

Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2016/A/4487 International Association of Athletics Federations (IAAF) v. Alexey Melnikov

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 Efraim Barak, attorney-at-law in Tel Aviv, Israel
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

Alexey Melnikov, Russia

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

Respondent

I. PARTIES

1. The International Association of Athletics Federations (the “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. Mr Alexey Melnikov (the “Respondent” or “Coach”) was previously the senior coach of the Russian national athletics team (endurance coach). He was an employee of the Federal state-funded institution “The Centre for Athletic Training of Russian National Team” between 2000 and 2015, when he retired.

II. FACTUAL BACKGROUND

3. 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

4. Yulia Stépanova (“Ms Stepanova”) was born on 3 July 1986 in Kursk, Russia. She is a professional athlete of Russian nationality, specialised 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 Coach.
5. 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 regarding the Coach

6. On 8 August 2015, the IAAF wrote to its affiliated member, the All Russia Athletic Federation (“ARAF”), stating that there was evidence that over a course of years the Coach had been involved in a doping scheme together with a Dr Portugalov (the “IAAF Charge Letter”). In particular, the IAAF said that the Coach referred athletes to Dr Portugalov in full knowledge of the fact that the latter was providing them prohibited substances.
7. The IAAF Charge Letter enclosed a statement from Ms Stepanova (the “Stepanova Statement”) and a statement from Ms Liliya Shobukhova (“Shobukhova”) (the “Shobukhova Statement”).
8. On 24 August 2015, RUSADA responded to the IAAF stating, among other things, that the Coach denied the allegations, that he asked for the audio recordings and that because

he was in Beijing he requested an extension until 5 September 2015 to further answer the IAAF Charge Letter.

9. Also on 24 August 2015, the IAAF wrote to the Russian National Anti-Doping Agency (“RUSADA”) stating that in light of the Coach providing only a general denial of the allegations, the IAAF would, in accordance with IAAF Rule 38.2, provisionally suspend the Coach from participating in any Competition or activity in Athletics pending resolution of the case. The IAAF asked RUSADA to immediately communicate the decision of suspension to the Coach.
10. On 7 September 2015, the Coach requested a hearing and denied his guilt. He said that he would provide his position after examining all evidence, including the audio records.
11. On 29 September 2015, the IAAF asked WADA for its consent to the Coach’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 its consent.
12. On 2 October 2015, the IAAF wrote to the ARAF and RUSADA to request their consent to the Coach’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 consent.
13. On 26 November 2015, the ARAF’s membership with the IAAF was suspended.
14. On 13 January 2016, the IAAF wrote to the Coach stating that his case would be referred to the CAS. The letter also asked the Coach whether he would prefer his case to be dealt with by a sole arbitrator sitting at first instance pursuant to IAAF Rule 38.3 or before a Panel (as a single hearing) pursuant to IAAF Rule 38.19.
15. On 26 January 2016, the Coach informed the IAAF that he would choose to have his case heard by a Panel as a single hearing.

C. The Stepanova and Shobukhova Statements

16. The following are the core parts of the Stepanova and Shobukhova Statements on which the IAAF relied. Their truth is vigorously contested by the Coach and their contents do not form the 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. In the 2010 Russian Summer National Championships, Ms Stepanova did not qualify for the European Championship. From that time onwards, the Coach began to take an interest in her running.
 - ii. The Coach referred Ms Stepanova to Dr Portugalov, whom she consulted for the first time in December 2010. Her trainer at this time was Vladimir Mokhnev.
 - iii. Dr Portuyalov provided Ms Stepanova with a range of prohibited substances including Oxandrolone, Oral Turinabol, Testosterone and EPO and advised her when to take them and in what dosage.

- iv. In Spring 2012, Ms Stepanova sustained an injury and was prevented from competing for a place at the London Olympics.
- v. After the London Olympics, Ms Stepanova decided to change her trainer to Vladimir Kazarin. He provided her with similar performance-enhancing drugs to those which she had used while being trained by Mr Mokhnev. However, Mr Kazarin was surprised she had not been taking Human Growth Hormone, which he said would yield an additional boost and improve competition results.
- vi. 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 the Coach had told Mr Kazarin 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, Mr Kazarin told her to stop taking them due to concerns about the ABP.
- vii. On 8 February 2013, Ms Stepanova had a meeting with the Coach and Mr Kazarin at the offices of the Russian Olympic Committee (the “ROC”) and ARAF. Ms Stepanova made an audio recording of this meeting. The Coach said that he had received papers from the IAAF about problems with Ms Stepanova’s ABP.
- viii. The Coach said he had been caught off guard and would tell the coaches to stop blood doping but feared that some of them would continue out of habit. He said that Ms Stepanova would be suspended for two years. He further suggested to Ms Stepanova that getting pregnant would mean she could not be fired, and therefore could continue to receive her athlete’s salary. At the end of the meeting, she was given papers to sign in order accept her sanction for the abnormalities in her ABP.
- ix. On 12 February 2013, Ms Stepanova met with the Coach at the Arena of the CSK Stadium in Moscow during the Russian National Championships. The Coach said to her that they were in the process of finding out more information about the ABP and they would not be caught off guard again. This conversation was also secretly audio-recorded by Ms Stepanova on her mobile phone.
- x. On 30 July 2014, Ms Stepanova found a missed call from the Coach, leading her to call him back. The Coach said that he had been in contact with both RUSADA and Ms Antilskaya of the doping control agency IDTM and that she was going to be tested the next day. He said he had arranged with RUSADA that they would contact the IAAF the following day to enquire whether the test was a normal out-of-competition test or part of the reinstatement testing. He said that RUSADA could not contact the IAAF before the test because it was supposed to be an unexpected test.
- xi. A few minutes later, Ms Stepanova received a call from Ms Antilskaya who obtained confirmation that Ms Stepanova had just spoken to the Coach. Ms Antilskaya confirmed that she would conduct the test and then RUSADA would enquire whether it was a normal out-of-competition test or part of the

reinstatement testing. These two conversations were also audio-recorded by Ms Stepanova.

- xii. On 19 November 2014, Ms Stepanova met with Ms Mariya Savinova, a Russian 800m runner, at Ms Savinova's house. They discussed doping in athletics. Ms Savinova said everyone was on "pharma" and that Mr Kazarin worked with the Coach and ARAF and was able to find compromises such as changing the dates of doping controls. She said she knew it was bad for their health but that the ill-effects were limited as they did not take horse-sized doses. Ms Stepanova used two mobile phones to secretly record this conversation, one recording video, the other audio.
- xiii. On 20 November 2014, Ms Stepanova attended a meeting with Dr Portugalov and the Coach. She told Dr Portugalov that she recently had a child and was looking forward to returning to athletics. Dr Portugalov and the Coach discussed whether they should put Ms Stepanova on any drugs. They seemed to agree that she should prepare "naturally" given the likelihood of testing.
- xiv. They said they would choose drugs which did not affect Testosterone levels. The Coach said they would carry out secret testing to check that athletes were clean, in particular before major competitions. The Coach said that they would not get involved with blood any more. Again, Ms Stepanova used two mobile phones to secretly record this conversation, one recording video, the other audio.

18. The key parts of the Shobukhova Statement provide, in summary, as follows:

- i. In early 2009, Ms Shobukhova ended her relationship with her coaches and her husband, Mr Igor Shobukhov, took over her training responsibilities.
- ii. Ms Shobukhova was approached by the Coach who wanted to become more involved in her training and preparation for marathons.
- iii. In March 2009, the Coach referred Ms Shobukhova to Dr Portugalov so that he could prepare her for the London Marathon. Ms Shobukhova met Dr Portugalov on three occasions prior to the 2009 London Marathon, always at his office in Moscow. During these consultations, Dr Portugalov would write down the products Ms Shobukhova was to take on a piece of paper. He would then leave the office briefly to obtain the products before giving them to Ms Shobukhova. He would say when she should take them, and in what dosages.
- iv. For the 2009 London Marathon, Dr Portugalov provided Ms Shobukhova with pills and ampoules of Human Growth Hormone and EPO to inject. The pills were in unlabelled bottles. Ms Shobukhova believed them to be steroids. She was also given non-prohibited substances.
- v. After the London Marathon Ms Shobukhova continued to see Dr Portugalov and he continued to provide her with similar products until her participation in the Chicago Marathon in October 2012.

- vi. During these times, Ms Shobukhova would usually pass through Moscow on her way to competitions in order to provide a blood and/or urine sample at a clinic. The results would be emailed to Dr Portugalov who would then telephone Ms Shobukhova to discuss the results and let her know whether she was clean and able to compete.
- vii. In August 2010, Dr Portugalov told Ms Shobukhova that he wanted to try a blood transfusion on her. He gave Ms Shobukhova precise instructions to give to the clinic. 400ml of blood was withdrawn. Red blood cells were reinfused about three days later. When Ms Shobukhova competed in the European Championships in Barcelona a week or so later, she felt she had no strength and had pains in one of her legs.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

- 19. On 8 March 2016, the IAAF filed its Request for Arbitration against the Coach and the ARAF. 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.
- 20. On 29 March 2016, the ARAF wrote to the CAS noting that, though it was a respondent to the arbitration, no relief had been sought against it by the IAAF. It asked CAS to invite the IAAF to specify the same and why the ARAF was involved in this case.
- 21. On March 30 2016, the Coach nominated Mr Efraim Barak as arbitrator.
- 22. On 6 April 2016, the IAAF wrote to the CAS stating that it thought the ARAF should remain a Respondent under IAAF Rule 42.19. It noted that had the ARAF not been suspended then it would be responsible for conducting these proceedings. It also stated, however, that if the ARAF maintained its unwillingness to participate, the IAAF would accept that the proceedings should be directed only against the Coach.
- 23. On 11 April 2016, the ARAF informed the CAS stating it did not wish to continue as a Respondent since it would be a waste of time and money. It also stated that it had never employed the Coach, contrary to the IAAF’s correspondence.
- 24. On 15 April 2016, the IAAF wrote accepting the ARAF’s position and agreed to withdraw any claims against the ARAF.
- 25. On 21 April 2016, the Coach wrote to the CAS saying that he had decided to refer all seven of the IAAF’s recordings to a professional deciphering agency to make complete transcripts, and then to make English translations. He had received the last translation only that day. He asked and was granted a five-day extension for filing his answer brief (to 26 April 2016).
- 26. On 3 May 2016, the IAAF, upon reviewing certain translations of transcripts provided by the Coach, suggested the appointment of an independent expert by the CAS to check the accuracy of the transcripts.

27. On 7 May 2017, the Coach objected, *inter alia*, to the IAAF's request to appoint an independent expert to translate the various transcripts of the recordings.
28. 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 Efraim Barak, arbitrators.
29. 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' translations 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 Coach given a 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 to 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.
30. On 3 June 2016, the Coach asked the Panel to dismiss the IAAF's requests contained in its 29 May 2016 letter based on the following arguments: (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 Coach should have a right to question that person; (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 Coach had not provided a version of the 21 October 2014 conversation, the Coach 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 Coach reiterated the proposal of having a Russian native speaker attending and testifying at the hearing.
31. On 25 July 2016, the Coach requested (1) that the hearing of his case be conducted separately from other cases, including the case of Mr Kazarin and the case of Ms Poistogova, and (2) for a suspension of his case until an award is delivered in the consolidated case CAS 2016/A/4417, 4419 and 4420.

32. On that same day, 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.
33. On 16 August 2016, the Panel denied the Coach's application for a suspension of the proceedings.
34. On 26 August 2016, the Panel instructed Mr Dolgov to provide independent translations of various passages in advance of the hearing.
35. On 16 September 2016, the CAS sent to the parties Mr Dolgov's translations.
36. On 22 September 2016, the parties signed and returned the order of procedure in this arbitration procedure.
37. 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 (counsels) (in person)
Ms Yuliya Stepanova (witness) (by skype)

For the Coach:

Mr Artem Patsev (counsel) (in person)
Mr Alexey Melnikov (the Coach) (by skype)

38. 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

39. 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 Alexey Melnikov is found guilty of an anti-doping rule violation in accordance with Rule 32.2(h) of the IAAF Rules;*
 - iv. *A lifetime period of ineligibility is imposed upon Mr Alexey Melnikov, 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 Alexey Melnikov 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.*

40. The IAAF's submissions, in essence, are summarized as follows:

- It is clear that the Coach facilitated the use of prohibited substances by athletes. He introduced both Ms Stepanova and Ms Shobukhova to Dr Portugalov with a view that the latter will provide the athletes with prohibited substances, which ultimately included: Oxandrolone, Dehydrochlormethyltestosterone (Turinabol), Testosterone, EPO and Human Growth Hormone.
- The Coach was actively involved in blood doping practices, as is shown by his conversation with Ms Stepanova on 8 February 2013. He referred to being “*caught off guard*”. On 20 November 2014, he referred to “*not going to get involved with blood any more*” which impliedly admitted that he had manipulated blood values in the past.
- The Coach had set up, with Dr Portugalov, a system of internal doping controls in order to monitor athletes' values and avoid detection. He would discuss the results with Ms Stepanova on the telephone. He also admitted that they were working on hemoglobin levels in order to avoid detection.
- On 12 February 2013, the Coach had told Ms Stepanova that they were gathering information on the hormone and steroid passports, in order to be able to circumvent the same.
- The Coach used his position and connections to influence the doping control processes. This is shown by (1) what Ms Savinova said to Ms Stepanova on 19 November 2014 about the Coach having “*a way of changing dates, of when you have to undergo testing or don't need to*” and (2) the call from the Coach to Ms Stepanova on 30 July 2014, during which the Coach informed Ms Stepanova that someone from IDTM would call her shortly prior to an anticipated doping control. The Coach also indicated that he had liaised with RUSADA in this regard. The IDTM person who then called referred to the Coach during the conversation.
- The Coach was a key player, if not the key player, in a pervasive scheme of doping of elite Russian athletes. He acted in breach of 2014 IAAF Rule 32.2(h).
- 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 (1) no lack of fault or significant fault in respect of the anti-doping rule violation, (2) no admission of the violation in the absence of other evidence or (3) no 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 Coach 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. According to 2014 IAAF Rule 40.10, the period of ineligibility should commence on the date of the CAS Award.

B. The Coach's submissions

41. In his Answer Brief, the Coach requested the following relief:

- i. The Answer deemed admissible;*
- ii. The IAAF's Request for arbitration shall be rejected;*
- iii. The claims raised by the IAAF shall be dismissed;*
- iv. The IAAF shall bear the entirety of the arbitration costs;*
- v. The IAAF is ordered to pay Mr Alexei Melnikov 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.*

42. The Coach's submissions are summarized as follows:

- The Stepanova Statement is a short narration of alleged conversations along with some unfounded allegations. Recordings must be authentic, accurate, without amendment and sufficiently comprehensible in order to be admitted into evidence and support a case against Athlete Support Personnel. These recordings do not form such a basis and cannot be relied upon. Moreover, the video

recording was filed outside the prescribed time limits and should not be admitted. There was no reason why it was not produced in April 2016.

- The transcripts relied upon by the IAAF must be fairly and properly produced. The Coach referred all of the audio and video files provided by the IAAF to a professional deciphering agency to make complete transcripts and, in turn, complete English translations of those transcripts. As to the 8 February 2013 conversation between Ms Stepanova, Mr Kazarin and the Coach, 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, that they will be able to return to athletics. The conversation had nothing to do with doping issues.
- As to the 12 February 2013 conversation between Ms Stepanova and the Coach, this was a casual meeting four days after the acceptance of sanction form had been signed by Ms Stepanova. Again, with emotions running high, the Coach tried to reassure her. The conversation had nothing to do with doping issues.
- As to the two 30 July 2014 conversations allegedly between Ms Stepanova and the Coach, and between Ms Stepanova and Ms Antilskaya of IDTM, these were just part of at least four telephone conversations. The Coach was simply trying to save Ms Stepanova money. The Coach was explaining to the IDTM doping control officer (presumably Ms Antilskaya) the poor financial situation of Ms Stepanova so that she would not have to pay extra for additional testing. The conversation had nothing to do with doping issues.
- 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 (Mr Kazarin) has kept denying ever making it.
- The 20 November 2014 conversation allegedly between Ms Stepanova, Dr Portugalov and the Coach was a sudden and unexpected meeting for the Coach. This conversation had nothing to do with doping issues. They were talking about legal training tests, muscle tests and an athlete's activity test.
- The recordings and excerpts of transcripts relied on 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.
- The Decision, as appealed to CAS by the Coach in case CAS 2016/A/4419, is an unfounded and politically motivated decision. It was not issued by a Court or an arbitration panel and therefore should be disregarded by the Panel.

- Ms Shobukhova is a well-known liar. She had denied doping on her part but she had no chance of setting aside the ARAF decision against her. Accordingly, she was motivated by finding another way to stop her having to repay her prize money. Hence she was trying to use the “*co-operation and substantial assistance scheme*” based on 2013 IAAF Rule 40.5(c) or similar WADA rules. Her resultant statements were unfounded and baseless. Furthermore, Ms Shobukhova’s evidence should be disregarded on the basis that she was not available for cross-examination.
- Had the Coach helped to prepare Ms Stepanova, there would be traces of that relationship, such as emails. But there was no trace of such a relationship, or of covering up her tests. There was no corroborative evidence. The Coach neither could nor interfered in the result management of abnormalities in athletes’ ABPs. If a test was missed, ADAMS would know. The Coach could not arrange the elimination of information from ADAMS. He does not speak English. It would simply be impossible.
- The only time the Coach spoke about doping was to warn others, mainly coaches but athletes as well, not to become involved in it. The Coach had never taken over Ms Shobukhova’s coaching. He had therefore never received any money from her or persons associated with her.
- The WADA IC First and Second Reports should not be considered as evidence in this case. They do not establish any new relevant facts and are 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. Both she and Ms Shobukhova are 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.
- The two athletes clearly signed statements prepared by someone else (due to the similarity of those statements). There are no statements whatsoever confirming that the Coach has administered (or tried to administer) a prohibited substance (or method).
- The recordings adduced by the IAAF were illegal and made without the consent of participants to those conversations. Accordingly, the evidence cannot be admitted and cannot form the basis for any conviction.
- This case could set a dangerous precedent because sanctioned athletes may be encouraged to make serious allegations against innocent people, in order to diminish the consequences for themselves.

V. JURISDICTION

43. The 2016 IAAF Rules, which are applicable because the Request for Arbitration was filed on 8 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.”

44. In this case, the 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.
45. In 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

46. 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 appointed an independent translator, Mr Dolgov, and instructed him to prepare translations of the recordings. The Coach 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.
47. 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 Coach in particular.

VII. APPLICABLE LAW

48. 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)”*.
49. Thus, the Code provisions applicable to the appeal arbitration procedure are also applicable in the present procedure.

50. 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.

51. 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.

52. 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.

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

54. 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.

55. The IAAF’s case alleges that the Coach’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.

56. The Coach 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.

57. Given that both parties agree on the application of the *lex mitior* principle 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.

58. The Coach emphasised in his submissions 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.
59. In his written submissions, the Coach 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 Coach’s Counsel submitted that the proper test was a little less than “*beyond reasonable doubt*” and much higher than “*the balance of probabilities*”.
60. Regarding this aspect, the Panel adheres to the well-established CAS jurisprudence and holds that the relevant and applicable standard of proof is that the Panel must be comfortably satisfied before making a finding of an anti-doping rule violation against the Coach.

VIII. EVIDENCE

A. Evidence relied on by the IAAF

61. The IAAF primarily relied upon the Stepanova and Shobukhova Statements, corroborated by the audio and video recordings made by Ms Stepanova and her testimony during the hearing.
62. 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 Coach

8 February 2013 conversation between Ms Stepanova, Mr Kazarin and the Coach

63. First, in the 8 February 2013 conversation with Ms Stepanova it was stated as follows (“YS” representing Ms Stepanova and “M” representing the Coach):

11 36 – 12 32

YS: But at the time I was under your supervision, under Portugalov's management. What I mean, is...

M: Yulia.

YS: I did everything you told me. And now, afterwards...

M: OK, ok, now, hang on a minute. Listen. This is what we'll do. The system we're talking about, we didn't really see the danger until spring 2012. That's when the first allegations

appeared. When we were at [Svetka Klyuka] and so on. Until then, I... we hadn't seen those charts. We had no idea what was going on. But that's the way things are now. The urine tests weren't a problem for us. You remember last winter, we supported you, and you... When we realised what was coming, we started to keep you to the index, until you normalised, your reticulocytes didn't go up. Do you remember what it was like?

YS: *Yes.*

M: *Once or twice.*

64. At the hearing, the Coach was asked what he had understood from Ms Stepanova when she said “*I did everything you told me*”. The Coach said he did not understand what she meant by these words. He went on to speak of anti-doping seminars which he had organised.

65. Second, the Coach was directed to the following passage:

14 21 – 15 11

YS: *And when will you make the announcement? You know...*

M: *Well, we can make the announcement a little bit later. It won't flare up straight away. We can postpone it for two, for three, maybe four weeks*

YS: *Right.*

M: *I'll try and make sure...you get paid to the end of the year. With us.*

YS: *Just to the end of the year.*

M: *Eh?*

YS: *Just to the end of the year?*

M: *Well, next year we can't put you on the list of the training team, so we'll have a year to think about...about how we can support you. What clubs are you in now?*

YS: *Well, I'm in Kazarin's club. And with Vologda.*

M: *So, you're in his club...I'll have a talk to them, they can keep you there doing relays and that sort of thing. I'll talk with Vologda. So...what can we do? We've got to get through it somehow.*

66. Third, the Coach was referred to this passage:

23 03 – 24 18

M: *I'll do everything I can.*

YS: *OK.*

M: It's just, you know, things happen in life that aren't up to us. Even this situation here isn't yours, it's ours. But, unfortunately, you know, it's happened to you, and it has done nothing to make things easier for us, but it can explain some things. You know, it's just as if the supervisory authorities, IAAF and WADA, are keeping their eye on us, as if... Not as if they're our enemies, at the end of the day we're not their people... To them we always have been and are the most dirty, the most dishonest, and so they're lining up, focusing on us. Now in the proceedings we have people who haven't even touched erythropoietin. And they're trying to catch us by something. We're trying to make sure that they can't even grab onto the smallest thing.

Unfortunately we were too late to deal with your situation. Because until now they concealed this from us...

67. The Coach was asked what he meant by the last sentence and who was meant by “we”. He said “we” was “coaches”. He said they understood the situation after they had received the letter blaming Ms Stepanova. They understood there were some problems.

68. Fourth, the Coach was referred to this passage:

33 36 – 34 00

M: Not more than 145. If not less. And at first we all thought that if... Sveta: 145 exactly.

M: Oh. It was Lashmanova. That's why creeping up there was nonsense. And if we don't need high haemoglobin, why do we need erythropoietin for at all, particularly in the quantities we used to...

69. When asked what he meant by this statement, the Coach said that the reference was to specific biological chemical indicators to reflect ABP.

70. Fifth, the Coach was referred to this passage:

42 35 – 43 28

M: and there's one more thing you need to understand. It's not a great consolation, but... If the country's been on its knees for 10-12 years, and there was nothing at all, all the factories have been shut down, even the pharmaceutical ones and so on... It was running on empty, before. Nobody was doing anything. Now they're trying, but only... Developing any substance takes time and billions, and I'm not talking roubles, to try and do something. Somewhere somebody's trying to develop something, but you know, it's a long and complicated process. It's easier to find someone with talent, like Yulia Rusanova or Mariya Savinova and... they can do the job with the minimum of substances.

71. When asked what was meant by “substances”, the Coach said it was a reference to non-prohibited supplements, which could help sportsmen during training and rest.

12 February 2013 conversation between YS and the Coach

72. The Coach was also referred to this passage:

23 11 – 24 02

M: Did you see the person I came with?

YS: Uh huh.

M: He's a lawyer [inaudible] ...of course if they had given us all this information earlier, then we wouldn't have got into all this... It's just you know... [inaudible]

YS: Well, you said that from now on there'll be a passport... they'll be doing hormone and steroid passports...

M: We are already dealing with all that now. We are trying to find out all this information earlier. While you have a break for two years, by this time all this business... You will already go... We'll already know what not to do. [inaudible] ...we'll refuse to do certain things, we are already refusing... Just so that...[inaudible]

73. When asked what he meant by “certain things”, the Coach said he was referring to combining non-prohibited substances.

Other evidence from the Coach

74. The Coach was asked to describe his position in the testing of athletes, in particular Ms Stepanova. He said he had suggested to her that she test with RUSADA because it was cheaper than the IAAF (her husband did not have a job at the time.).
75. The Coach also said that “IKO” was a physical investigation of the athlete. “UMO” was a deep medical examination which took place 3 times a year for the team.

20 November 2014 conversation between Ms Stepanova, Dr Portugalov and the Coach

76. The Coach was referred to the following passage:

12 50 – 13 34

M: Is Semyonish okay and comfortable?

YS: Yes, good. The group is good. Only, admittedly, he doesn't know that I've come to see you.

M: Well never mind.

P: No, he... In this sense, he and I get on all right.

M: He doesn't have any, have any problems. Firstly, it's nothing... and it's purely... And then I can tell him that I called you myself.

P: Yes, it's always a good thing to have a check. Do you see...

M: I'm now going to have [a] quiet chat with him...

YS: He could get upset with me, say...

P: What's he going to get offended about?

YS: I came here without his permission...

M: No. Firstly, I'm now going to... we... in quotation marks "have a row with him". Because. He's not putting the best of his group through [IKO]

P: It's clear why.

M: No. It's purely because of the everyday inconvenience??: He doesn't want to bring them.

77. When asked what "IKO" meant, the Coach said it was a complex examination of an individual. It showed the physical condition and state of a sportsman.
78. The Coach was then referred to the following passage:

13 34 – 14 19

M: Yes. But we'll suggest... When the autumn stage starts let's have a check over. To find out what we have to work with. In what condition everyone is in. This and that. Have a look at the biochemistry, the [IKO]. Have a look at all the zones. Go through an extended medical. And then they'll begin training there, to help with certain things and so on. And now... Well, he's kind of... in the know. We'll be testing constantly in order to check that nothing is out of order. They'll give us that opportunity.

YS: To test on this..?

M: To test in the laboratory [inaudible].

YS: That means looking at the analyses. Yes, I...

M: So that there won't be...

79. When asked to describe the meaning of the above passage, the Coach stated that Ms Stepanova came back after a period of training. It was very important to understand if she could handle hard, physical work. That was why they wanted to undergo tests to see how she felt physically, after having a child.
80. The Coach was then referred to the following passage:

14 51 – 15 46

M: We are not trying to organise... Firstly the passport is mainly linked with testosterone. One the progress of this [inaudible]... That's what, it's this part that triggers it. Therefore, we'll also be trying. Firstly, we'll see the underlying basis that you have at the end of January. Maybe you'll already be here in February. Maybe he'll be in [Novogorsk], and you'll already be able to make it into the trials. We'll give a sample here and see your levels in your normal condition. Because not all drugs affect the testosterone levels. As Sergei Nikolayevich would tell you. One part has an influence, apparently there and there, but this part has an affect and this doesn't. Therefore, of

course, we'll be choosing the path that will have the least affect. So that... And in addition we'll be testing in closed conditions.

81. When asked what he meant by the last sentence, the Coach said the Russian Olympic team always did biological examinations. After an athlete had given birth they wanted to do extra examinations. Also, they wanted to prevent doping cases, which was why they decided to carry out extra investigations for her.
82. The Coach said they always warned athletes not to use Prohibited Substances, especially someone who had already been disqualified. He knew she had been doping with steroids and other prohibited substances from her interview with the WADA IC.
83. The conversation continued:

15 46 – 16 18

M: We did this last year also. Especially before the main competitions, so that...

YS: In other words, we need to go through a doping test, just so that they can have a look and see?

M: Yes. Absolutely right. So that already by the final inspection everything will be in order. So that there won't be any problems with the test.

YS: Uh huh.

M: Well, there you have it. Well, there's not much left to do. Be brave. I was saying that in theory there's a kind of agreement, the management is moving in the direction of supporting...

84. When asked what he understood from Ms Stepanova's question and why he answered in the way he did, the Coach said he understood that she would be very serious about obeying anti-doping rules.

Questions of the Coach by the IAAF's Counsel

85. The Coach stated he was absolutely against doping and was arranging anti-doping educational classes. He warned young athletes not to dope and was arranging biochemical testing to detect and prevent possible doping cases as early as possible.
86. The Coach was then referred to the 20 November 2014 conversation (the IAAF's translation), as follows:

16 18 – 17 07

YU: Well, I just want to go out there and run really fast. I talked with Kazarin about this and he... and I also talked about this with Masha... She says that he doesn't particularly know anything.

M: About what?

YU: About well... The pharmacological side of the preparations. Meaning...

M: Come off it, he doesn't know! He's got his own... preparations. I talked with him in detail. I'll talk... with him in detail. About you. It's just that now it's not the time. We're not going to be ready in the winter and on the fly there's nothing to be done for now. And then he will be here and we'll talk to him in detail about all these questions. Where the dangerous and safe zones are in the calendar and all those sorts of things... so that we don't make the same mistakes.

87. With reference to the above, the Coach stated that he was referring to Mr Kazarin. He said that at the time Mr Kazarin was not present, only he (the Coach) and Ms Stepanova. He said Ms Stepanova was always asking him about the pharmacological side of preparations.
88. The Coach intervened to say that this passage should be presented in the future tense, not the past tense as appearing in the IAAF's translation. He said it was not dealing with doping.

Questions from the Panel

89. In answer to questions from the Panel, the Coach said that from early 2012 the IAAF started to provide information about ABP, hence they were asked to look at blood parameters. He said they tried to solve this problem with three different approaches. The first was anti-doping education. There was also increasing quality of biochemical control of athletes' conditions and taking special attention of the parameters used for the ABP programme. In a year or 18 months, the quantity of anti-doping rule violations decreased significantly and, accordingly, the Coach considered that they had done a good job in terms of education.
90. The Coach spoke about having sufficient information about parameters so that they could pay special attention to the biochemical conditions of the athletes, which would enable them to detect abnormalities at an early stage and intervene in case there was a risk that the athlete would fail a doping test. He was asked if this was covering up, meant to detect an abnormality and then stop the athlete from using prohibited substances. The Coach denied there was a cover-up system. First, he said, sometimes there would be unusual and inexplicable increase/decrease in blood parameters. The national team was not a doping organisation. They did not collect samples. If a sample was collected, it went straight to ADAMS and they could not intervene. It was impossible for them to cover up anything.
91. The Coach was then referred to the following passage in the 8 February 2013 conversation:

11 36 – 12 32

Y: But at the time I was under your supervision, under Portugalov's management. What I mean, is...

M: Yulia.

Y: I did everything you told me. And now, afterwards...

M: OK, ok, now, hang on a minute. Listen. This is what we'll do. The system we're talking about, we didn't really see the danger until spring 2012. That's when the first allegations appeared. When we were at [Svetka Klyuka] and so on. Until then, I... we hadn't seen those charts. We had no idea what was going on. But that's the way things are now. The urine tests weren't a problem for us. You remember last winter, we supported you, and you... When we realised what was coming, we started to keep you to the index, until you normalised, your reticulocytes didn't go up. Do you remember what it was like?

Y: Yes.

M: Once or twice.

92. When asked why there was a “danger”, the Coach said that the “danger” was for the athletes who used EPO, which was a danger for the national team as well. He said that part of the fault lay with the coaches for the national team because they could not detect some athletes and the coaches did not stop some athletes. The “danger” was that these athletes might be disqualified.
93. The Coach was then referred to another passage in the same conversation:

15 12 – 16 22

M: Now with the passport, unfortunately they caught us off guard. And the main thing I'll try and do even now, when these... girls... when they've gone, I'll try to tell the coaches stop it, you shouldn't do it. And in spite of everything others will carry on out of habit. They keep thinking that someone's... giving the wrong information, that... someone's pulling the wool over their eyes, or who knows what... that they're being messed about. And the situation with us, sadly, now, is that a large number of people have been caught up in the process. So... regardless. If... as you say, if we coordinate in some way, and then we don't know everything, and I don't even get your coach involved... yes, well, you know, to be honest I don't want to go into it all now... the whole situation

94. The Coach was asked why the phrase “off guard” had been used. He said that, as he had said before, this was an unfortunate situation for the whole national team. The conversation was in the context of Ms Stepanova being informed by him that she would be disqualified. He was trying to reassure her. The disqualification was a bad surprise. He was asked if he was angry with Ms Stepanova about the fact that she had used Prohibited Substances. He said that everyone chooses their own way. Sometimes the athletes are in their personal coaches' hands, sometimes they intentionally use Prohibited Substances. Sometimes, as in the case of Ms Stepanova, the Coach felt sympathy for the athlete.
95. The Panel also noted the following passage from the conversation which took place on 8 February 2013. The excerpt below is from the Coach's own translation:

Yes, San Sanna will take a pause now. So I will do everything I will be able to. Just, you know, there are some situations in life when not everything depends on us. Just even this situations of yours, it is not your, it is our. It unfortunately became, you see, a part of something, for you and for us it's a pity, it doesn't lighten anything, but can explain something. You know, the controlling authority (unintelligibly, 00:23:31), they still reckon us maybe not as an enemy, but still we are not their own people at the least. We

have always been for them the dirtiest, the most dishonest. And so they, they make all these exactly on purpose. There are some propel [people] involved in the proceeding who has never touched one or other thing, and still they are trying to hook them. We try to fight back in cases where we have at least a little basement for this. In your case, unfortunately, we just understood the situation too late, because they suppressed it in actual fact from us...

C. Evidence of Ms Stepanova

96. Ms Stepanova said she thought other athletes knew that Dr Portugalov was providing Russian athletes with Prohibited Substances. She said she had discussed with the Coach having private blood tests. They had agreed to prepare for the London 2012 Olympics with EPO and steroids. The discussion had been in Portugal in 2012. The Coach told Ms Stepanova to use the same things as she had used with Vladimir Mokhnev.
97. It was then the Coach, rather than his counsel, who asked questions of Ms Stepanova. The Coach asked if Ms Stepanova said he had ever offered her Prohibited Substances. She said no, it was Dr Portugalov's job to provide the Prohibited Substances and the Coach's job to cover up for them. The Coach asked what she meant. She said that in May 2012 someone (Ms Antilskaya) called her Coach saying that Ms Stepanova would have to give samples for doping control. The Coach had warned her in advance. Sometimes she could not do the test and the Coach would cover up for her. The Coach said this was nonsense and there was no evidence.
98. Ms Stepanova said that she had only met the Coach a few times. Her contact had mostly been by telephone.
99. She said she had never paid the Coach money, but did pay money to Dr Portugalov. She had asked the Coach if she owed him money. He said no, all she had to do was run fast and earn medals.

IX. MERITS

A. The Anti-Doping Rule Violations alleged by the IAAF

100. The IAAF asserts that the Coach breached Rule 32.2(h) of the 2014 IAAF Rules.
101. Rule 32.2(h) forbids 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.”*
102. According to the IAAF, *“Administration”* is 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

103. 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.
104. 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 consistent 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).
105. Given that, as the Coach 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.*”
106. 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.
107. Concerning the Coach’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).

108. 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).
109. 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).
110. In the present case, the Panel considers, first, that the recordings made by Ms Stepanova could not have been obtained with the consent of those being recorded. 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.
111. In view 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 Coach that the recordings are not used against him in the present proceedings.
112. 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 disclose widespread doping in Russian sport. Clearly, Ms Stepanova acted as a "whistle-blower".
113. Thus, the Panel comes to the conclusion that the recordings of Ms Stepanova's conversations are admissible as evidence in the current proceedings (in the same way, CAS 2016/O/4504, para 78).
114. The Panel decided to rely on the translations prepared by the independent translator, Mr Dolgov, where there is any conflict between the parties' proposed translations. Otherwise, the Panel has relied on the translations provided on behalf of the Coach.
115. In particular, the Panel considered the translation of the 8 February 2013 conversation provided on behalf of the Coach where the Coach is cited as saying:

"Yes, San Sanna will take a pause now. So I will do everything I will be able to. Just, you know, there are some situations in life when not everything depends on us. Just even this situation of yours, it is not your, it is our, It unfortunately became, you see, a part of

something, for you and for us it's pity [...] There are some people involved in the proceeding who has never touched one or other thing, and still they are trying to hook them. We try to fight back in cases where we have at least a little basement for this. In your case, unfortunately, we just understood the situation too late, because they suppressed it in actual fact from us. [...]"

The evidence of Ms Stepanova and the Coach

116. In the view of the Panel, the Coach was unable to undermine the evidence provided by Ms Stepanova in her testimony and examination. The cross examination of Ms Stepanova was limited and did not establish any material flaws in her evidence. It is evidence which the Panel accepts, considers reliable and relies upon in reaching its conclusions.
117. By contrast, the Panel finds the Coach's testimony unreliable. His answers to questions were sometimes implausible. Further, from his answers to the Panel's questions, it appeared that he was guilty of covering up doping within the Russian national team.
118. Furthermore, the Panel considers that it follows from the translation cited above, first, that the Coach admits having been responsible for Ms Stepanova's problem in relation to the ABP that led to her doping sanction. Second, that the Coach, by using the word "we", admits that persons other than just him, i.e. Mr Kazarin and Dr Portugalov, were involved in the supervision of at least Ms Stepanova's doping program. Third, that the Coach knew which athletes were taking Prohibited Substances and which were not as he affirmed that some persons that had never touched any substance were under investigation. The circumstance that the Coach, in order to be able to make such a statement, must know which athletes take Prohibited Substances and which do not, corroborates, in the Panel's view, the first and second findings, i.e. that the Coach was in charge of the doping of Ms Stepanova, together with Dr Portugalov and her trainer, Mr Kazarin.
119. All of these findings lead the Panel to the conclusion that the Coach, even though he cannot be said to have personally provided Prohibited Substances to athletes, clearly orchestrated, encouraged, assisted and aided and abetted athletes and their trainers to commit anti-doping rule violations.

C. Decision on liability

120. The Panel is comfortably satisfied that the Coach is guilty of "Administration" in the sense of Rule 32.2(h) of the 2014 IAAF Rules, read in light of the definition provided by the 2016 IAAF Rules (see above).
121. In particular, the Panel is comfortably satisfied that the Coach supervised and encouraged the use of Prohibited Substances and Methods, sought to avoid controls, organised testing and gave instructions to athletes, i.e. Ms Stepanova, in order to prevent them from being caught in anti-doping control tests. He assisted and aided, in coordination with other Athlete Support Personnel, i.e. Mr Kazarin, and other highly ranked personnel, Dr Portugalov and Ms Antilskaya, encouraged and abetted athletes and trainers to commit anti-doping rule violations.

D. Decision on sanction

122. 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.”*
123. First, the Panel agrees with IAAF that Rule 40.5, on elimination or reduction of ineligibility based on exceptional circumstances, is not applicable in the present case.
124. Second, the Panel recalls that the 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).
125. As to the seriousness of the offence, the Panel notes that given its findings, the offence is of the most serious nature. Indeed, the Coach is held liable for several separate offences set out in IAAF Rule 32.2 (h) of the 2014 IAAF Rules and this on multiple occasions and over a considerable period of time.
126. 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).
127. 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.
128. In the present case, it is not contested that the Coach, although not directly employed by IAAF but employed by the state-funded institution in charge of the training of all Russian national teams, 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 athletes, but for a nation.

129. The Panel holds that the following factors have to be considered as aggravating circumstances: the Coach committed multiple offences; he has made no admission of liability (at least not purposely); he showed no remorse for his actions; he provided no assistance to the anti-doping authorities; he encouraged a culture in Russian athletics whereby athletes felt compelled to dope in order to compete, he colluded with doctors and gave instructions to trainers to further the doping culture in Russian athletics.
130. 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.
131. The Panel fully agrees with this reasoning and is of the opinion that, in the present case, the offences committed by the Coach are of the most extraordinary seriousness. Indeed, given his high position as senior coach of the Russian national athletics team, which led him, according to the Coaches' own sayings, to organize and coordinate the trainers' work during the training process and the competitions. This allowed him to provide the information on the performance results of Russian athletes to the Head Coach of the National Team, to monitor the athletes' and the coaches'/trainer's compliance with existing anti-doping rules, and to cooperate with various organizations supporting the training process. Given that, as ARAF has stated in the opening correspondence to the present procedures, the Coach has never been an employee of ARAF, but has been an employee of the state funded institution in charge of the athletic training of all Russian national teams, he cannot be considered as only having been one small cog in a big wheel. On the contrary, due to his high position and his wide range of responsibilities, he must be regarded as a central figure of the Federal state funded endeavours to help the Russian national teams achieve the best possible results with all the consequences which this entails.
132. In the light of all of these considerations, the Panel finds that a lifetime period of ineligibility for the Coach is the appropriate warranted sanction which is also proportionate in these circumstances.
133. Finally, given that the Coach 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

134. 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.

135. 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, 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 entirely by the Coach. 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 Coach that has not been able to engage in coaching athletes since August 2015 and the fact that he will not be able to do so in the future, decides that the Coach shall contribute 4,000 CHF towards the legal fees and expenses of the IAAF in connection with these proceedings.

ON THESE GROUNDS

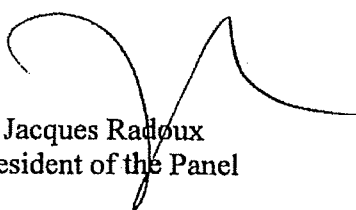
The Court of Arbitration for Sport rules that:

1. The request for arbitration filed with the Court of Arbitration for Sport by the IAAF against Mr Alexey Melnikov on 8 March 2016 is upheld.
2. Mr Alexey Melnikov committed an anti-doping rule violation according to IAAF Rule 32.2(h).
3. Mr Alexey Melnikov 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 in their entire amount by Mr Alexey Melnikov.
5. Mr Alexey Melnikov shall bear his own costs and is ordered to pay the IAAF the amount of CHF 4,000 (four thousand Swiss Francs) as a contribution 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 Rado
President of the Panel