Trainer is the only warranted sanction which is also proportionate in these circumstances.

100. Finally, given that the Trainer is already provisionally suspended since 24 August 2015, it is not necessary for the Panel to determine the starting point of the period of ineligibility, yet such date is formally set for the record at the date of this Award.

X. COSTS

101. Article R64.5 of the Code provides that:

In the arbitral award, the Panel shall determine which party shall bear the arbitration costs or in which proportion the parties shall share them. As a general rule, the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such contribution, the Panel shall take into account the complexity and outcome of the proceedings, as well as the conduct and the financial resources of the parties.

102. In the present case, the request for arbitration filed by the IAAF is upheld on all points. In view of the outcome of this arbitration and of the fact that the ARAF has neither participated actively in this procedure, nor sought any specific relief, the Panel determines that the costs of arbitration, to be calculated by the CAS Court Office and communicated separately to the parties, shall be borne by Mr. Vladimir Kazarin. As a general rule, the CAS grants the prevailing party a contribution towards the legal fees and other expenses incurred in connection with the proceedings. The Panel, having considered, on the one hand, the fact that the IAAF prevailed on all grounds and the considerable efforts and activities of the IAAF to adduce evidence and litigate this case, and, on the other hand, the presumed very difficult financial position of the Trainer that has not been able to engage in training of athletes since August 2015 and the fact that he will not be able to do so in the future, decides that the Trainer shall contribute 4,000 CHF towards the legal fees and expenses of the IAAF in connection with these proceedings

ON THESE GROUNDS

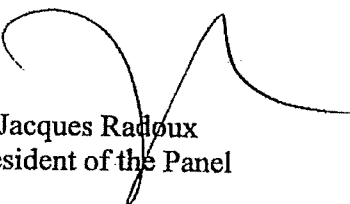
The Court of Arbitration for Sport rules that:

1. The request filed by the IAAF with the Court of Arbitration for Sport against the All Russia Athletics Federation and Mr Vladimir Kazarin on 4 March 2016 is upheld.
2. Mr Vladimir Kazarin committed anti-doping rule violations according to IAAF Rules 32.2 (f), (g) and (h) of the 2014 IAAF Rules.
3. Mr Vladimir Kazarin is sanctioned with a lifetime period of ineligibility, starting on the date of this Award.
4. The costs of the arbitration, to be determined and served to the parties by the CAS Court Office, shall be borne entirely by Mr Vladimir Kazarin.
5. Mr Vladimir Kazarin is ordered to pay to the IAAF the amount of CHF 4,000 (four thousand Swiss Francs) as a contribution to the IAAF towards the legal fees and expenses incurred in relation with these proceedings.
6. All other motions or requests for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Award issued on 7 April 2017

COURT OF ARBITRATION FOR SPORT


Jacques Radoux
President of the Panel