

Tribunal Arbitral du Sport
Court of Arbitration for Sport

**CAS 2016/O/4575 International Association of Athletics Federations (IAAF) v. All
Russia Athletic Federation (ARAF) & Dr Sergei Nikolaevich
Portugalov**

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition

Sole Arbitrator: Mr Luigi Fumagalli, Professor and Attorney-at-Law, Milan, Italy

between

INTERNATIONAL ASSOCIATION OF ATHLETICS FEDERATIONS (IAAF), Monaco
Represented by Mr Ross Wenzel, Attorney-at-Law at Kellerhals Carrard in Lausanne,
Switzerland

as Claimant

and

ALL RUSSIA ATHLETIC FEDERATION (ARAF), Moscow, Russia
Represented by Mr Mykhail Butov, then ARAF General Secretary

as First Respondent

and

Dr SERGEI NIKOLAEVICH PORTUGALOV, Moscow, Russia

as Second Respondent

* * * * *

1. BACKGROUND

1.1 The Parties

1. The International Association of Athletics Federations (“IAAF” or the “Claimant”) is the world governing body for track and field, recognized as such by the International Olympic Committee. One of its responsibilities is the regulation of track and field, including the running and enforcing of an anti-doping programme consistent with the World Anti-Doping Code (“WADC”).
2. The Russian Athletics Federation (ARAF) (the “Russian Federation” or the “First Respondent”) is a member, currently suspended, of the IAAF as the national athletics federation for Russia. On 2 November 2015, the Russian Federation changed its name from ARAF into RusAF.
3. Dr Sergei Nikolaevich Portugalov (“Dr Portugalov” or the “Second Respondent”; the Russian Federation and Dr Portugalov are the “Respondents”) is a Russian medical doctor who advised athletes affiliated to the Russian Federation. Dr Portugalov has been described by IAAF as having held *inter alia* the position and function as Chief of the Medical Commission of the Russian Federation.

1.2 The Dispute between the Parties

4. The circumstances stated below are a summary of the main relevant facts, as submitted by the parties in their written pleadings or in the evidence given in the course of the proceedings. Additional facts may be set out, where relevant, in connection with the legal discussion which follows.
5. On 3 December 2014, a television program was aired by the German television channel ARD. In such program widespread doping practices in Russian athletics were exposed.
6. On 16 December 2014, an independent commission (“IC”) presided over by Mr Richard Pound QC was established by the World Anti-Doping Agency (“WADA”). The IC’s mandate was the investigation into the allegations of doping practices implicating Russia.
7. On 4 August 2015, Ms Yuliya Stepanova, a Russian athlete specialized in the 800m event (“Ms Stepanova”),¹ signed before a Swiss notary a declaration (the “Stepanova Declaration”) regarding her experience and knowledge of Dr Portugalov’s involvement in doping practices. The Stepanova Declaration:
 - i. describes the beginning of Ms Stepanova’s career as a professional athlete, her initial training under the supervision of Mr Vladimir Mokhnev, and the supply by Mr Mokhnev, starting from January 2007, of performance enhancing drugs (“PEDs”);
 - ii. refers to her introduction to Dr Portugalov in December 2010, upon the recommendation of Mr Melnikov, the then Russian head coach of endurance, and the financial agreements reached: at the beginning, Mr Mokhnev paid Dr

¹ Ms Stepanova is sometimes referred to in the documents filed in this arbitration as “Ms Rusanova”, by reference to her family name before she married Mr Stepanov.

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- Portugalov for the drugs and the supplements; later Mr Stepanova started to pay directly a yearly consultation fee, as well as for the drugs and the supplements provided by Dr Portugalov, and a percentage on her winnings;
- iii. mentions that on one occasion Dr Portugalov told Ms Stepanova that, if she was ever concerned about testing positive for a banned substance after a doping control at the national championships, she had to send him a text message specifying the sample test number: he would use his contacts in Moscow to conceal the positive results;
 - iv. describes the preparation of Ms Stepanova under the supervision of Dr Portugalov, which included the prescription of prohibited substances, such as Oxastenon, Oxandrolone, Oral Turinabol and EPO, and the injection of testosterone, which led to an improvement of her performances. In that period, Mr Stepanova was subject to private blood testing, the results of which were also discussed with Dr Portugalov. At the end of February 2012, Dr Portugalov stopped providing drugs to Ms Stepanova, with no explanation;
 - v. mentions the change of coach after the 2012 London Olympic Games and the fact that the new coach of Ms Stepanova, Mr Vladimir Kozarin discussed with her the use of PEDs, and, among them, of human growth hormone;
 - vi. refers to the sanction imposed on Ms Stepanova by IAAF on the basis of the blood passport, and to a meeting (recorded by Ms Stepanova) held on 8 February 2013 between Ms Stepanova, Mr Melnikov and Mr Kozarin;
 - vii. describes a conversation (also recorded) of Ms Stepanova with Mr Melnikov on 12 February 2013, about steroid and hormone passports;
 - viii. mentions a meeting of 20 November 2014, video- and audio-recorded, between Ms Stepanova, Mr Melnikov and Dr Portugalov, where her preparation for the return to competitions was discussed: such discussion included a reference to drugs that would not increase the testosterone levels and to secret testing to check that the athletes were clean.
8. The Stepanova Declaration had attached a number of exhibits, which included extracts from Ms Stepanova's journal of drugs and supplements, email exchanges with Dr Portugalov, and transcripts of parts of the meetings of 8 February 2013, 12 February 2013 and 20 November 2014, intended to confirm the contents of the declaration.
9. On 4 August 2015, also Ms Liliya Shobukhova, a Russian long distance athlete specialized in the marathon event ("Ms Shobukhova"), signed before a Swiss notary a declaration (the "Shobukhova Declaration") regarding her experience and knowledge of Dr Portugalov's involvement in doping practices. The Shobukhova Declaration:
- i. describes the beginning of the involvement of Mr Melnikov in her training and preparation for marathons;
 - ii. mentions her introduction to Dr Portugalov, to whom Ms Shobukhova was referred by Mr Melnikov in March 2009, and the meetings with Dr Portugalov for the preparation of the 2009 London Marathon, during which meetings Dr Portugalov prescribed and delivered products, which included pills and ampoules of human growth hormone and EPO to inject;

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- iii. refers to the consultation of Ms Shobukhova with Dr Portugalov also after the 2009 London Marathon, and to the instructions sent by e-mail by Dr Portugalov for the use of testosterone, EPO and human growth hormone;
 - iv. touches upon the payments for the services of Dr Portugalov, which included a percentage of her annual winnings;
 - v. describes the private tests Ms Shobukhova had to undergo prior to competitions, the results of which were sent to Dr Portugalov;
 - vi. confirms a blood transfusion Ms Shobukhova underwent in August 2010 upon instructions of Dr Portugalov.
10. The Shobukhova Declaration had attached copies of emails sent by Dr Portugalov to Ms Shobukhova on 26 June 2009 and on 19 June 2012.
 11. In a letter transmitted by email on 8 August 2015, IAAF informed the Russian Federation of the IAAF's decision to charge Dr Portugalov with a number of doping offences under the applicable version by the IAAF Anti-Doping and Medical Rules (the "IAAF ADR"). More specifically, IAAF indicated that in its opinion there was sufficient evidence that Dr Portugalov had, over the course of years, been involved in procuring and providing prohibited substances to athletes, and in advising athletes to engage in prohibited methods, for significant financial rewards. In the same letter, IAAF summarized the available evidence against Dr Portugalov, as based on the Stepanova Declaration and the Shobukhova Declaration, specified the rules that in its opinion had been violated, including those prohibiting trafficking and administering prohibited substances, encouraging, aiding, abetting and complicity in the use by athletes of prohibited substances and methods, and the possession of prohibited substances for the purposes of providing them to athletes he was working for. Finally, IAAF requested the Russian Federation to forward the letter to Dr Portugalov and to invite him to submit his response to the allegations brought, and indicated the possibility that a provisional suspension be accepted by Dr Portugalov or imposed by IAAF.
 12. In an email to IAAF, of 24 August 2015, the Russian Anti-Doping Agency ("RUSADA") informed IAAF *inter alia* that Dr Portugalov was "*in hospital now and is unable to download his file*", and therefore needed some extra-time to provide explanations.
 13. On 24 August 2015, IAAF provisionally suspended Dr Portugalov from participating in any competition or activity in athletics pending resolution of his case.
 14. On 11 September 2015, RUSADA forwarded to IAAF a document transmitted by Dr Portugalov. Such document reads as follows:

"My explanations regarding the allegations made by Rusanova and Shobukhova are presented below.

Rusanova. These contacts occurred from 2010 to the end of 2011. During this period she was given physiological examination and was tested several time according to ARAF's request at the Russian research center of sport in Moscow. There are no other procedures connected to my work. Discussing the results of analysis I repeatedly pointed out her biological passport abnormalities and the management of ARAF was informed accordingly. She repeatedly asked me to explain her "correct way" to use doping but I

rejected those requests. But Rusanova showed her perseverance (she even might offer her sexual services to me or threaten to compromise me). In connection with the circumstances above I stopped contacting her at the end of 2011. The attached emails to her are false all the more she openly threatened me. She came to the Russian research center at the beginning of 2015, asked me to help her to return to sport and illegally made video. I have not examined this audio-record.

Shobukhova. These contacts occurred from 2009 to the end of 2011. During this period she was given physiological examination and was tested several times according to ARAF's request at the Russian research center of sport in Moscow. There are no other procedures connected to my work. Discussing the results of analysis I repeatedly pointed out her biological passport abnormalities, which has been explained with altitude. I had informed the ARAF's management accordingly. After that I stopped contacting Shobukhova at the beginning of 2012. I have never bought any medicines upon Shobukhova request or obtained money. The attached emails to her are false. All the more I have information that Shobukhova contacted Rusanova regarding the sanction reduction".

15. On 9 November 2015, the IC submitted a report to the President of WADA. The IC Report referred to Dr Portugalov as follows:

"... Dr Sergey Portugalov ... provided banned substances to Russian athletes and was very active in the conspiracy to cover-up athletes' positive tests in exchange for a percentage of their winnings.....

... not only did Dr Portugalov supply PEDs to athletes and coaches, but also administered the doping programs and even injected athletes himself".

16. On 26 November 2015, the IAAF Council decided to suspend the Russian Federation's membership to IAAF.
17. On 13 January 2016, IAAF informed Dr Portugalov that, following the suspension of the Russian Federation by IAAF and the suspension of RUSADA by WADA, IAAF had taken over the responsibility of the disciplinary proceedings brought against him, indicating the next possible procedural steps, to be followed at the option of Dr Portugalov, *i.e.* either a procedure before the Court of Arbitration for Sport ("CAS") as a first instance hearing body pursuant to IAAF Rule 38.3 or a procedure before CAS as a single instance hearing panel pursuant to IAAF Rule 38.19.
18. Dr Portugalov did not respond to this letter.

2. THE ARBITRAL PROCEEDINGS

2.1 The CAS Proceedings

19. On 29 April 2016, IAAF filed a request for arbitration with the CAS pursuant to the Code of Sports-related Arbitration (the "Code") against the Russian Federation and Dr Portugalov.
20. In its request for arbitration, IAAF requested that the matter be heard by a sole arbitrator acting as a first instance body, and that, pursuant to Rule 38.3 of the IAAF ADR, the CAS procedure would be governed by the CAS appeal arbitration rules. In that regard, IAAF

indicated that its request for arbitration should be considered its statement of appeal and appeal brief for the purposes of the Code.

21. By letter of 3 May 2016, the CAS Court Office initiated the present arbitration and specified that, as requested by the Claimant and in view of IAAF Rules 38.3, it had been assigned to the CAS Ordinary Arbitration Division but would be dealt with according to the Appeals Arbitration Division rules. The Respondents were further invited to submit their Answer within 30 days.
22. Together with this letter, the CAS Court Office transmitted the request for arbitration to the Respondents. With respect to the Second Respondent, more specifically, the request for arbitration and its exhibits were sent by DHL to the address of the First Respondent. The cover letter accompanying the request for arbitration was also sent by email to the email addresses (*s.port@mail.ru* and *snpor55@gmail.com*) provided by IAAF for the Second Respondent.
23. On 24 May 2016, the CAS Court Office sought from the Respondents confirmation that the CAS letter of 3 May 2016 had been delivered to the Second Respondent and requested the First Respondent to provide any document confirming such delivery.
24. By communication dated 7 June 2016, the CAS Court Office informed the parties, on behalf of the President of the CAS Ordinary Arbitration Division, that the Panel had been constituted as follows: Prof. Luigi Fumagalli, Sole Arbitrator. At the same time, it reiterated the request for information already contained in the letter of 24 May 2016.
25. On 27 June 2016, the CAS Court Office, writing to the parties on behalf of the Sole Arbitrator, informed the Claimant that no answer to the requests for information had been received, and therefore invited the Claimant to either confirm that communications to the Second Respondent by mail would, notwithstanding that, still be sent to the First Respondent's postal address or to provide the CAS Court Office with another address for the Second Respondent.
26. On 30 June 2016, Claimant sent an email to the CAS Court Office, transmitting some correspondence it had received from RUSADA and the Russian Federation.
27. On 6 July 2016, the CAS Court Office advised the parties *inter alia* of the following:

"The Sole Arbitrator notes that the First Respondent duly forwarded CAS correspondence to the Second Respondent on 18 and 25 May 2016;

The Sole Arbitrator notes that the combined Request for Arbitration and Appeal Brief was hence sent to the Second Respondent on 18 May 2016;

... [U]nless we hear otherwise from one of the Respondents by fax/e-mail and within 5 days from receipt of the present letter by DHL, it will be considered that (i) the Second Respondent received the CAS letter of 3 May 2016 at the latest on 25 May 2016, (ii) the time limit for the filing of the Second Respondent's Answer expired at the latest on 24 June 2016 and (iii) the Second Respondent hence chose not to file any written submissions;

Should the Second Respondent wish a hearing to be held in the above-reference matters, it shall further inform the CAS Court Office accordingly within the same time limit;

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In view of the Second Respondent's personal mailing address provided to the CAS Court Office by the Claimant in its e-mail of 30 June 2016 and of the confirmation of his e-mails addresses, the present letter for the Second Respondent is sent by e-mail at s.port@mail.ru and at snpor55@gmail.com and by mail at 388, 17, Borisa Galushkina str., 129301 Moscow;

Please note that unless we would hear otherwise from one of the parties by fax/e-mail and within 5 days, all communications for the Second Respondent will be sent at the above-mentioned e-mails and, if needed, to his postal address".

28. On 5 August 2016, the CAS Court Office informed the parties that its letter of 6 July 2016 had not been delivered by DHL to the Second Respondent, and noted specifically the following:

"i. on 11 July 2016, DHL issued a report by which the CAS Court Office was informed that a delivery attempt was made on 7 July 2016 at 18:06 and that "consignee not home. Phone number or email needed please";

ii. the CAS Court Office hence provided DHL with the two e-mails addresses it has for the Second Respondent;

iii. on 19 July 2016, DHL issued a report by which the CAS Court Office was informed as follows: "Email sent to consignee. Waiting for feedback for Delivery 19.07 NO REPLY";

iv. on 22 July 2016, the CAS Court Office requested DHL to specify whether they have let an "avis de passage"; in the affirmative when such notice was let in the Second Respondent's mail box and whether the delivery was refused;

v. on 26 July 2016, DHL informed that CAS Court Office that on 7 July 2016 at 18:06, they attempted delivery at the Second Respondent's address and noted "18h06 – Refused Delivery – Personal Delivery" because "The courier was at the address and spoke to the dweller who lives there. The man told that the apartment was the apartment of the consignee but he did not know the receiver at all", they did not let any notice;

vi. on 28 July 2016, the CAS Court Office requested DHL to make a new delivery attempt and to let a notice;

vii. on 28 July 2016, DHL answered that it was impossible because of the information provided by his local colleagues on 25 and, with more details, on 27 July 2016. Further to some misinterpretation of some previous information DHL provided the CAS Court Office with the following complete information:

"A new delivery is possible when we get in touch with the receiver to assure that the receiver is going to be at home and ready to get the shipment. I see no reason why to send the courier again if we already spoke to the dweller of the apartment 388. As I have stated already there is a different person lives there who does not know DR. SERGEI NIKOLAEVICH PORTUGALOV.

I have found a land phone and spoke to a lady first who asked some questions and then handled a phone to some man who said to me that SERGEI NIKOLAEVICH PORTUGALOV does not live there anymore.

I dialed

<i>Телефон</i>	<i>Полное имя</i>	<i>Адрес</i>
6828540	ПОРТУГАЛОВ С. Н.	Галущкина Бориса ул., д. 17, кв. 388

Latinized

6828540	PORTUGALOV S. N.	Galushkina Borisa ul., d. 17, kv. 388
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The man confirmed I called 388, 17, Borissa Galushkina st”;

vii. *in view of the above, the CAS Court Office requested DHL to send back to the CAS Court Office the courier that was tentatively sent to the Second Respondent on 6 July 2016;*

ix. *regarding the communication sent by e-mail on that day at s.port@mail.ru and at srpor55@gmail.com, please note that the CAS Court Office received, for both e-mails, the following information: “La remise à ces destinataires ou groupes est achevée, mais aucune notification de remise n'a été envoyée par le serveur de destination”.*

In view of the above and of Article R31 par. 1 of the CAS Code and on behalf of the Sole Arbitrator, I invite the Claimant to let the CAS Court Office know within a week whether they wish to proceed on the basis of the transmissions that were made to the Second Respondent”.

29. In a message to CAS dated 11 August 2016, IAAF noted the notification difficulties. It therefore indicated that it would endeavour to find alternative contact details for Dr Portugalov, and that “for the time being, ... IAAF does not want to proceed on the basis of the existing transmissions”.
30. On 17 August 2016, the CAS Court Office noted such communication and therefore suspended the procedure until further notice.
31. On 29 September 2016, IAAF informed the CAS Court Office that it had been in contact with RUSADA and the Russian Federation, and that it

“was informed of the following:

- *RUSADA confirmed that the postal address provided by IAAF is the correct one ...;*
- *ARAF confirmed that it knew that this postal address was the correct address for the Second Respondent ...;*
- *ARAF confirmed that it forwarded the CAS correspondence to such address ...;*
- *RUSADA previously notified an official letter to the Second Respondent on his email s.port@mail.ru ... The latter responded to the notification from the same email address ...;*
- *ARAF has phoned the Second Respondent on his mobile phone, but the latter “rejected any attempts even to discuss any matters concerning the CAS procedures*

...

In view of the above, it is clear that the Second Respondent is refusing service of the CAS correspondence. In these circumstances, unless the Sole Arbitrator considers otherwise, the IAAF submits that the proceedings should be resumed on the basis of the transmissions made to the Second Respondent to date.

In addition, the IAAF recalls that, pursuant to Rule 30.7 of the IAAF Rules, notice to a person may be accomplished by delivery of the notice to the national federation ...”.

32. The IAAF’s letter had attached a number of document relating to the correspondence exchanged with RUSADA and the Russian Federation.
33. On 5 October 2016, the CAS Court Office informed the parties that the Sole Arbitrator had decided to resume the present procedure. At the same time, the Claimant was invited

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- to provide the English translation of some documents it had filed in Russian on 29 September 2016.
34. On 6 October 2016, IAAF provided a translation of such documents.
 35. On 7 October 2016, the CAS Court Office informed the parties that the Sole Arbitrator had decided to send again the request for arbitration and its exhibits by email to the Second Respondent, and that all future correspondence with the Second Respondent would take place exclusively by email unless the Second Respondent would provide the CAS Court Office with a postal address. In addition, and *inter alia*, the parties were invited to inform the CAS Court Office whether they wished a hearing to be held in this matter.
 36. In an email of 17 October 2016, the Claimant confirmed that it did not consider a hearing to be necessary in this case.
 37. In a letter of 9 November 2016, the CAS Court Office noted that the Second Respondent had not submitted any response to the request for arbitration sent on 11 October 2016, and therefore announced that it was understood that the Second Respondent had chosen not to file any written submission and that the Sole Arbitrator would nevertheless proceed.
 38. On 21 December 2016, the CAS Court Office issued on behalf of the Sole Arbitrator an order of procedure (the "Order of Procedure"). In the Order of Procedure the parties were advised *inter alia* that by its signature the parties confirmed the CAS jurisdiction and that the Sole Arbitrator, deeming himself sufficiently informed, had decided to issue an award on the preliminary objections without a hearing.
 39. On 23 December 2016, the First Respondent returned the Order of Procedure signed by its then Secretary General.
 40. In a letter of 30 December 2016, however, the First Respondent indicated to the CAS Court Office that it wished to clarify some misunderstandings regarding its position, as they might have been caused by its signature of the Order of Procedure, and underlined (i) that it "*contests the jurisdiction of CAS for the reasons stated in the First Respondent letters earlier duly filed*", and (ii) that, by the signature of the Order of Procedure, its Secretary General "*has not intended to change the legal position of the First Respondent declared and submitted before*". The First Respondent, then, made some remarks regarding the position of the Second Respondent, and requested the Sole Arbitrator to consider its letter as an integral part of the Order of Procedure.
 41. On 4 January 2017, IAAF signed the Order of Procedure.
 42. On 6 January 2017, the CAS Court Office, writing on behalf of the Sole Arbitrator, invited the First Respondent to specify and to send copy of "*the First Respondent letters earlier duly filed*" mentioned in the letter of 30 December 2016. At the same time, the Claimant was granted a deadline to file observations regarding such letter.
 43. On 11 January 2017, the First Respondent informed the CAS Court Office that, "*after a database search and a short internal inquiry*", it had to "*admit that due to an RusAF's employee's mistakes no letters related directly to the RusAF's position on the CAS*

jurisdiction were duly filed with the CAS". The First Respondent forwarded in that respect two draft letters (dated 10 May 2016 and 21 November 2016) prepared but not sent. In addition, the First Respondent clarified that it *"does not contest the CAS jurisdiction in any matter between IAAF and RusAF only"* and that it had *"just informed the parties and the Sole Arbitrator that the First Respondent ... is not aware of any binding documents duly signed ... that may be considered as allowing to refer any disputes regarding Dr. Portugalov as a party to the CAS for consideration"*.

44. On 19 January 2017, the Claimant filed with CAS its observations on the First Respondent's letters of 30 December 2016 and 11 January 2017, confirming the First Respondent's standing to be sued before CAS and the fact that the Second Respondent is bound by the IAAF rules and regulations.
45. On 2 February 2017, the First Respondent sent a letter confirming that the Second Respondent was never its employee but stressing that he was however a member of the RusAF Scientific-Methodical Commission until November 2015.

2.2 The Position of the Parties

46. The following outline of the parties' positions is illustrative only and does not necessarily comprise every submission advanced by the Claimant and the Respondent. The Sole Arbitrator has nonetheless carefully considered all the submissions made by the parties, whether or not there is specific reference to them in the following summary.

a. The Position of the Claimant

47. In its request for arbitration, IAAF requested the CAS to rule as follows:
 - (i) *CAS has jurisdiction to decide on the subject matter of this dispute.*
 - (ii) *The Request for Arbitration of the IAAF is admissible.*
 - (iii) *Sergey Portugalov is found guilty of an anti-doping rule violation in accordance with Rule 32.2(f), Rule 32.2(g) and/or Rule 32.2(h) of the IAAF Rules.*
 - (iv) *A lifetime period of ineligibility is imposed upon Sergey Portugalov, commencing on the date of the (final) CAS Award. In the event that a shorter than lifetime period of ineligibility is imposed, any period of provisional suspension imposed on, or voluntarily accepted, by Sergey Portugalov until the date of the (final) CAS Award shall be credited against the total period of ineligibility to be served.*
 - (v) *Any arbitration costs are borne entirely by the Respondents.*
 - (iv) *The IAAF is awarded a significant contribution to its legal costs*".
48. In other words, in the Claimant's opinion, Dr Portugalov is responsible for the anti-doping rule violations contemplated by Rule 32.2(f) [*"Possession of a Prohibited Substance or Prohibited Method"*], Rule 32.2(g) [*"Trafficking or Attempted Trafficking in any Prohibited Substance or Prohibited Method"*] and Rule 32.2(h) [*"Administration or Attempted Administration of a Prohibited Substance or Prohibited Method"*] of the IAAF ADR and has to be sanctioned according to Rule 40 of the IAAF ADR.
49. In that respect, IAAF confirms that the Russian Federation has standing to answer the claims brought in this arbitration and that Dr Portugalov was subject to the IAAF rules,

and therefore to the CAS jurisdiction. More exactly, it is the Claimant's contention that:

- i. the First Respondent in its letters of 30 December 2016 and 11 January 2017, although referring to the CAS jurisdiction, raised arguments relating to its standing to be sued. However, the IAAF ADR specifically allow the Claimant to take a case directly to CAS in case of suspension of the member (such as the Russian Federation) under the authority of which the proceedings would have been conducted, if it had not been suspended. As a result, in this case, CAS is effectively acting as a substitute for the Russian Federation, and according to Rule 38.3 of the IAAF ADR the costs of the CAS proceedings are to be borne by the Russian Federation. Therefore, the request for costs submitted to CAS against the First Respondent is legitimate;
 - ii. Dr Portugalov was involved in many IAAF official events as a member of the ARAF's delegation. He was *inter alia* accredited at the 2005 IAAF World Half Marathon Championships in Edmonton, at the 2008 IAAF World Indoor Championships in Valencia and at the 2010 IAAF World Indoor Championships in Doha. It is self-evident that Dr Portugalov, having been accredited and having attended these competitions, especially as a member of the Medical Team, must have been aware of the existence of the IAAF ADR, and its underlying obligations such as not to provide prohibited substances to athletes. Thus, by accepting to be accredited to these events and participating in them, Dr Portugalov is bound by the IAAF ADR. Reference is in that regard made to Rule 30.1 of the IAAF ADR ("*the Anti-Doping Rules shall apply to the IAAF, its Members and Area Associations and to Athletes, Athlete Support Personnel and other persons who participate in the activities or Competitions of the IAAF, its Members and Area Associations by virtue of their agreement, membership, affiliation, authorization or accreditation*") and to the definition of "*Athlete Support Personnel*" (as "*any coach, trainer, manager, authorized athlete representative, agent, team staff, official, medical or paramedical personnel, parent or any other Person working with, treating or assisting an Athlete participating in, or preparing for Competition in Athletics*"). Moreover, the evidence shows that Dr Portugalov was also the Chairman of a commission set up by ARAF "*to deal with science-practical aspects of athletes' preparation for Olympic Games in London. One of the function of this centre is to develop and implement on a constant basis theoretical and practical support of athletes, including recovery and efficient use of permitted medical substances*". Therefore, Dr Portugalov is bound by the IAAF Rules both as an Athlete Support Personnel at IAAF events, and through his affiliation to ARAF by chairing one of its commissions set up specifically to prepare athletes for international competitions.
50. In support of its request on the merits, then, IAAF refers to the Stepanova Declaration and to the Shobukhova Declaration (the "Declarations"), evidencing the commission by Dr Portugalov of the anti-doping rule violations for which he is charged. Those Declarations show that Dr Portugalov provided Ms Stepanova and/or Ms Shobukhova with oxandrolone, dehydrochloromethyltestosterone and testosterone as well as with EPO and human growth hormone, which he also administered. All those substances are non-specified substance prohibited in and out-of-competition under the relevant IAAF ADR.
51. More specifically, IAAF submits, in view of the mentioned available evidence, that:

- i. Dr Portugalov was in possession of the prohibited substances which he provided to Ms Stepanova and Ms Shobukhova during their consultations. He therefore violated Rule 32.2(f)(ii) of the IAAF ADR, because the possession of those substances is prohibited at all times;
 - ii. Dr Portugalov given a "*panoply*" of prohibited substances to Ms Stepanova and Ms Shobukova on multiple occasions within the meaning of Rule 32.2 (g) of the IAAF ADR;
 - iii. Dr Portugalov breached Rule 32.2 (h) of the IAAF ADR by providing the prohibited substances to Ms Stepanova and Ms Shobukhova.
52. With respect to the period of ineligibility to be imposed on Dr Portugalov, IAAF accepts that the infringements for which Dr Portugalov is charged do not constitute multiple violations, but have to be considered together as one single first violation: the consequence to be imposed, therefore, is to be determined on the basis of the infringement that carries the more severe sanction, in accordance with Rule 40.7(d)(i) of the IAAF ADR. As a result, under Rule 40.3(b) of the IAAF ADR, the ineligibility period should be from four years to lifetime, corresponding to the sanction for the anti-doping rule violations contemplated by Rules 32.2(g) and 32.2(h) of the IAAF ADR.
53. As to the actual measure of the sanction, IAAF contends that there is no basis for any reduction below the four years minimum period of ineligibility and that the criterion of the seriousness of the violation has to be taken into account for the determination of the ineligibility period. In that regard, IAAF emphasizes that:
- i. Dr Portugalov provided prohibited substances to at least two athletes, introduced to him by Mr Melnikov, the head coach for endurance of the Russian Federation;
 - ii. Dr Portugalov "*was evidently a kingpin in an organized doping scheme involving a number of athletes. He betrayed and abused his status and functions by actively and continuously, engaging in doping practices. Not only did he provide prohibited substances to athletes, he also gave advice as to how to take them*";
 - iii. Dr Portugalov's actions "*must be viewed in the wider context of the national doping scandal in Russia*". Indeed, "*this case involves the most prominent sports doctor in the Russian sports system systematically and knowingly advocating the use of, administering and procuring prohibited substances to his athletes. This is the case of flagrant flouting of the anti-doping rule violations by a senior doctor that was embedded in, and operating in, the highest level of Russian athletics*".
54. As a result, in IAAF's opinion, a lifetime ineligibility period, starting on the date of the CAS award, "*is the only appropriate sanction*".

b. *The Position of the Respondents*

b.1 *The Position of the First Respondent*

55. The Russian Federation was notified of the IAAF's request for arbitration, and invited to submit an answer. Despite the foregoing, the Russian Federation did not lodge any answer and expressed no position on the claims submitted by IAAF until the letters dated 30 December 2016 and 11 January 2017, transmitted to the CAS Court Office only after the signature of the Order of Procedure. In those letters, the Russian Federation:

- i. contested the jurisdiction of CAS (letter of 30 December 2016), even though “*not ... in any matter between IAAF and RusAF only*”, but with regard to “*any disputes involving Dr. Portugalov as a party*” (letter of 11 January 2017). In addition, no substantive dispute exists between the Claimant and the First Respondent and no relief was submitted by IAAF against the Russian Federation (except for the arbitration costs) (draft letter dated 10 May 2016 lodged as an attachment to the letter of 11 January 2017);
- ii. submitted to CAS some observations regarding the position of Dr Portugalov, indicating that:
 - Dr Portugalov has never been an employee of the Russian Federation and has never been holding any position within it. Actually, an “*ARAF Medical Commission ... has not ever had Dr. Portugalov as its member, still less a chief*” and “*does not exist at least since 1994*”;
 - “*as a result Dr. Portugalov’s details (phone number, valid email, post address, etc.) are not in the First Respondent’s disposal. All First Respondent’s attempts to reach Dr. Portugalov and transfer him the relevant documents, including the mere Request for Appeal with all appendices, were vain and yielded no response*”;
 - “*Dr. Portugalov, not being ever under ARAF’s jurisdiction, has never signed any arbitration agreement (in any written form) allowing any sport-related body to refer any dispute in which Dr. Portugalov is a party, to CAS for consideration*”. In any case, “*ARAF is not aware of such agreement, and no copies of such agreement (be it a single document, or a fax, email, telex correspondence, etc) have ever been at ARAF’s disposal*”;
 - Dr Portugalov was however a member of the RusAF Scientific-Methodical Commission until November 2015.

b.2 The Position of the Second Respondent

56. Dr Portugalov was notified of the request for arbitration, and invited to submit an answer: the request for arbitration, the exhibits thereto, as well as all subsequent correspondence from the CAS regarding this arbitration were in fact sent to a Moscow address (*Galushkina Borisa ul., d. 17, kv. 388*) and to email addresses (*s.pori@mail.ru* and *snpor55@gmail.com*) which the Claimant, the First Respondent and RUSADA confirmed to be Dr Portugalov’s addresses. Despite the foregoing, Dr Portugalov did not lodge any answer and expressed no position on the claims submitted by IAAF.
57. The Sole Arbitrator, however, notes that, in a message received by IAAF on 11 September 2015, Dr Portugalov denied any and all allegations brought by Ms Stepanova and Ms Shobukhova against him. In such statement (§ 14 above) Dr Portugalov *inter alia*:
- i. underlined that his work regarded only physiological examinations and testing of Ms Stepanova and Ms Shobukhova at the request of the Russian Federation;
 - ii. indicated that he had drawn the attention of both Ms Stepanova and Ms Shobukhova to their biological passport abnormalities;
 - iii. declared that he had never provided Ms Stepanova and Ms Shobukhova with prohibited substances: Ms Stepanova was requesting explanations about the way of doping, but he refused any assistance;

- iv. maintained that the emails attached to the declarations of Ms Stepanova and Ms Shobukhova are false.

3. LEGAL ANALYSIS

3.1 Jurisdiction

58. CAS has jurisdiction to decide the present dispute between the parties.

59. In fact, the jurisdiction of CAS to hear as a first instance hearing body the dispute concerning the commission by Dr Portugalov of an anti-doping rule violation is contemplated by Rule 38.3 of the IAAF ADR, as in force at the time the request for arbitration was filed (as Chapter 3 of the IAAF Competition Rules 2016-2017), which provides materially as follows:

"... If the Member fails to complete a hearing within 2 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. ..."

60. In the present case, in fact, the Russian Federation is currently suspended by IAAF, and RUSADA is suspended by WADA. As a result, no entity has jurisdiction in Russia to conduct a hearing in Dr Portugalov's case and IAAF took over the responsibility for coordinating the relevant disciplinary proceedings. In a letter of 13 January 2016, in that regard, IAAF informed the Respondents that the case of Dr Portugalov would be referred to the CAS for a hearing. Therefore, the conditions for the CAS jurisdiction under Rule 38.3 of the IAAF ADR are met.

61. At the same time, and in addition, the Sole Arbitrator notes that:

- i. the Russian Federation accepted the CAS jurisdiction by the signature without reservations on 23 December 2016 of the Order of Procedure, which at its Section 1 *inter alia* so reads: *"The jurisdiction of the CAS is not contested by the All Russia Athletics Federation (ARAF) (the "First Respondent") and by Dr. Sergei Nikolaevich Portugalov (the "Second Respondent") and is confirmed by the signature of the present order"*. The objection subsequently raised in the letter of 30 December 2016 is belated and further relates not to CAS jurisdiction on the First Respondent but exclusively to CAS jurisdiction on the Second Respondent, who is not represented by the First Respondent;
- ii. contrary to the First Respondent's suggestions, the Second Respondent appears to be bound by the IAAF ADR, as evidenced by the Claimant. Indeed, the Second Respondent:
 - was entered into IAAF events and competitions as a member of the medical team of the Russian Federation (point which is not disputed by the First Respondent) and was a member of a commission created by the Russian

Federation to deal with the preparation of the Russian athletes for the 2012 Olympic Games;

- in the declaration concerning the allegations made against him by Stepanova and Shobukhova transmitted to IAAF by RUSADA on 11 September 2015 (§ 14 above), Dr Portugalov confirmed the medical support offered to those athletes and did not claim in any way to be foreign to the Russian Federation's system.

62. As a result, Dr Portugalov falls in the category of "*Athlete Support Personnel*" under the IAAF ADR, and participated in the activities or competitions of IAAF and the Russian Federation by virtue of consent, authorization or accreditation. As a result, having consented to the IAAF ADR by participating in the IAAF and ARAF's activities, he consented also to the possibility of arbitration of anti-doping rule violation in front of the CAS.

3.2 Admissibility and Standing to Be Sued

63. The request for arbitration complies with the formal requirement set by the Code. The admissibility of the request for arbitration is not challenged by the Respondents.

64. The First Respondent, at the same time, has standing to be sued by IAAF before CAS with respect to the IAAF's request that the Second Respondent be sanctioned for anti-doping rule violation under the IAAF ADR. Such standing is confirmed by the IAAF ADR (Rule 38.3) and follows also the IAAF's request that the First Respondent be ordered to bear the costs of these CAS proceedings.

65. Accordingly, the request for arbitration is admissible and both Respondents have standing to be sued.

3.3 Ordinary Proceedings

66. As these proceedings are based on a request for arbitration for the conduct of a first instance hearing and do not involve an appeal against a decision rendered by a sports-related body, they are considered as ordinary arbitration proceedings, within the meaning, and for the purposes, of the Code. However, in accordance with Rule 38.3 of the IAAF ADR, as in force at the time the request for arbitration was filed, these proceedings are "*handled in accordance with CAS rules ... applicable to the appeal arbitration procedure without reference to any time limit for appeal*".

3.4 Applicable Law

67. Pursuant to Article R58 of the Code, this Sole Arbitrator is required to decide the dispute:

"... according to the applicable regulations and 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, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".

68. Rule 42 of the IAAF ADR, as in force at the time the request for arbitration was filed,

provides that:

- “23. *In all CAS appeals involving the IAAF, CAS and the CAS Panel shall be bound by the IAAF Constitution, Rules and Regulations (including the Anti-Doping Regulations). In the case of any conflict between the CAS rules currently in force and the IAAF Constitution, Rules and Regulations, the IAAF Constitution, Rules and Regulations shall take precedence.*
24. *In all CAS appeals involving the IAAF, the governing law shall be Monegasque law ...”.*

69. In the present case, therefore, the “*applicable regulations*” are the IAAF rules. More specifically, the IAAF ADR in force in the period March 2009 to October 2012² apply under the “*tempus regit actum principle*” to determine whether anti-doping rule violations were committed by Dr Portugalov and the duration of any applicable ineligibility period. Monegasque law, then, applies subsidiarily to the merits of the dispute.

3.5 The Dispute

70. The case before this Sole Arbitrator concerns the commission by Dr Portugalov of the anti-doping rule violations contemplated by Rule 32.2(f) [*“Possession of a Prohibited Substance or Prohibited Method”*], Rule 32.2(g) [*“Trafficking or Attempted Trafficking in any Prohibited Substance or Prohibited Method”*] and Rule 32.2(h) [*“Administration or Attempted Administration of a Prohibited Substance or Prohibited Method”*] of the IAAF ADR, and, in the event such violations are found, the determination of the consequences thereof: the Claimant requests that the Sole Arbitrator sanctions Dr Portugalov, found responsible of those anti-doping rule violations, with a lifetime period of ineligibility; the Second Respondent denies any responsibility, while the First Respondent expressed no view on the Claimant’s claims.
71. The Sole Arbitrator shall examine separately the issues (i) of the commission by Dr Portugalov of the anti-doping rule violations for which he is charged, and, if the case, (ii) of the consequences thereof.
- i. Is Dr Portugalov responsible of the anti-doping rule violations contemplated by Rule 32.2(f) [“Possession of a Prohibited Substance or Prohibited Method”], Rule 32.2(g) [“Trafficking or Attempted Trafficking in any Prohibited Substance or Prohibited Method”] and Rule 32.2(h) [“Administration or Attempted Administration of a Prohibited Substance or Prohibited Method”] of the IAAF ADR?*
72. Dr Portugalov is charged with the violation of Rule 32.2(f) [*“Possession of a Prohibited Substance or Prohibited Method”*], Rule 32.2(g) [*“Trafficking or Attempted Trafficking in any Prohibited Substance or Prohibited Method”*] and Rule 32.2(h) [*“Administration*

² It is in that respect to be underlined that, as IAAF acknowledged in its submissions, subsequent editions of the IAAF ADR (of 2009, of 2010-2011 and of 2012-2013), based on the 2009 WADC, entered into force in that period, before the 2015 IAAF ADR, and the subsequent 2016-2017 edition, based on the 2015 WADC, became applicable. The editions of the IAAF ADR in force between March 2009 and October 2012 contained identical anti-doping rules. Therefore, for ease of reference, any mention to the IAAF ADR shall be intended to cover the 2009 IAAF ADR and those editions which followed them, pre-dating the 2015 IAAF ADR.

or Attempted Administration of a Prohibited Substance or Prohibited Method"] of the IAAF ADR.

73. Under Rule 32.2 of the IAAF ADR:

"The following constitute anti-doping rule violations: □□...

(f) Possession of a Prohibited Substance or Prohibited Method, ...

(ii) Possession by an Athlete Support Personnel In-Competition □ of any Prohibited Method or Prohibited Substance or Possession by an Athlete Support Personnel Out-of-Competition of any Prohibited Method or Prohibited Substance which is prohibited Out-of-Competition in connection with an Athlete, Competition or training, unless the Athlete Support Personnel establishes that the Possession is pursuant to a TUE granted to an Athlete in accordance with Rule 34.9 (Therapeutic Use) or other acceptable justification. □

(g) Trafficking or Attempted Trafficking in any Prohibited Substance or Prohibited Method. □

(h) Administration or Attempted administration to any Athlete In-Competition of any Prohibited Method or Prohibited Substance, or administration or Attempted administration to any Athlete Out-of-Competition of any Prohibited Method or Prohibited Substance that is prohibited Out-of-Competition or assisting, encouraging, aiding, abetting, covering up or any other type of □ complicity involving an anti-doping rule violation or any Attempted anti-doping rule violation.

74. Such provision corresponds *verbatim* to Articles 2.6.1, 2.7 and 2.8 of the 2009 edition of the WADC.

75. For the purposes of those rules the following "*Definitions*", as set by the IAAF ADR, are relevant:

"Athlete Support Personnel

Any coach, trainer, manager, authorised athlete representative, agent, team staff, official, medical or para-medical personnel, parent or any other Person working with, treating or assisting an Athlete participating in, or preparing for, competition in Athletics. .

Possession

The actual, physical possession or the constructive possession of a Prohibited Substance or Prohibited Method (which shall be found only if the Person has exclusive control over the Prohibited Substance / Method or the premises in which a Prohibited Substance / Method exists); provided, however, that if the Person does not have exclusive control over the Prohibited Substance / Method or the premises in which a Prohibited Substance / Method exists, constructive possession shall only be found if the Person knew about the presence of the Prohibited Substance / Method and intended to exercise control over it. Provided, however, there shall be no anti-doping rule violation based solely on possession if, prior to receiving notification of any kind that the Person has committed an anti-doping rule violation, the Person has taken concrete action demonstrating that the Person never intended to have possession and has renounced possession by explicitly declaring it to the IAAF, a Member or an Anti-Doping Organisation. Notwithstanding anything to the contrary in this definition, the purchase (including by any electronic or

other means) of a Prohibited Substance or Prohibited Method constitutes possession by the Person who makes the purchase.

Trafficking

The selling, giving, transporting, sending, delivering or distributing of a Prohibited Substance or Prohibited Method (either physically or by any electronic or other means) by an Athlete, Athlete Support Personnel or any other Person to any third party; provided however, this definition shall not include the actions of bona fide medical personnel involving a Prohibited Substance or Prohibited Method used for genuine and legal therapeutic purposes or other acceptable justification and shall not include actions involving Prohibited Substances which are not prohibited in Out-of-Competition Testing unless the circumstances as a whole demonstrate such Prohibited Substances are not intended for genuine and legal therapeutic purposes”.

76. The Sole Arbitrator, in addition, notes that in accordance with Rule 33 of the IAAF ADR:

“1. The IAAF, 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, 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. □...

3. 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, experts reports, documentary evidence, conclusions drawn from longitudinal profiling such as Dr Portugalov Biological Passport and other analytical information”.

77. In other words, IAAF has the burden to establish “*to the comfortable satisfaction of the relevant hearing panel*” that Dr Portugalov is responsible for the violations for which he is charged.

78. In the Sole Arbitrator’s opinion, IAAF satisfied such burden.

79. The Sole Arbitrator, in fact, remarks that evidence has been provided by IAAF to support the conclusion that Dr Portugalov, a medical doctor falling in the definition of “*Athlete Support Personnel*” (as described above):

- i. possessed substances prohibited out-of-competition without acceptable justification, with the purpose of providing them to athletes in order to enhance their sporting performances, and not to treat them for medically justified reasons;
- ii. distributed such prohibited substances to athletes, taking actions which show that that he was not using *bona fine* those substances for genuine and legal therapeutic purposes or other acceptable reason, and earning a remuneration, also based on the annual winnings of the athletes concerned, for his actions;
- iii. administered to athletes prohibited substances and assisted athletes in committing, or covering up, anti-doping rule violations.

80. Evidence in that respect is provided by the Declarations, which are detailed, consistent, credible and, with respect to the Stepanova Declaration supported by audio- and video-recordings, as well as by contemporary documents, such as emails and notes. In addition, those Declarations remained largely unchallenged. In fact, Dr Portugalov only provided IAAF with a generic denial, and did not take the opportunity (offered by the present arbitration) to test in adversary proceedings the evidence submitted by IAAF.
81. Indeed:
- i. as to the possession of prohibited substances, the Shobukhova Declaration confirms that the PEDs given her were in the availability of Dr Portugalov (“12. *During these consultations, Dr. Portugalov would write down the products that I needed to take on a piece of papers. He would then leave the office briefly and come back with the relevant products. ... 13. For the 2009 London Marathon, Dr. Portugalov provided me with pills and also ampoules of Human Growth Hormone and EPO to inject. ... 15. After the London Marathon, I continued to see Dr. Portugalov and he continued to provide me with similar products ...*”). In the same way, the Stepanova Declaration mentions the delivery of “*drugs and supplements*”, corresponding to “*a wide range of prohibited and non-prohibited substances*” by Dr Portugalov to Ms Stepanova;
 - ii. as to the trafficking in prohibited substances, the Declarations are conterminous. In fact, both Declarations diffusely confirm the distribution to Ms Stepanova and Ms Shobukhova of PEDs on various occasions. In addition:
 - in her Declaration, Ms Stepanova declared that “*26. When I first started seeing Dr. Portugalov, Vladimir Mokhnev would pay him for the drugs and supplements. Later on, I started to pay Dr. Portugalov myself; ... I also paid Dr. Portugalov about 20'000 roubles per season, i.e. half a calendar year, for his advice. 27. In addition, Dr. Portugalov took about 5% of my winnings together with certain financial bonuses when I placed in the top three in a competition*”;
 - in the Shobukhova Declaration, Ms Shobukhova stated that “*14. My husband always paid Dr. Portugalov in cash for the products. For the products that I received during the three consultations before the 2009 London Marathon, I recall that the amounts were between 1500 USD and 2000 USD each time. ... 19. As well as paying Dr. Portugalov for the drugs, I also had to pay 5% of my annual winnings to him ... This amounted to about 15,000 USD in 2009 and 35,000 USD in each 2010 and 2011*”;
 - iii. as to the administration of prohibited substances and methods, assistance, aid, abetting, cover up or complicity involving anti-doping rule violations, the Declarations profusely describe the actions of Dr Portugalov, who prescribed prohibited substances, advising Ms Stepanova and Ms Shobukhova as to the timing and dosages of their use, and directed blood manipulation practices. In addition, both Declarations confirm the habit, under the care of Dr Portugalov, of having the athletes privately tested, in order to verify effects and detectability of the doping practices. At the same time, Dr Portugalov told Mr Stepanova that “*if I was ever concerned about testing positive for a banned substance after a doping control during the national Athletics Championships, I should send the sample test number to him via SMS. He assured me that he would be able to use his contacts at the*

Moscow Laboratory to conceal the positive test results” (Stepanova Declaration, § 24).

82. In light of the foregoing, the Sole Arbitrator finds that Dr Portugalov committed the anti-doping rule violations contemplated by Rules 32.2(f), 32.2(g) and 32.2(h) of the IAAF ADR.

ii. *What are the consequences to be imposed on Dr Portugalov?*

83. As a result, it is for the Sole Arbitrator to determine the consequences to be imposed on Dr Portugalov for the anti-doping rule violations which he committed.

84. Rule 40 [“*Sanctions on Individuals*”] of the IAAF ADR, so far as relevant in this arbitration, provides as follows:

“Ineligibility for ... Possession of Prohibited Substances and Prohibited Methods”

2. *The period of Ineligibility imposed for a violation of Rule ... 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 in Rule 40.6 are met, shall be as follows:*

First Violation: Two (2) years' Ineligibility.

Ineligibility for Other Anti-Doping Rule Violations

3. *The period of Ineligibility for anti-doping rule violations other than as provided in Rule 40.2 shall be as follows: ...*

(b) *For violations of Rule 32.2(g) (Trafficking or Attempted Trafficking) or Rule 32.2(h) (Administration or Attempted Administration of a Prohibited Substance or Prohibited Method), the period of Ineligibility imposed shall be a minimum of four (4) years up to lifetime Ineligibility unless the conditions in Rule 40.5 are met. An anti-doping rule violation involving a Minor shall be considered a particularly serious violation and, if committed by Athlete Support Personnel for violations other than Specified Substances referenced in Rule 34.5, shall result in lifetime Ineligibility for such Athlete Support Personnel. In addition, significant violations of Rules 32.2(g) or 32.2(h) which may also violate non-sporting laws and regulations, shall be reported to the competent administrative, professional or judicial authorities. ...*

Aggravating Circumstances which may Increase the Period of Ineligibility

6. *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. ...

Multiple Violations

7. ... (d) Additional Rules for Certain Potential Multiple Violations:

- (i) For the purposes of imposing sanctions under Rule 40.7, an anti-doping rule violation will only be considered a second violation if it can be established that the Athlete or other Person committed the second anti-doping rule violation after the Athlete or other Person received notice pursuant to Rule 37 (Results Management) or after reasonable efforts were made to give notice of the first anti-doping rule violation; if this cannot be established, the violations shall be considered together as one single first violation and the sanction imposed shall be based on the violation that carries the more severe sanction; however, the occurrence of multiple violations may be considered as a factor in determining aggravating circumstances (Rule 40.6) ...”.*

85. In other words, the IAAF ADR provide that a first violation of the rules which Dr Portugalov breached be punished with the following standard sanctions:

- for the violation of Rule 32.2(f), a period of ineligibility of two years;
- for the violation of Rule 32.2(g), a period of ineligibility between four years and lifetime;
- for the violation of Rule 32.2(h), a period of ineligibility between four years and lifetime.

86. As mentioned, Dr Portugalov is responsible for a plurality of anti-doping rule violations: the Second Respondent's actions, in fact, were found to run against Rules 32.2(f), 32.2(g) and 32.2(h) of the IAAF ADR. However, such anti-doping rule violations can only be considered together as one single first violation because Dr Portugalov committed all anti-doping rule violations before he received notice pursuant to Rule 37 (Results Management) or reasonable efforts had been made to give notice of the first anti-doping rule violation. As a result, the sanction imposed shall be based on the violation that carries the more severe sanction.

87. In light of the foregoing, and in summary, the sanction to be applied to Dr Portugalov consists in a period of ineligibility between four years and lifetime. And in the determination of the actual sanction in that range, all the circumstances of the infringements have to be considered.

88. In such regard, the Sole Arbitrator notes that Dr Portugalov's infringements were committed as part of an organized doping system, at the centre of which was Dr Portugalov, who possessed and used multiple prohibited substances on multiple occasions. The very fact that Dr Portugalov abused his medical practice, in order to advise athletes on doping schemes, applying science not to treat illness but to direct illegal conducts, appears to be utterly reprehensible.
89. As a result, the Sole Arbitrator finds that a lifetime period of ineligibility is the only proper sanction to be applied to Dr Portugalov.
90. The starting moment of the period of ineligibility is set by Rule 40.11 of the IAAF ADR, according to which:
- "Except as provided below, the period of Ineligibility shall start on the date of the final hearing decision providing for Ineligibility or, if the hearing is waived or there is no hearing, on the date the Ineligibility is accepted or otherwise imposed. ..."*
91. On the basis of such rules, the starting moment of the period of ineligibility to be imposed on Dr Portugalov is the date of this award, which is *"the final hearing decision providing for Ineligibility"*.

3.6 Conclusion

92. In light of the foregoing, Dr Portugalov is found responsible for the anti-doping rule violations contemplated by Rule 32.2(f) [*"Possession of a Prohibited Substance or Prohibited Method"*], Rule 32.2(g) [*"Trafficking or Attempted Trafficking in any Prohibited Substance or Prohibited Method"*] and Rule 32.2(h) [*"Administration or Attempted Administration of a Prohibited Substance or Prohibited Method"*] of the IAAF ADR. The sanction of lifetime ineligibility from the date of this award is imposed on Dr Portugalov.

4. COSTS

93. Article R64.4 of the Code provides:

"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".

94. Article R64.5 of the Code provides:

"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 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 outcome of the proceedings, as well as the conduct and the financial resources of the parties”.

95. Rule 38.3 of the IAAF ADR provides that the hearing conducted before a CAS sole arbitrator in the circumstances described by said provision
“shall proceed at ... expense of the Member”.
96. The IAAF requested that the arbitration costs are entirely borne by the Respondents and that IAAF is awarded a significant contribution to its legal costs.
97. Taking into account the outcome of the arbitration and considering Rule 38.3 of the IAAF ADR, the Sole Arbitrator considers that the Russian Federation shall bear the arbitration costs in an amount that will be determined and notified to the parties by the CAS Court Office.
98. Furthermore, pursuant to Article R64.5 of the CAS Code and in consideration of the outcome of the proceedings, as well as of the conduct and the financial resources of the parties, the Sole Arbitrators finds that Athlete must contribute to the legal fees and expenses of the Claimant in an amount of CHF 5,000 (five thousand) Swiss Francs.
99. The present award may be appealed to CAS pursuant to Rule 42 of the IAAF ADR.

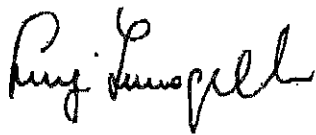
ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. Dr Sergei Nikolaevich Portugalov is responsible for the anti-doping rule violations contemplated by Rule 32.2(f) [*Possession of a Prohibited Substance or Prohibited Method*], Rule 32.2(g) [*Trafficking or Attempted Trafficking in any Prohibited Substance or Prohibited Method*] and Rule 32.2(h) [*Administration or Attempted Administration of a Prohibited Substance or Prohibited Method*] of the IAAF Anti-Doping and Medical Rules.
2. Dr Sergei Nikolaevich Portugalov is imposed the sanction of lifetime ineligibility starting from the date of this award.
3. The costs of the arbitration, to be determined and served on the parties by the CAS Court Office, shall be borne by the Russian Athletics Federation.
4. Dr Sergei Nikolaevich Portugalov shall pay to the International Association of Athletics Federations (IAAF) an amount of CHF 5,000 (five thousand Swiss Francs) as a contribution toward the costs it has sustained in connection with these arbitration proceedings.
5. All other motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Date: 10 March 2017

COURT OF ARBITRATION FOR SPORT

Luigi Fumagalli
Sole Arbitrator