CAS 2016/O/4481 International Association of Athletics Federations (IAAF) v. All Russia Athletics Federation (ARAF) & Mariya Savinova-Farnosova

ARBITRAL AWARD

rendered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Dr. Hans **Nater**, Attorney-at-Law, Zurich, Switzerland

Ad hoc Clerk: Mr Dennis **Koolaard**, Attorney-at-Law, Arnhem, the Netherlands

In the arbitral proceeding between:

INTERNATIONAL ASSOCIATION OF ATHLETICS FEDERATIONS (IAAF), Monaco

Represented by Mr Ross Wenzel and Mr Nicolas Zbinden, Attorneys-at-Law, Kellerhals Carrard, Lausanne, Switzerland

- Claimant -

and

1/ ALL RUSSIA ATHLETICS FEDERATION (ARAF), Moscow, Russian Federation

Represented by Mr Mykhail Butov, ARAF General Secretary

- First Respondent -

and

2/ Ms MARIYA SAVINOVA-FARNOSOVA, Russian Federation

Represented by Mr Mike Morgan and Mr Richard Martin, Solicitors, Morgan Sports Law LLP, London, United Kingdom, Mr Howard Jacobs, Attorney-at-Law, Law Offices of Howard L. Jacobs, Westlake Village, California, United States of America, and Mr Claude Ramoni, Attorney-at-Law, Libra Law, Lausanne, Switzerland

- Second Respondent -

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I. PARTIES

1. The International Association of Athletics Federations (the "Claimant" or the "IAAF") is the world governing body for the sport of Athletics, established for an indefinite period with legal status as an association under the laws of Monaco. The IAAF has its registered seat in Monaco.

2. The All Russia Athletics Federations (the "First Respondent" or the "ARAF") is the national governing body for the sport of Athletics in the Russian Federation, with its registered seat in Moscow, Russian Federation. The ARAF is a member federation of the IAAF, currently suspended from membership.

3. Ms Mariya Savinova-Farnosova ("Second Respondent" or the "Athlete") is a Russian athlete specialising in the 800 metres, in which discipline she won gold medals at the 2009 European Indoor Championships in Turin, the 2010 World Indoor Championships in Doha, the 2010 European Championships in Barcelona, the 2011 World Championships in Daegu, the 2012 Olympic Games in London and a silver medal at the 2013 World Championships in Moscow. The Athlete is an International-Level Athlete for the purposes of the IAAF Competition Rules (the "IAAF Rules").

II. OVERVIEW OF THE CASE

4. This case concerns a claim by the IAAF against an International-Level Russian Athlete for violating IAAF Rule 32.2(b) of the IAAF Rules (*Use or Attempted Use By Athlete of a Prohibited Substance or A Prohibited Method*). The ARAF has been included in the claim as the First Respondent, as the ARAF has not been able to conduct the hearing process due to its suspension.

5. The case raises complex evidentiary issues. The Parties' submissions draw upon the admissibility, particularisation and reliability of a tape recorded conversation between the Athlete and a whistle-blower, corroborated by a witness statement, and the Athlete's Biological Passport ("ABP").

III. FACTUAL BACKGROUND

6. Below is a summary of the main relevant facts, as established on the basis of the parties' written and oral submissions and the evidence examined in the course of the present arbitration proceedings and during the hearing. This background is set out for the sole purpose of providing a synopsis of the matter in dispute. Additional facts may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, he refers in his award only to the submissions and evidence he considers necessary to explain his reasoning.

7. The Athlete has been charged with violating Rule 32.2(b) of the IAAF Rules *"Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method"*.

8. The evidence of the Athlete's alleged anti-doping rule violation(s) is based on three pieces of evidence:

   i) Audio/video recordings of conversations between Ms Yuliya Stepanova and the Athlete, and between Ms Stepanova and Mr Vladimir Kazarin, the former coach of Ms Stepanova and the Athlete..

   ii) A witness statement of Ms Yuliya Stepanova.

   iii) The ABP of the Athlete.

9. In the period from 2013 to 2014, Ms Stepanova, an elite Russian athlete who was sanctioned in February 2013 with a two year period of ineligibility in connection with abnormalities in her ABP, recorded a number of conversations that she had with Russian athletes and athlete support personnel, including the Athlete. The Athlete allegedly admitted to Ms Stepanova in one of the recordings (of a conversation on 19 November 2014) that she had used prohibited substances including Oxandrolone, Testosterone, Parabolan (Trenbolone) and human growth hormone.

10. With a view to exposing the widespread doping practices within Russian athletics, Ms Stepanova made the recordings available to a German journalist, who used extracts from the recordings to produce a documentary alleging widespread doping in Russian athletics. This documentary was broadcasted on the German television channel ARD on 3 December 2014.

11. In the wake of the documentary, the World Anti-Doping Agency ("WADA") announced the establishment of an independent commission ("WADA IC"), comprised of Mr Dick Pound QC (Chairman), Prof. Richard McLaren and Mr Günter Younger.

12. On 9 November 2015, the WADA IC issued its first report (the "WADA IC First Report") in which it concluded in general that *"*[t]*he investigation has confirmed the existence of widespread cheating through the use of doping substances and methods to ensure, or enhance the likelihood of, victory for athletes and teams"* and specifically in respect of the Athlete that *"*[b]*ased on Ms. Savinova-Farsonova's* [sic] *statements and her demonstration of in-depth knowledge of doping in the ARD secret tape recordings, IC investigators believe she has breached Code article 2.2 "Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method." This finding is further reinforced by Mr. Melnikov's statement that they "pumped so much into her"."*

13. From 15 August 2009 until 22 March 2015, the IAAF collected 28 ABP blood samples from the Athlete. Each of the samples was analysed by a laboratory accredited by the World Anti-Doping Agency ("WADA") and logged in the Anti-Doping Administration & Management System ("ADAMS") using the Adaptive Model, a statistical model that calculates whether the reported HGB (haemoglobin concentration), RET% (percentage of immature red blood cells – reticulocytes) and OFF-score (a combination of HGB and RET%) values fall within an athlete's expected distribution.

14. The registered values for HGB, RET% and OFF-score in the Athlete's respective samples are as follows:

No.	Date of Sample	HBG (g/dL)	RET%	OFF-score
1.	15 August 2009	14.7	0.69	97.20
2.	10 March 2010	15.1	0.84	96.00
3.	26 July 2010	15.3	0.64	105.00
4.	15 June 2011	13.9	0.67	89.90
5.	17 June 2011	15.2	0.81	98.00
6.	26 July 2011	14.8	0.60	101.50
7.	31 August 2011	15.9	0.40	121.10
8.	5 December 2011	14.3	1.41	71.80
9.	27 January 2012	14.2	0.81	88.00
10.	7 March 2012	15.3	1.04	91.80
11.	9 May 2012	14.8	0.91	90.80
12.	30 May 2012	14.9	1.02	88.40
13.	7 August 2012	16.1	1.30	92.60
14.	25 August 2012	15.0	1.05	88.50
15.	22 October 2012	14.3	1.00	83.00
16.	27 November 2012	14.6	0.78	92.68
17.	14 January 2013 (invalid sample)	14.8	0.93	90.10
18.	5 February 2013	14.6	1.14	81.90
19.	11 March 2013	14.7	1.29	78.90
20.	5 June 2013	14.4	0.64	96.00
21.	13 August 2013	14.4	1.06	82.20
22.	31 October 2013	14.4	1.28	76.10
23.	4 December 2013	13.5	1.06	73.23
24.	10 April 2014	15.0	1.47	77.30
25.	2 December 2014 (collected during the Athlete's pregnancy)	13.6	1.60	60.10
26.	29 December 2014 (collected during the Athlete's pregnancy)	13.7	1.85	55.40
27.	3 February 2015 (collected during the Athlete's pregnancy)	13.8	2.42	44.70
28.	22 March 2015 (collected during the Athlete's pregnancy)	14.4	1.64	67.20

15. On 14 July 2015, three experts with knowledge in the field of clinical haematology (diagnosis of blood pathological conditions), laboratory medicine and haematology (assessment of quality control data, analytical and biological variability and instrument calibration) and sports medicine and exercise physiology: Prof. Yorck Olaf Schumacher, Prof. Giuseppe d'Onofrio and Prof. Michel Audran (the "Expert Panel") issued a first joint opinion (the "First Joint Expert Opinion") concluded as follows after having analysed the Athlete's ABP profile:

"We therefore conclude that it is highly likely that a Prohibited Substance or a Prohibited Method has been used and that it is unlikely that the passport is the result of any other cause.

It is our unanimous opinion that considering the information available at this stage and in the absence of an appropriate physiological explanation, the likelihood of the abnormality 1 described above being due to blood manipulation, namely the artificial increase of red cell mass using an erythropoietic stimulant and/or blood transfusion is high. On the contrary, the likelihood of a medical condition causing the supraphysiologically increased red cell mass visible in this sample is low.

Analytical shortcomings are also highly unlikely to have caused the suspicious pattern in the profile. Environmental factors such as altitude exposure are also improbable to have had a significant effect, as based on the available documentation, the athlete never sojourned at altitudes sufficient to trigger haematological changes such as observed in the relevant samples.

The last part of the profile with the abnormal samples 25-27 (abnormality 2) can be explained by the pregnancy of the athlete.

We therefore recommend requesting the athlete's explanations for her blood values regarding the first point highlighted above."

16. On 7 August 2015, the IAAF asserted in a letter to the ARAF (the "Charge Letter") that there was sufficient evidence that the Athlete had committed an anti-doping rule violation by using prohibited substances and charged her with a violation of Rule 32.2(b) of the IAAF Rules. The Athlete was also informed of the abnormalities in her ABP and specified that the IAAF may assert a further violation of Rule 32.2(b) of the IAAF Rules on that basis.

17. On 24 August 2015, the IAAF informed the ARAF that the Athlete was provisionally suspended with immediate effect pending resolution of the case in accordance with Rule 38.2 of the IAAF Rules.

18. On 7 September 2015, the Athlete denied the charge and requested to be informed of the date, time and place of a hearing.

19. On 30 September 2015, the Russian anti-doping authority ("RUSADA") sent the IAAF the Athlete's explanation for the abnormalities in her ABP profile and added a number of supporting documents including medical certificates and laboratory results.

20. On 14 November 2015, the Expert Panel issued a second joint report (the "Second Joint Expert Opinion") concluding that "[b]*ased on scientific scrutiny of the different points forwarded by the athlete, we do not think that any of the arguments explain the abnormalities of the profile.* [...] *Considering the information available at this stage, we therefore confirm our previous opinion that the profile is highly suspicious for blood manipulation. It is highly unlikely that it is the result of a normal physiological or pathological condition but might in contrast be caused by the use of prohibited substances or prohibited methods."*

21. On 18 November 2015, the IAAF confirmed to the Athlete, via RUSADA, that the Athlete was charged with a violation of Rule 32.2(b) of the IAAF Rules based on her abnormal ABP.

22. On 3 February 2016, the IAAF informed the Athlete (i) that ARAF's membership had been suspended, (ii) that it took over the responsibility for coordinating the disciplinary proceedings and (iii) that her case would be referred to the Court of Arbitration for Sport ("CAS"). The Athlete was offered to choose between the following two procedures:

> *"5.1. Before a Sole Arbitrator sitting as a first instance hearing panel pursuant to IAAF Rule 38.3. The case will be prosecuted by the IAAF and the decision will be subject to an appeal to CAS in accordance with Rule 42; or*
>
> *5.2. Before a CAS Panel as a single hearing, with the agreement of WADA and any other anti-doping organisation with a right of appeal, in accordance with Rule 38.19. The decision rendered will not be subject to an appeal (save to the Swiss Federal Tribunal)."*

23. On 17 February 2016, the Athlete requested the IAAF to be provided, before expressing her preference as to the two alternative CAS routes, with complete unedited recordings of the alleged meetings or, at the very least, complete transcripts of those recordings in English and Russian, in order to fully understand the allegations made against her and to properly prepare her defence.

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

24. On 4 March 2016, the IAAF lodged a Request for Arbitration with CAS in accordance with Article R38 of the CAS Code of Sports-related Arbitration (2016 edition) (the "CAS Code"). The IAAF informed CAS that its Request for Arbitration was to be considered as its Statement of Appeal and Appeal Brief and requested the matter to be submitted to a sole arbitrator. This document contained a statement of the facts and legal arguments and included the following requests for 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) The Athlete be found guilty of an anti-doping rule violation in accordance with Rule 32.2(b) of the IAAF Rules.*
>
> *(iv) A period of ineligibility of between two and four years be imposed upon the Athlete, commencing on the date of the (final) CAS Award. Any period of provisional suspension effectively served by the Athlete before the entry into force of the CAS award shall be credited against the total period of ineligibility to be served.*
>
> *(v) All competitive results obtained by the Athlete from 15 August 2009 through to the commencement of her provisional suspension on 24 August 2015, shall be*

disqualified, with all resulting consequences (including forfeiture of any titles, awards, medals, profits, prizes and appearance money).

(vi) The arbitration costs be borne entirely by the Respondents.

(vii) The IAAF is awarded a contribution to its legal costs."

25. On 8 March 2016, the CAS Court Office initiated the present arbitration and specified that, as requested by the IAAF and pursuant to Rule 38.3 of the IAAF Rules, the present arbitration had been assigned to the CAS Ordinary Arbitration Division to be dealt with according to the Appeal Arbitration Procedure.

26. On 22 March 2016, the Respondents were invited to submit their Answer within 30 days.

27. On 24 March 2016, the Athlete informed the CAS Court Office that the IAAF had only provided a transcript (in English and Russian) of what it considers to be the "relevant part" of the recordings of Ms Stepanova and requested the IAAF to be ordered to file *"complete transcripts in English of Exhibits 18 and 19 of the Request for Arbitration"*.

28. On 29 March 2016, the IAAF objected to the Athlete's request of 24 March 2016.

29. On 31 March 2016, the ARAF requested the IAAF to clarify why the ARAF was involved in this case as a Respondent, not as a witness, and what types of relief are sought by the IAAF against the ARAF.

30. On 5 April 2016, the CAS Court Office informed the parties that the Division President decided to deny the Athlete's request of 24 March 2016.

31. On 11 April 2016, the IAAF informed the CAS Court Office that CAS is effectively acting as a substitute for the ARAF because of its inability to conduct disciplinary proceedings in Russia in due time and that the IAAF Rules clearly contemplate that, in these circumstances, the costs of those proceedings will be borne by the ARAF. The IAAF therefore maintained its requests for relief against the ARAF.

32. On 19 April 2016, in accordance with Article R54 of the CAS Code, and on behalf of the President of the CAS Ordinary Arbitration Division, the CAS Court Office informed the parties that the arbitral tribunal appointed to decide the present matter was constituted by:

- Dr. Hans Nater, Attorney-at-Law, Zurich, Switzerland

33. As from 19 April 2016 onwards, the CAS Court Office attempted to schedule a hearing date in the matter at hand several times, however, the parties continuously agreed to postpone the planning of such hearing date.

34. On 7 June 2016, the Athlete filed her Answer in accordance with Article R55 of the CAS Code. The Athlete submitted the following requests for relief:

"9.1 Ms Savinova-Farnosova respectfully requests the Sole Arbitrator:

(a) to dismiss the IAAF's charges against her; and

(b) confirm that no sanction is to be imposed on her.

9.2 Alternatively, if the Sole Arbitrator were to find that she had committed any anti-doping rule violation, Ms Savinova-Farnosova respectfully requests the Sole Arbitrator to permit Ms Savinova-Farnosova to make further submission in relation to:

(a) the applicable period of ineligibility;

(b) the period of ineligibility commencement date; and

(c) the disqualification of any results.

9.3 In any event, Ms Savinova-Farnosova respectfully requests the CAS to order the IAAF to reimburse Ms Savinova-Farnosova's legal costs and the costs of the arbitration. In that regard, Ms Savinova-Farnosova respectfully requests the right to file separate costs submissions following the determination of the merits of the dispute."

35. On 17 June 2016, upon being invited by the CAS Court Office to file a second written submission, the IAAF submitted exhibits with information on the Athlete's ABP at a specificity of both 99% as well as 99.9% with the CAS Court Office.

36. On 8 July 2016, the CAS Court Office confirmed that, although invited to do so by letter of 23 June 2016, none of the Respondents submitted additional observations on the documents filed by the IAAF on 17 June 2016.

37. On 7 September 2016, the parties and their witnesses were called to appear at a hearing on 4 November 2016 at the CAS Court Office.

38. On 11 and 17 October 2016 respectively, the IAAF and the Athlete informed the CAS Court Office of the persons attending the hearing. On 18 October 2016, the IAAF supplemented the information provided before.

39. On 20, 25 and 28 October 2016 respectively, the ARAF, the IAAF and the Athlete returned duly signed copies of the Order of Procedure to the CAS Court Office. The Athlete, in her hand-written notes on the Order of Procedure, observed that the proceedings should be subject to the CAS Ordinary Arbitration Procedure of Article R38 *et seq.* of the CAS Rules and not subject to the CAS Appeal Arbitration Procedure of Article R47 *et seq.* of the CAS Rules.

40. On 3 November 2016, the Athlete informed the CAS Court Office that she would not attend the hearing as she was not called as a witness.

41. On 4 November 2016, a hearing was held in Lausanne, Switzerland. At the outset of the hearing, all parties confirmed that they had no objection to the constitution and composition of the arbitral tribunal.

42. In addition to the Sole Arbitrator, Ms Pauline Pellaux, Counsel to the CAS, and Mr Dennis Koolaard, *Ad hoc* Clerk, the following persons attended the hearing:

For the IAAF:

- Mr Ross Wenzel, Counsel;
- Mr Nicolas Zbinden, Counsel;
- Ms Alexandra Vokova Jurema, Interpreter

For the Athlete:

- Mr Howard Jacobs, Counsel;
- Mr Richard Martin, Counsel;
- Mr Claude Ramoni, Counsel

43. The Sole Arbitrator heard evidence of the following persons:

- Ms Yuliya Stepanova, Russian athlete that made recordings of the Athlete, witness called by the IAAF, by video-conference;
- Dr. York Olaf Schumacher, expert in sports medicine, expert witness called by the IAAF, in person;
- Prof. Giuseppe D'Onofrio, expert haematologist, expert witness called by the IAAF, by video-conference;
- Mr Paul Scott, President and Chief Science Officer of Scott Analytics, Inc., expert witness called by the Athlete, by video-conference

44. The Athlete initially requested Ms Olga Schwartz, an academic in respect of Russian criminal law, to be heard. At the outset of the hearing, the IAAF however stated that, even if the recordings were illegal, they are still admissible as evidence in the proceedings at hand. The IAAF did not specifically state that it did not dispute that the recordings were illegally obtained, but added that it would not contest this. Upon this acknowledgement, the Athlete no longer deemed it necessary to hear Ms Schwartz.

45. All witnesses and experts witnesses were invited by the Sole Arbitrator to tell the truth subject to the sanctions of perjury under Swiss law. All parties and the Sole Arbitrator had the opportunity to examine and cross-examine the witnesses and expert witnesses.

46. The parties were afforded ample opportunity to present their case, submit their arguments and answer the questions posed by the Sole Arbitrator. The parties also were given the opportunity at the end of the hearing to address the Athlete's request pursuant to para. 9.2 and 9.3 of the Answer to file further submissions.

47. At the end of the hearing, further to an inquiry by the Sole Arbitrator, the Athlete withdrew such request and agreed that the proceedings can be closed.

48. Before the hearing was concluded, all parties expressly stated that they had a fair hearing and that their right to be heard had been respected.

49. The Sole Arbitrator confirms that he carefully took into account in his decision all of the submissions, evidence, and arguments presented by the parties, even if they have not been specifically summarised or referred to in the present arbitral award.

V. SUBMISSIONS OF THE PARTIES

50. The IAAF's submissions, in essence, may be summarised as follows:

- The IAAF submits that anti-doping rule violations may be proved by any reliable means and that the witness statement of Ms Stepanova, including the transcripts of the recordings, constitutes reliable evidence that the Athlete used prohibited substances.

- In respect of the witness statement of Ms Stepanova, the IAAF maintains that during her conversation with Ms Stepanova on 19 November 2014, the Athlete made a number of admissions regarding her use of prohibited substances: Oxandrolone, Testosterone, Human Growth Hormone, Parabolan etc. More generally, she displayed a detailed knowledge of different doping products and the related washout periods.

- The Athlete expressed the view that doping was rife (if not to say universal) in elite Russian athletics and that it was not possible to be successful without doping.

- The Athlete had resisted her husband's advice to cease doping after the London Olympic Games as she believed that her coach and others in the ARAF hierarchy would protect her by finding "compromises" such as changing the dates of doping control. Indeed, she makes an explicit admission that went back on her promise to train clean for the 2013 World Championships.

- In her conversation with Ms Stepanova on 19 November 2014, the Athlete very much gives the impression of an athlete who is willingly engaged in doping practices and intimately familiar with a whole panoply of different doping products and techniques, including blood doping.

- The fact that the Athlete's coach, Mr Kazarin, was actively engaged in procuring and administering prohibited substances to his athletes is demonstrated by the fact that, only nine days before the conversation between the Athlete and Ms Stepanova on 19 November 2014, he provided Ms Stepanova with Oxandrolone tablets and advice as to when to take them in order to avoid a positive test.

- In an interview with investigators of the WADA IC in Moscow on 2 July 2015, the Athlete conceded that the conversation with Ms Stepanova on 19 November 2014 did occur. However, she maintained that she had never used prohibited substances and claimed that Ms Stepanova had made the allegations against her out of jealousy.

- The IAAF's case is that the Athlete's ABP profile constitutes clear evidence that the Athlete has committed an anti-doping rule violation in breach of Rule 32.2(b) of the IAAF Rules as follows:
  - The ABP sequence is abnormal for RET% and OFF-score with a probability in excess of 99.9%. In other words, there is a less than 1 in 1,000 chance that the values are normal.
  - The Expert Panel flatly rejected each of the physiological and non-physiological explanations put forward by the Athlete to explain the abnormalities in her passport.
  - The Athlete's ABP profile reveals a supraphysiological increase in red cell mass in and around competition periods. HGB levels are markedly higher during the summer months (competition period), contrary to what one would expect physiologically:
    - The Athlete's highest HGB value of 16.1 g/dL occurs on 7 August 2013 (Sample 13), one day before she competed for the first time at the London Olympic Games.
    - The Athlete's second highest HGB value of 15.9 g/dL occurred on 31 August 2011 (Sample 7), one day before she competed for the first time at the 2011 World Championship in Daegu.
    - The Athlete's third highest HGB value was recorded at 15.3 g/dL on 26 July 2010 (Sample 3), one day before she competed for the first time at the 2010 European Championships in Barcelona.
- As to the period of ineligibility, the IAAF argues that pursuant to Rule 40.2(b) of the IAAF Rules, a two year period of ineligibility shall be imposed. There are no reasons to reduce this standard sanction in accordance with Rule 40.4 or 40.5 of the IAAF Rules.
- The IAAF maintains that Rule 40.6 of the IAAF Rules may be applied in order to increase the period of ineligibility to a maximum of a four-year period of ineligibility due to aggravating circumstances, as the evidence indicates that the Athlete used a prohibited substance on multiple occasions and that the Athlete engaged in a doping plan or scheme. According to the IAAF, in light of the repeated and long-term doping practices, it would be appropriate to impose the maximum four year period of ineligibility on the Athlete.
- Finally, the IAAF submits that, unless the Athlete accepts that her anti-doping rule violation(s) may be sanctioned entirely in accordance with the 2016-2017 IAAF Rules (*i.e.* including with respect to the applicable period of ineligibility), all her results from 15 August 2009 (*i.e.* the date Sample 1 was taken) until her provisional suspension on 24 August 2015 shall be disqualified, together with the forfeiture of any prizes, medals, prize money and appearance money etc.

51. Although duly invited, the ARAF did not submit any position on the merits of the present proceedings.

52. Besides the procedural arguments advanced by the Athlete in respect of the applicable regulations and the applicable law set out in another section of this arbitral award, the Athlete provided the following summary of her submissions on the merits of the case:

- *"Ms Savinova-Farnosova denies having committed an anti-doping rule violation.*

- *This case does not involve a "positive test". There is no physical evidence of any wrongdoing. No one has witnessed Ms Savinova-Farnosova committing an anti-doping rule violation. No banned substance has been seized or detected in samples collected from Ms Savinova-Farnosova. Instead, there are allegations of a number of unspecified anti-doping rule violations, spanning across several years.*

- *The* [IAAF] *bears the burden of proving that Ms Savinova-Farnosova has committed an anti-doping rule violation. Thus, for* ***every*** *alleged violation, the IAAF is required to establish, to the Sole Arbitrator's "comfortable satisfaction... bearing in mind the seriousness of the allegation which is made" that Ms Savinova-Farnosova has committed that particular anti-doping rule violation.*

- *Ms Savinova-Farnosova respectfully requests the Sole Arbitrator to dismiss the IAAF's charges on the basis that:*

  (a) The only abnormalities in Ms Savinova-Farnosova's [ABP] *were caused by her pregnancy. The rest of Ms Savinova-Farnosova's blood values fall within her normal range;*

  (b) None of the evidence relating to Ms Stepanova is particularised (i.e. the what/when/where/how of an offence) or corroborated and cannot, therefore, establish the commission of an anti-doping rule violation."

- Furthermore, in respect of the evidence brought by the IAAF based on the Athlete's ABP, the Athlete contends that Samples 25 to 28 triggered the ABP review but that these samples were collected during her pregnancy from 20 August 2014 until 15 May 2015. Absent these samples, the Athlete's ABP would not have resulted in any further action as all her samples would fall within her "normal" range. Since Samples 7 and 8 of the Athlete's ABP do not exceed the Athlete's "normal" range, they do not and cannot establish that the Athlete has committed an anti-doping rule violation. The Athlete further argues that there is no statistically significant difference between the Athlete's mean HGB values from samples collected during summer (competition period – *i.e.* May to September) and those collected during the rest of the year.

- In respect of the evidence brought by the IAAF based on the recordings and the witness statement of Ms Stepanova, the Athlete maintains that neither the IAAF, nor Ms Stepanova, allege that the Athlete admitted to using EPO or otherwise

manipulating her blood. The Athlete further submits that the recordings made by Ms Stepanova of her conversation with the Athlete are not admissible as evidence and that the allegations are not sufficiently particularised. In arguing that the recordings are not admissible as evidence, the Athlete relies on the Swiss Criminal Code, the Swiss Constitution and the Russian Criminal Code and jurisprudence of the European Court of Human Rights.

- In order not to prejudice her position with regard to the admissibility of the recordings, the Athlete does not engage in a detailed analysis of its contents, however, the Athlete submits that nothing in the recordings is capable of establishing to the comfortable satisfaction of the Sole Arbitrator that she committed an anti-doping rule violation.

- The Athlete further argues that without the ABP charge and without the recordings, the IAAF is left only with Ms Stepanova's witness statement and that this cannot be sufficient for the Sole Arbitrator to be comfortably satisfied that she committed an anti-doping rule violation.

- Should the Sole Arbitrator nevertheless find that the Athlete is guilty of committing an anti-doping rule violation, the Athlete submits that the period of ineligibility to be imposed should be limited to two years, as is allegedly applied in the majority of ABP cases. In such situation, the Athlete requests the right to file further written submissions regarding the start date of any period of ineligibility and regarding the disqualification of results.[1] In respect of the disqualification of results, the Athlete nevertheless argues that i) she never admitted to having doped in preparation of the London 2012 Olympics or the 2013 World Championships, ii) and iii) that Samples 1 and 3 are not unusual and iv) that disqualifying her result for the 2012 Olympics would be unfair and that it falls to be protected under the "fairness" caveat of the 2011 RUSADA ADR.

VI. JURISDICTION

53. The IAAF maintains that the jurisdiction of CAS derives from Rule 38.3 of the IAAF Rules (2016 edition). As a consequence of its suspension, the ARAF was not in a position to conduct the hearing process in the Athlete's case by way of delegated authority from the IAAF pursuant to Rule 38 of the IAAF Rules. In these circumstances, it is not necessary for the IAAF to impose any deadline on the ARAF for that purpose.

54. The Athlete did not object to the jurisdiction of CAS, but considered it inappropriate that the rules of the CAS Code applicable to appeals arbitration proceedings are applied while this is a first instance case. The Athlete mainly appears to object to the fact that the proceedings before CAS are not free of charge, while the proceedings before ARAF, if its membership would not have been suspended, would have been free of charge.

55. The Sole Arbitrator observes that Article R47 of the CAS Code determines as follows:

[1] This request was ultimately withdrawn by counsel for the Athlete during the hearing.

> *"An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body."*

56. Rule 38.3 of the IAAF Rules determines as follows:

> *"If a hearing is requested by an Athlete, it shall be convened without delay and the hearing completed within two months of the date of notification of the Athlete's request to the Member. Members shall keep the IAAF fully informed as to the status of all cases pending hearing and of all hearing dates as soon as they are fixed. The IAAF shall have the right to attend all hearings as an observer. However, the IAAF's attendance at a hearing, or any other involvement in a case, shall not affect its right to appeal the Member's decision to CAS pursuant to Rule 42. If the Member fails to complete a hearing within two months, or, if having completed a hearing, fails to render a decision within a reasonable time period thereafter, the IAAF may impose a deadline for such event. If in either case the deadline is not met, the IAAF may elect, if the Athlete is an International-Level Athlete, to have the case referred directly to a single arbitrator appointed by CAS. The case shall be handled in accordance with CAS rules (those applicable to the appeal arbitration procedure without reference to any time limit for appeal). The hearing shall proceed at the responsibility and expense of the Member and the decision of the single arbitrator shall be subject to appeal to CAS in accordance with Rule 42. A failure of a Member to hold a hearing for an Athlete within two months under this Rule may further result in the imposition of a sanction under Rule 45."*

57. The Sole Arbitrator notes that the Athlete is an International-Level Athlete and that the ARAF is indeed prevented from conducting a hearing in the Athlete's case within the deadline set by Rule 38.3 of the IAAF Rules. The Sole Arbitrator confirms that the IAAF was therefore permitted to refer the matter directly to a sole arbitrator appointed by CAS, subject to an appeal to CAS in accordance with Rule 42 of the IAAF Rules. The jurisdiction of CAS is therefore based on Rule 38.3 of the IAAF Rules and the rules of the Appeal Arbitration Procedure shall apply.

58. Additionally, the Sole Arbitrator finds that the Athlete does not incur any hardship from the fact that these proceedings before CAS are not free of charge as opposed to the proceedings before ARAF, because the costs of these proceedings will in any event not be for her to bear, but for the IAAF and/or for ARAF. In the absence of any other arguments being advanced by the Athlete as to why it would be unfair to apply the Rules of the CAS Code regarding the Appeal Arbitration Procedure and in view of the clear wording of Rule 38.3 of the IAAF Rules, the Athlete's request to apply the CAS Rules on the Ordinary Arbitration Procedure is to be dismissed.

59. Further, CAS jurisdiction is generally confirmed by the signature of the Order of Procedure by all parties. It follows that CAS has jurisdiction to adjudicate and decide on the present matter.

VII. APPLICABLE LAW

60. The IAAF maintains that the procedural aspects of these proceedings shall be subject to the 2016-2017 edition of the IAAF Rules and the substantive aspects of the asserted anti-doping rule violations shall be governed by the pre-2015 IAAF Rules, more particularly the 2012-2013 edition of the IAAF Rules. To the extent that the IAAF Rules do not deal with a relevant issue, Monegasque law shall apply (on a subsidiary basis) to such issue.

61. The ARAF did not put forward any specific position in respect of the applicable law.

62. The Athlete argues that since the IAAF is standing in the shoes of RUSADA and ARAF in this dispute, the anti-doping regulations of RUSADA (the "RUSADA ADR") apply to this dispute. Since the IAAF's main allegations relate to events between 2011 and 2013, the 2011 version of the RUSADA ADR should apply, subject only to the principle of *lex mitior*.

63. The Athlete maintains that the IAAF Rules are only applicable to appeal procedures, not first instance procedures. The application of the RUSADA ADR is considered important by the Athlete because, contrary to the IAAF Rules, it provides for a fairness exception in respect of the disqualification of results. Also, contrary to the RUSADA ADR, the IAAF Rules failed to incorporate the rules relating to backdating of sanctions for delays not attributable to athletes. These differences must be resolved in favour of the Athlete pursuant to the principle of *contra proferentem*.

64. The Athlete further submits that Swiss law is applicable, both as the *lex causae* and the *lex arbitri*. Additionally, the principles of human rights and article 6 of the European Convention on Human Rights (the "ECHR") and the principles of *lex sportiva* or *lex ludica* should apply.

65. Finally, in respect of the admissibility of the recordings made by Ms Stepanova of her conversations with the Athlete, the Athlete relies on Swiss as well as Russian criminal law arguing that the recordings were illegally procured and that the subsequent use, storage and transfer was unlawful.

66. 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."*

67. The Sole Arbitrator finds that the IAAF indeed replaces the ARAF in prosecuting the Athlete for an alleged anti-doping rule violation and that the regulations to be applied are in principle the regulations that would have to be applied by the ARAF, *i.e.* the RUSADA ADR.

68. It is undisputed that in possible appeal proceedings before CAS the IAAF Rules would be applicable anyway (Rule 42.23 of the IAAF Rules). As will be explained in more detail below, the Athlete's case is not prejudiced by the application of the IAAF Rules instead of the RUSADA ADR, as the Sole Arbitrator reached the conclusion that the general principles of fairness and proportionality are applicable and adequately protect the interests of the Athlete, who would hence in any event not have been better off under the RUSADA ADR.

69. Furthermore, in the IAAF Charge Letter dated 7 August 2015, reference was already made to an anti-doping rule violation under the IAAF Rules. The Athlete, at that time, did not object to the application of the IAAF Rules.

70. The Sole Arbitrator will therefore primarily apply the IAAF Rules and, subsidiarily, Monegasque law, as the IAAF is seated in Monaco.

71. Pursuant to the legal principle of *tempus regit actum*, the Sole Arbitrator is satisfied that procedural matters are governed by the regulations in force at the time of the procedural act in question. Consequently, whereas the substantive issues are governed by the pre-2015 edition of the IAAF Rules (more particularly the 2012-2013 edition), procedural matters are governed by the 2016-2017 version of the IAAF Rules.

72. Finally, the Sole Arbitrator will duly consider the ECHR, Swiss and Russian criminal law especially in respect of the admissibility of the recordings of the conversations between Ms Stepanova and the Athlete.

VIII. MERITS

A. The Rules

73. The Athlete has been charged with violating Rule 32.2(b) of the IAAF Rules:

> *"Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method*
>
> *(i) it is each Athlete's personal duty to ensure that no Prohibited Substance enters his body. Accordingly, it is not necessary that intent, fault, negligence or knowing Use on the Athlete's part be demonstrated in order to establish an anti-doping rule violation for Use of a Prohibited Substance or a Prohibited Method.*
>
> *(ii) the success or failure of the Use or Attempted Use of a Prohibited Substance or Prohibited Method is not material. It is sufficient that the Prohibited Substance or Prohibited Method was Used, or Attempted to be Used, for an anti-doping rule violation to be committed."*

74. Rule 33.1 of the IAAF Rules determines the following:

> *"The IAAF, the Member or other prosecuting authority shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof*

shall be whether the IAAF, the Member or other prosecuting authority has established an anti-doping rule violation to the comfortable satisfaction of the relevant hearing panel, bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt."

B. The Main Issues

75. The main issues to be resolved by the Sole Arbitrator are:

i. Did the Athlete violate Rule 32.2(b) of the IAAF Rules?
   a) The evidence based on the recordings made by Ms Stepanova
      1. Are the recordings of Ms Stepanova's conversations with the Athlete admissible evidence?
      2. Are the recordings of Ms Stepanova's conversations with the Athlete reliable evidence?
      3. The content of Ms Stepanova's witness statement and the recordings.
   b) The evidence based on the Athlete's ABP
   c) Overall conclusion in respect of the Athlete's alleged violation of Rule 32.2(b) of the IAAF Rules
ii. If Rule 32.2 (b) of the IAAF Rules has been violated, what sanction shall be imposed on the Athlete?

i. Did the Athlete violate Rule 32.2(b) of the IAAF Rules?

a) The evidence based on the recordings made by Ms Stepanova

76. The IAAF principally relies on recordings of conversations between Ms Stepanova and the Athlete and on a recorded conversation between Ms Stepanova and Mr Vladimir Kazarin, who used to coach both Ms Stepanova as well as the Athlete.

77. The Athlete confirms that Ms Stepanova invited herself to the Athlete's home on 19 November 2014, where the two spoke about various matters. However, the Athlete maintains that Ms Stepanova's recollection of events is inaccurate and cannot possibly be sufficient for the Sole Arbitrator to be comfortably satisfied that she has committed an anti-doping rule violation.

78. The Athlete also maintains that the entire case must be dismissed for lack of particularisation. In the present case there is no physical evidence of any wrongdoing. There are allegations of a number of unspecified anti-doping rule violations, spanning across several years. The fact that this case does not involve a positive test does not exempt the IAAF from particularising its charges. The IAAF has to very clearly particularise each and every allegation it makes. The Athlete submits that none of the evidence provided by Ms Stepanova is evidence of a single specific instance of doping by the Athlete and that it should not be up to the Sole Arbitrator or the Athlete to decipher from the IAAF's vague allegations which acts the IAAF considers to be violations or when, where and how such violations have allegedly been committed.

1. Are the recordings of Ms Stepanova's conversations with the Athlete admissible evidence?

79. The Athlete submits that the recordings must be declared inadmissible due to the circumstances under which they were obtained. The evidence was procured illegally, and its subsequent use, transfer and storage was also illegal. The Athlete maintains that Ms Stepanova's creation, and the IAAF's use of the recordings are a criminal offence under the Swiss Criminal Code and the Criminal Code of the Russian Federation. The Athlete also refers to article 6(1) of the European Convention of Human Rights and case law of the European Court of Human Rights.

80. The IAAF argued during the hearing that the Athlete only advanced the technical argument of the illegal procurement of the recordings to avoid having to address the merits of the case. Even if evidence is illegally obtained, it can still be admissible. The parties can stipulate the rules of evidence themselves, and the IAAF Rules determine that any reliable evidence can be used. The IAAF submits that, according to CAS jurisprudence, the public interests would have to be weighed against the private interests of the Athlete. In weighing these interests in the case at hand it shall be taken into account that extracts of the recorded videos are already in the public domain. Although the IAAF admits that a violation of the Athlete's personality rights may entail a possible restriction on the admittance of the evidence, it submits that the balance of interest overall is clearly in favour of the IAAF. Admitting the recordings in the matter at hand does not result in a breach of public order.

81. The admittance of means of evidence is subject to procedural laws, *i.e.* the *lex arbitri*. Since the seat of the present arbitration is Switzerland, Switzerland's Private International Law Act (the "PILS") is applicable.

82. Article 184(1) PILS determines as follows:

> *"The arbitral tribunal shall take evidence."*

83. This provision vests arbitral tribunals in international arbitration proceedings seated in Switzerland with ample latitude in the taking of evidence. Arbitral tribunals do not have to follow the rules of taking evidence in state courts in Switzerland. The power to determine the arbitral proceedings in the absence of an agreement between the parties thus allows the arbitral tribunal to freely determine the principles governing evidence to the extent that these are of a procedural nature and not governed by the applicable substantive law (VEIT, Article 184 PILS, in: ARROYO (Ed.), Arbitration in Switzerland – The Practitioner's Guide, p. 127; with further reference to: POUDRET/BESSON, Comparative Law of International Arbitration, 2nd ed., 2007, para. 644).

84. It is also contemplated in 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)

Freely translated into English, without references:

> *"[t]he power of the Panel to rule on the admissibility of evidence is also noted in the CAS Code (cf. Article 44.2). It follows from Article 184, paragraph 1 PILS (as well as the CAS Code) that the Panel disposes of a certain discretion to determine the admissibility or inadmissibility of evidence"*

85. In general, 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).

86. In the matter at hand, the relevant sporting regulations are the IAAF Rules. Rule 33(3) of the IAAF Rules reads as follows:

> *"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."*

87. Article 6(7) of the IAAF Anti-Doping Regulations (2015 edition) determines the following:

> *"The IAAF shall gather and record all relevant information and documentation as soon as possible, in order to develop that information and documentation into admissible and reliable evidence in relation to the possible anti-doping rule violation, and/or to identify further lines of enquiry that may lead to the discovery of such evidence. The IAAF shall ensure that investigations are conducted fairly, objectively and impartially at all times and, in accordance with Rule 31.13, the IAAF Anti-Doping Administrator may, in the course of such an investigation, seek an advisory opinion from any person or persons whom he considers to be appropriate. The conduct of investigations, the evaluation of information and evidence identified in the course of that investigation, and the outcome of the investigation, shall be fully documented."*

88. The Sole Arbitrator does not consider the reference made by counsel for the Athlete to article 6(7) of the IAAF Anti-Doping Regulations to be relevant as the admissibility of evidence is set out in Rule 33(3) of the IAAF Rules.

89. The discretion granted to admit evidence under Rule 33(3) of the IAAF Rules is fairly wide as that rule determines that anti-doping rule violations may be established by "any reliable means". The Sole Arbitrator has no doubt that, pursuant to Rule 33(3) of the IAAF Rules, recordings can in principle be regarded as a reliable means of evidence.

90. The evidence against the Athlete in the matter at hand consists of Ms Stepanova's witness statement as well as the corroborating recordings and transcripts thereof.

91. Whereas Ms Stepanova's witness statement is undoubtedly admissible, particularly because witness statements are listed as a means of evidence in Rule 33(3) of the IAAF

Rules, the Sole Arbitrator finds that the admissibility of the recordings and the transcripts thereof require a more detailed analysis, because they have been made covertly.

92. Objectively, the Sole Arbitrator has no doubt that the recordings and their transcripts fall under the category "any reliable means" provided for in Rule 33(3) of the IAAF Rules, as they adequately substantiate the IAAF's submissions regarding an anti-doping rule violation committed by the Athlete. It has to be examined, however, whether the recordings have been illegally obtained.

93. If a means of evidence is illegally obtained, it is only admissible if the interest to find the truth prevails (Art. 152, 168 Swiss Code of Civil Procedure ("CCP"); 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, 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 first, 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).

94. This view has been endorsed by the Swiss Federal Tribunal:

> *"The principle that illicitly obtained evidence is inadmissible is generally recognized in Swiss legal writing, corresponds with the case law of the Federal Tribunal, and is found in both Art. 140 f. of the Swiss Code of Criminal Procedure (CCrP); SR 312.0) and in Art. 152(2) of the Swiss Code of Civil Procedure (CCP; SR 272). The principle is also recognized in other legal orders; it may only be derogated from exceptionally and in a very limited way, particularly in an adversarial system.*
>
> [...] *The Appellant rightly refrains from arguing that illegally obtained evidence would be excluded in all cases according to the Swiss view; the interests at hand must instead be balanced; they are, on the one hand, the interest in finding the truth and, on the other hand, the interest in protecting the legal protection infringed upon by the gathering of the evidence (see BGE 140 III 6 at 3.1, p. 8; 139 II 7 at 6.4.1,p. 25; 136 V 117 at 4.2.2, p. 125; 131 I 272 at 4.1.2, p. 279)* [...]." (SFT 4A_362/2013, 3.2.1-3.2.2)

95. On balancing the parties' interests regarding illegally obtained blood bags, a CAS Panel determined the following:

> *"L'ordre juridique interne suisse n'établit pas de principe général selon lequel des preuves illicites seraient généralement inadmissibles dans une procédure devant les cours civiles étatiques. Au contraire, le Tribunal Fédéral, dans une jurisprudence constante, est d'avis que l'admissibilité ou la non-admissibilité d'une preuve illicite est le résultat d'une mise en balance de différents aspects et intérêts juridiques (TF, 18.12.1997, 5C.187/1997; TF, 17.2.1999, 5P.308/1999 et TF, 17.12.2009, 8C_239/2008). Sont pertinents, par exemple, la nature de la violation, l'intérêt à la manifestation de la vérité, la difficulté de preuve pour la partie concernée, le comportement de la victime, les intérêts légitimes des parties et la*

possibilité d'acquérir les (mêmes) preuves de façon légitime (FRANK/STRÄULI/MESSMER, Kommentar zur zürcherischen Zivilprozessordnung, 3ème éd. 1997, vor § 133 ff no.6; VOGEL/SPÜHLER, Grundriss des Zivilprozessrechts, 9ème éd. 2008, 10. Kap. No. 101. La doctrine suisse prédominante suit cette jurisprudence du Tribunal Fédéral (SPÜHLER, ZZZ 2/2002, p. 148; STAEHELIN, Der Beweis im schweizerischen Zivilprozessrecht, in: Der Beweis im Zivil- und Strafprozess der Bundesrepublik Deutschland, Österreichs und der Schweiz, Mittelbarer oder unmittelbarer Beweis im Strafprozess, 1996; RÜEDI, Materiellrechtswidrig beschaffte Beweismittel im Zivilprozess, 2009, p. 35 ss). L'approche adoptée par le Tribunal Fédéral et la doctrine dominante a, par ailleurs, été codifiée dans le nouveau CPC suisse (Article 152 alinéa 2), qui entrera en vigueur le 1er janvier 2011.

[…]

"Dans le cas d'espèce la Formation considère qu'une lutte efficace contre le dopage constitue en tout état de cause non seulement un intérêt privé de l'association mais aussi un intérêt public. Cela est également mis en évidence par des Conventions, dont la Suisse est état contractant (Convention contre le dopage du Conseil de l'Europe no. 135, Convention internationale contre le dopage dans le sport de l'UNESCO). L'intérêt de lutter contre le dopage est – selon l'opinion unanime de la Formation – dans le cas d'espèce prépondérant à ne pas voir les analyses effectuées dans le cadre d'une enquête pénale transmise à une autorité sportive compétente." (TAS 2009/A/1879, para. 69-74 of abstract published on the CAS website)

Freely translated into English, without references:

"The Swiss national legal order does not establish any general principle according to which illicit evidence is to be considered generally inadmissible in procedures before state civil courts. On the contrary, the Swiss Federal Tribunal, as set out in its constant jurisprudence, is of the opinion that a decision regarding the admissibility of illicit evidence must be the result of a balancing of various juridical interests. Matters considered pertinent, for example, are the nature of the violation, the interest in discerning the truth, the difficulty of adducing evidence for the concerned party, the conduct of the victim, the legitimate interests of the parties, and the possibility of acquiring the (same) evidence in a legitimate manner. The predominant Swiss doctrine follows this jurisprudence of the Federal Tribunal. This approach adopted by the Swiss Federal Tribunal and the dominant doctrine, moreover, have been codified in the new Swiss Civil Code (Article 152, paragraph 2), which will enter into effect on January 1, 2011.

[…]

"[T]*he Panel finds that the successful battle against doping constitutes not only a private interest of the association in question but also a public interest. This is also highlighted by the Conventions of which Switzerland is a contracting state. The interest underlying the fight against doping is – according to the unanimous opinion of the Panel – in the present case preponderant over the Athlete's interest in not*

having the analyses carried out in the context of a criminal investigation transmitted to the competent sport disciplinary authority."

96. Finally, the Sole Arbitrator notes that, according to the Swiss Federal Tribunal, not only the interest of a complainant in abstaining from obtaining evidence in an illegal manner is relevant in this balancing, but also the interest of not having this evidence used against him:

"Insgesamt überwiegt nach der dargelegten Interessenabwägung das private Interesse des Beschwerdeführers, dass der fragliche Beweis unverwertet bleibt, das öffentliche Interesse an der Wahrheitsfindung. Ein Abstellen auf die rechtswidrig erlangten Filmaufnahmen hält deshalb vor dem Fairnessgebot nicht stand. Dies führt zu einem Beweisverwertungsverbot." (SFT 137 I 218, para. 2.3.5.5)

Freely translated into English:

"Overall, after a balancing of the interests at stake, the private interests of the complainants that the evidence in question remains unutilized prevails over the public interest in discerning the truth. Fairness demands that the unlawfully obtained film recordings are excluded. This leads to a prohibition to rely on the evidence."

97. The balancing test applied by the Swiss Federal Tribunal is confirmed by the European Court of Human Rights in *K.S. and M.S. v. Germany*, no. 33696/11, ECHR 2016-V, 6 October 2016.

98. Acknowledging the above general legal framework, the Sole Arbitrator, in the case at hand, proceeds with balancing the interest in finding the truth on the one hand and, on the other hand, the interest of the Athlete in refraining from relying on the recordings.

99. The Sole Arbitrator starts his analysis from the Athlete's contention that the recordings are illegally obtained evidence, under both Swiss and Russian law, and have been gathered in violation of the fundamental and procedural rights of the Athlete as well as the principle of good faith. The Sole Arbitrator notes that the Athlete bases her argument particularly on a violation of her privacy rights.

100. Furthermore, the Sole Arbitrator notes that the Athlete herself does not rely on the content of the recordings. Rather, the Athlete submits that she does not wish to prejudice her position with regards to the admissibility of the recordings and cannot, therefore, engage in any detailed analysis of its contents.

101. The Sole Arbitrator finds that the recordings were not made by Ms Stepanova in a 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.

102. The actions of Ms Stepanova triggered widespread investigations into the systematic use of doping by Russian athletes. Ms Stepanova's recordings were used by Mr Hajo Seppelt in a documentary that was broadcasted on German television channel ARD on 3 December 2014, which subsequently triggered large scale investigations into the

systematic use of doping in Russian athletics by the WADA IC, leading to the conclusion that *"[t]he investigation has confirmed the existence of widespread cheating through the use of doping substances and methods to ensure, or enhance the likelihood of, victory for athletes and teams"*. Following the backdrop of this conclusion, ARAF's membership of the IAAF was suspended.

103. Therefore, with hindsight, it may be concluded that the interest in discerning the truth concerning systematic doping abuse in Russia was of utmost importance to keep the sport clean and to maintain a level playing field among athletes competing against each other. The Sole Arbitrator deems it unlikely that Ms Stepanova could have acquired the (same) evidence in a legitimate manner.

104. As noted by the Panel in TAS 2009/A/1879, the fight against doping is not only of a private interest, but indeed also of a public interest.

105. It is notorious that doping in Russia is widespread and has been systematically supported by coaches, clubs and government-affiliated organisations. In such a special situation, the interest in finding the truth must prevail and the Athlete should not be allowed to invoke the principle of good faith as a defence against gathering illegally obtained evidence.

106. Considering all the elements above, the Sole Arbitrator finds that the interest in discerning the truth must prevail over the interest of the Athlete that the covert recordings are not used against her in the present proceedings. The Sole Arbitrator is not prepared to accept that the principle of good faith has been violated in the proceedings at hand.

107. Consequently, the Sole Arbitrator finds that the recordings of Ms Stepanova's conversations with the Athlete and the Coach are admissible as evidence in the proceedings at hand.

2. Are the recordings of Ms Stepanova's conversations with the Athlete reliable evidence?

108. The Sole Arbitrator finds that the recordings are of a reasonably good quality and allow to draw conclusions therefrom. Although certain parts are inaudible, such inaudible parts are only short. The Sole Arbitrator considers it very unlikely that these short inaudible sections would entirely change the context in which the audible parts must be understood. The Sole Arbitrator takes the view that the recordings have not been distorted in any way.

109. As will be examined in more detail below, the Sole Arbitrator considers the admissions made by the Athlete in the recordings to be so abundantly clear that no further corroborating evidence is needed beyond Ms Stepanova's testimony, the recordings and the transcripts of the recordings. The IAAF Rules do not set forth that a conviction must be based on multiple pieces of evidence and, in any event, the evidence against the Athlete does not consist only of Ms Stepanova's subjective opinion, but also on the recordings of the conversation between Ms Stepanova and the Athlete, which is objective evidence.

110. At this stage, reference may be made to an article by Ms Estelle De La Rochefoucauld:

> *"In two longstanding doping-related cases, CAS Panels have admitted that the uncontroverted testimony of a wholly credible witness can be sufficient to establish a doping offence absent any adverse analytical finding. The arbitrators also held the existence of a right and power to draw an adverse inference from the athlete's refusal to testify. However, in the circumstances, the witness' testimonies established the admission by the athlete of the use of a prohibited substance and were sufficient to establish the commission of a doping offence. The evidence alone was therefore sufficient to convict"* (DE LA ROCHEFOUCAULD, The Taking of Evidence Before the CAS, CAS Bulletin 2015/1, with further reference to CAS 2004/O/645 USADA v. M. & IAAF, para. 45 ff. and CAS 2004/O/649 USADA v. G, para. 46 ff.).

111. The Sole Arbitrator does not find Ms Stepanova's recollection of the conversation to be inaccurate. To the contrary, and as will be examined in more detail below, the recordings corroborate the allegations expressed in Ms Stepanova's witness statement. The Sole Arbitrator finds the recordings particularly convincing because they do not only contain sound, but also video footage.

112. Consequently, the Sole Arbitrator finds that the recordings are in general reliable evidence.

3. The content of Ms Stepanova's witness statement and the recordings

113. Between minute 15:08 and 17:14 of the recordings, the following conversation took place between Ms Stepanova and the Athlete:

Athlete:	*"My Lekha* [the Athlete's husband] *is like that, too... just as he was against it after the Olympics... it was all just simply... Unreal. The fact that all these rules had been tightened, all these... tests and all that... all these samples. How strongly he was against it... How he and I fought against it initially... Well shit... And I just simply... I convinced him, that the Federation was helping us, giving us protection, that they help the trainer, and that's the end of it. It's a sort of guarantee of our peace-of-mind, if you like... that we can simply train and help our bodies along..."*
Stepanova:	*"And what about him... does Lekha run, too, on his own health? He doesn't take anything?"*
Athlete:	*"Well, very rarely he does. Really rarely... He doesn't take oksik, or all those* [inaudible], *but just* [inaudible] *and some other stuff, too... But those* [inaudible] *a hundred years ago..."*
Stepanova:	*"But I thought all those anabolic medications don't work for men? I thought they were more for women?"*
-:	*"Well, there it is..."*

Athlete: *"Somehow, I managed to persuade him. It's all so... At first, it was totally... Initially, even, I remember how I agreed, that OK, I was going to train clean for the Worlds in 13. On my own health. So... I had to change that. Take my words back, argue...* [inaudible] *yes, of course, it is a risk... but you have to just try to explain, you do, to Vitalik, that... it results in different levels."*

114. The Sole Arbitrator adheres with the IAAF that it appears from this conversation that the Athlete initially wanted to participate clean for the World Championship in Moscow in 2013, but that she finally did not. The conversation is clearly about doping and the reference to "on my own health" undoubtedly refers to a situation where no doping would be used. The Sole Arbitrator considers this to be a clear general admission of doping use by the Athlete prior to and in preparation for the 2013 World Championship.

115. Between minute 19:54 and 20:29 of the recordings, the following conversation took place between Ms Stepanova and the Athlete:

Stepanova: *"For us it is all different, somehow."*

Athlete: *"That is, oksik brings up our testosterone levels."*

-: *"It cannot lift it that much for us. My testik has never gone up very high. Well, I did have about three and a half, maximum... But I never used the [inaudible] testik. Well, I did use it once, and it flew up to 150... I was shocked... Well, that's the last thing I need, after the next injection I'll grow a black beard and starting rasping like a man. The boss said nope, that's it, we've finished with that."*

116. Although the Sole Arbitrator is willing to accept that either Ms Stepanova or the Athlete admitted the use of *"testik"*, which is understood to be Testosterone, it is not clear from the recordings or the transcripts that it was the Athlete who said *"I did use it once"*. The Sole Arbitrator therefore finds that it is not established to his comfortable satisfaction that the Athlete admitted to having used *"testik"*.

117. Between minute 21:27 and 23:02 of the recordings, the following conversation took place between Ms Stepanova and the Athlete:

Stepanova: *"It is just that the boss... well, he gave me oksik... and he said... well, measured for 40 days. Shit, and now I am also... I am afraid that it will still be detected... I mean..."*

Athlete: *"It is not like that, look here... Those... Those, shot-putters, for example, it will no longer be detectable for them. For the middle-distance runners it will not be so long, because you have your metabolism, and you are thin, look at the volume you have, that, is, all of it, really, with the sweating... it will come out much faster. So, it is not definite. For me, it all comes out in less than 20 days. So for me, I don't know really, this is your personal..."*

-: *"Seriously?* [Inaudible]*"*

-: *"Yeah, for me it all comes out quicker."*

Stepanova: *"And parabolan... Now they are saying that it is about 30 days... that is, for you it is only 10 days?"*

Athlete: *"Well, no, I mean... over 10... well, 15... about 20 or 15 days in my body it is all... cleaned out... It is just that I have been monitored, they watched it... It is just that Lekha has good relations with that Grigoriy Rodchenkov. The boss said: "Now he's sending them all down... That Rodchenkov, everyone one of them. The slimeball."*

118. The Sole Arbitrator finds that it is clear from this part of the conversation that the Athlete used Parabolan, because she states that it takes about 20 or 15 days for this substance to wash out of her body. The Sole Arbitrator considers this to be a clear admission of an anti-doping rule violation by the Athlete. Not only does this prove an anti-doping rule violation, it is also evidence of the sophisticated way in which the Athlete used doping. Indeed, the Athlete very much appears to say that she has been monitored by certain persons for finding out her personal wash-out period for Parabolan, which proves that several people were involved in the use of Parabolan by the Athlete.

119. Between minute 47:24 and 48:34 of the recordings, the following conversation took place between Ms Stepanova and the Athlete:

Stepanova: *"Well, I asked him, what to run on apart from these tablets? Is that really it, just pills and that's it? Well, growth hormone... He said it was total nonsense, that it did not work at all. Like, it costs a load, and does not work at all. Sort of... and he, like... we won't do that."*

Athlete: *"Well, of course, as he was saying do it two or three times per week, and that is enough. And the fact that you need to do it every time, every day, well, I don't know about that..."*

Stepanova: *"Well, you trained on the hormone..."*

Athlete: *"I did it but, you see, Lekha advised me, because he was drying me out. Yes, he did a good job drying me out."*

120. The Sole Arbitrator finds that the Athlete, in this part of the conversation, clearly admits the use of growth hormones. The Athlete literally says *"I did it"*, albeit without specifying the prohibited products she took and the time when she took them.

121. In her witness statement, Ms Stepanova also refers to a conversation she had with the Athlete in November 2012 during which the latter allegedly admitted to using Ox (Oxandrolone), peptides and Winstrole (Stanozolol).

122. However, during cross-examination, Ms Stepanova finally admitted that the Athlete did not mention any names of substances during this conversation in November 2012, and testified that the Athlete said to her that she received pills by Dr. Portugalov knowing the pills contained prohibited substances.

123. The Sole Arbitrator is not convinced that the Athlete, in her conversation with Ms Stepanova in November 2012 admitted the use of Oxandrolone, peptides and Winstrole (Stanozolol).

124. The Athlete understandably came forward with the argument that the IAAF's allegations lacked particularisation. At this point, the IAAF's Charge Letter must be taken into consideration. The Sole Arbitrator notes that the following is set out in the IAAF's Charge Letter of 7 August 2015 that was addressed to the Athlete:

> *"In particular, the evidence shows that Ms. Savinova used prohibited substances, including oxandrolone stanozolol, human growth hormone and testosterone in the period from 2009 until 2014.*
>
> [...]
>
> *Ms. Savinova has admitted to taking* inter alia *oxandrolone, testosterone, stanozolol, Trenbolone, human growth hormone and EPO* [...].
>
> *Oxandrolone, testosterone, stanozolol and Trenbolone have at all material times belonged to the category of Anabolic Agents set out at section S.1. of the Prohibited List. EPO and human growth hormone have at all material times belonged to the category of Peptide Hormones, Growth Factors and Related Substances set out at S.2 of the Prohibited List.*
>
> *In view of the above, the IAAF considers that there are sufficient grounds to charge Ms. Savinova with Use of prohibited substances."*

125. The Sole Arbitrator finds that the IAAF, with this Charge Letter in combination with the content of the recordings and the Request for Arbitration filed to CAS, sufficiently particularised the allegations against the Athlete and takes the view that, based on the evidence filed by the IAAF, the charges have been adequately particularised, although it has not been established at what time the prohibited substances had been taken by the Athlete.

126. Consequently, the Sole Arbitrator has no doubt that the Athlete violated Rule 32.2(b) of the IAAF Rules by admitting the use of Parabolan and growth hormones to Ms Stepanova.

b) The evidence based on the Athlete's ABP

127. The Sole Arbitrator observes that, in its attempt to establish an anti-doping rule violation of the Athlete under Rule 32.2(b) of the IAAF Rules, the IAAF also relies on conclusions drawn from longitudinal profiling as shown by the Athlete's ABP. The IAAF focuses on an abnormal sequence in the RET% and OFF-score values in the Athlete's ABP with a probability in excess of 99.9%, the rejection of each of the physiological and non-physiological explanations put forward by the Athlete and a supraphysiological increase in red cell mass in and around competition periods. In this respect, the IAAF relies on the Athlete's ABP and the Athlete's corresponding competition schedule, the First and Second Joint Expert Opinions and the testimony of Prof. d'Onofrio and Dr. Schumacher during the hearing.

128. In the First Joint Expert Opinion, the Expert Panel concludes as follows:

> *"In our view, the data of the athlete bears the following abnormal features which require explanations:*
>
> 1. *The sequence of samples 7 and 8, where the athlete displays an OFF score of 121 in August 2011 (IAAF World Championship Daegu, sample 7) and more normal values in winter (sample 8). Such constellation illustrates a supraphysiological red cell mass (high haemoglobin) with downregulated erythropoiesis (low reticulocytes) in the lead up to a major competition. It is typically observed after the use and discontinuation of an erythropoietic stimulant or the application of a blood transfusion. In addition to this specific abnormality, there is also a clear, consistent pattern of high haemoglobin values paired with low reticulocyte% during summer (= the competitive season) (see figure 1), which is against physiological regulation (1,2) and points towards a repetitive supraphysiological increase in red cell mass with subsequently suppressed erythropoiesis.*
>
> 2. *Samples 25-27 with an obvious reticulocyte increase with low haemoglobin concentration. In the mentioned samples, the athlete displays the lowest haemoglobin paired with the highest reticulocytes of the profile* [...]. *Such constellation is typically observed after blood loss, where haemoglobin concentration is low and the body increases its erythropoietic activity to counterbalance the loss, thus the increased reticulocytes. The athlete was apparently 19-20 weeks pregnant when sample 27 was obtained. Pregnancy usually causes a drop in haemoglobin concentration due to plasma volume expansion and (possibly) an increase in reticulocyte to accommodate the blood volume for the unborn child (3-5). The timeline of haematological changes in relation to the state of the pregnancy is well defined in the scientific literature* [...], *and matches the profile of the athlete. Therefore, the constellation visible in the last part of the profile can be explained by a pregnancy.*
>
> *We therefore conclude that it is highly likely that a Prohibited Substance or Prohibited Method has been used and that it is unlikely that the passport is the result of any other cause. It is our unanimous opinion that considering the information available at this stage and in the absence of an appropriate physiological explanation, the likelihood of the abnormality 1 described above being due to blood manipulation, namely the artificial increase of red cell mass using an erythropoietic stimulant and/or blood transfusion is high. On the contrary, the likelihood of a medical condition causing the supraphysiologically increased red cell mass visible in this sample is low. Analytical shortcomings are also highly unlikely to have caused the suspicious pattern in the profile. Environmental factors such as altitude exposure are also improbable to have had a significant effect, as based on the available documentation, the athlete never sojourned at altitudes sufficient to trigger haematological changes such as observed in the relevant samples. The last part of the profile with the abnormal samples 25-27 (abnormality 2) can be explained by the pregnancy of the athletes. We therefore recommend*

requesting the athlete's explanations for her blood values regarding the first point highlighted above."

129. Upon having learned of the contents of the First Joint Expert Opinion, the Athlete provided the following comments:

"I started practicing track-and-field athletics in 1999 with Tatyana Ivanova Maslova. Starting from 2002 I started getting places in different competitions among my peers. In 2000 Ms. Maslova acquainted me with the doctor of alternative medicine Boris Aleksandrovich Chernov, with whom I have been cooperating to the present day. Under the guidance of Ms. Maslova I showed 2.00.78 set in 800 m in 2007.

My athletic career on the adult national level started in 2008, the same year I moved to the group of Vladimir Semenovich Kazarin. I benefitted from changing training methods. I started to travel regularly to training camps, where I spent almost 11 months per year. From the junior age I paid a lot of attention to vitamins and minerals during the training process. During competition seasons I constantly used natural products and herbs recommended by Mr. Chernov, and products dispensed in the national team: actovegin in tablets, folic acid, vitamin B12, iron supplements. I didn't use any prohibited products.

During winter competition season, which I skipped, I discontinued all the vitamins and minerals for the body to have rest and not to get used to constantly high levels of vitamins and minerals. I also used acupuncture and different practices administered by Boris Aleksandrovich Chernov to improve physical and mental state.

In winter 2011 I started using altitude tent HYPOXICO.

As an experiment one year before the Olympics, before the world championship in Daegu, after consulting physicians, athletes and trainers I decided to use the tent in Kislovodsk at the altitude of 1100 m above sea level. I slept in the tent at the altitude 2200 m above sea level, and also did exercises during the preparation period of the training camp, breathing rarefied air with Hypoxico tent from the altitude of 4000-6900 m from 30 minutes to 1 hour. I also used the tent with the same scheme at the final training in Vladivostok. The results included increase of strength values, stamina and improvement of blood values. Detailed blood test couldn't be done, as only blood chemistry could be assessed at the training camp.

In 2012 before the Olympics in London and in 2013 before the World Championship in Moscow I also used the previously tested training method with altitude tent, as I achieved significant results with it. I again observed the increase of physical strength, stamina and improvement of blood values.

I usually used the altitude tent in the beginning of the preparation period and during the competition period before the main start of the season.

I want to describe some specifics of my body. Since 2003 I am followed up by a gynaecologist due to polycystic ovarian syndrome. It results in certain problems:

unstable menstrual cycle (from 20 to 47 days), complications during pregnancy, increased blood testosterone and DHT. You can find the consultation list of endocrinologist of FGHI "CCH of MIA of the Russian Federation" in the attachment.

It's also worth mentioning that currently my hemogram shows RBC level 5.22x10^12/L, HB 140g/dL. A heterozygote PAI-1, a marker of thrombophilia, is observed. The results are attached.

I also have blood chemistry tests from different periods of my athletic career.

Since I started participating in competitions of track-and-field athletics my body always adjusted to the main start and in 95% of cases menstruation started either several hours after the start or the next day. It happened at all the main starts of my life. When I was on the race track after the final of Olympic games in London, I felt premenstrual pain as always before the menstruation onset. At the stadium I asked medical staff for help and they led me to the room under the tribunes and gave me painkillers (Diclophenacum and Paracetamol). Menstruation started when I returned to the hotel. At the World Championship in Daegu in 2011 I also had a delay of menstruation, and it started the next day after the final.

Also the experts have questions with regards to the 8th assay. This sample was taken upon return from the training camp in Cholpon-Ata and Karakol, Kyrgyz Republik. We trained at centers situated at the altitude of 1630 and 2400 m above sea level.

As the international experts consider the blood test from a large number of sportsmen with different levels of training, I would like to ask the experts if in their practice they had sportswomen with deviations in genes or other specific deviations. Do they consider other values that indirectly affect erythropoiesis? I would like to note that my average hemoglobin is about 150 units. During menstruation hemoglobin decreases by 10-15 units. During pregnancy hemoglobin level was 140-145 units. After child birth the next day hemoglobin was 142 units. And blood loss during delivery was 600 mL (discharge summary No. 2148/26596/2015). Pregnancy lasted 38.5 weeks. From 20.08.2014 to 15.05.2015."

130. In the Second Joint Expert Opinion, and taking into account the comments of the Athlete, the Expert Panel concludes as follows:

"Supplements and blood markers

There is ample scientific literature on the influence of various forms of supplements on the peripheral blood picture: Both iron and Vitamin B12 are compulsory substrates of the blood cell synthesis and deficiency in any of those elements will lead to insufficient erythropoiesis (1,2). This usually presents clinically as anaemia (low haemoglobin) with very characteristic features in the red blood cell indices (low MCV for iron deficiency, high MCV for Vitamin B12 deficiency). In the present athlete however, neither anaemia nor any abnormality in the red cell indices is observed in any of the samples. Thus, it is highly unlikely that the athlete suffered of any deficiency. In the healthy athlete without any insufficiencies, it is well proven in the scientific literature that additional supplementation or even excess of various

vitamins and minerals will not cause any clinically relevant changes in the red blood cell picture (3). The explanations of the athlete on this topic can therefore be dismissed.

Altitude training & hypoxic tents

It is well described that the hypoxia of altitude can cause changes in markers of the athlete biological passport (4,5). However, the magnitude of such changes is generally small and will cause distinct patterns in the blood profile. Typically, reticulocytes are slightly suppressed approximately 10 days after return to sea level, paired with possibly mildly elevated haemoglobin levels, leading to a slight increase in OFF score. However, nowhere in the blood profile any such pattern is visible when relating the profile to the alleged use of hypoxia ("winter of 2011 onwards"). The most abnormal period mentioned in our previous report that might theoretically display such configuration is the time around the 2011 Daegu World Championships (held in August), thus before the use of this method. Furthermore, the magnitude of changes observed in the present profile is much too large to be caused by any form of hypoxia: Whereas the largest changes in the OFF score triggered by altitude/ hypoxia found in the studies cited above ranged around 30 units, the athlete shows variations of more than 50 units, even when not considering the period of pregnancy in 2014. Furthermore, prerequisite for altitude related changes to occur is a sufficient duration and height of exposure. It is generally recognised that 18 days at ~2500m are required to trigger measurable changes in the red blood cell system (6). The athlete apparently never spent sufficient times at relevant altitude for the periods in question (samples 7+8). Using a hypoxic tent or other forms of artificial hypoxia can, in theory, induce the same changes than natural hypoxia. However, most of the time, the daily exposure time in the tent is too short to trigger measurable increases in erythropoiesis. This has been investigated in several scientific studies (7,8). Generally, it is believed that, depending on the degree of hypoxia, 10 or more hours of continuous exposure at [sic] *are required to increase erythropoiesis. Intermittent hypoxic exposure, as apparently performed by the athlete, is another form of hypoxic training, where shorts bursts (minutes) of extreme altitude (3000-7000m) are administered (instead of long sojourns during conventional altitude training). It is undisputed in the scientific literature that such form of hypoxic training will not affect any blood marker (9,10). In summary, it is obvious that the highlighted abnormalities in the profile are highly unlikely to have been caused by any form of altitude or hypoxic exposure.*

Genetic disposition to Thrombophilia

Thrombophilia is a defect of the coagulation system of the blood which can cause prolonged bleeding due to the genetically induced malfunction of one or several proteins involved in the coagulation cascade. The defect is claimed by the athlete (heterozygous Plasminogen Activator Inhibitor 1 (PAI 1) 4G/5G defect) is a common polymorphism; its clinical significance is still debated. Homozygous defects will lead to prolonged bleeding times, thus might lead to lower haemoglobin levels. However, such feature is never observed in the athlete. The most suspicious tests (samples 7+8) display normal and high haemoglobin values, making any form

of subclinical bleeding or blood loss unlikely. It is also unclear how this genetic abnormality (which is supposedly present all the time) might cause distinct seasonal abnormalities.

Irregular menstruation related to polycystic ovarian syndrome

The athlete claims irregular menstruation to have caused the fluctuations in her profile. According to her explanations, the menstruation always started after the main competitions. During normal menstruation, approximately 40ml of blood is lost (11). Other authors (12) have described the variation of Haemoglobin concentration during the menstrual cycle to range within 0.7g/dl in a relatively large study group. Interestingly, all authors attribute the observed changes mainly to hormone induced plasma volume shifts and not to variations in red cell mass itself. Thus, the variation caused by the monthly bleeding is not very important and certainly smaller than the variations that might be induced by plasma volume shifts caused by different modalities of exercise. Heavy menstruation (menorrhagia) can cause blood losses of 80ml or more (11). The haemoglobin concentration of the blood can be related to the quantity of the blood lost through the menses, but will significantly affect this system only at persistent monthly losses of > 80ml (menorrhagia). The magnitude of this association ranges around –g/dl for subjects who lose more than 80ml regularly. Heavy bleeding of any origin in general can, theoretically, lead to persistently low haemoglobin values, especially if iron stores are depleted. Interestingly, for the suspicious periods in the present profile, low haemoglobin values are never the problem: The relevant phase of the profile (summer 2011) shows high haemoglobin values and a suppression of erythropoiesis with a decrease in Reticulocytes. In this context, it is important to highlight that lacking menstrual bleeding (amenorrhea), does not cause any increase in Haemoglobin concentration. It is a misconception to believe that lacking menstrual bleeding will in fact be "stored" as a surplus in the body and lead to supraphysiologically high Haemoglobin concentrations associated with supressed bone marrow activity, such as observed in the present case (samples 7+8). Haemoglobin concentration is regulated by the oxygen tension in the blood. The stimulation/ inhibition of the red cell production in the bone marrow is balanced by this entity over a feedback mechanism involving Erythropoietin. Thus, if the oxygen tension in the blood is sufficient, no additional red blood cells will be produced, irrespective of the menstrual blood loss. Therefore, the argument forwarded by the athlete and her defence that menstrual disturbances have partly caused the abnormalities visible in the profile is not supported by the scientific evidence.

Impact of pregnancy

We refer to our report dated 14.07.2015, in which we evaluated pregnancy as a potential cause for the observed passport abnormalities and concluded that the sequence of samples 25-27 might indeed be explained by pregnancy.

Conclusion

Based on scientific scrutiny of the different points forwarded by the athlete, we do not think that any of the arguments explain the abnormalities of the profile. The most suspicious point highlighted in our previous expertise, namely samples 7 and

8 and the abnormal seasonal pattern remain unexplained. In contrast to the explanations provided by the athlete, it is typical to observe features such as seen in the profile assuming blood manipulation, notably an artificial increase in red cell mass for the 2011 IAAF World Championships.

Considering the information available at this stage, we therefore confirm our previous opinion that the profile is highly suspicious for blood manipulation. It is highly unlikely that it is the result of a normal physiological or pathological condition but might in contrast be caused by the use of prohibited substances or prohibited methods."

131. In her Answer, the Athlete does not reiterate any of the arguments submitted in her initial comments forwarded to the IAAF by RUSADA on 30 September 2015. The Sole Arbitrator therefore does not deem it necessary to look at the Athlete's initial comments in further detail and understands that the Athlete accepted the arguments of the Expert Panel in the Second Joint Expert Opinion.

132. The Athlete however submits that no abnormalities appear in her ABP, if the blood samples collected during the pregnancy of the Athlete are removed. According to the Athlete, Sample 28 triggered the ABP review and, therefore, absent the "pregnancy samples", the Athlete's ABP would not have resulted in any further action and Samples 7 and 8 do not exceed the upper or lower limits of the ABP at 99.9% specificity. As to the alleged seasonal variations, the Athlete argues that there is no statistically significant difference between the Athlete's mean HGB values from samples collected during summer and those collected during the rest of the year. Finally, in respect of the IAAF's contention that the Athlete admitted to using EPO in her conversations with Ms Stepanova, the Athlete maintains that she never admitted to using EPO in the recorded conversations, nor does Ms Stepanova allege this in her witness statement.

133. The Sole Arbitrator is satisfied to accept that the ABP is a reliable and accepted means of evidence to assist in establishing anti-doping rule violations and feels comforted in this conclusion by CAS jurisprudence and legal literature (see CAS 2010/A/2174, para. 9.8; VIRET, Evidence in Anti-Doping at the Intersection of Science and Law, 2016, p. 735; LEWIS / TAYLOR (Eds.), Sport: Law and Practice, 2014, para. C.126).

134. The Sole Arbitrator is however mindful of the warnings expressed in legal literature that a pitfall to be avoided is the fallacy that if the probability of observing values that assume a normal or pathological condition is low, then the probability of doping is automatically high (VIRET, Evidence in Anti-Doping at the Intersection of Science and Law, 2016, p. 763, with further references to Dr. Schumacher and Prof. d'Onofrio 2012, p. 981; Sottas 2010, p. 121) and that it has been submitted in this context that *"if the ADO is not able to produce a "doping scenario" with a minimum degree of credibility ("density"), the abnormality is simply unexplained, the burden of proof enters into play and the ADO's case must be dismissed since there is no evidence pleading in favour of the hypothesis of "doping" any more than for another cause."* (VIRET, Evidence in Anti-Doping at the Intersection of Science and Law, 2016, p. 774).

135. This is indeed the argument made by Mr Scott during the hearing. He testified that there can be multiple explanations for the unusual characteristics of Samples 7 and 8. Mr Scott did not deny that doping was a plausible explanation, but that the question was whether

it is the most likely explanation, as other normal physiological explanations are possible as well.

136. This view has indeed also been adopted in CAS jurisprudence and the Sole Arbitrator finds that another CAS panel summarised it nicely by stating that *"abnormal values are (for the purposes of the ABP) a necessary but not a sufficient proof of a doping violation"* (CAS 2010/A/2235, para. 86). Although such panel continued by emphasising that it is not necessary to establish a reason for blood manipulation, the panel noted a coincidence of the levels with the athlete's racing schedule and stated the following:

> *"As Dr Sottas convincingly explained, in the same way as the weight of DNA evidence said to inculpate a criminal is enhanced if the person whose sample is matched was in the vicinity of the crime, so the inference to be drawn from abnormal blood values is enhanced where the ascertainment of such values occurs at a time when the Athlete in question could benefit from blood manipulation."* (CAS 2010/A/2235, para. 102).

137. The Sole Arbitrator agrees with these considerations and, as such, concludes that from the mere fact that an athlete cannot provide a credible explanation for the deviations in his or her ABP it cannot automatically be deduced that an anti-doping rule violation has been committed. Rather, the deviations in the ABP are to be interpreted by experts called to put into the balance various hypothesis that could explain the abnormality in the profile values, *i.e.* a distinction should be made between a "quantitative" and a "qualitative" assessment of the evidence.

138. Applying the above to the matter at hand, even in the absence of a credible non-doping related explanation for the abnormal values and sequence in her ABP, the abnormal values may not necessarily be explained by doping. The Sole Arbitrator needs to be convinced that the abnormal values are caused by a "doping scenario", which does not necessarily derive from the quantitative information provided by the ABP, but rather from a qualitative interpretation of the experts and possible further evidence.

139. The Sole Arbitrator accepts that Samples 25 to 28 (the "pregnancy samples") triggered the review of the Athlete's ABP, not because of the individual values of these samples, but because of the overall sequence of the Athlete's ABP. It is not in dispute that the irregular values of these "pregnancy samples" are not indicative of doping.

140. However, regardless of the fact that the pregnancy samples are not considered indicative of doping, the criteria for reviewing the Athlete's ABP were in any event met, since Samples 25, 26 and 27 were low for OFF-score at a specificity of 99.9% and Samples 26 and 27 were high for RET% at a specificity of 99.9% in addition to an abnormal sequence at a specificity of 99.9%.

141. In the review of an ABP, all samples that form part of such ABP are analysed by an Expert Panel. The fact that the Expert Panel finally did not consider Samples 25 to28 indicative of doping, while these samples triggered the analysis, does not prevent the Expert Panel from concluding that the Athlete's ABP was indicative of doping use, based on previous samples in the Athlete's ABP. Therefore, despite the fact that the "pregnancy samples" are excluded from the analysis, the Expert Panel was not

prevented from concluding that the Athlete's ABP as a whole was nevertheless indicative of use of blood doping. During the hearing, further to a specific question from counsel for the IAAF (*"just to confirm, even excluding pregnancy samples, there are outliers, highly likely to result from doping?"*), both Prof. d'Onofrio as well as Dr. Schumacher answered affirmatively.

142. The IAAF principally relies on three arguments. First, the deviation in values between Samples 7 and 8. Second, seasonal variations throughout the Athlete's ABP. The IAAF's argument that seasonal variations are visible in the Athlete's ABP reinforces the argument that Samples 7 and 8 are indicative of blood doping use by the Athlete, both arguments are therefore intertwined to a certain extent. Furthermore, in respect of this second argument, the IAAF stated during the hearing that there was more a difference in the Athlete's blood values between important competitions and the off-season than a difference between summer and winter. Third, the alleged admission of EPO used by the Athlete in her conversations with Ms Stepanova.

143. Commencing with the seasonal variation, the Sole Arbitrator notes that Samples 2, 3, 5, 7, 10 and 13 show relatively elevated levels of haemoglobin (HGB), whereas Samples 4, 8, 9, 15, 20, 21, 22 and 23 show relatively low levels of haemoglobin (HGB), although all within the "normality" threshold of the ABP at a specificity of 99.9%.

144. As documented by the below list, Samples 2, 3, 4, 5, 7, 9, 13 and 21 were all taken closely before an important competition, whereas Samples 8, 10, 15, 20, 22 and 23 were taken in the off-season or a relatively long period before the next competition in which the Athlete competed:

No.	Date of Sample	Most recent competition before Sample	Most recent competition after Sample
2	10 March 2010	28 February 2010 - Moscow	12 March 2010 - Doha
3	26 July 2010	15 July 2010 - Saransk	27 July 2010 - Barcelona
4	15 June 2011	9 June 2011 - Oslo	18 June 2011 - Stockholm
5	17 June 2011	9 June 2011 - Oslo	18 June 2011 - Stockholm
7	31 August 2011	22 July 2011 - Cheboksary	1 September 2011 - Daegu
8	5 December 2011	8 September 2011 - Zurich	29 December 2011 - Chelyabinsk
9	27 January 2012	7 January 2012 - Yekaterinburg	3 February 2012 - Orenburg
10	7 March 2012	3 February 2012 - Orenburg	31 May 2012 - Rome
13	7 August 2012	4 July 2012 - Cheboksary	8 August 2012 - London
15	22 October 2012	9 September 2012 – Rieti	2 June 2013 - Yerino Yuliya Pechonkina RUS
20	5 June 2013	2 June 2013 – Yerino Yuliya Pechonkina RUS	30 June 2013 - Zhukovsky
21	13 August 2013	25 July 2013 – Moscow	15 August 2013 - Moscow
22	31 October 2013	29 August 2013 – Zurich	/
23	4 December 2013	29 August 2013 – Zurich	/

145. The Sole Arbitrator finds that this overview in general does not show a clear seasonal variation based on which it can be concluded that the Athlete used doping. However, if

one notes that three important events in the Athlete's competition schedule in this period were the European Championship in Barcelona in July 2010 (Sample 3), the World Championship in Daegu in September 2011 (Sample 7) and the Olympic Games in London in August 2012 (Sample 13), the Sole Arbitrator finds that this may indeed support a "doping theory" as, according to Dr. Schumacher's testimony, it is a non-physiological feature to have higher HGB in summer than in winter.

146. The blood values of Sample 21 (taken before the World Championship in Moscow in 2013) are however not in line with such pattern, as this sample does not show any irregularities (as confirmed by Dr. Schumacher during the hearing). The Sole Arbitrator finds that this does not necessarily prove that the Athlete did not dope in her preparations for the 2013 World Championship in Moscow, while it entails at least that the pattern is interrupted.

147. During the hearing, Dr. Schumacher furthermore explained that Sample 13 (taken on the eve of the Olympic Games in London) was suspicious because it is not physiological to have a high HGB (16,1) and a high RET% at the same time. Speculating about a possible explanation for this, Dr. Schumacher stated that the Athlete may have tried to arrive to the London Olympic Games with a high HGB, but tried to influence the OFF-score and the RET% by taking low dosages of EPO in order to prevent the RET% from dropping too low (micro-dosing).

148. Although this evidence raises suspicion, it is not conclusive in itself. Hence, the Sole Arbitrator is not satisfied that there is a "clear seasonal pattern".

149. Turning to the deviation in blood values between Samples 7 and 8, the Sole Arbitrator notes that Sample 7 shows an OFF-score above the ABP's "normality" threshold at a specificity of 99% and that Sample 8 shows an OFF-score below the ABP's "normality" threshold at a specificity of 99%. However, neither of the samples exceeds the "normality" threshold at a specificity of 99.9%. The specificity maintained in the ABP Operating Guidelines is 99%, whereas the IAAF voluntarily maintains a specificity of 99.9%.

150. As maintained by the Expert Panel in the First Joint Expert Report, the Sole Arbitrator is willing to accept that the high OFF-score in Sample 7 and the low OFF-score in Sample 8 *"illustrates a supraphysiological red cell mass (high haemoglobin) with downregulated erythropoiesis (low reticulocytes) in the lead up to a major competition. It is typically observed after the use and discontinuation of an erythropoietic stimulant or the application of a blood transfusion"*. The Sole Arbitrator is however not fully convinced to his comfortable satisfaction that this constellation in itself proves a "doping theory", because the Athlete's ABP was apparently not submitted for review at the time these two Samples became known to the IAAF. Furthermore, the Sole Arbitrator notes that the Expert Panel, in coming to the above-quoted conclusion, partially relies on the argument that a clear seasonal pattern can be seen in the Athlete's blood values, whereas the Sole Arbitrator is not convinced that there is such clear consistent pattern of high HGB paired with low RET% during summer, as explained above.

151. As to the alleged admission of EPO use by the Athlete in her conversations with Ms Stepanova, the Sole Arbitrator notes that Ms Stepanova, the Athlete and her husband

certainly discussed the ABP and how to use doping without getting caught. The conversation about the ABP however mainly takes place between Ms Stepanova and the Athlete's husband, whereas the role of the Athlete in the conversation is limited.

152. The part of the conversation deemed most relevant by the Sole Arbitrator is the following between minute 58:09 and 01:08:

Farnosov: *"Yes, but here... for you, also, if you are going to give* [samples], *yeah... you have to take into account that... you need to take into account your old samples... So, look, you had, for example, blood samples, of about 125, 135, 145, specific values. That is, it is better for you to start out with the highest possible level. You understand, that will be easier for you, if you really are going just to train, to show high results. If you have the maximum level when you start out, that is, they won't be able to catch you out so easily... sort of... That is, there will be fewer precedents to catch you out. I mean, you were tested as you started again after the disqualification, and you have, say, haemoglobin of 145. But if it was 115 then, yes, if the next time you do a test is at the starting line somewhere, and you have 160. 115 and 160 – look at that difference... and then 145 and 160."*

Farnosov: *"Here, also. Here, it is sort of like, when you start, you also need to really think it through, how to start, at what values. Because it can depend on anything. How will WADA treat you in future, you understand?"*

Stepanova: *"But how can you change those values? You mean, use again? The same old Epocrin again, to force the values to change?"*

Farnosov: *"Perhaps* [inaudible], *and take iron, and something else, too. But, you understand, you should not exceed a certain norm... the statistical average. That is, it should not be strangely high, that is, approaching the maximum. How much is it for women, 160?"*

Athlete: *"160"*

Farnosov: *"So, then, not 160, just over 140, closer to 150. That is, a good, standard level, let's say."*

Athlete: *"What is you level?"*

Stepanova: *"140."*

Farnosov: *"Well, that is normal."*

Athlete: *"You, you can help it a little bit... with iron or something..."*

Farnosov: *"With EPO why do people get caught? First, they are taken at the starting line... you have just under 160, 163 or however much it is...*

And then suddenly, you stop taking it, and in the autumn they come and find you, and you are at 113."

Athlete: *"...your low level..."*

Farnosov: *'No, why... not your low level. You just stop using EPO, that's all. The body needs time to start producing it normally. It has got used to you giving it Epocrin, and it does not need to produce its own. It needs time to get back to producing it again, itself."*

Athlete: *"You just have to keep using it for years."*

Farnosov: *"No, why so? A couple of months."*

153. The Sole Arbitrator finds that the Athlete does not explicitly admit to having used blood doping in this conversation. However, the conversation does show that the Athlete had a certain knowledge of blood doping and the ABP and that the three openly, and in a sophisticated manner, discussed the possibilities to use blood doping while avoiding detection through the ABP. Indeed, the Athlete's statement *"You just have to keep using it for years"* is a very strong indication that the Athlete engaged in such practice herself.

154. Although the Sole Arbitrator finds that, on a stand-alone basis, none of this evidence is sufficient to prove that the Athlete used blood doping, he takes the conclusion that the evidence altogether convinces him to his comfortable satisfaction that the Athlete engaged in blood doping. In particular, the Sole Arbitrator finds that the Athlete's conversation with Ms Stepanova, in conjunction with the fact that the Athlete's ABP showed markedly higher HGB values in samples that were taken shortly before three major competitions (the European Championship in Barcelona, the World Championship in Daegu and the Olympic Games in London) and the constellation of having a very high OFF-score in Sample 7 that was taken before the World Championship in Daegu (above the threshold of "normality" at a specificity of 99%), followed by a very low OFF-score in Sample 8 that was taken in the off-season (below the threshold of "normality" at a specificity of 99%), constitutes convincing evidence that the Athlete used blood doping. For the sake of completeness, the Sole Arbitrator underlines that the fact that the Athlete was never tested positive despite several retests does not jeopardize this conclusion as the ABP inter alia aims to reveal doping cases that are not otherwise detectable.

155. Based on the evidence deriving from the Athlete's ABP, the Sole Arbitrator is satisfied to accept that the IAAF established a "doping scenario" in its qualitative assessment of the evidence and that the Athlete used blood doping as from at least Sample 3 (taken on the eve of the European Championship in Barcelona) until Sample 13 (taken on the eve of the Olympic Games in London).

156. Consequently, the Sole Arbitrator finds that the Athlete also violated Rule 32.2(b) of the 2012-2013 IAAF Rules on the basis of the evidence derived from her ABP.

c) Overall conclusion in respect of the Athlete's alleged violation of Rule 32.2(b) of the IAAF Rules

157. In view of all the above, taking into account the admissions of the Athlete in her conversations with Ms Stepanova regarding the consumption of prohibited substances and the evidence based on the Athlete's ABP, the Sole Arbitrator finds that the Athlete violated Rule 32.2(b) of the IAAF Rules.

158. The Sole Arbitrator finds that the first evidence of doping use by the Athlete is Sample 3 in her ABP (taken on the eve of the European Championship in Barcelona on 26 July 2010) and that the last evidence of doping use is the admission of the Athlete to Ms Stepanova that she finally did not participate clean in the World Championship in Moscow in 2013.

159. Coming back to the argument of the Athlete that the IAAF failed to sufficiently particularise its allegations against her, the Sole Arbitrator notes that several dates of the samples were referred to in the submissions of the IAAF. The dates of the different samples in the Athlete's ABP were known to the Athlete, as well as the fact that the IAAF sought to disqualify her results as from Sample 1 of 15 August 2009, or alternatively as from Sample 3 of 26 July 2010.

160. At the same time, the Athlete was also aware that the IAAF considered her statement towards Ms Stepanova that she had to go back on her promise to prepare without doping for the World Championship in Moscow in 2013 as evidence of doping.

161. The allegations against the Athlete were thus sufficiently particularised in order for her to defend herself against these allegations.

162. Accordingly, although, based on the Athlete's ABP, the use of blood doping by the Athlete was only established between 26 July 2010 until 7 August 2012, the Sole Arbitrator is convinced that the Athlete also used doping in her preparations for the World Championship in Moscow in 2013.

163. Consequently, the Sole Arbitrator finds that the Athlete engaged in using prohibited substances from 26 July 2010 (the eve of the European Championship in Barcelona) through to 19 August 2013 (the day after the World Championship in Moscow), *i.e.* a period of more than three years.

ii. If Rule 32.2 (b) of the IAAF Rules has been violated, what sanction shall be imposed on the Athlete?

164. Rule 40.2 of the IAAF Rules determines as follows:

> *"The period of Ineligibility imposed for a violation of Rules 32.2(a) (Presence of a Prohibited Substance or its Metabolites or Markers), 32.2(b) (Use or Attempted Use of a Prohibited Substance or Prohibited Method) or 32.2(f) (Possession of Prohibited Substances and Prohibited Methods), 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 for in Rule 40.6 are met, shall be as follows:*

First Violation: Two (2) years' Ineligibility."

165. The Sole Arbitrator finds that Rule 40.4 of the IAAF Rules dealing with specified substances is not applicable in the matter at hand since the Athlete admitted to Ms Stepanova to have used doping and because no circumstances could be demonstrated by the Athlete as to the application of Rule 40.5 of the IAAF Rules (Elimination or Reduction of Period of Ineligibility Based on Exceptional Circumstances). The Athlete in fact disputed to have committed an anti-doping rule violation in the proceedings before CAS, but did not put forward any arguments that could justify the reduction of the otherwise applicable standard sanction of a two year period of ineligibility in case an anti-doping rule violation would be established.

166. The remaining question to be examined by the Sole Arbitrator is therefore whether there are aggravating circumstances that should lead to an increase of the standard sanction, up to a maximum of a four year period of ineligibility.

167. The IAAF maintains that, in view of the repeated and long-term doping practices of the Athlete, and with reference to CAS jurisprudence, it would be appropriate to impose the maximum four year sanction.

168. The IAAF argues that there are two categories of aggravating circumstances in the Athlete's case, namely (i) the use of a prohibited substance or prohibited method on multiple occasions and (ii) engaging in a doping plan or scheme.

169. The Athlete argues that, should an anti-doping rule violation be established, any period of ineligibility would have to be limited to a maximum of two years. The Athlete refers to CAS jurisprudence in this respect.

170. Rule 40.6 of the IAAF Rules determines as follows:

"If it is established in an individual case involving an anti-doping rule violation other than violations under Rule 32.2(g) (Trafficking or Attempted Trafficking) and Rule 32.2(h) (Administration or Attempted Administration) that aggravating circumstances are present which justify the imposition of a period of Ineligibility greater than the standard sanction, then the period of Ineligibility otherwise applicable shall be increased up to a maximum of four (4) years unless the Athlete or other Person can prove to the comfortable satisfaction of the hearing panel that he did not knowingly commit the anti-doping rule violation.

(a) Examples of aggravating circumstances which may justify the imposition of a period of Ineligibility greater than the standard sanction are: 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.

(b) An Athlete or other Person can avoid the application of this Rule by admitting the anti-doping rule violation as asserted promptly after being confronted with the anti-doping rule violation (which means no later than the date of the deadline given to provide a written explanation in accordance with Rule 37.4(c) and, in all events, before the Athlete competes again."

171. The Sole Arbitrator agrees with the IAAF that the Athlete admitted to having used Parabolan and growth hormones and that she had used blood doping. The Sole Arbitrator is therefore willing to accept that the Athlete used prohibited substances on multiple occasions and that this is to be taken into account as an aggravating circumstance in determining the period of ineligibility to be imposed on the Athlete.

172. Regarding the alleged engagement of the Athlete in a doping plan or scheme, the Sole Arbitrator observes that CAS jurisprudence has determined the following in the context of avoiding detection and/or adjudication of a doping violation:

> *"The Sole Arbitrator notes that most, if not all, doping practices are timed to avoid detection. As a result, an aggravating circumstance is likely to require a further element of deception. However, since IAAF Rule 40.6 is already engaged, this point may be left open in this case."* (CAS 2012/A/2772, para. 129)

173. The Sole Arbitrator observes that no provision in the IAAF Rules indicates that an anti-doping rule violation proven by means of the ABP, *per se*, justifies a higher sanction than the presence of a prohibited substance.

174. The Sole Arbitrator feels himself comforted in this conclusion by the reasoning of another CAS panel in respect of the UCI ADR:

> *"UCI claims that blood manipulation constitutes an aggravating factor and, consequently, that a minimum three-year ban should be imposed upon the Athlete. This submission has no foundation in the UCI ADR which does not under article 293 differentiate between various forms of first offence or suggest that blood manipulation attracts ratione materiae a higher sanction than the presence of a prohibited substance. It is the circumstances of the offence, not the commission of the offence itself which may aggravate. Here there is nothing before the CAS Panel to displace the presumption that 2 years ineligibility for a first offence is appropriate in this case."* (CAS 2010/A/2235, para. 119)

175. The Sole Arbitrator infers from the recorded conversations that there was a high level of sophistication in the doping use by the Athlete. The Athlete showed a detailed knowledge of wash-out periods of certain specific substances and her husband had extensive knowledge about the ABP. The Sole Arbitrator also finds that the use of blood doping, in general, is a more advanced method of doping in comparison with the mere ingestion of prohibited substances. As argued by the IAAF, blood doping requires a

certain degree of advice and support. The Sole Arbitrator notes that the Athlete used doping over a prolonged period of time. The level of sophistication is also exemplified by the statement of the Athlete to Ms Stepanova in the discussion about wash-out periods of Parabolan where the Athlete stated *"Well, no, I mean... over 10... well, 15... about 20 or 15 days in my body it is all... cleaned out... It is just that I have been monitored, they watched it..."*. The Sole Arbitrator finds that this proves that the Athlete did not act on her own initiative, but that she had certain people monitoring her, proving the sophistication of the doping regime the Athlete was subjected to.

176. The Sole Arbitrator therefore has no doubt to conclude that the Athlete engaged in a doping plan or scheme and that this is also to be taken into account as an aggravating circumstance in determining the period of ineligibility to be imposed on the Athlete.

177. CAS jurisprudence is diverse on the nature and effect of aggravating factors. In CAS 2010/A/2235, TAS 2010/A/2178 and TAS 2010/A/2308 no aggravating circumstances were established and a two year period of ineligibility was imposed. In CAS 2012/A/2772 and CAS 2013/A/3080 two separate categories of aggravating circumstances were considered to be present and periods of ineligibility of four years and two years and nine months respectively were imposed. In the case at hand the facts most closely resemble the facts of CAS 2012/A/2772. Similar to CAS 2012/A/2772, the Athlete used blood doping over a prolonged period of time in combination with other prohibited substances.

178. The establishment of a sophisticated doping plan or scheme over a protracted period of time and the fact that the Athlete used a prohibited substance on multiple occasions, justify the imposition of the maximum period of ineligibility of four years, even without considering that the Athlete also used multiple prohibited substances (which is an additional aggravating circumstance that was not explicitly raised by the IAAF).

179. The next issues to be addressed relate to fixing the starting date of the period of ineligibility and the determination of the disqualification of the results.

180. Rule 40.10 of the IAAF Rules determines as follows:

> *"Except as provided below, the period of Ineligibility shall start on the date of the hearing decision providing for Ineligibility or, if the hearing is waived, on the date the Ineligibility is accepted or otherwise imposed. Any period of Provisional Suspension (whether imposed or voluntarily accepted) shall be credited against the total period of Ineligibility served."*

181. The Sole Arbitrator finds that, for practical reasons and in order to avoid any eventual misunderstanding in the calculation of the period of ineligibility, the period of ineligibility should start on 24 August 2015, the date of commencement of the provisional suspension and not of the date of the award, for the reasons set out below.

182. Turning to the disqualification of the Athlete's results, the Sole Arbitrator observes that Rule 40.8 of the IAAF Rules, determines as follows:

> *"In addition to the automatic disqualification of the results in the Competition which produced the positive sample under Rules 39 and 40, all other competitive*

results obtained from the date the positive Sample was collected (whether In-Competition or Out-of-Competition) or other anti-doping rule violation occurred through the commencement of any Provisional Suspension or Ineligibility period shall be Disqualified with all of the resulting Consequences for the Athlete including the forfeiture of any titles, awards, medals, points and prize and appearance money."

183. The IAAF maintains that the Sole Arbitrator may be comfortably satisfied that Sample 1 of 15 August 2009 constitutes evidence of doping, or at least Sample 3.

184. The IAAF seeks the disqualification of all the results of the Athlete for all the competitions in which she took part from 15 August 2009 until her provisional suspension on 24 August 2015, together with the forfeiture of any prizes, medals, prize money and appearance money.

185. The Athlete submits that there is nothing unusual with the values of Sample 1 and that using the date of Sample 1 as the starting date of a period of disqualification would be absurd. The Athlete also argues that Sample 3 has not been flagged by the IAAF experts and that the values of Sample 3 fall squarely within the Athlete's normal range. Finally, the Athlete submits that the "fairness exception" should be applied and that her blood values during the 2012 Olympic Games (Sample 13) fell within her normal range and that disqualifying the results for the 2012 Olympic Games would be unfair.

186. The Sole Arbitrator notes that pursuant to the literal wording of Rule 40.8 of the IAAF Rules all the competitive results of the Athlete as from the moment the positive sample was collected until her provisional suspension was pronounced would have to be disqualified.

187. The Sole Arbitrator observes that the present facts are not a case of a specific "positive sample", it is however a case that falls under Rule 40 of the IAAF Rules, as a consequence of which the Athlete's competitive results are nevertheless subject to disqualification. A complicating factor in this respect is that an anti-doping rule violation established on the basis of an ABP can normally not be determined on a specific date but merely for a certain period. This difficulty has been identified in CAS jurisprudence (CAS 2010/A/2235, para. 116).

188. In the present case, the Sole Arbitrator accepts that the period during which the Athlete used doping started on 26 July 2010 (Sample 3).

189. Therefore, based on a literal reading of Rule 40.8 of the IAAF Rules, in principle, all results of the Athlete as from this date until 24 August 2015 (the date the Athlete was provisionally suspended) would have to be disqualified (*i.e.* a period of five years and one month), despite the fact that there is no evidence of doping use by the Athlete after 19 August 2013.

190. The Sole Arbitrator finds that the disqualification of results is, in itself, a severe sanction and, in a way, can be equated to a period of ineligibility. However, whereas the period of ineligibility to be imposed (even for the worst cases) is limited to four years, the period during which results can be disqualified is unlimited.

191. The Sole Arbitrator is also concerned about the fact that the results management process in respect of the evidence based on the Athlete's ABP only commenced shortly before 14 July 2015 (the date of the First Joint Expert Opinion) whereas no valid explanations were provided for the late start of this process (Prof. d'Onofrio mentioned during the hearing that the Athlete's ABP was flagged after Samples 7 and 8, but that for some reason it was not submitted to the Expert Panel for review at that stage).

192. The Sole Arbitrator considers it unfair to disqualify all the results of the Athlete over a period of five years and one month in accordance with the applicable IAAF Rules, because the Athlete is not to blame for the fact that the result management started so late. If the results management had started as soon as the evidence (Samples 3 to 13 of the Athlete's ABP) was available to the IAAF, the period of disqualification would be considerably shorter (*i.e.* about two years).

193. The Sole Arbitrator notes that the 2008 version of the IAAF Rules contained a "fairness exception", but that this exception was removed for all versions of the IAAF Rules from 2009 to 31 December 2014. It was only in the 2015 version of the IAAF Rules that the IAAF reintroduced the "fairness exception".

194. Whereas the IAAF objects to the application of the "fairness exception", because the IAAF Rules applicable to the merits of the present dispute do not provide for such exception, the Athlete argues that such exception is applicable, because the RUSADA ADR must be applied to the present dispute which do provide for a "fairness exception".

195. The Sole Arbitrator agrees with the Athlete that the general principle of fairness must prevail in order to avoid disproportional sanctions. As suggested by the Athlete in her Answer, such interpretation of the IAAF rules would further not only be in accordance with the general principle of law but also with the WADA Code, which the IAAF signed and thus committed to comply with.

196. According to established CAS jurisprudence, the principle of proportionality requires to assess whether a sanction is appropriate to the violation committed in the case at stake. Excessive sanctions are prohibited (see *e.g.* CAS 2005/A/830, at paras. 10.21 – 10.31; 2005/C/976 & 986, at paras. 139, 140, 143, 145 – 158; 2006/A/1025, at paras 75 – 103; TAS 2007/A/1252, at paras. 33 - 40, CAS 2010/A/2268 at paras. 141 f, all of them referring to and analysing previous awards and doctrine).

197. The Sole Arbitrator does not consider it fair to disqualify any results of the Athlete between 19 August 2013 and 24 August 2015 considering that there is no evidence that the Athlete used doping substances or methods during this period and that she is not accountable for the fact that the result management process got started a long time after the relevant ABP samples became known to the IAAF.

198. The Sole Arbitrator however also considers that, in view of the seriousness of the Athlete's anti-doping rule violation, the delay in the result management process, not attributable to her, does not justify to backdate her period of ineligibility earlier than 24 August 2015, when the provisional suspension took effect.

199. This finding would thus not be any different if the RUSADA ADR, specifically article 9.10.3 of those rules, or the WADA Code, specifically article 10.9.1 of this Code, were

applied. These rules do not require to backdate the period of ineligibility prior to 24 August 2015, but merely authorise to do so. The Sole Arbitrator considers it neither fair nor appropriate to use such possibility in the present case.

200. Consequently, the Sole Arbitrator finds that a period of ineligibility of four years is to be imposed on the Athlete from 24 August 2015 and that the results of the Athlete from 26 July 2010 until 19 August 2013 are to be disqualified, including the forfeiture of any titles, awards, medals, points and prize and appearance money.

C. Conclusion

201. Based on the foregoing, and after taking into due consideration all the evidence produced and all arguments made, the Sole Arbitrator finds that:

i. The Athlete violated Rule 32.2(b) of the IAAF Rules by admitting in her conversations with Mr Stepanova the use of Parabolan and Growth hormones.
ii. The Athlete also violated Rule 32.2(b) of the 2012-2013 IAAF Rules on the basis of the evidence derived from her ABP.
iii. The Athlete engaged in using doping from 26 July 2010 (the eve of the European Championship in Barcelona) through to 19 August 2013 (the day after the World Championship in Moscow), *i.e.* a period of more than three years.
iv. A period of ineligibility of four years as from 24 August 2015 is to be imposed on the Athlete and all results of the Athlete from 26 July 2010 until 19 August 2013 are to be disqualified, including the forfeiture of any titles, awards, medals, points and prize and appearance money.

IX. COSTS

202. Article R64.4 of the CAS Code provides as follows:

> *"At the end of the proceedings, the CAS Court Office shall determine the final amount of the cost of arbitration, which shall include the CAS Court Office fee, the administrative costs of the CAS calculated in accordance with the CAS scale, the costs and fees of the arbitrators, the fees of the ad hoc clerk, if any, calculated in accordance with the CAS fee scale, a contribution towards the expenses of the CAS, and the costs of witnesses, experts and interpreters. The final account of the arbitration costs may either be included in the award or communicated separately to the parties."*

203. Article R64.5 of the CAS Code reads as follows:

> *"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."*

204. Rule 38.3 seventh sentence of the IAAF Rules determines that the hearing of a case as the present before CAS shall proceed *"at the responsibility and expense of the Member* [...]".

205. The IAAF requested that the arbitration costs are entirely borne by the Respondents and that the IAAF is awarded a significant contribution to its legal costs.

206. Taking into account the outcome of the arbitration and considering Rule 38.3 of the IAAF Rules, the Sole Arbitrator sees no other possibility than to rule that ARAF shall bear the arbitration costs in an amount that will be determined and notified to the parties by the CAS Court Office.

207. Furthermore, pursuant to Article R64.5 of the CAS Code and in consideration of the complexity and outcome of the proceedings as well as the conduct and the financial resources of the parties, the Sole Arbitrator rules that the Athlete shall bear her own costs and pay a contribution towards the IAAF's legal fees and other expenses incurred in connection with these proceedings in the amount of CHF 6,000. ARAF shall bear its own costs.

208. In accordance with Article R59 of the CAS Code and unless both parties would agree otherwise, the present award is not confidential and can be published by the CAS.

209. The present award may be appealed to CAS pursuant to Rule 42 of the IAAF Rules.

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ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The claim filed on 4 March 2016 by the International Association of Athletics Federations against the All Russia Athletics Federation and Ms Mariya Savinova-Farnosova is partially upheld.

2. A period of ineligibility of four years is imposed on Ms Mariya Savinova-Farnosova starting from 24 August 2015.

3. All results of Ms Mariya Savinova-Farnosova from 26 July 2010 until 19 August 2013 are to be disqualified, including forfeiture of any titles, awards, medals, points and prize and appearance money.

4. The costs of the arbitration, to be determined and served to the parties by the CAS Court Office, shall be borne entirely by the All Russia Athletics Federation.

5. Ms Mariya Savinova-Farnosova shall bear her own costs and is ordered to pay to the International Association of Athletics Federations the amount of CHF 6,000 (six thousand Swiss Francs) as a contribution towards the legal fees and other expenses incurred in connection with these arbitration proceedings.

6. The All Russia Athletics Federation shall bear its own costs.

7. All other and further prayers or requests for relief are dismissed.

Seat of arbitration: Lausanne
Date: 10 February 2017

THE COURT OF ARBITRATION FOR SPORT

Hans **Nater**
Sole Arbitrator