CAS 2018/A/5989 IAAF v. Qatar Athletics Federation & Musaeb Abdulrahman Balla

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President:	Prof Dr Ulrich Haas, Professor in Zurich, Switzerland
Arbitrators:	Mr Murray Rosen QC, Barrister in London, United Kingdom
	Mr Mark Hovell, Solicitor in Manchester, United Kingdom
Ad-Hoc clerk	Ms Amrei Keller, attorney-at-law in Zurich, Switzerland

in the arbitration between

International Association of Athletics Federations, Monte Carlo, Monaco

Represented by Mr Ross Wenzel and Mr Magnus Wallsten, Kellerhals Carrard, Lausanne, Swizerland

Appellant

and

Qatar Athletics Federation, Doha, Qatar

Represented by Mr Jan Kleiner, Kleiner & Cavaliero AG, Zurich, Switzerland

First Respondent

Mr Musaeb Abdulrahman Balla, London, United Kingdom

Represented by Mr Claude Ramoni, Libra Law SA, Lausanne, Switzerland

Second Respondent

I. PARTIES

1. The International Association of Athletics Federations (hereinafter referred to as "the IAAF" or "the Appellant") is the international federation for the sport of athletics. The IAAF is an association under the laws of Monaco and has its headquarters in Monte Carlo, Monaco.

2. Qatar Athletics Federation (hereinafter referred to as "the QAF" or "the First Respondent") is Qatar's athletics federation based in Doha, Qatar.

3. Mr Musaeb Abdulrahman Balla (hereinafter referred to as "the Athlete" or "the Second Respondent"), born on 19 March 1989, is a middle-distance runner originally from Sudan. He is licensed by the QAF.

II. FACTS

A. The training camp in Barcelona

4. In late May and early June 2016, the Athlete attended a QAF training camp in Sabadell, Spain. Along with the Athlete, Mr Jama Aden (hereinafter referred to as "Jama Aden" or "the Coach"), three other coaches, three masseurs/physiotherapists and approximately 20 other athletes attended the training camp.

5. Prior to coming to the training camp, the Athlete suffered an injury. He could not train due to this injury and was undergoing medical treatment in order to recover from it.

6. On 20 May 2016, the Athlete arrived in Spain together with the rest of the Qatari team.

7. On 8 June 2016, the Athlete was subjected to an out-of-competition ("OoC") doping test, which returned a negative result.

8. On 20 June 2016, the Athlete was subject to another OoC doping test, which also returned a negative result.

B. The surveillance by the Spanish Police

9. On 10 May 2016, prior to the Athlete coming to Spain, the IAAF had contacted the Mossos d'Esquadra (hereinafter referred to as "the Mossos d'Esquadra" or "the Spanish Police") to request surveillance and monitoring of athletes and athlete support personnel belonging to the QAF training camp. The IAAF indicated that the athletes, coaches etc. were going to reside at the Hotel Arrahona in Barcelona, Spain (hereinafter referred to as "the Hotel") and that surveillance was required to investigate into potential trafficking of illegal medications and potential doping activities. The IAAF request was supported by the Spanish Anti-Doping Agency (hereinafter referred to as "AEPSAD").

10. The Spanish Police conducted a series of surveillance and monitoring operations at the Hotel. These operations are described in various monitoring reports – *inter alia* – as follows:

> **31 May 2016** (participating agents no. 11376, 17627, 3697, 1639): *"[...] Agent No. 11376 observed the coach Jama Aden exit the Arrahona Hotel alone on foot. [...] He stopped after a few metres immediately in front of a refuse container. Over the course of the journey he passed by numerous refuse containers and numerous bins, without making any motion (distance covered, approximately 235 metres).*
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> *Agent No. 17627 observed that Jama Aden was holding some kind of white coloured object in his right hand. Jama Aden observed his surroundings and proceeded to throw an item into the refuse container (lifting the cover of it by using the container foot pedal). The individual in question then continued walking [...].*
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> *Agent No. 17627 carried out a visual inspection from the exterior of the refuse container [...] (into which Jama Aden had thrown an item), immediately noticing a hypodermic needle and protector/ cover (which was not placed as to protect it). Dark red blotches could be seen in the cover in question. Agent No. 17627 proceeded to recover the hypodermic needle and cover, and performed a search of the interior of the refuse container, discovering a PVC syringe plunger. [...] Sergeant No. 1639 and corporal No. 3697 joined the unit. Once informed of the situation a new and comprehensive search of the container was carried out, with the aim of locating the body of the syringe, with negative results.*
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> *Faced with this situation a visual inspection of the refuse containers [...] was carried out, similarly with negative results. The liners from all of the bins, found along the route covered by Jama Aden, were retrieved. Said liners were transported to be meticulously inspected [...]. In one of the bags [...] the PVC, 10 millilitre body of an HMC brand syringe was found, this size corresponds to that of the plunger found prior to this, and the body contained the same kind of dark red blotches as those observed in the hypodermic needle cover. In another of the bins [...] one (1) plastic sleeve from an HMC brand, 10 ml "disposable syringe" was discovered as well as one (1) empty vial of the medication CALCO 50 Ul 1 ml, Calcitonin from the LISAPHARMA SPA laboratory, Italy batch F0424 expiry date APR/2017."*
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> At the end, sergeant no. 1639 and corporal no. 3697 carried out a photographic report of the retrieved items and proceeded to seal them into bags, using seal number 6504723: Plunger bagged with a green seal, hypodermic needle and cover bagged with a blue seal and 10ml, HMC syringe body with a red seal.

The relevant police conclusion read as follows:

> *"On the date of 31/05/2016, at 21:02 hours, Mr Jama ADEN left the Arrahona Hotel where he was staying, with the sole purpose of disposing of a used syringe.*

To this end, he took rigorous precautions:

a.- He threw the syringe away having dismantled it into separate parts and in different locations, over a distance of 220 metres.

b.- He avoided using hotel bins, as well as the refuse containers and bins nearest to it. The first container that was used is located some 235 metres from the hotel.

c.- He observed his surroundings before disposing of the parts of the syringe.

d.- It is important to remember that the body of the syringe still contained a large amount of medication residue. It could be possible to detect traces of the DNA of the person the injection was administered to within the needle. Removing the hypodermic needle (extracting the cover), as well as the body of the syringe (completely extracting the plunger), accelerates the drying and oxidation of the remainder of the product.

e.- The medication CALCO 50 U.I. was thrown away along with the syringe, this is not doping medication, but it is illegal in Spain, it can be injected and requires storage in cold conditions."

1 June 2016 (participating agents no. 11376, 17627, 3697, 1639): *"[...] Agent No. 17627 observed the coach Jama Aden exit the Arrahona Hotel alone on foot. [...] Agent No. 11376 followed the coach Jama Aden on foot and observed him stop in front of the first bin that he found and perform the motion of throwing an item into it [...]*

Agent No. 11376 continued on this route and observed the coach Jama ADEN pass by numerous bins, without making any motion. [...] He crossed [...] a wall to his right backing onto a building site. Agent No. 11376 observed the coach Jama Aden perform a movement whereby he lifted both of his arms upwards at the same time and lowered them before looking behind himself, (which is why it was suspected that he could have thrown something over the wall). [...]

At the same time as Jama ADEN was observed on this (straight line) journey the first bin was monitored. Nobody threw anything in it after Jama ADEN.

[...] Agent No. 17627 performed a visual inspection of the first bin (into which Jama Aden had thrown something) [...], the agent noticed a hypodermic needle among the rubbish and its protector/ cover (placed so as to protect it). Dark red blotches could be seen in the needle and cover in question. [...]

Agent No. 17627 proceeded to retrieve the hypodermic needle and the cover.

Before doing this a visual inspection was carried out of all the bins located along the route taken by Mr Jama Aden. Agent No. 11376 discovered a syringe plunger in a bin located approximately 134 metres from the first bin, (in which the hypodermic needle and its cover were found) and proceeded to retrieve it.

[...] Agents No. 11376 and No. 17627 inspected the interior of the building site where Mr Jama Aden was suspected of having potentially thrown an item.

A visual inspection was performed on the side nearest the wall, where the PVC, 10 millilitre body of an HMC brand syringe was found, this size corresponds to that of the plunger found prior to this, and the body contained the same kind of dark red blotches as those observed in the hypodermic needle cover."

At the end, sergeant no. 1639 and corporal no. 3697 performed a photographic report of the retrieved items and proceeded to seal them into bags, using seal number 6504781: Plunger bagged with a blue seal, hypodermic needle and cover with a green seal and the 10ml HMC brand body of the syringe with a red seal.

The relevant police conclusion read as follows:

"On the date of 01/06/2016, at 22:38 hours, Mr Jama ADEN left the Arrahona Hotel where he was staying, with the sole purpose of disposing of a used syringe.

To this end, he took rigorous precautions:

a.- He threw the syringe away having dismantled it into separate parts and in different, distant locations.

b.- He avoided using hotel bins, as well as the refuse containers.

c.- He observed his surroundings before disposing of the parts of the syringe.

d.- It is important to remember that the body of the syringe still contained a large amount of medication residue. It could be possible to detect traces of the DNA of the person the injection was administered to within the needle. Removing the hypodermic needle (extracting the cover), as well as the body of the syringe (completely extracting the plunger), accelerates the drying and oxidation of the remainder of the product."

2 June 2016 (participating agents no. 11376, 17627, 3697, 1639): *"[...] Sergeant No. 1639, corporal No. 3697 and agent No. 11376 observed coach JAMA ADEN exiting the side door of ARRAHONA hotel and the athlete MUSAEB ABDULRAHAM BALLA. When [s]aid individuals [arrived] at the second group of containers (some 75 metres from the hotel), agent No. 11376 observed Mr Jama ADEN lift the cover of the second container (probably to throw something inside it).*

Agent No. 11376 remained to keep watch on the container where Jama ADEN had thrown an item. Coach JAMA ADEN and the athlete MUSAEB ABDULRAHAM BALLA continued walking [...].

[Around 260 metres from the hotel], there is a group of six containers of various types (cardboard, glass, plastic recycling and normal refuse). Sergeant No. 1639 observed as Mr JAMA ADEN moved momentarily (three or four paces) away from Mr BALLA and threw an item into one of the first containers. After walking 5 metres, he repeated this action throwing something into the last container (for bottle and plastic recycling). Sergeant

No. 1639 remained to keep watch on the containers in question, with corporal No. 3697 maintaining surveillance. Mr JAMA ADEN and MUSAEB ABDULRAHAM BALLA, continued for another 200 metres in the same direction, turned around and returned to the hotel.

[...] Agent No. 11376 performed a visual inspection of the container which the agent was monitoring and into which Mr JAMA ADEN was believed to have thrown something and observed on the interior of the container in question the plunger for a PVC syringe and retrieved it.

[...] Sergeant No. 1639 inspected the plastic recycling container which the sergeant was monitoring and observed and retrieved the body of a 10ml, PVC, ICO+3 brand syringe, which featured dark red blotches.

[...] Agent No. 11376 gained entry to the interior of the cardboard recycling container and located and retrieved:

A paper and cellophane sleeve for a ICO+3 syringe, which was stained red. Its inside contained a piece of transparent plastic that was stained red, along with a used vial for the medication "Magnesium Sulphate Injection 50% w/v For IM Injection. Alter dilution, for IV infusion" batch 0034500, expiry date 08/2017" from the Aurum Pharmaceutical laboratory."

Sergeant no. 1639 and corporal no. 3697 performed a photographic report of the retrieved objects, and subsequently proceeded to seal them into bags, using seal 6504789:

-Seal 6504789 (red): hypodermic syringe plunger, retrieved from the refuse container and a PVC body of a 10ml ICO+3 brand syringe.

-Seal 6504789 (blue) Paper and cellophane sleeve for a 10ml, PVC, ICO+3 brand syringe, a piece of transport plastic stained with a red product retrieved from the recycling container.

-Seal 6504789 (green): A vial of Magnesium Sulphate Injection 50% w/v For IM Injection. Alter dilution, for IV infusion "batch 0034500, expiry date 08/2017" from the Aurum Pharmaceutical laboratory, retrieved from the recycling container.

The relevant police conclusion read as follows:

"On the date of 02/06/2016, at 23:30 hours, Mr Jama ADEN left the Ar-rahona Hotel where he was staying, with the sole purpose of disposing of a used syringe. He made a first attempt to do so but for whatever reason abandoned this effort and carried it out later in the company of the athlete Musaeb Abdulrahman BALLA.

To this end, he took rigorous precautions:

a.- He threw the syringe away having dismantled it into separate parts and in different locations, over a distance of 200 metres.

b.- He avoided using hotel bins, as well as the refuse containers nearest to it. The first container used is located some 75 metres from the hotel.

c.- It is important to remember that the body of the syringe still contained a large amount of medication residue.

It could be possible to detect traces of the DNA of the person the injection was administered to within the needle. Removing the hypodermic needle (extracting the cover), as well as the body of the syringe (completely extracting the plunger), accelerates the drying and oxidation of the remainder of the product.

Along with the syringe packaging a form of injectable medication (likely to be administered intravenously) was thrown away, this was not doping medication but is still illegal in Spain."

3 June 2016 (participating agents no. 11376, 17627, 3697, 1639): *"[...] The athlete Musaeb Abdulrahman BALLA left the hotel. He was followed by agent No. 17627 and corporal 3697. He walked along [...] very slowly, exhibiting an "uneasy" manner and would occasionally stop suddenly. On one occasion he turned to look at what was happening behind him. [...] Mr Musaeb Abdulrahman BALLA changed pavements on the same street and continued walking. The agents were forced to withdraw to a maximum distance and to finally abandon surveillance. Some of the containers and bins along the "possible route" were inspected, with negative results."*

The relevant police conclusion read as follows:

"[...] The athlete Musaeb Abdulrahman BALLA, who on the previous day had accompanied Jama ADEN to dispose of the used syringe, exited the hotel alone and at the same time, exhibiting a highly vigilant demeanour (whilst it cannot be verified it is possible that this was to dispose of a syringe)."

7 June 2016 (participating agents no. 11376, 17627, 3697, 1639): *"[...] The coach Jama ADEN was seen exiting the hotel with a white plastic bag. He approached the containers located near to the Arrahona hotel [...] and threw it into the blue container.*

[...] The surveillance unit within the Arrahona hotel indicated that MUSAEB ABDULRAHAM BALLA had left the room of the coach Jama ADEN (107) and was heading towards the ground floor. Sergeant No. 1639 observed the individual in question in the hotel lobby proceeding to the area where the hotel cafe is located. Balla was also expected to exit the hotel as on previous days but this individual did not appear.

[...] A hotel employee was observed exiting from the side door carrying a large rubbish bag. She [...] threw it into one of the first containers in the

street. Faced with the possibility that MUSAEB ABDULRAHAM BALLA had disposed of the syringe in the cafe rubbish bin, Sergeant No. 1639 ordered for the retrieval of the rubbish bag in question to enable its inspection.

[...] Agent No. 11376 proceeded moments later to retrieve said bag of rubbish.

[...] Corporal No. 3697 and agent 17627 proceeded to retrieve the plastic bag that had been thrown away by the coach Jama ADEN from the coloured container, which previously had only been thrown away by the coach Jama Aden, with the sole purpose of examining whether any medical or sanitary product containers could be found within it that could represent proof or evidence of the investigated crimes against public health.

[...]

Once the unit had ceased operating, the signatory agents checked the contents of the rubbish thrown away by the coach Jama ADEN and the rubbish bag thrown away by the (Sabadell) Arrahona hotel employee.

No items of interest for the investigation were found among the rubbish thrown away by the coach Jama ADEN.

From the bag of rubbish thrown away by the hotel employee there was retrieved:

Inside a bag of rubbish containing domestic waste there was found:

-One (1) S-S Disposable single-use, 3ml syringe (with needle and cover) and plastic wrapping produced by Sung Shim Medical CO, LTD (Made in Korea) and one (1) 2ml vial of the injectable medication LIVABION, which is illegal in Spain, batch 1520609 and expiry date 12/2018 from the SIGMATEC laboratory. [...]

It should be pointed out that the syringe was found inside a closed bag of domestic waste which was inside the refuse sack. This bag was of the same kind that the hotel cleaners remove from the apartment-style hotel rooms. Given that when Musaeb Abdulranmam BALLA came down he was not carrying a bag we feel that this syringe cannot be attributed to Mr Musaeb Abdulrahmam BALLA."

The relevant police conclusion read as follows:

"The discovery among rubbish including food waste of one (1) S-S Disposable, single-use, 3ml syringe (with needle and cover) and plastic wrapping produced by Sung Shim Medical CO, LTD (Made in Korea) and one (1) 2ml vial of the injectable medication LIVABION, which is illegal in Spain, batch 1520609 and expiry date 12/2018 from the SIGMATEC laboratory, which was inside a large rubbish bag that a hotel employee threw away at 00:10 hours on 08/06/2016 clearly and unequivocally indicates that the medication in question was being administered within Spain to one of the athletes within the group of the coach Jama ADEN within one of the hotel apartments. Intravenous doses of cyanocobalamin are used together with other compounds

(iron and folic acid) to accelerate recovery following exercise, administering it in this way presents high risks to the health of the athlete."

8 June 2016 (participating agents no. 11376, 17627, 3697, 1639): *"[...] As on other occasions when this kind of walk has been observed Mr BALLA looped back on himself to see what was happening behind him and changed pavement, all of which required the agent to maintain distance from the target [...]. The agent returned towards the Arrahona hotel [...] and observed that Mr Musaeb Abdulrahman BALLA was proceeding in front of him also towards the Arrahona hotel, after a few metres Mr BALLA changed direction. The agent lost visual contact with Mr BALLA after which the agent carried out a search of the surrounding roads but with negative results.*

[Afterwards] Mr Musaeb Abdulrahman BALLA was observed arriving at the hotel and entering it.

[...] The coach Jama ADEN was seen exiting the hotel holding a bag of rubbish. He approached the containers located on the same side of the road as the hotel [...] and placed it into the brown container (organic material). This same operation but with different types of bags and at a different time was observed during surveillance operations on 6 and 7 June 2016, with what was found in the bags of domestic waste in question not being relevant to the investigation.

[...] Corporal No. 3697 and agent 11376 proceeded to retrieve the rubbish that had been thrown away by the coach Jama ADEN from the brown coloured container and the four (4) bags of rubbish that were found in the grey container which had previously been thrown away by the hotel cleaning staff for the sole purpose of examining whether they contained any medical or sanitary product containers that could represent proof or evidence of the investigated crimes against public health.

[...]

Once the unit had ceased operating, the signatory agents checked the contents of the rubbish thrown away by the coach Jama ADEN and the rubbish bag thrown away by the (Sabadell) Arrahona hotel employee.

No items of interest for the investigation were found among the rubbish thrown away by the coach Jama ADEN.

In the contents of the hotel rubbish there was retrieved:

a.- One (1) used 3ml syringe (no distinguishable brand) along with a plastic SUNG brand syringe sleeve (Korea), a hypodermic needle and a used vial of medication which is illegal in Spain, Livabion batch 1520609 and expiry date 12/2018.

b.- The remainders of cartons and leaflets for the following medication which is illegal in Spain:

- One (1) empty box of the medication CALCO Calcitonine de Saumon, which is illegal in Spain — 50 U.I. injectable solution from the LIXAPHARMA laboratory, batch F0424 and expiry date 04/2017.

- One (1) empty box of a medication which is illegal in Spain, Livabion 6 vials/ 2ml for IM/IV injection from the SIGMATEC laboratory, batch 1520609 and expiry date 12/2018 and its leaflet. Both the box and the leaflet were in English and Arabic.

- One (1) empty box of the medication Prefolic 15 mg/3ml, which is illegal in Spain (5 vials of 15mg and 5 vials of 3ml of solvent) from the Zambon laboratory, batch 521398E02 and expiry date 10/2017. The medication box was in Italian.

- One (1) leaflet for the medication ACTOVEGIN which is illegal in Spain written in Russian (Cyrillic characters).

c.- The remainders of the packaging of one (1) BEREG-KIT model, anti-doping, blood sampling kit produced by Berlinger Special AG-Switzerland with a number and bar code 129663, as well as a small piece of paper with blood on it and a pair of white latex gloves.

d.- The remainders of the packaging of one (1) ant-doping, urine sample kit produced by Berlinger Special AG-Switzerland.

e.- One (1) drip dosing pipette with liquid remaining inside it."

The relevant police conclusion read as follows:

"There have again been sightings (as on previous days) of Mr Musaeb Abdulrahman BALLA leaving the hotel alone and heading off with no particular destination, at the same time behaving suspiciously and doubling back on himself in order to see what is happening behind him, changing pavement, changing direction to then retrace his steps again, etc. Surveillance of this individual has not been forced given the extraordinary "safety measures" he took during these walks.

He is the only athlete to go out like this alone. It is strongly suspected that these journeys are part of an effort to destroy evidence.

The discovery of boxes and leaflets for medication which is illegal in Spain (used for so-called intravenous recovery), along with syringes and an empty vial of one of those medications indicates the use and administering of the products in question within the hotel.

The retrieval of packaging material from anti-doping blood or urine sample kits, seems highly suspicious given that it doesn't serve any purpose."

9 June 2016 (participating agents no. 11376, 17627, 3697): *"[...] The coach Jama ADEN was seen exiting the hotel holding a bag of rubbish, and in the company of Mr Musaeb Abdulrahman BALLA. He approached the containers located near to the Arrahona hotel [...] and threw it into the blue container. The coach Jama ADEN again proceeded towards the interior of the hotel and Mr Musaeb Abdulrahman BALLA started walking [...]. He was followed by corporal No. 3697 and agent 11376. As on other occasions when this kind of nocturnal walk has been observed (changes of pace, looping back on himself*

to see what was happening behind him and changing pavement), all of which required the agents to maintain distance from the target [...].

[...] Corporal No. 3697 and agent No. 11376 retrieved three (3) bags on rubbish from the grey container where the hotel personnel dispose of the waste produced over the course of it functioning as well as the bag of rubbish thrown by the coach Jama ADEN into the blue container for the sole purpose of examining whether they contained any medical or sanitary product containers that could represent proof or evidence of the investigated crimes against public health.

[...] Agent No. 17627 observed the athlete Musaeb Abdulrahman BALLA arrive at the hotel [...]. He was dressed in the same way and did not appear to have any bag or object that he did not have when he left the hotel.

[...]

Once the unit had ceased operating, the signatory agents checked the contents of the rubbish thrown by the coach Jama ADEN into the blue container and the three (3) rubbish bags from the grey container where hotel staff dispose of waste produced over the course of its running.

No items of interest for the investigation were found among the rubbish thrown away by the coach Jama ADEN.

In the contents of the hotel rubbish there was retrieved

a.- The remainders of the packaging of one (1) ant-doping, urine sample kit produced by Berlinger Special AG-Switzerland.

b.- One (1) empty 646 mg glass vial bearing the name TAD 600, with a red lid and an aluminium seal. A description of the product written in Italian can be seen on the vial, part of which read "Powder for injectable solution. intermuscular or intravenous use." Its active ingredient is 646mg of Glutathione sale sódico and the Biomedica Foscama Group S.P.A.N. laboratory. The batch number can be seen on the aluminium seal it reading Batch number 141159 and expiry date 11.2017.

c.- An empty, used, 4ml glass vial where the product description in Italian was as follows "Sterile water for injections" and reading it English "Sterile Water for infection". The laboratory was Biomedica Foscama, batch number 149062 and the expiry date 08/2019.

d.- Empty "Pic Solution" 5ml syringe packaging by the Italian manufacturer, with Batch number 1506077. Furthermore a PIC Solution syringe with its 5ml fitted plunger was found coinciding with the described packaging along with its needle and cover.

e.- Empty QG (Qatari German) brand syringe packaging), Medical Devices 10ml Made in Qatar. Its batch number was 1510006, its manufacture date is 2015.02 and the release date of 2020.01.

f.- A pipette with remaining liquid inside.

g.- A plastic vial with Cyrillic characters which corresponds to the Riboksin Bufusr product. Its main active ingredient is inosine and it is administered intravenously."

The relevant police conclusion read as follows:

"Musaeb Abdulrahman BALLA has been observed (as on previous days) leaving the hotel alone and walking without a fixed destination, all the while exhibiting suspicious behaviour, such as doubling back on himself in order to see what is happening behind him, changing pavement, changing direction to then retrace his steps again, etc. Surveillance of this individual has not been forced given the extraordinary "safety measures" taken during these walks.

He is the only athlete to go out like this alone. It is strongly suspected that these journeys are part of an effort to destroy evidence.

The discovery of the medication which is illegal in Spain (used for so-called intravenous recovery), along with syringes and an empty vial of one of those medications indicates the use and administering of the products in question within the hotel.

The retrieval of packaging material from urine sample kits, seems highly suspicious given that it doesn't serve any purpose."

C. The search at the Hotel and the proceedings in Spain

11. On 17 June 2016, Criminal Court No. 5 of Sabadell ("the Court") – based upon the surveillance reports of the Spanish Police – authorised a police raid and search at the Hotel. The Order (hereinafter referred to as "the Search Warrant") read in its pertinent part as follows:

"To approve search warrants for the following rooms and apartments at the Hotel Arrahona located [...] in Sabadell:
*1. **Apartment number 107** used by Jama Aden.*
*2. **Room number 120** used by Musaeb Abdulrahman Balla. [...]*

In the case of the rooms of Musaeb Abdulrahmen Balla, [...] the purpose of the search warrant is to find and seize illegal drugs, doping substances, related medical instruments, documentation in paper and digital format, telephones and other objects that could be used as evidence [...] in this case. [...]

***The attendance of an expert from AEPSAD during the search is permitted** [...].*

If the execution of the search warrant is recorded, the recordings must be properly stored and may not be used for purposes unrelated to these proceedings.

[...]

The search warrant will be executed by the Mossos d'Esquadra in the presence of the suspects or their legal representatives.

The search warrant will be executed on 20 June 2016 in the morning at 8:30 am, in the presence of the attorney representing the Justice Department, who will draft the corresponding report on the entry and search [...]."

12. On the morning of 20 June 2016, Spanish Police notified the Athlete, who was with the team at the training site close to the Hotel, that a search would take place in his hotel room and that he was not allowed to access his room until the search was completed. The police summons notification form ("Notification Form") stated as follows:

> *"In this act we notify Mr./Mrs. MUSEEB BALA with the ID/Passport (Country) 01098009 FROM QATAR that the Criminal Court number 5 of Sabadell has granted a court warrant agreeing to the entry and police register of the room that occupies in the hotel Arrahona in Sabadell. [...] The required person [the Athlete] states that he/she is currently occupying room number 211 and he/she is currently sharing this room with ABU BAKAR ABDALA."*

13. The Spanish Police then entered and searched the rooms in the Hotel. One of the rooms searched was room no. 120, the room occupied by the Athlete at the time. The entry and search of the room was conducted in the presence of the Athlete. The Court Clerk produced a handwritten report of the search performed in room no. 120 (hereinafter referred to as "the Court Clerk Minutes"). The relevant part of the Court Clerk Minute stated as follows:

> *"[...] Also present was the individual recognised as Mr Musaeb Abdulrahman Balla, whose identity was verified with his Qatari passport No. 01098009. He was informed of the purpose of these proceedings and notified of the ruling authorising the entry, with translation provided by the interpreter Akram IQBAL national ID No. X0809965C and was thus fully informed and notified of the ruling. Mr Balla stated that this was not his room and that his room was No. 211. Nevertheless, the entry and search of it was carried out.*
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> *Over the course of the search of the room, the following items were found:*
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> *- A box containing 5 full bottles and one open bottle of the medication EPOTIN 4000 IU, which were sealed into bag No. 093381.*
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> *- Four used syringes, 10 unused ones, and a pack of 10 unused 1 ml insulin syringes, which were sealed into bag No. 093382.*
>
> *- Two boxes each containing 1 bottle of the medication DEPOMEDROL, which was sealed into bag No. 093383.*
>
> *In addition to the above, a box of the medication Baxter Cernevit, a partly used pack of the medication magnesium sulphate injection, a partly used box of the medication Feresec, a partly used box of TAD 600 Glutathione, two boxes of Prefolic, one of DECAN and one of VITAMIN B-12 and one of Feroglobin.*

Also found was the Qatari passport of Mr Musaeb Abdelrahman Bala with No. 01098009. When asked via the interpreter he stated that what had been found in the room did not belong to him, despite it having been found in a suitcase containing medication, photographs and ID cards belonging to Mr Bala. [...]"

14. Also on 20 June 2016, the Athlete provided a statement to the Central Police Directorate of Catalonia which said in essence as follows:

"When questioned regarding the EPO and other injectable medication discovered this morning in his room he STATED as to being unaware of its provenance as it was not his.

When asked why he asserted that they were not his, despite them being found in his room and in a suitcase containing photographs of the declarant, he RESPONDED that he could not comment on their origin as he did not know.

When asked how long he has known the trainer Jama ADEN, he STATED that has had known him since the year 2010.

When asked how many times he had attended a training camp with Jama ADEN, he STATED that this was the fourth training camp that he had been to.

When asked if there had been any doctors present at the training camp he RESPONDED that there had not been any doctors or Physiotherapists and Sysai was the physiotherapist. That David De Andrés came exclusively for him and he does not receive care from any other physiotherapist.

When asked if the trainer Jama ADEN had at any time supplied him with any injectable medication he RESPONED in the negative, explaining that Jama ADEN had never supplied him with any injectable medication and that he only ever takes tablets orally.

When asked if he had shared a room with anyone he RESPONDED in the affirmative, explaining that he had shared with an athlete called YASEER. That he asked Yaseer who the injectable medication belonged to and that he said it was his.

That he asked to whom Jama ADEN planned to supply the injectable medication corresponding with the syringe of which he disposed, together with the declarant, the night of 2 June 2016. He STATED that he did not go with Jama ADEN to throw away any syringe. The declarant was then informed that he was being detained on suspicion of crimes associated with that detailed herein, and was at that point placed into custody.

Given this new situation the statement was brought to a halt at that point so that the detained individual could have a meeting with his lawyer before making any further statement if so desired. [...]"

15. On 21 June 2016, Mr Yaser Salam Mubarak Bagharab (hereinafter referred to as "Yaser Salam") provided a witness statement. He said that he was staying in room no. 120 together with the Athlete and declared that he had not consumed banned substances or doping substances and denied the Athlete's statement in respect of the provenance of the EPOTIN.

16. On 22 June 2016, the Athlete provided a pre-trial statement to Criminal Court No. 1 of Sabadell, saying as follows:

> *"[...] That he arrived in Spain on and that he expects to leave on 16 September.*
>
> *carries out test on the person making the statement. That the police have it. That on 2 June he was given a surprise test by the International Federation. That on 2 June it appeared at 4 a.m.*
>
> *That he does not recall having left the hotel with Mr Jama on 2 June.*
>
> *That he does not recall whether they passed some containers and whether Mr Jama threw a syringe and a box of medicines into the container.*
>
> *That Mr Jama does not ask him what he has in his had if he is going to throw it away.*
>
> *That Mr Jama has not supplied him with any medicine.*
>
> *That two days ago they carried out a test and everything was correct and that the police have the result.*
>
> *That he has not been convicted of any offence.*
>
> *To the questions from the Public Prosecutor's Office:*
>
> *That he did not tell the police that his room was 211.*
>
> *That it is not true that he collected the key to room 211 from the reception, that he only collected his own.*
>
> *That room 211 was the oxygen room and that he had the obligation to be there for 6-8 hours.*
>
> *That as there are many athletes not all of them fit in the room, they decided to be in room 310 as well.*
>
> *That the police delivered to him in the stadium a paper notifying him that the entry and search had been carried out.*
>
> *That he only signed the paper and did not put his room no. That room 211 is a general room for all the athletes.*
>
> *[...]*
>
> *To the questions from the defence counsel:*
>
> *That he has been coming to Spain for four years, that he came for an athletics camp.*

That he came with the Qatari national athletics team. This national team is led by Jama Aden, who is their trainer and manager.

That the national team is made up of the manager, himself, and other athletes.

That there are 2 physiotherapists, one is called David and the other Sisai.

That he knows Quarid Mounir, who is from the Saudi Arabian team. He is the physiotherapist of the Saudi Arabian team.

That he was staying in Hotel Arraona, but he does not remember the number of the room. That his room was at the start of the corridor. That he had never asked for the room key. That his stay at Hotel Arraona is paid for by the Qatari Federation.

That he leaves his passport in the safe in the room when he goes out for training. That his room is 120, what he doesn't know is the room of the other person.

That he was very sure he had left his passport in room 120.

That the suitcase with the medicines belongs to his teammate Yasser Ba-Gharab.

That the photos taken of him are from his suitcase. That at the time he Mossos d'Esquadra searched the room they tipped all the medicines together when they emptied it together with the photos. That they made him stay at the side during the search and he didn't see anything.

That he does not use any banned substances. That he did not know that the medicines were illegal because he did not have those medicines. He knows after the search. That he has a cut in his leg, which has been injured since 17 May and that he came to train. That on Monday 20 June was the first day he trained to test his condition.

That the syringes are his for the injury he has and he uses them to reduce the pain. He also takes pills that have been prescribed for him here in Sabadell in the hospital. He believes that they are called Sentecat, they were prescribed by the doctor in the hospital, but that the doctor knows what they are called. He bought them in the chemist's.

That he has not supplied these substances to any teammate. That the medicines were his teammate's because he is subject to testing, but his teammate is not subject to testing.

That his teammate is afraid and that is why he says that they are his. That the deponent has witnesses of this.

That he does not recall whether on 2 June he went out with Mr Jama, but that he tends to go about every night with Mr Jama for exercise.

That the deponent knows that as an athlete cannot take substances, that in addition there are tests by his country's Federation, as there are tests outside the Federation. That there is also a sheet shows he passed two tests on 20 May.

That these have consisted of two blood and urine tests.

That the registration sheet of the tests is in possession of the police, which keeps them among his personal effects.

That the website of the federation indicates that what he can take and the medicines that are prohibited to prevent anything from coming out bad. That the Federation's website already marks with a cross what he can take and what is prohibited.

That the injury he has consists of a third-degree cut in the right tendon. That he has a CD that reflects the condition of his injury.

That if he has recovered he will take part in the Brazil Olympics.

[...]"

17. On 6 July 2016, Yaser Salam provided a pre-trial statement to Court No. 5 of Sabadell. He confirmed his previous statement of 21 June 2016 and stated that he was staying in room no. 120 which he shared with the Athlete and that he did not know anything about the medication found in the room, had not received any injections during his stay in Barcelona and never saw the Athlete offering, distributing or dealing with medicines, or any healthcare product.

18. On 9 August 2016, the Generalidat de Catalonia sent a letter to the Court and provided it with the Lofoscopic report dated 26 July 2016 of the Central Unit of Visual Inspections (Scientific Police Division). The report contained a detailed fingerprint analyses conducted on six boxes of medication found in room no. 120 (lofoscopic prints). A total of 10 lofograms on the items were compared to fingerprints provided by the Athlete. Three lofograms did not present a sufficient identifying value to enable identification; the remaining seven did not match with the Athlete's fingerprints.

19. On 30 May 2017, the Court (in summary proceedings 84/2017, prior proceedings 546/2016) issued its decision (the "Court Decision") relating – *inter alia* – to the Athlete. The Court Decision found that:

"During their surveillance operations [...], on 31 May 2016 at the time of 21:02 the Mossos d'Esquadra observed Mr Jama Mohamoud Aden leaving the HOTEL ARRAHONA alone, exhibiting a vigilant demeanour, he passed by numerous refuse containers and waste bins, they then observed as he threw an object into one of the containers over 200 metres from the hotel, turn round and return to the hotel. A hypodermic needle could be seen in the container, the protective cover had removed and it bore a red stain, the syringe plunger was found but not its body. The Mossos d'Esquadra then undertook an inspection of the waste bins located along the route taken by Mr Jama Mohamoud Aden on his way back to the hotel and determined that one contained an HMC branded, 10ml hypodermic needle, with red marks visible on its interior, identical to those on the hypodermic needle cover, the needle's plastic packaging and a bottle of the medication CALCO 50 Ul 1ml, from the Lisapharma Spa laboratory.

On 1 June 2016 at the time of 22:38 the agents undertaking the surveillance saw Mr Jama Mohamoud Aden leave hotel alone, exhibiting a vigilant

demeanour, and follow a route which differed from that of the previous day, he threw an object into a waste bin and approached a plot of land surrounded by a wall, he then performed a movement with his arms, as if throwing something. Inside the bin, the agents found a hypodermic needle which was stained red and had its protective cover still attached. In the other bin, which he had passed, a hypodermic syringe plunger was found and on the other side of the wall of the plot of land the body of a syringe was found bearing red marks.

On 2 June 2016 at the time of 22:10 Mr Jama Mohamoud Aden left the hotel, exhibiting a vigilant demeanour, walked around for a while and returned to the hotel without throwing anything away. At the time of 23:30 he left the hotel accompanied by the athlete Mr Musaeb Abdelrahman Bala. According to the agents, both passed several containers, it being noted that after 75 metres Mr Jama Mohamoud Aden lifted the lid of a container. Subsequently, approximately 260 metres from the hotel Mr Jama Mohamoud Aden approached a group of six containers, throwing an object into one container and another object into another container. Within the containers in question there was found a syringe plunger, the body of an ICO+3 syringe, the "cellophane paper" sleeve of the ICO+3 syringe, a transparent piece of which was stained red and a vial of the medication MAGNESIUN SULPHATE INJECTION 50°/ w/v from the Pharmaceutical laboratory.

On 3 June 2016, at the time of 19:55, Mr Mounir Ouarid was seen going to the pharmacy J.L.I. Baradad, located in Plaza Creu de Barberá no. 8 in Sabadell, and purchasing one box of OPTOVITE, one box of ACFOL, one box of NORMON branded medication and 20 ICO+3 syringes.

On 3 June 2016 at the time of 23:30 Mr Musaeb Abdelrahman Bala left the hotel and appeared to be uneasy and vigilant, turning back on himself and stopping suddenly, meaning that the agents were forced to abandon their pursuit, given that this individual crossed from one side of the road to the other and it was necessary to maintain a safe distance. The agents inspected a number of containers and waste bins along the route with negative results.

On 7 June 2016 at the time of 23:44 Mr Jama Mohamoud Aden was seen exiting the hotel with a white plastic bag, which he threw into a container. This bag was subsequently determined to contain nothing of interest to the investigation. At the time of 00:00, Mr. Bala was seen making his way down from the room of Mr Jama Mohamoud Aden to the ground floor and the cafeteria. Following this, a hotel employee was observed exiting the hotel by the side door and then depositing a bag of hotel rubbish in the container. In light of the possibility of Mr Bala disposing of certain effects in the cafeteria rubbish, the bag of rubbish was retrieved by the agents. Within the bag in question was found: a single-use, 3ml syringe with its needle and cover and

a 2ml vial of the injectable medication LIVABION from the SIGNATEC laboratory. These effects were found within a bag of rubbish containing the same kind of domestic waste as that collected by the hotel housekeeping staff and which was itself found inside the bag of rubbish thrown away by the HOTEL ARRAHONA employee. Given that Mr Bala was not seen descending to the cafeteria with a bag, it is not considered likely that he deposited the bag within the cafeteria rubbish bag.

On 8 June 2016, at the time of 19:35, Mr Bala was once again identified but, in the same manner as on the date of 3 June 2016, he remained vigilant, crossing from one side of the street to the other and turning to look behind himself, meaning that visual contact was lost. At the time of 23:56, Mr Jama Mohamoud Aden was seen disposing of a bag of rubbish in the containers located on the same side of the street as the hotel. At the time of 00:15, the rubbish placed in the container by Mr Jama Mohamoud Aden was retrieved along with four bags of rubbish placed there by hotel personnel. No item of interest was found among the rubbish thrown away by Mr Jama Mohamoud Aden. The hotel rubbish was found to contain: a used syringe, a plastic syringe sleeve, a hypodermic needle and a used vial of LIVABION, as well as the remains of the packaging and leaflets for three types of medication: CALCO 50 Ul Injectable Salmon Calcitonin Solution from the Lixapharma laboratory, an empty box of LIVABION 6 vials/ 2 ml for IM/IV injection from the SIGMATEC laboratory, an empty box of the medication PREFOLIC 15 mg/3 ml in 5 vials of 15mg and 5 vials of 3ml solvent from the Zambon laboratory, a leaflet for the medication ACTOVEGIN in Russian, the remains of the packaging for a BEREG-KIT model, Berlinger Special AG-Switzerland branded kit for taking blood samples for anti-doping, as well as a piece of paper with blood on it and a pair of white latex gloves; the remains of the packaging for a kit for taking urine samples for anti-doping tests of the same brand as above and a drop-counting, dosing pipette with liquid left inside.

On 9 June 2016, at the time of 22:20, Mr Jama Mohamoud Aden was observed leaving the hotel holding a bag and in the company of Mr Musaeb Abdelrahman Bala. Mr Musaeb deposited a bag in one of the containers and began walking at alternating paces, often turning around to see what was happening behind him and crossing from one side of the street to the other, meaning that the surveillance operation on him had to be lifted. At the time of 00:15, agents proceeded to examine the contents of the bag Mr Musaeb had thrown away, among which there was found nothing of interest, as well as three bags of rubbish thrown into the containers by hotel personnel. From those bags of rubbish they retrieved: a BERLINGER SPECIAL AG-SWITZERLAND branded anti-doping kit for taking urine samples; an empty vial of the medication TAD 600 with a red cap and aluminium seal; an empty, 4ml, glass container for a product described in Italian as "Acqua sterile per preparazioni inettabili" and in English as "Sterile water for injection" from the Biomedica Foscama laboratory; an empty, 5ml, PIC SOLUTION syringe wrapper, produced by an Italian manufacturer, a 5ml syringe with plunger

intact; an empty, 10ml, QATARI GERMAN MEDICAL DEVICES syringe wrapper; a pipette containing the remnants of a liquid; and a plastic container featuring Cyrillic characters for the product RIBOKSIN BUFUS for intravenous administration."

[...]

During the entry and search performed in the room of Mr Musaeb Abdelrahman Bala the following items were found: 1 box of EPOTIN 4000 IU, 24 syringes, 2 boxes of DEPO-MEDROL injectable, 2 boxes of CERNEVIT injectable solution, 1 box of MAGNESIUN SULPHATE INJECTION 50%, 1 box of FEROSAC intravenous, 1 box of TAD 600 mg, 2 boxes of PREFOLIC 15 mg, 1 box of DECAN 40 ml, 1 box of vitamin B12 GERDA, 1 box of FERO-GLOBIN B12 [...]. Mr Musaeb Abdelrahman Bala stated at police headquarters that the medication and doping substances found in his room did not belong to him, that he was unable to explain why said substances had been found in a suitcase with photographs of his, that Mr Jama Mohamoud Aden was his trainer, that Mr Aden had not supplied him with any injectable substances, that the substances found in his room belong to an athlete named Yaseer [...]. The witness Yaser Salam Mubarak Bagharab denied that the substances found in the room which he was sharing with Mr Bala were his, when asked at the police headquarters [...] and in court in his witness statement delivered as pre-constituted evidence. From the entry and search it emerged that the substances were found in a suitcase which contained photographs and cards belonging to Mr Bala [...]. Mr Bala stated in court that he had come to the gathering in Spain as an athlete and member of the Qatar team, that Mr Mounir Ouarid was a Saudi Arabia team physiotherapist, that the suitcase of medication belonged to his roommate, that the Mossos d'Esquadra knocked over the medication next to his suitcase during the entry and search, that he was unable to see the proceedings of the entry and search, that he had been injured since 17 May, that he had been using the syringes to treat an injury, that he was taking tablets for the injury as prescribed in the hospital in Sabadell, that he used to go out with Mr Jama Mohamoud Aden at night for exercise, that he knew as an athlete that he was unable to consume certain substances and that undergoing anti- doping tests is commonplace [...].

From the documentation appearing in proceedings it is clear that the syringes pre-filled with ARANESP 60 micrograms were acquired in Saudi Arabia [...]; that the medication RECORMON 4000 ul injectable solution in pre-filled syringe has been distributed in various foreign countries [...] and that the medication EPREX 40000 Ul/ml injectable in pre-filled syringes has been distributed in numerous medical centres in Spain [...].

In the report produced by AEPSAD on 14 July 2016 it emerged that 11 syringes pre-filled with ARANESP 60 mg/0.3 ml contained darbepoetin alfa, that the 3 syringes pre-filled with EPREX 40000 contained epoetin alfa and that the 5 syringes pre-filled with RECORMON 4000 contained epoetin beta. These syringes were found in the room belonging to Mr Mounir. The aforementioned report also shows that the 5 vials of EPOTIN 4000 IU, found in the room belonging to Mr Musaeb Abdelrahman, contained epoetin alfa. Two of the vials of DECAN 40 ml found in the rooms of both investigated parties had negative results when tested for the presence of banned substances [...].

The samples submitted by the Mossos d'Esquadra to the Lausanne Doping Control Laboratory were not found to contain the presence of doping substances [...].

The expert analysis provided by the Spanish Agency for Medication and Healthcare Products dated 27 July 2016 [...] shows that none of the following forms of medication is authorised for sale in Spain:

1. AKTOVER 40: In the aforementioned report the medication AKTOVER is described as a banned method under the Anti-doping Code if it is intravenously supplied in volumes exceeding 50ml during a 6 hour period and its supply is not therapeutically justified in healthy individuals;

2. RECORMON 4000 IU/0.3 ml and EPOTIN 4000 UI: According to the report its main active ingredient is erythropoietin or epoetin and in order for it to be effective an adequate supply of iron, vitamin B12 and folic acid must be ensured, this medication is for hospital use and should only be administered under expert medical supervision, it enhances athletic performance and presents health risks, which are particularly high among those practising endurance sports and when it is administered without any therapeutic need.

3. DEPO-MEDROL: According to the report its consumption can have numerous side-effects.

4. COLTRAMYL: According to the report its consumption can occasionally trigger serious side-effects and any consumption which is not therapeutically required can constitute a risk factor in the development of cancer.

5. CALCO: It is not suitable for non-therapeutic uses and its long-term consumption slightly increases the risk of suffering tumours.

6. LORINASE: Its consumption can trigger adverse reactions and above a certain concentration in urine it is considered to be a stimulant likely to lead to positive results in doping tests.

7. TAD 600 mg

8. VITAMINA C-LOGES INJECTABLE and LAROSCORBINE 1 gram: Presents a risk of overdose if fat-soluble.

9. METHYCOBAL INJECTION, LIVABION, MAGINJECTABLE, VITAMIN B12 GERDA and HIDROXICOBALAMINE 1000: Presents a risk of overdose if fat-soluble.

10. BECOZYME INJECTABLESOLUTION: Presents a risk of overdose if fat-soluble.

11. VITAMIN D3: Presents a risk of overdose if fat-soluble.

12. CERNEVIT: Presents a risk of overdose if fat-soluble.

13. MAGINJECTABLE and MAGNESIUM SULPHATE INJECTION: Present possible side-effects.

14. CALCIRETARD and CALCIUM GLUCONATE 10%: Present possible side-effects.

15. DECAN 40 ml: Can trigger adverse reactions.

16. FERLIXIT 62.5 mg, VENOFER 100 mg and FEROSAC: Can trigger adverse reactions.

17. PREFOLIC 15 mg: Can produce side-effects.

As detailed in the report, medications 2 and 3 are banned substances and medication 6 is banned if its concentration exceeds 150 micrograms per millilitre and as the composition of these sixteen forms of medication is unknown, and which are unauthorised for sale, their supply represents a public health risk.

The majority of the forms of medication detailed are administered parentally, in other words, are injectable, which presents risks where this means of administration is not justified and is not carried out by healthcare professionals, in ISO approved conditions or is provided in inadequate facilities. None of the forms of medication is suitable for enhancing the performance of healthy individuals.

[...]

While it is true that the doping tests carried out on the athletes staying at the HOTEL ARRAHONA had negative results [...], what is also clear from the report produced by Mr Thomas Capdevielle, Anti-doping Administrator at the IAAF, is that this could be down to technical limitations, which occasionally prevent the detection of banned substances in blood and urine [...].

According to the Barcelona Anti-Doping Laboratory, neither epoetin nor banned substances were detected in the syringes [...], although this could be due to the deterioration of the substances and does not rule out their presence, especially given the delay in the publishing of the report in question [...]"

20. The decision of the Court concluded in relation to the Athlete as follows:

> *"With regards to Mr Musaeb Abdelrahman Bala, a professional athlete trained by Mr Jama Mohamoud Aden [...], his perpetration of the crimes which are the subject of this case has not been duly proven. Although over the course of the surveillance operations his demeanour aroused suspicion, he was not seen throwing away any objects. The terminals seized during the entries and searches did not reveal him to have participated in the supply of substances to third parties. Page 31 of the operational police report on the organisation overseen by Mr Jama Mohamoud Aden which reached this court on the date of 10 March 2017 [...] illustrates that the medication DECAN found in his room was part of the same batch purchased by Mr Mounir in the Perpignan pharmacy and several vials of MAGNESIUM SULPHATE INJECTION belonged to the same batch as the vial thrown away by Mr Jama Mohamoud Aden on the date of 2 June 2016 [...], meaning that we cannot rule out the possibility that the substances seized from his room were supplied by his trainer and physiotherapist in order to enhance his athletic performance. For this reason, without prejudice to the administrative responsibility which may have been incurred pursuant to the possession and consumption of the substances found in his possession, the provisional stay of proceedings and closure of the file with regards to him is hereby ordered in accordance with LECrim article 779.1d in relation to article 641.1 of the same legal corpus. [...]"*

D. The Proceedings before the DTQAF

21. On 5 July 2016, the IAAF notified the Athlete that it had been informed by the AEPSAD of the results of the search of the Spanish Police. The IAAF advised the Athlete that EPOTIN is a prohibited substance under the 2016 WADA List of Prohibited Substances. Furthermore, the IAAF informed the Athlete that the use of prohibited substance or prohibited method (Rule 33.2(b) of the IAAF Competition Rules 2016-2017 (hereinafter referred to as the "2016-2017 IAAF ADR")) as well as the possession of a prohibited substance (Rule 32.2(f) of 2016-2017 IAAF ADR) constitute an anti-doping rule violation ("ADRV"). The IAAF advised the Athlete that based on the above it had initiated an investigation into potential ADRVs, pursuant to Rule 37.12 of 2016-2017 IAAF ADR. Moreover, the IAAF invited the Athlete to provide a written explanation in response to the findings by the Spanish Police.

22. On 8 July 2016, the Athlete provided his explanation to the IAAF. In essence, the Athlete maintained as follows:

> *"First and foremost, I would like to begin by acknowledging there was various EPO found in my hotel room here in Sabadell, Spain.*
>
> *However, I am not alone in the hotel room. My roommate is Yemeni born Yasser Salem who is not eligible to compete due to nationality change, transferring to Qatar. The boy is 18 years old and has changed his story multiple times; whereby he began by saying the 'vitamins' in the room were his and reassured an overwhelming majority of the team that they were only vitamins.*

Not less than a day later, Yasser went to the police station and said that the items did not belong to him. He came back to the hotel with a different story to the athletes and claiming to have admitted that he possessed the 'vitamins'.

Notwithstanding this, Yasser changed his story numerous times to numerous athletes. While I was away, the police came to Yasser and manipulated him saying that I had already admitted the EPO was mine and agreed on the suspension. That being said, Yasser changed his story once again to fit the situation thinking this would be beneficial to him and myself.

Upon discussing the issue with him, he told me that he was scared of the consequences he would have to face if he admitted the EPO belonged to him but would admit that the EPO belonged to him in court, this was once again changed.

I would like to inform you that I have been a professional athlete for 7 years and I know the consequences I would have to pay if I took or even possessed any sort of EPO and furthermore, I have been under doping control since 2014 and I have never missed a test or tested positive in all international competitions and out of competition testing.

To conclude, the case is still ongoing in court, considering Yasser once again changed his story to court on July 6th.

[...]".

23. On 10 July 2016, the Athlete provided another explanation to the IAAF, reading in its relevant parts as follows:

"[...]

First and foremost I would like to strongly reject the commission of any anti-doping rule violation.

I will therefore proceed with an explanation of the circumstances surrounding the present matter as follows:

a. I have a third degree cut on my right tendon since 17 May 2016 and for that reason, I have decided to travel to Spain with the Qatari National Team, directed by Mr. Jama Aden, to join an athlete's training camp in order to prepare myself for the Olympics in Rio de Janeiro. Unfortunately, my tendon injury did not allow me to start the training as expected. On 20 June I had my first training session to evaluate my physical condition and to decide what would be the adequate training plan for my full recovery.

b. Moreover, I would like to highlight that I was submitted to several doping control tests including one dated 20 June 2016, the day of the Spanish Police raid, and no prohibited substances of any type were found in my organism.

c. With regards to the vials found by the Spanish Police raid in my hotel room (number 120), it is extremely important to clarify that I shared that hotel room with another Athlete, Mr. Yaser Ba-Garab who also had many items and belongings in the room. This fact has been accepted and

confirmed by the police and acknowledged by all the witnesses that were inquired in this respect.

d. During the raid, the police did not establish any distinction or requested me to identify my own properties inside the room. Mr. Yaser Ba-Garab was not present and the police considered that everything contained in the room was mine. As it was confirmed by the police, their understanding was that that room was mine and that nobody else was sleeping there. [...]

e. Mr. Yaser Ba-Garab is a young athlete (18 years old) that expressly admitted to me and to other athletes of the team that the prohibited substances found in our room were of his property. He changed his version when he spoke to the police and to the judge because he was scared of the consequences and because the Police told him that I had admitted the culpability as he expressly recognized.

f. Besides staying in a shared hotel room, it is important to remark that Mr. Yaser Ba-Garab and I were not the only persons with access to our room. As it happens in any other athlete's training camp, it is common and usual that many athletes of the team -or even from other teams- visit the room and hang there without even asking. In fact, there were some occasions that I arrived to the room and found people that I did not know well. This fact can be corroborated by many witnesses.

g. In this sense, and considering that several people had access to our room, I could not possibly know or take responsibility of the content or natures of all the bags kept there apart from mine or even conceive to whom they belonged to.

h. I am a professional athlete for more than 7 years and I have passed more than a hundred anti-doping tests without ever missing one or testing positive.

i. Consequently, I hereby deny (i) the property of the vials of EPOTIN found by the Spanish Police, following a police raid dated 20 June 2016 and (ii) any violation of the IAAF or any anti-doping rule, in particular of Rules 32.2 (b), 32.2 (f) or 37.12 as per stated in your correspondence. [...]"

24. In a letter dated 11 October 2016, the IAAF rejected the Athlete's explanations and imposed a provisional suspension on the Athlete from all activities in athletics pending the resolution of the case by the QAF. The IAAF furthermore informed the Athlete that it was requesting to be a party to the criminal proceedings in Spain.

25. On the same day, the QAF informed the IAAF that it would advise the Athlete about the provisional suspension. The QAF requested the IAAF that any QAF hearing be postponed until it receives the full evidentiary file and until the criminal investigation in Spain are concluded.

26. On 21 December 2017, the IAAF's Athletics Integrity Unit (hereinafter referred to as "the AIU") provided the QAF with a memorandum ("the Memorandum"), setting out the evidential basis upon which the IAAF Anti-Doping Administrator had concluded

that the Athlete had a case to answer for an ADRV. Specifically, the Memorandum suggested that the Athlete had committed the following anti-doping rule violations:

i. *"possession of erythropoietins a prohibited substance listed in S2 of the 2016 WADA Prohibited List; and*

ii. *use and/or administration of erythropoietins."*

27. In the Memorandum the IAAF invited the QAF, based on Rule 38.1 of 2016-2017 IAAF ADR, to convene a hearing before the relevant tribunal to determine the commission of the ADRVs and the consequences that should be imposed.

28. On 9 January 2018, the QAF acknowledged receipt of the Memorandum.

29. On 2 February 2018, the QAF requested the AIU to provide it with additional information.

30. On 26 February 2018, the QAF reiterated its request to the AIU.

31. On the same day, the AIU provided some of the documents.

32. On 1 April 2018, the QAF reiterated its request in relation to the Athlete's ID card, the video footage and whether any fingerprints were taken off the medicine found in the bag in the hotel room no. 120.

33. On 22 April 2018 and on 30 April 2018, the QAF sent another reminder to the AIU.

34. On 30 April 2017, the QAF advised the AIU that it felt compelled to initiate formal proceedings against the Athlete, in order to protect his fundamental right that the case be decided within a reasonable timeframe.

35. On 4 May 2018, the AIU informed the QAF that it had commissioned a review of the documents relating to the raid at the Hotel. It advised the QAF that while the records of the Spanish Police relate to the Athlete's ID Cards found in a bag (together with the medicine), it was now the AIU's understanding *"[...] that the reference to 'ID Cards' is a mistake"* and that there was *"no other reference/piece of evidence related to it, either in the Police report, or in the statement of Mr Musaab Bala"*. In relation to the video footage requested by the QAF, the AIU stated that there was no record of its existence. The only video footage that existed related to other rooms than hotel room no. 120.

36. The AIU also provided the QAF with a copy of a police document dated 22 August 2016 relating to the fingerprint analyses performed on the boxes of medicine found in the Athlete's hotel room.

37. On 13 May 2018, the QAF expressed its surprise in relation to this new information provided by the IAAF and expressed its concern that the Athlete had been suspended for two years based on unreliable information.

38. On 17 May 2018, the AIU replied to the QAF that the evidence obtained in the course of the criminal investigation constituted highly reliable and credible evidence/information. Furthermore, the AIU stated that it expected to receive an English translation of the fingerprint analyses in due course.

39. On 19 May 2018, the AIU forwarded the translation of the fingerprint analyses to the QAF.

40. On 23 May 2018, the QAF provided the AIU with the relevant case documents and all the material it intended to send to the Athlete, including the Notice of Charge.

41. On 24 May 2018, the AIU confirmed that it had no objections with the enclosures being included in the Notice of Charge.

42. On 26 May 2018, the QAF sent the Notice of Charge to the Athlete, outlining the relevant factual background and the doping charges against him. Furthermore, it invited the Athlete to provide his written comments by 8 June 2018.

43. On 5 June 2018, the Athlete provided his written comments that read as follows:

> *"[...] First and foremost I would like to strongly reject the commission of any anti-doping rule violation.*
>
> *I will therefore proceed with an explanation of the circumstances surrounding the present matter as follows:*
>
> *a. I have a third degree cut on my right tendon since 17 May 2016 and for that reason, I have decided to travel to Spain with the Qatari National Team, directed by Mr. Jama Aden, to join an athlete's training camp in order to prepare myself for the Olympics in Rio de Janeiro. Unfortunately, my tendon injury did not allow me to start the training as expected. On 20 June I had my first training session to evaluate my physical condition and to decide what would be the adequate training plan for my full recovery.*
>
> *b. Moreover, I would like to highlight that I was submitted to several doping control tests including one dated 20 June 2016, the day of the Spanish Police raid, and no prohibited substances of any type were found in my organism.*
>
> *c. With regards to the vials found by the Spanish Police raid in my hotel room (number 120), it is extremely important to clarify that I shared that hotel room with another Athlete, Mr. Yaser Ba-Garab who also had many items and belongings in the room. This fact has been accepted and confined by the police and acknowledged by all the witnesses that were inquired in this respect.*
>
> *d. During the raid, the police did not establish any distinction or requested me to identify my own properties inside the room. Mr. Yaser Ba-Garab was not present and the police considered that everything contained in the room was mine. As it was confirmed by the police, their understanding was that that room was mine and that nobody else was sleeping there.*

e. Mr. Yaser Ba-Garab is a young athlete (18 years old) that expressly admitted to me and to other athletes of the team that the prohibited substances found in our room were of his property. He changed his version when he spoke to the police and to the judge because he was scared of the consequences and because the Police told him that I had admitted the culpability as he expressly recognized.

f. Besides staying in a shared hotel room, it is important to remark that Mr. Yaser Ba-Garab and I were not the only persons with access to our room. As it happens in any other athlete's training camp, it is common and usual that many athletes of the team -or even from other teams- visit the room and hang there without even asking. In fact, there were some occasions that I arrived to the room and found people that I did not know well. This fact can be corroborated by many witnesses.

g. In this sense, and considering that several people had access to our room, I could not possibly know or take responsibility of the content or natures of all the bags kept there apart from mine or even conceive to whom they belonged to.

h. I am a professional athlete for more than 7 years and I have passed more than a hundred anti-doping tests without ever missing one or testing positive.

i. Consequently, I hereby deny (i) the property of the vials of EPOPTIN found by the Spanish Police, following a police raid dated 20 June 2016 and (ii) any violation of the IAAF or any anti-doping rule, in particular of Rules 32.2 (b), 32.2 (f) or 37.12 as perstated in your correspondence.

j. I am at the disposal of the IAAF to assist in any way that is required in order to clarify this unfortunate and harming situation.

In light of the foregoing, I respectfully request to the Anti-Doping Administrator that no provisional suspension be imposed on me in the present case.

[...]

Dear Sir,

First and foremost, I would like to begin by acknowledging there was various EPO found in my hotel room here in Sabadell, Spain.

However, I am not alone in the hotel room. My roommate is Yemeni born Yasser Salem who is not eligible to compete due to nationality change, transferring to Qatar. The boy is 18 years old and has changed his story multiple times; whereby he began by saying the 'vitamins' in the room were his and reassured an overwhelming majority of the team that they were only vitamins.

Not less than a day later, Yasser went to the police station and said that the items did not belong to him. He came back to the hotel with a different

story to the athletes and claiming to have admitted that he possessed the 'vitamins'.

Notwithstanding this, Yasser changed his story numerous times to numerous athletes. While I was away, the police came to Yasser and manipulated him saying that I had already admitted the EPO was mine and agreed on the suspension. That being said, Yasser changed his story once again to fit the situation thinking this would be beneficial to him and myself.
Upon discussing the issue with him, he told me that he was scared of the consequences he would have to face if he admitted the EPO belonged to him but would admit that the EPO belonged to him in court, this was once again changed.
I would like to inform you that I have been a professional athlete for 7 years and I know the consequences I would have to pay if I took or even possessed any sort of EPO and furthermore, I have been under doping control since 2014 and I have never missed a test or tested positive in all international competitions and out of competition testing.
To conclude, the case is still ongoing in court, considering Yasser once again changed his story to court on July 6th.
Hope above will be sufficient to avoid a provisional suspension, considering all circumstances. (((Moreover the day iaaf came my room they been having a video camera and they was typing everything from zero until they finish from the room search and that can be a clear good proof to show all the search was happened m my room)))
[...]"

44. On 23 July 2018, the QAF held a hearing which the IAAF was also invited to attend. The content of the hearing was summarised in the QAF decision of the Disciplinary Tribunal of the Qatar Athletics Federation ("the DTQAF") dated 31 August 2018 as follows:

"At the outset of the Hearing, the Athlete confirmed that he had no objection to the composition of the QAF Disciplinary Tribunal and to how the proceedings had been conducted so far. He also confirmed that he had received and understood the Memorandum and the charges brought against him.

With regard to the search of the hotel room, the Athlete explained that on the relevant day, he was taken directly from the racetrack to the hotel.

When he arrived to the reception with Spanish-speaking police officers, he was asked which room was registered under his name. He stated that around five rooms may have been registered under his name. Since he was the oldest athlete in the entire training group, it was usual that in training camps, he would take responsibility at the hotel and sign the entry forms, in particular also for younger athletes.

The Athlete insisted that he never wanted to create any confusion about his room and/or that he mislead the police. He stated that he was very clear to the police that room no. 211 was not his room but that he was residing in room 120.

The Athlete also stated that for several years already, whenever staying for training at the Arrahona Hotel, he always uses the room 120. Most of the doping tests he underwent took place in this room. Accordingly, he had no reason to lie about his room number, since it was clearly known to anybody wanting to test him for doping.

With regard to the search of room 120, the Athlete explained that from the beginning, a person with a video camera was present, recording the entire search.

The Athlete described that there were several bags in the room, which belonged to him, whereas other bags belonged Yasser Salem, with whom he shared the room. The Athlete stated that when asked where his bags were, he pointed to the three bags which were his.
However, the police officers emptied all the bags they found in the room (i.e. including the ones not belonging to the Athlete) onto the bed or table, and they also put all other belongings they found onto the bed.

The police officers found photos of the Athlete in the bedside table and they also put them next to the other items. Afterwards, pictures were taken of all the items, together with the Athlete's photographs.

When asked about who had access to room 120, the Athlete stated that in principle, it was his room and the room of his colleague Yasser Salem. However, the Athlete also explained that whenever a group of athletes goes to a training camp, anybody can enter each other's rooms. Most of the athletes know each other, and sometimes they would even sleep in different rooms.

As such, room no. 120 was in essence open for everybody, and all athletes who wanted to enter could simply go to reception and ask for the key. There were indeed athletes from many different countries who often came to his room, e.g. athletes from Egypt, Saudi Arabia, Djibouti, Ethiopia or Sudan.

In addition, the Athlete explained that room no. 120 was on the ground floor, with a small balcony/terrace, which used to be always open because many athletes were hanging their clothes up there for drying.

When asked about why he left the hotel late at night with the Coach, the Athlete explained as follows: On one occasion, when he was about to leave the hotel, the Coach approached him and said 'let us walk

together'. The Coach then threw away some stuff. However, the Athlete did not know what the Coach was throwing away, as he was not interested in this at all.

When the search of the room of the coach was apparently finished, the police officers started to search his room, which was room no. 120.

The Athlete left the hotel alone in the evening, he explained that since he was still in recovery, his physiotherapist had advised him to go for a small footing in the evening before going to bed. The physiotherapist had also shown him certain easy exercises, which he should perform during his evening walks.

Finally, the Athlete insisted that he had already been tested on numerous occasions, and that all tests were of course negative. He insisted that he never took any banned substances, and that he was tested also on the day of the hotel search, and 4 days prior to this.

The Athlete also mentioned that during this stay in Spain, it was the first time for him after a long injury that he only did some light exercises with a physiotherapist on the running track, and that it would make no sense at all to take any doping for this purpose.
[...]"

45. On 31 August 2018, the DTQAF rendered a decision acquitting the Athlete of any ADRV ("the Appealed Decision"). The operative part of the Appealed Decision reads as follows:

> *"1. The Athlete Musaeb Abdulrahman Bala is acquitted of all charges.*
>
> *2. The Athlete Musaeb Abdulrahman Bala shall not have to bear any costs related to these proceedings, except for his own costs.*
>
> *3. All other requests or motions are dismissed."*

46. With respect to the alleged possession of a Prohibited Substance and the alleged use of a Prohibited Substance, the Appealed Decision reads – *inter alia* – as follows:

> *"[...]*
>
> ***b. Possession of a Prohibited Substance***
>
> *Rule 32.2(f)(i) ADR specifies that the Possession of a Prohibited Substance out-of-competition of any Prohibited Substance or Prohibited Method that is prohibited out-of-competition shall constitute an anti-doping rule violation. The definition of Possession provides for a variety of circumstances in which the anti- doping rule violation may be committed, including by actual physical possession, through constructive possession and/or via possession by purchase.*

In the present matter, it is undisputed that a Prohibited Substance was found in a hotel room, in which the Athlete resided, together with another athlete.

The question to be answered by the Tribunal is thus whether, to its comfortable satisfaction, this qualifies as possession by the Athlete of the Prohibited Substance.

(i) Preliminary Observations

The Tribunal notes that the Memorandum very strongly relies on the information provided by the relevant police reports.

The Tribunal agrees, in principle, that such information and reports normally constitute very reliable and credible evidence and it understands the reliance of the Memorandum on these reports.

However, in the present matter, and after a thorough analysis of all materials and correspondence on file and the further investigations carried out by QAF, the Tribunal cannot ignore certain misgivings it has towards several aspects of these reports. Indeed, the Tribunal is surprised by various factors, in particular with how certain important facts were, or rather were not, included in the information provided by the Spanish police.

For instance, the Tribunal notes that a fingerprint analysis was carried out already on 22 August 2016, which concluded that none of the fingerprints on the items found in room 120 could be identified as fingerprints of the Athlete. However, this information was not included in any of the relevant police reports and in fact only provided upon request by QAF.

Similarly, the Tribunal has misgivings towards the fact that the relevant police reports expressly mention that a personal ID card of the Athlete was found in a bag, together with the Prohibited Substances. Indeed, Enclosure No. 4 to the Memorandum notes that 'When asked via the interpreter [the Athlete] stated that what had been found in the room did not belong to him, despite having been found in a suitcase containing medication, photographs and ***ID cards belonging to Mr Bala****.' (emphasis added).*

Only once QAF noted the discrepancy to the pictures provided by the police, this Statement was eventually corrected as a 'mistake' and it was confirmed that no ID Card of the Athlete was found together with the Prohibited Substances.

The Tribunal notes, and understands to a certain extent, that according to the police reports, there were strong suspicions against the Ath-

lete because he left the Arrahona Hotel alone late in the evening. However, the Tribunal also notes that whenever the Athlete was personally followed or observed, he never disposed any prohibited material, or similar.

The Tribunal takes the view that from the fact alone that the Athlete, on one single occasion, accompanied the Coach, when the latter seemingly disposed of prohibited materials, no negative inference can be drawn to the detriment of the Athlete and/or the Athlete's credibility. At the same time, the Tribunal considers that the police reports indicate a strong suspicion against the Athlete based on the fact that he was observed together with the Coach.

As such, the Tribunal does not share this general suspicion.

In the Tribunal's view, the Athlete also gave a credible explanation why he went for walks / footings outside of the Arrahona Hotel at a rather late point in time and why he made rather particular patterns of movements (i.e. the exercised performed upon instructions of the Athlete's physiotherapist). Also in this respect, the Tribunal has no particular suspicion towards the Athlete, although the Tribunal understands that such movements or the fact that the Athlete left the hotel by himself late at night, might look suspicious to an outside observer.

In addition, the Tribunal notes that the Athlete maintained from the very beginning that during the search of his hotel room, a person with a camera was present and recording the search. The Athlete insisted repeatedly on obtaining this video footage, and the QAF Disciplinary Tribunal does not see a reason why the Athlete would have made an untruthful statement in this respect.

The Tribunal is rather surprised that apparently, video footage would exist from the searching of other hotel rooms, whereas no such footage was apparently made from the searching of room no. 120.

Overall, therefore, the QAF Disciplinary Tribunal has certain reservations whether the observations made by the police with regard to the Athlete were indeed objective and to the required standard of diligence at all times.

Nevertheless, the question for the QAF Disciplinary Tribunal to determine remains whether, based on the facts the Tribunal considers as established, an anti-doping rule violation of the Athlete is proven to the Tribunal's comfortable satisfaction.

ii. Prohibited Substance in Room 120

The Tribunal notes that it is undisputed that a Prohibited Substance was found in room 120.

The Tribunal excludes, however, that the Athlete had direct physical possession of the Prohibited Substance. This is not alleged in the Memorandum, and the Tribunal feels comforted in its findings by the fingerprint analysis, i.e. by the fact that no fingerprints of the Athlete were found on the relevant materials.

However, the question remains whether constructive possession by the Athlete can be established.

According to the definitions provided by the World Anti-Doping Code, constructive possession exists in the following circumstances:

> *"if the Person has exclusive control or intends to exercise control over the Prohibited Substance or Prohibited Method or the premises in which a Prohibited Substance or Prohibited Method exists";*
>
> *"however. (...) if the Person does not have exclusive control over the Prohibited Substance or Prohibited Method or the premises in which a Prohibited Substance or Prohibited Method exists, constructive Possession shall only be found if the Person knew about the presence of the Prohibited Substance or Prohibited Method and intended to exercise control over it."*

In other words, if it is established that the Athlete had exclusive control over room no. 120 or, if this was not the case, if he knew about the presence of the Prohibited Substances in room 120, this would suffice for the Tribunal to determine that the Athlete had (constructive) possession thereof.

The Tribunal notes that the Athlete did not exercise exclusive control over the premises (room no. 120) in which the Prohibited Substance was found. It is undisputed that another athlete (Yasser Salem) shared the room with the Athlete. This is confirmed, inter alia, by the relevant police documentation, e.g. by the testimony given by Yasser Salem to the local police (Dispatch record 453196/2016, attached to the Memorandum as Exhibit 10).

However, from the relevant police reports, it appears that the police merely assumed that all belongings found in the room 120 belonged to the Athlete. This can be noted, for example, from the handwritten police report (attached to the Memorandum as Exhibit 4) and from the extract of the raid report (attached to the Memorandum as Exhibit 6), which expressly states the following: "the entry and search of room number 120 of the Hotel Arrahona in Sabadell was initiated, which corresponded to Musaeb Abdelrahman BALLA, with Qatari passport No. 01098009".

In addition, the Tribunal is mindful of the fact that in athlete training camps, rooms are often de facto shared and/or used quite freely among the athletes.

Moreover, the Tribunal took note of the declarations of the Athlete at the Hearing, who described in detail how the access to room 120 was indiscriminately very free to many Athletes. Although the Tribunal notes that the Athlete has a strong own interest in making such statements, and although the Tribunal does not attach a strong evidentiary weight to those statements, it considered them as generally credible.

All of this furthermore puts into question whether one can speak of "exclusive control" by the Athlete (and/or Yasser Salem).

Moreover, also in this respect, the QAF Disciplinary Tribunal has certain reservations towards the conclusions drawn in the relevant police reports. In particular, it appears that, although it was undisputed that an additional athlete was sharing the room with the Athlete, it seems that all the belongings found in this room were indiscriminately allocated to the Athlete, as if none of the items could also belong to the additional athlete Yasser Salem.

On the other hand, the Tribunal notes that declarations made by the Athlete with regard to his room number indeed seem to have been unclear or, potentially, an attempt to mislead the police by the Athlete.

While the Tribunal cannot assess with certainty whether the Athlete deliberately gave wrong information about the number of his room, several documents indicate that indeed, he had initially stated that his room number was 211 (e.g. the handwritten report of the entry and search proceedings, enclosed as Exhibit 4 to the Memorandum).

Accordingly, the Tribunal has certain reservations towards the credibility of the Athlete in this respect and about the possible underlying intentions of such a wrong statement.

iii. Conclusion

After carefully weighing the elements set out above, the Members of the Tribunal come to the unanimous conclusion that they are not comfortably satisfied that, through constructive possession, the Athlete would have violated Rule 32.2(f)(i) ADR.

While the Tribunal deems the declarations of the Athlete concerning his room number unclear and questionable, the Tribunal is of the view that in spite of this, (i) it could not be established that the Athlete had exclusive control over room 120, (ii) it strongly appears that no differentiation was made between belongings of the Athlete and of Yasser

Salem and (iii) it could not be established that the Athlete had knowledge of the Prohibited Substances in room 120.

Moreover, the Tribunal bears in mind the seriousness of the reproached violation and the otherwise applicable sanction, i.e. a possible suspension of 4 years, which would clearly require that the Tribunal would be comfortably satisfied of the alleged anti-doping rule violations.

For the reasons mentioned, the Tribunal concludes that it did not reach this evidentiary threshold.

[...]"

47. By email dated 7 September 2018, the IAAF requested the QAF to provide it with the full case file in order to decide whether to exercise its right to appeal.

48. On 16 September 2018, the QAF sent the entire case file to the IAAF.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

49. On 31 October 2018, the Appellant filed an appeal with the Court of Arbitration for Sport (hereinafter referred to as "the CAS") against the Respondents relating to the Appealed Decision, nominating Mr Ken Lalo as arbitrator.

50. By an email dated 9 November 2018, the Appellant requested a 5 days extension of the time limit until 20 November 2018 to file its Appeal Brief.

51. On 12 November 2018, that request was granted pursuant to Article R32.2 of the Code of Sports-related Arbitration (hereinafter referred to as "the CAS Code").

52. By an email of 20 November 2018, the Appellant requested an extension of the time limit until 23 November 2018 to file the Appeal Brief. On the same day, the CAS Court Office invited the Respondents to state by 21 November 2018 whether they agreed to such extension.

53. On 21 November 2018, the First Respondent gave notice that it would be represented by Mr Jan Kleiner and Mr Marc Cavaliero, attorneys-at-law at Kleiner and Cavaliero AG in Zurich, Switzerland, and agreed to the Appellant's request for an extension of the time limit.

54. On 22 November 2018, the CAS Court Office noted that the First Respondent had agreed to the Appellant's request for an extension and that the Second Respondent had not objected to it. Accordingly, the Appellant's deadline to file its Appeal Brief was extended until 23 November 2018.

55. On 23 November 2018, the Appellant filed its Appeal Brief.

56. On 26 November 2018, the First Respondent informed the CAS Court Office that it had forwarded a copy of the letter of 9 November 2018 to the Second Respondent and provided the CAS Court Office with Second Respondent's email address.

57. On the same date, the Second Respondent nominated Mr Mark Hovell as an arbitrator.

58. On 27 November 2018, the CAS Court Office invited the Respondents to submit the postal address of the Second Respondent and invited the First Respondent to inform the CAS Court Office whether it agreed to the nomination of Mr Mark Hovell as an arbitrator.

59. On the same date, the Appellant informed the CAS Court Office that the personal address of the Second Respondent was unknown to it.

60. By email of 29 November 2018, the Second Respondent requested the CAS Court Office to submit any correspondence addressed to him via the First Respondent.

61. On 30 November 2018, the First Respondent agreed with the nomination of Mr Mark Hovell as arbitrator in these proceedings.

62. On 30 November 2018, pursuant to Article R55 of the CAS Code, the CAS Court Office invited the Respondents to submit an Answer within 20 days upon receipt of this letter and to forward the documents to the Second Respondent without delay; stated that the time-limit for filing the Answers would start running, for both Respondents, from delivery of the Appeal Brief to the First Respondent; and acknowledged that the Respondents had jointly nominated Mr Mark Hovell as arbitrator.

63. On 3 December 2018, the Second Respondent informed the CAS Court Office that Mr Claude Ramoni of Libra Law SA in Lausanne, Switzerland would be acting as his counsel.

64. By a letter dated 5 December 2018, the CAS Court Office invited the Second Respondent to provide it with a power of attorney until 10 December 2018; pointed out that pursuant to Rule 42.15 of the 2016-2017 IAAF ADR, the Respondents' deadline to submit their respective Answers was in fact 30 days from receipt of the CAS letter of 30 November 2018; and advised the Second Appellant that his request for further information regarding Mr Ken Lalo had been forwarded to the latter.

65. On the same date, the Second Respondent's counsel provided the requested power of attorney and asked the CAS Court Office to forward a copy of the Appeal Brief and exhibits to him and stated that the period to submit his Answer would run only from the date of receipt of the Appeal Brief by him.

66. By a letter dated 6 December 2018, the CAS Court Office advised the Second Respondent that following his previous request, the hard copies of the Appeal Brief together with the exhibits had been sent to the QAF and that the time limit for the filing of the Answers would start running, for both Respondents, from delivery of the Appeal Brief to the QAF (letter dated 2 December 2018). Notwithstanding the above, the CAS Court Office enclosed a copy of the Appellant's Appeal Brief, together with the exhibits for the counsels' attention.

67. On 7 December 2018, the CAS Court Office informed the Parties that Mr Ken Lalo had declined to serve as an arbitrator in this procedure. Therefore, the CAS Court Office invited the Appellant to nominate another arbitrator within 10 days of receipt of this letter.

68. On the same date, the CAS Court Office informed the Parties that Mr Mark Hovell had accepted his nomination and disclosed some information in his form.

69. On 10 December 2018, the Respondents requested an extension of the deadline to file their Answers until 9 January 2019.

70. On 11 December 2018, the Appellant nominated Mr Murray Rosen QC as an arbitrator and agreed to Respondents' request for an extension of the deadline.

71. On 12 December 2018, the Appellant agreed to the extension of the deadline for the Answers.

72. On the same date, the CAS Court Office granted the Respondents' request for an extension of deadline to file the Answers until 9 January 2019.

73. On 13 December 2018, the CAS Court Office informed the Parties that Mr Rosen QC had accepted his nomination.

74. By letter of 18 December 2018, the Second Respondent informed the CAS Court Office that he would not pay his share of the advance of costs.

75. By a letter dated 24 December 2018, the Second Respondent requested the Appellant to provide some additional documents and information pursuant to Article R43.3 of the CAS Code.

76. On 27 December 2018, the CAS Court Office invited the Appellant to comment on the Second Respondent's request for document production until 3 January 2019.

77. By an email of 28 December 2018, the Appellant requested an extension of its deadline to submit its position on the Second Respondent's document production request until 9 January 2019. The extension was granted.

78. By a letter of 4 January 2019, the First Respondent noted that the Second Respondent's request for documentation production was still pending and requested a new deadline to provide its Answer to the Appeal Brief once the requested documents were produced and/or a decision by the Panel in that respect was rendered.

79. By a letter of 7 January 2019, the Second Respondent supported the First Respondent's request and also requested that his deadline to submit an Answer be suspended until the requested documents were produced and/or a decision was rendered by the Panel.

80. On 8 January 2019, the CAS Court Office invited the Appellant to provide its position on the Respondents' requests by 14 January 2019 and stated that the time-limit for the filing of the Answer was suspended as from 4 January 2019 for the First Respondent and as from 7 January 2019 for the Second Respondent.

81. By a letter of 9 January 2019, the Appellant submitted its observations to the Second Respondent's requests and objected to any further suspension or extension of the deadline to file the Answers.

82. By a letter of 17 January 2019, the CAS Court Office, on behalf of the President of the CAS Appeals Arbitration Division, informed the Parties that the Panel appointed to decide the dispute at hand was constituted as follows:

President:	Prof Dr Ulrich Haas, Professor, Zurich, Switzerland
Arbitrators:	Mr Murray Rosen QC, Barrister in London, United Kingdom
	Mr Mark Hovell, Solicitor, Manchester, United Kingdom

83. On 21 January 2019, the CAS Court Office informed the Parties that the President of the Appeals Arbitration Division had decided to refer the question whether or not a new deadline should be granted with respect to the Answers due by the Respondents to the Panel. In the meantime, the CAS Court Office stated that the deadlines for the Respondents to submit their respective Answers remained suspended.

84. By a letter of 5 February 2019, the CAS Court Office informed the Parties of the Panel's decision with respect to the Second Respondent's request for document production and that full reasons would be provided in the final Award and granted the Respondents a deadline of 20 days from receipt of this letter to file their respective Answers with the CAS Court Office.

85. By a letter dated 6 February 2019, the CAS Court Office informed the Parties that Ms Amrei Keller had been appointed to assist the Panel as an ad-hoc clerk.

86. By a letter of 18 February 2018, the Second Respondent submitted an application to bifurcate the procedure and requested that the deadline to file his Answer on the merits be stayed until the Panel issues a decision on the above request.

87. On 21 February 2019, the CAS Court Office invited the Appellant and the First Respondent to submit their positions on the Second Respondent's request for bifurcation within 7 days from receipt of that letter and to state whether or not they agreed with Second Respondent's request to suspend the deadline to file his Answer until 25 February 2019.

88. On 22 February 2019, the Appellant objected to Second Respondent's application for bifurcation.

89. On the same date, the First Respondent submitted that it did not object to the suspension of deadline as requested by Second Respondent and requested that its deadline to file its Answer be immediately suspended and that a new deadline to file its Answer be set once the Panel has rendered a decision on the Second Respondent's request for bifurcation.

90. Also on the same date, the Second Respondent applied for a 10 days extension of the deadline to file his Answer.

91. On 25 February 2019, the CAS Court Office informed the Parties that the deadline for the Respondents to file their respective Answers would be temporarily suspended until further notice from the CAS Court Office.

92. By letter of the same date, the First Respondent stated that it had not received a reply to its letter of 22 February 2019 and requested therefore a short extension to file its Answer to the Appeal Brief until 3 March 2019.

93. By a letter of 1 March 2019, the CAS Court Office advised the Parties that the Second Respondent's request for bifurcation had been rejected and that the reasons for this procedural measure would be provided in the final Award and the First and Second Respondent were granted an extension of seven days to file their respective Answers.

94. By a letter dated 1 March 2019, the First Respondent supported the Second Respondent's request for bifurcation and stated that the deadline to comment on the Second Respondent's request to that effect had not yet elapsed. In addition, the letter made a request for unspecified provisional measures.

95. By a letter of 6 March 2019, the CAS Court Office informed the Parties that the First Respondent had been notified of the Second Respondent's request for bifurcation on 21 February 2019 and consequently, the Panel considered that the time limit for the First Respondent to submit its position on such request had elapsed on 28 February 2019, but the Panel could always reconsider procedural directions previously made and had done so in this case and found that when exercising the discretion accorded to it under the applicable provisions, it was not persuaded by the Respondents' arguments to bifurcate the proceedings. Furthermore, the CAS Court Office invited the First Respondent to specify its request for provisional measures contained in its letter dated 1 March 2019 by 11 March 2019.

96. On 8 March 2019, the First and the Second Respondent filed their Answers to the Appeal Brief.

97. By a letter of 11 March 2019, the First Respondent stated that its request for provisional measures contained in its letter dated 1 March 2018 had become moot and requested that a hearing be organised for the first possible date.

98. On 14 March 2019, the CAS Court Office acknowledged receipt of the Answers of First and Second Respondent and invited the Appellant to inform it by 21 March 2019 whether or not it preferred a hearing to be held in the present matter.

99. On 22 March 2019, the Appellant stated that it wished for a hearing be held.

100. On the same date, the CAS Court Office informed the Parties that the Panel would be available for a hearing on 20 May 2019. The First and Second Respondent confirmed their availabilities on the aforementioned date.

101. By letter of 29 March 2019, the Appellant requested an extension of the deadline to indicate its availability for a hearing until 5 April 2019. The extension was granted.

102. On 5 April 2019, the Appellant confirmed its availability for the hearing on 20 May 2019.

103. On 8 April 2019, the CAS Court Office informed the Parties that the hearing would be held on 20 May 2019 at 09:30 (Swiss time).

104. On 9 April 2019, the Appellant requested the CAS to send a confirmation to the Court that Mr Antonio Bolivar Troya, Court Clerk, had been called to testify at the hearing in these proceedings scheduled on 20 May 2019.

105. On 11 April 2019, the CAS Court Office sent the requested confirmation to the Court.

106. On 12 April 2019, the CAS Court Office requested that the Parties sign and return a copy of the Order of Procedure (hereinafter referred to as "the OoP") by 19 April 2019.

107. On the same date, the Second Respondent submitted that the following persons would attend the hearing:

- Mr Musaeb Abdulrahman Balla
- Mr Claude Ramoni, counsel
- Mrs Monia Karmass, counsel

108. On 15 April 2019, the Appellant returned a signed copy of the OoP and informed the CAS Court Office that the following persons would attend the hearing:

- Mr Huw Roberts, AIU
- a representative from the AIU
- Mr Ross Wenzel, counsel
- Mr Magnus Wallsten, counsel
- Mr Francesc Xavier Tarrés Camprécios, sergeant of the Spanish Police
- Corporal of the Spanish Police with police ID no. 3697 (via video-conference)
- Corporal of the Spanish Police with police ID no. 15303 (via video-conference)
- Mr Antonio de Campos Gutierrez, Expert AEPSAD (via video-conference)
- Mr Antonio Bolivar Troya, Court Clerk (via video-conference)
- a Spanish-English interpreter

109. On the same date, the CAS Court Office acknowledged the list of participants submitted by the Appellant and the Second Respondent.

110. On 17 April 2019, Second Respondent objected to the list of attendees submitted by the Appellant. He took issue with the fact that the policemen 3697 and 15303 were only referred to by ID no. and not by name. The Second Respondent declared that following the failure to submit the names of the witnesses, the witness statements of the respective policemen are inadmissible and should be removed from the case file.

111. On the same date, First Respondent informed that it would be represented by Mr Jan Kleiner at the hearing.

112. By its letter dated 18 April 2019, the First Respondent returned a sigend copy of the OoP. Furthermore, it advised the CAS Court Office that the *"First Respondent disputes the admissibility of the Appeal and it maintaines all its obejctions raised so far"*.

113. On 18 April 2018, the CAS Court Office acknowledged the First Respondent's list of attendees and invited the Appellant to provide its comments on the Second Respondent's objection to the testimony of the policemen 3697 and 15303 by 23 April 2019.

114. On 23 April 2019, the Appellant submitted its comments on the Second Respondent's objections.

115. By letter of 25 April 2019, the CAS Court Office invited the Appellant to provide it with the relevent Spanish law provisions referred to in its letter dated 23 April 2019 translated into English. Furthermore, it invited the Appellant to submit pertinent evidence according to which the policemen were prevented from being identified by their names.

116. On 1 May 2019, the CAS Court Office – referring to the Appellant's Appeal Brief – invited it to confirm whether or not it wished to call Yaser Salam as a witness in these proceedings and to submit the name of the AIU representative and the name of the interpreter referred to in its letter of 15 April 2019 by 6 May 2019.

117. On 2 May 2019, the Appellant submitted its answer to the letter of the CAS Court of Office of 25 April 2019.

118. On 6 May 2019, the Appellant advised the CAS Court Office that it will not insist on calling Yaser Salam as a witness. Furthermore, it submitted the names of the representative of the AIU, Mrs Olympia Karavasili, and the name of the Spanish-English interpreter, Mrs Pilar Gil.

119. On 13 May 2019, the CAS Court Ofice informed that the Panel will decide the issue of the admissibility of the witnesses idenified by their ID-numbers at the hearing after hearing the Parties.

120. On 16 May 2019, the First Respondent submitted that the National Team Manager, Mr Khalid Rashid al Merri, would be present at the hearing.

121. The hearing was held on 20 May 2019 in Lausanne. Besides the members of the Panel, the ad hoc Clerk, Mrs Amrei Keller, and the Counsel of the CAS, Mrs Andrea Sherpa-Zimmermann, the following persons were present at the hearing:

The Appellant was represented by Mr Ross Wenzel, Mr Magnus Wallsten (both counsels for the Appellant) and Mrs Olympia Karavasili of the AIU. The First Respondent was represented by Mr Jan Kleiner (counsel for QAF) and Mr Khalid Rashid Al Merri, National Team Manager of the QAF. The Second Respondent was represented by Mr Claude Ramoni and Mrs Monia Karmass (both counsels for the Second Respondent) and the Athlete.

122. The following witnesses were heard on behalf of the Appellant:

- Mr Antonio Bolivar Troya, Court Clerk
- Mr Francesc Xavier Tarrés Camprécios, sergeant of the Spanish Police
- Corporal of the Spanish Police with police ID no. 3697
- Corporal of the Spanish Police with police ID no. 15303
- Mr Antonio de Campos Gutierrez, Expert AEPSAD

123. The Parties were given the opportunity in the hearing to present their cases, to make their submissions and arguments and to answer questions posed by the Panel. Upon closing the hearing, the Parties expressly stated that they had no objections in relation to their respective rights to be heard and that they had been treated equally in the proceedings, subject to the Second Respondent's maintaining his objections as to the admissibility of the testimony of the two policemen that were not identified by name (but only by their official police identification numbers ("TIP")).

IV. PARTIES' RESPECTIVE REQUESTS FOR RELIEF AND BASIC POSITIONS

124. This section of the award does not contain an exhaustive list of the Parties' contentions, its aim being to provide a summary of the substance of the Parties' main arguments. In considering and deciding upon the Parties' claims in this Award, the Panel has accounted for and carefully considered all of the submissions made and evidence adduced by the Parties, including allegations and arguments not mentioned in this section of the Award or in the discussion of the claims below.

A. The Appellant

125. On 31 October 2018, in its Statement of Appeal, and on 23 November 2018, in its Appeal Brief, the Appellant requested:

1. *"The Appeal of IAAF is admissible.*
2. *The decision dated 31 August 2018 rendered by the Qatar Athletics Federation Disciplinary Tribunal in the matter of Musaeb Abdulrahman Balla is set aside.*
3. *Musaeb Abdulrahman Balla is found to have committed an anti-doping rule violation.*
4. *Musaeb Abdulrahman Balla is sanctioned with a period of ineligibility of four years starting on the date on which the CAS award enters into force. Any period of provisional suspension effectively served by Musaeb Abdulrahman Balla before the entry into force of the CAS award shall be credited against the total period of ineligibility to be served."*

126. The Appellant's submissions on the admissibility of the appeal can be summarised as follows:

- (i) The appeal was admissible, because
  - The 2016-2017 IAAF ADR apply in the present case.

- The IAAF's Statement of Appeal was lodged within the deadline set forth under Rule 42.15 of 2016-2017 IAAF ADR, i.e. within 45 days from the receipt of the complete case file.
- The IAAF is entitled to request the complete case file from the Anti-Doping Organization ("ADO") that was responsible for carrying out the hearing process and then calculate its deadline from the receipt of that case file.
- It is true that the 2018 IAAF Anti-Doping Rules (hereinafter "2018 IAAF ADR") provide for a shorter deadline to file an appeal. However, the 2018 IAAF ADR clearly provide that in the case at hand the deadlines for appeal follow the 2016-2017 IAAF ADR. In addition, the principle of *lex mitior* does not apply to procedural matters such as appeal deadlines.

127. The Appellant's submissions on the merits can be summarised in their main parts as follows:

- (i) The Athlete attempted to deceive the officials conducting the raid by stating that his hotel room no. was 211 instead of 120.
  - He did so, because he knew that his bag contained compromising items such as EPOTIN. It is for this reason that he claimed – on two different ocassions – that he was residing in a different room. In doing so he hoped that his bags were not being searched.
  - A further sign of attempted deception can be found in the police Notification Form in which the Athlete – wrongly – indicated that his roommate was Mr Abu Bakar Abdala. It is only later that the Athlete admitted that his roommate was Yaser Salam.
- (ii) The EPOTIN was found in the Athlete's bag in his hotel room no. 120 in the Hotel. This is evidenced by the fact that
  - The photographs of the Athlete were found in the bag containing the EPOTIN.
  - Furthermore, the bag also contained syringes that the Athete admitted having used.
  - The Athlete admitted that the photograps were from his plastic bag.
- (iii) The Athlete's explanations were contradictory and designed to hide the true facts.
  - Initially, the Athlete denied *vis-à-vis* the Spanish Police that he went for a walk with the Coach on 2 June 2016. At a later stage, the Athlete no longer recalled whether or not he had gone on a walk with the Coach.
  - According to the agents of the Spanish Police, the Athlete initially claimed that he had left his passport at the embassy. When being interrogated by the Court he asserted that he left his passport in the safe of his hotel room when going out for training.

- When being interrogated before the Court, the Athlete claimed that he was not able to see anything during the search of his hotel room, because he was made to stand at the side. However, in the hearing before the DTQAF the Athlete submitted to have identified his belongings in the room to the officers conducting the search.
- At the outset of the hearing before the DTQAF, the Athlete stated that the police officers found the photographs of him in the bedside table and then put them next to other items found in the bags. However, before the Court the Athlete had told a different version of events. According thereto, the photographs had been found in his bag.

- (iv) In order to qualify the Athlete's behaviour as an ADRV it is not necessary to have actual possession of a Prohibited Substance or Method. Instead, it suffices that the Athlete has control of the Prohibited Substance or Method or of the premises, in which the same are located. Even the sheer knowledge of the presence of the Prohibited Substance or Method in the room and the intent to exercise control over the same qualifies as Possession within the meaning of the IAAF ADR.
- (v) The AIU submits that the Athlete remained suspended since 31 October 2018. It *"is willing to accept that the effective date of the re-imposed suspension is 31 October 2018 as opposed to the date of this correspondence. [...]"*

B. The First Respondent

128. In its Answer dated 8 March 2019 the First Respondent filed the following prayers for relief:

> "[...]
>
> *Prayer 1: The Appeal shall be declared inadmissible.*
>
> *Subsidiary to Prayer 1:*
> *Prayer 1A: The Appeal shall be rejected and the decision under Appeal shall be confirmed.*
>
> *Prayer2: IAAF shall be ordered to bear the costs of the arbitration and it shall be ordered to contribute to the legal fees incurred by First Respondent at an amount of CHF 20,000."*

129. The First Respondent's submissions on the admissibility of the appeal can be summarised in their main parts as follows:

- (i) The appeal is manifestly late under the applicable rules.
- (ii) The 2016-2017 IAAF ADR are not applicable to the case at hand. Instead, the 2018 IAAF ADR apply. Rule 13.7 of the 2018 IAAF ADR provides for a deadline of 30 days to file an appeal with the CAS.
- (iii) The 2018 IAAF ADR are applicable because of the principle of *lex mitior*:

- The shorter deadline for appeal contained in the 2018 IAAF ADR is more favourable than the 2016-2017 IAAF ADR to the accused Athlete.
- CAS case law as well as the jurisprudence of the Swiss Federal Tribunal confirms that the principle of *lex mitior* applies also to Appeal Arbitration Procedures.
- The relevance of the *lex mitior principle* also in the context of procedural matters is confirmed by Rule 21.3 of the 2018 IAAF ADR.

- (iv) The 2018 IAAF ADR are also applicable, because of the IAAF's behaviour throughout these proceedings:
  - The IAAF acted at all relevant times *vis-à-vis* the DTQAF or the First Respondent through detailed instructions from the AIU (and not the IAAF). The entire proceedings were initiated by the AIU and based on the Memorandum drafted by the AIU.
  - The AIU has remained in control of these proceedings until today. This is evidenced – *inter alia* – by a letter sent directly and exclusively by the AIU in reply to a request from Second Respondent on 22 February 2019.
  - However, according to the 2016-2017 IAAF ADR the AIU did not even exist. The AIU was only created with the entry into force of the 2018 IAAF ADR.
  - Therefore, in light of the involvement of the AIU in this case, the Appellant simply cannot argue today that the 2016-2017 IAAF ADR apply.
- (v) When the QAF notified the case file to the Appellant on 16 September 2018, the Appellant had already – for a long time – been in possession of all relevant documents. At the latest with the notification of the Appealed Decision on 2 September 2018, Appellant had all the relevant information pertaining to this case. Accordingly, the *dies a quo* to calculate the Appellant's deadline to file the appeal is the date of receipt of the Appealed Decision, i.e. 2 September 2018. Consequently, the appeal of the IAAF dated 31 October 2018 was filed late and is, thus, inadmissible.

130. The First Respondent's submissions on the merits can be summarised in their main parts as follows:

- (i) The work of the Spanish Police was seriously flawed.
- (ii) One of the key evidentiary elements put forward against the Athlete is that Prohibited Substances were found in a bag that allegedly belonged to the Athlete. The assumption that the bag belonged to the Athlete was based on the photograps of the Athlete that were allegedly found in the bag:
  - However, it was unclear whether or not the photographs were indeed found in the same bag as the Prohibited Substances.
  - The Spanish Police ignored the fact that the Athlete was not the only occupant of the hotel room no. 120. They did not determine which bag

belonged to which athlete. The Spanish Police failed to ask the Athlete to identify his property/bags. Instead, the Spanish Police assumed that everything they found in the hotel room belonged to the Athlete.

- (iii) In athlete training camps, rooms are often *de facto* shared freely among different athletes. Thus, a variety of people had access to the Athlete's hotel room.
- (iv) The AIU Memorandum was exclusively based on the investigations and reports drafted by the Spanish Police. Since the latter were flawed, the AIU Memorandum cannot be relied upon either. In particular, the First Respondent claimed that:
    - The Spanish Police tried to hide the conclusion of the fingerprint anaylsis from the Athlete and the QAF.
    - The Court Clerk Minutes contained incorrect information It stated that "ID cards" of the Athlete were found together with the Prohibited Substances in the bags. This information was wrong.
    - When asking for the video recordings of the police search of the Athlete's hotel room, the Athlete and the QAF were informed that "no such video existed".
    - However, there were partial video clips of the evidence found in the hotel room no. 120. The pertinent parts of these video clips seem to have been edited out. In particular, there was no video evidencing where the Athlete's photograhs were discovered, and whether or not they were found in the same bag as the Prohibited Substances.
- (v) There was no evidence for the Athlete's direct or constructive possession of the Prohibited Substances.
- (vi) Furthermore, there was no evidence to charge the Athlete with the Use, Attempted Use and/or the Administration of a Prohibited Substances.
- (vii) The IAAF bore the responsibility to diligently carry out investigations into alleged ADRVs. The IAAF is responsible for ensuring that if such investigations are carried out, in particular if supported by local law enforcement authorities, they result in the required proof against the Athlete.
- (viii) The parallel Criminal proceedings against the Athlete in Spain were first suspended and then subsequently closed, because of insufficient proof that the Athlete was involved in any wrongdoings.
- (ix) It was the DTQAF's understanding that once it rendered the Appealed Decision the Athlete was no longer provisionally suspended.

C. The Second Respondent

131. In its Answer dated 8 March 2019 the Second Respondent filed the following prayers for relief:

> *"I. The Statement of Appeal filed by IAAF in the procedure CAS 2018/A/5989 is late;*
>
> *II. The Appeal filed by IAAF in the case CAS 2018/A/5989 is dismissed;*

III. The CAS does not have jurisdiction to entertain the appeal in the case CAS 2018/A/5989;

IV. The QAF decision dated 31 August 2018 is confirmed;

V. The provisional suspension imposed on Musaeb Abdulrahman Balla is lifted with immediate effect;

VI. All costs of the CAS procedure shall be paid by the IAAF;

VII. The IAAF shall be ordered to pay to Mr Musaeb Abdulrahman Balla a contribution towards his legal and other costs incurred within the framework of these proceedings, in an amount to be determined at the discretion of the Panel, which will be specified at a later stage of the procedure."

132. The Second Respondent's submissions on the admissibility of the appeal can be summarised in essence as follows:

- (i) The Appealed Decision was sent to the Athlete, IAAF and WADA on 2 September 2018. The IAAF filed its Statement of Appeal with the CAS on 31 October 2018, i.e. 58 days after the receipt of the Appealed Decision.
- (ii) According to the legal principle *tempus regit actum* laws and rules relating to procedural matters apply immediately upon entering into force and regardless of when the facts occurred. Therefore, the case should be governed by procedural rules under the 2018 IAAF ADR.
- (iii) The case at hand is governed by the 2018 IAAF ADR. According to Rule 13.7 2018 IAAF ADR the deadline for filing an appeal with CAS shall be 30 days from the date of receipt of the decision in question by the appealing party. Consequently, the appeal was filed late.
- (iv) Whilst Rule 21.3 2018 IAAF ADR provides that procedural matters relating to the case of the Appellant are governed by the 2016-2017 IAAF ADR, since the alleged ADR dates back to May/June 2016, the same provision specifies that the application of the 2016-2017 IAAF ADR is subject to the principle of *lex mitior:*
    - The reference in Rule 21.3 2018 IAAF ADR to the principle of *lex mitior* is not restricted to "substantive matters". On the contrary, the principle of *lex mitior* is meant to apply "notwithstanding the foregoing". Consequently, the principle of *lex mitior* applies – according to the 2018 IAAF ADR irrespective of the (explicit) transitional rules. The issue as to whether the principle of *lex mitior* only applies to the "applicable offence and sanctions" or also applies to other regulations, such as procedural matters, is "*debatable. In any case, according to the CAS jurisprudence, the application of said principle beyond the scope of sanctions and offences is clearly not excluded.*"

- In application of the principle *contra proferentem* the CAS has to interpret Rule 21.3 2018 IAAF ADR in a broad sense, i.e. that the principle applies to both, the substantive and the procedural law.
- It is in the interest of the Athlete – who has been cleared from any ADRV by the QAF – that a possible appeal by IAAF be filed as swiftly as possible, implying that the new regulations providing for a 30-day deadline for appeal are more favourable to the Athlete than the previous regulations.

- (v) Irrespective of the principle of *lex mitior*, the 2018 IAAF ADR apply, because these were the provisions applied by the IAAF:
  - The AIU was involved in all steps of the disciplinary proceedings before the QAF since the start.
  - The proceedings were *de facto* conducted in accordance with Rule 8.10 2018 IAAF ADR. Also the decision to "re-impose" a provisional suspension on the Athlete (without informing him) was taken by the AIU. The 2016-2017 IAAF ADR do not grant the AIU such authority.
  - The 2016-2017 IAAF ADR do not contain any reference to the AIU.
- (vi) Rule 13.7.1 2018 IAAF ADR clearly provides that the deadline for filing an appeal to the CAS shall start from the receipt of the decision in question, and not from the receipt of the case file. Under the 2018 IAAF ADR, the *dies a quo* is the date of receipt of the Appealed Decision, i.e. 2 September 2018.
- (vii) Even if the 2016-2017 IAAF ADR apply, the appeal filed by the IAAF was too late:
  - The IAAF cannot rely on the receipt of the "full case file" for the *dies at quo*. Said provision is only warranted in circumstances in which the IAAF does not dispose of the complete file from the outset. In the case at hand the IAAF was aware of the whole contents of the case file. The file initially sent by the QAF to the IAAF was identical with the file provided by the IAAF (or the AIU) to the QFA together with the Memorandum. Therefore, the IAAF should not be entitled to benefit from a longer deadline to file the appeal.
  - Accordingly, the 45-day deadline to file the appeal to the CAS provided for under Rule 42.15 2016-2017 IAAF ADR (if applicable), started to run on 2 September 2018 and expired on 17 October 2018 (i.e. 45 days of receipt of the Appealed Decision).

133. The Second Respondent's submissions on the merits can be summarised in their main parts as follows:

- (i) The Athlete did not know about the presence of the Prohibited Substances in the hotel room no. 120.
- (ii) The Athlete did not have the exclusive control over the hotel room 120.
- (iii) During the search the Athlete was not standing next to the police officers identifying the items taken out of the bags.
- (iv) The officials conducting the search failed to properly distinguish between the bags belonging to the Athlete and Yaser Salam:

- This is all the more troubling considering that the Athlete explicitely told the Spanish Police which of the bags were his.
- At least two bags were searched. The first bag searched only contained used syringes. The Athlete does not challenge that this bag and its content were his.
- The Spanish Police, however, also searched a second bag, i.e. the so-called Nike-bag. The Nike-bag did not belong to the Athlete. The Prohibited Substances were only found in the Nike-bag.
- The Spanish Police placed and grouped everything they found during the search on the floor, not distinguishing whether the items were found in the Athlete's or in his roommate's belongings. Consequently, the contents of the various bags got mixed up.
- The Athlete cannot be made responsible for the content of the Nike-bag, since this latter belonged to his roommate Yaser Salam.
- The Search Warrant and the Court Clerk Minutes fail to mention that there were two persons occupying the hotel room no. 120.

- (v) That the Nike-bag does not belong to the Athlete is also evidenced by the fact that:
  - Yaser Salam admitted to the Athlete that the EPOTIN found in the room was his.
  - Furthermore, none of the fingerprints that were detected on the medicine boxes (found in the Nike-bag) could be attributed to the Athlete. They were all from unidentified individuals.
- (vi) During the search his roommate Yaser Salam was not present. The only reasonable explanation for the police not inviting Yaser Salam to attend the search is that the police officers were unaware that room no. 120 was occupied by two athletes.
- (vii) There was a lot of movement amongst the athletes and support persons present in the Hotel with persons entering and exiting hotel rooms, which were not their own rooms.
- (viii) Even if - *quod non* - the Nike-bag belonged to the Athlete, the fact that the fingerprints retrieved were from unknown individuals is a clear proof that the Nike-bag was not under the control of the Athlete.
- (ix) The only evidence linking the Nike-bag to the Athlete are the photographs of the Athlete that were allegedly found in a little green plastic bag that was in the Nike-bag. The Athlete challenges this finding and submits that:
  - there is no evidence that the photographs of the Athlete were in the green plastic bag found in the Nike-bag. None of the video-clips show that the photographs were retrieved from the green plastic bag.
  - Even if the photographs were in the plastic bag – *quod non* – this does not constitute evidence that the bag actually belonged to the Athlete.
  - It is true that the Court Clerk Minutes state that the photographs were "found in a suitcase containing the medication". However, these minutes cannot be relied upon, since they are wrong. They also state

that "ID cards belonging to Mr Bala" were also found in the Nike-bag. It is, however, undisputed that no such ID cards were found.

- (x) The Appellant failed to submit the Athlete's roommate (Yaser Salam) to an anti-doping test. The Nike-bag containing the EPOTIN also had empty vials in it. Thus, one could reasonably infer that someone had used the EPOTIN found in the Nike-bag during the training camp in Spain. It is highly unlikely that this was the Athlete, since the latter was tested and did not return an adverse analytical finding.
- (xi) The use of EPOTIN would not have made any sense for the Athlete. EPOTIN has a performance enhancing effect in endurance sport. The Athlete is an 800-metre (sometimes 400-metre) runner and, thus, he is not practising an endurance sport.
- (xii) The Athlete had never tried to mislead the Spanish Police:
  - The officers that notified him of the search had filled out the Notification Form beforehand. They had marked down the wrong room number in the form and misspelt Athlete's name. It was not the Athlete who gave them the wrong number of the hotel room. He did not try to deceive them.
  - There has been a misunderstanding between the Spanish Police and the Athlete due to the language barrier. The Athlete is a Qatari athlete of Sudanese origin, with a relatively good command of English. He has, however, a strong accent and does not speak any Spanish.
- (xiii) Since the Nike-bag was not his, the Athlete did not know about the presence of the Prohibited Substance in the Nike-bag or in his room. He did not have any control over the Nike-bag and did not intend to exercise control over the Prohibited Substance.
- (xiv) After the Appealed Decision was issued by the DTQAF the Athlete was no longer under provisional suspension and free to compete or to take part in any sport activities. In addition, the Athlete submits that he has not been notified of any decision by IAAF re-imposing a provisional suspension on him.
- (xv) Should the CAS imposes a suspension on the Athlete, all periods of provisional suspension served since 11 October 2016 shall be deducted from any sanction imposed on the Athlete.

V. JURISDICTION

134. Since this procedure was initiated before 1 January 2019, the CAS Code in force before 1 January 2019 applies. Article R47 (1) of the CAS Code reads as follows:

> *"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 statues or regulations of that body."*

135. It is disputed between the Parties whether the regulations referred to in Article R47 of the CAS Code are the 2016-2017 IAAF ADR or the 2018 IAAF ADR. However, this question can be left unanswered here, since both sets of regulations contain an arbitration clause and it is unchallenged that the Athlete has submitted either to the 2016-2017 IAAF ADR or to the 2018 IAAF ADR.

136. Rule 42.3 of 2016-2017 IAAF ADR provides:

> *"In cases arising from an International Competition or involving International-Level Athletes or their Athletes Support Personnel, the first instance decision of the relevant body of the Member shall not be subject to further review at national level and shall be appealed exclusively to CAS in accordance with provisions set out below."*

137. It is uncontested that the Second Respondent is an International-Level Athlete within the meaning of the 2016-2017 IAAF ADR and that the appealed decision constitutes "*the first instance decision of the relevant Member*".

138. Rule 13.2.3 of the 2018 IAAF ADR reads as follows:

> *"In cases arising involving International-Level Athletes or Athlete Support Persons or involving International Competitions, a decision may be appealed exclusively to CAS."*

139. Rule 1.9 of the 2018 IAAF ADR defines the term "International Athlete" as follows:

> *"Within the overall pool of Athletes set out above who are bound by and required to comply with these Anti-Doping Rules, each of the following Athletes shall be considered to be an International-Level Athlete ("International-Level Athlete") for the purposes of these Anti-Doping Rules and therefore the specific provisions in these Anti-Doping Rules applicable to International-Level Athletes shall apply to such Athletes:*
>
> *(a) An Athlete who is in the International Registered Testing Pool; [...]"*

140. The Athlete evidently complies with these prerequisites and is, thus, an International-Level Athlete within the above meaning.

141. Furthermore, CAS jurisdiction has not been challenged by the Parties to this procedure and is – further – confirmed by the signing of the OoP by all the Parties.

142. In the light of the foregoing, the Panel finds that it has jurisdiction to hear the present appeal.

VI. ADMISSIBILITY

143. Article R49 of the CAS Code reads as follows:

> *"In the absence of a time limit set in the statutes or regulations of the federation ... the time limit for appeal shall be twenty-one days from receipt of the decision appealed against. ..."*

144. It is undisputed between the Parties that the IAAF regulations deviate from the 21-day deadline provided for in the CAS Code. What is disputed between the Parties is, however, which version of the IAAF ADR apply.

145. Rule 42.15 of the 2016-2017 IAAF ADR determines as follows:

> *"Unless stated otherwise in these Rules (or the Doping Review Board determines otherwise in cases where the IAAF is the prospective appellant), the appellant shall have forty-five (45) days in which to file his statement of appeal with CAS, such period starting from the day after the date of receipt of the decision to be appealed (or where the IAAF is the prospective appellant, from the day after the date of receipt of both the decision to be appealed and the complete file relating to the decision, in English or French) or from the day after the last day on which the decision could have been appealed to the national level appeal body in accordance with Rule 42.8(b). Within fifteen days of the deadline for filing the statement of appeal, the appellant shall file his appeal brief with CAS and, within thirty days of receipt of the appeal brief, the respondent shall file his answer with CAS."*

146. Rule 13.7 2018 IAAF ADR provides as follows:

> *"The deadline for filing an appeal to CAS shall be 30 days from the date of receipt of the decision in question by the appealing party. Where the appellant is a party other than the IAAF, to be a valid filing under this Article 13.7.1, a copy of the appeal must be filed on the same day with the IAAF. Within 15 days of the deadline for filing the statement of appeal, the appellant shall file his appeal brief with CAS and, within 30 days of receipt of the appeal brief, the respondent shall file his answer with CAS."*

147. Thus, the Parties are in dispute whether the 30-day deadline of the 2018 IAAF ADR or the 45-day deadline of the 2016-2017 IAAF ADR applies to file the Statement of Appeal with CAS.

A. The transitional rules contained in the 2018 IAAF ADR

148. Rule 21.3 2018 IAAF ADR contains a transitional rule that provides as follows:

> *"Any case pending prior to the Effective Date, or brought after the Effective Date but based on an Anti-Doping Rule Violation that occurred before the Effective Date, shall be governed, with respect to substantive*

> *matters, by the predecessor version of the anti-doping rules in force at the time the Anti-Doping Rule Violation occurred and, with respect to procedural matters by (i) for Anti-Doping Rule Violations committed on or after 3 April 2017, these Anti-Doping Rules and (ii) for Anti-Doping Rule Violations committed prior to 3 April 2017, the 2016-2017 IAAF Competition Rules. Notwithstanding the foregoing, (i) Article 10.7.5 of these Rules shall apply retroactively, (ii) Article 18 of these Rules shall also apply retroactively, unless the statute of limitations applicable under the predecessor version of the Rules had already expired by the Effective Date; and (iii) the relevant tribunal may decide it appropriate to apply the principle of lex mitior in the circumstances of the case."*

149. It is uncontested between the Parties that the issue of the timeliness of the appeal is a procedural matter. It is further undisputed between the Parties that the Effective Date within the above meaning is 6 March 2018, i.e. the date of the entry into force of the 2018 IAAF ADR. The alleged ADRV occurred in June 2016. Furthermore, the proceedings against the Athlete were pending at the time of the Effective Date. Consequently, a verbatim reading of the above provision leads to the application of the 2016-2017 IAAF ADR, since the alleged ADRV was committed before 3 April 2017.

B. Exception because of *lex mitior*

150. The Respondents submit that there are exceptions to the above principle. They base their conclusion first and foremost on the principle of *lex mitior*. It is true that Rule 21.3 2018 IAAF ADR provides that the principle of *lex mitior* is applicable "notwithstanding the foregoing". The Parties disagree whether the scope of application of the principle of *lex mitior* also extends to procedural provisions such as the deadline for appeal.

151. The principle of *lex mitior* is a concept of criminal law. The principle dictates that if the law is changed in the interval between the commission of the alleged criminal act and the time of sentencing, the accused shall be given the benefit of the lesser penalty. The principle is also well-established in CAS jurisprudence. Reference is made to CAS 2009/A/1918, para. 18 seq., where that Panel held as follows:

> *"The Panel identifies the applicable rules by reference to the principle "tempus regit actum": in order to determine whether an act constitutes an anti-doping rule infringement, the Panel applies the law in force at the time the act was committed. In other words, new regulations do not apply retroactively to facts that occurred prior to their entry into force, but only for the future. As stated in a CAS precedent (CAS 2000/A/274, Digest of CAS Awards II (1998-2000), p. 389 at 405), in fact,*
>
> *'under Swiss law the prohibition against the retroactive application of Swiss law is well established. In general, it is necessary to apply those laws, regulations or rules that were in force at the time that the facts at issue occurred'.*

> *The principle of non-retroactivity is however mitigated by the application of the 'lex mitior' principle. In this respect the Panel fully agrees with the statements contained in the advisory opinion CAS 94/128 (Digest of CAS Awards (1986-1998), p. 477 at 491), which read (in the English translation of the pertinent portions) as follows:*
>
> *'The principle whereby a criminal law applies as soon as it comes into force if it is more favourable to the accused (lex mitior) is a fundamental principle of any democratic regime. It is established, for example, by Swiss law (art. 2 para. 2 of the Penal Code) and by Italian law (art. 2 of the Penal Code). This principle applies to anti-doping regulations in view of the penal or at the very least disciplinary nature of the penalties that they allow to be imposed. By virtue of this principle, the body responsible for setting the punishment must enable the athlete convicted of doping to benefit from the new provisions, assumed to be less severe, even when the events in question occurred before they came into force. This must be true, in the Panel's opinion, not only when the penalty has not yet been pronounced or appealed, but also when a penalty has become res iudicata, provided that it has not yet been fully executed.*
>
> *The Panel considers that [...] the new provisions must also apply to events which have occurred before they came into force if they lead to a more favourable result for the athlete. Except in cases where the penalty pronounced is entirely executed, the penalty imposed is, depending on the case, either expunged or replaced by the penalty provided by the new provisions'.*

152. It follows from the above that the principle of *lex mitior* enables retroactive application of provisions insofar as "penalties" or "sanctions" are concerned, if the new law is more favourable than the provisions applicable under the principle *tempus regit actum*. The underlying idea is that it makes little sense to sanction the party concerned according to out-dated provisions, if the unanimous view now holds that the act in question carries a milder sanction.

153. The Panel finds that the principle of *lex mitior* cannot be applied to deadlines for appeal. Deadlines as such cannot be qualified as "milder" or "stricter", because the effects of such deadlines will always depend on who is the appellant and what the contents of the appealed decision is. Deadlines for appeal by their very nature are very different from "sanctions". They apply irrespectively of whether or not the person entitled to appeal has acted with or without fault nor do they – unlike sanctions – express a disapproval of a party's behaviour or infringe on his or her personality rights. The deadline of appeal is – at the end of the day – a procedural issue that is first and foremost dictated by considerations of appropriateness and/or practicability as well principles such as legal certainty and foreseeability that cannot be categorized as "more" or "less" favourable. The Panel also notes that the Respondents could not cite any CAS jurisprudence that applied the principle of *lex mitior* effectively to deadlines for appeals. Finally, the Panel notes that even if the principle was applicable – *quod non* – Rule 21.3 2018 IAAF ADR provides that it "may" do so where it finds this to be "appropriate". The Panel is not willing to use such discretion, because it does not find it appropriate to deviate from the applicable provisions on deadlines for appeal contained in the 2016-2017 IAAF ADR.

154. In view of the above there is also no room for the application of the principle of interpretation against the draftsman ("*contra proferentem*"). The principle establishes that where there is doubt as to the interpretation of a provision, the latter shall be construed against the person who drafted it. In the view of the Panel the contents and the consequences of the Rule 21.3 2018 IAAF ADR are neither unclear nor ambiguous.

C. Exception because of IAAF practice

155. The Respondents argues that IAAF throughout the procedure applied the 2018 IAAF ADR and is, therefore, barred from referring to the 2016-2017 IAAF ADR at this stage. Whether the application of the 2018 IAAF ADR follow from an agreement of the Parties or from the application of the principle of *venire contra factum proprium* is not clear. Be it as it may, the Panel finds that the IAAF at no point in time gave rise to the Athlete's legitimate interest that the 2018 IAAF ADR shall apply (to the deadlines for appeal).

156. It is true that the AIU gave instructions to the QAF and that it was the AIU that issued the Memorandum to the QAF. It is equally true that the AIU did not exist before 2017. However, nothing can be inferred from this. The AIU is an organ of the IAAF. Which internal organ is competent to enforce the internal rules and regulations is at the discretion of the federation. The mere fact that an organisational transition took place within the IAAF has no influence on the applicable rules. The sole fact that the IAAF today is acting through new (internal) bodies is no indication that the provisions applicable to a specific case have equally changed. Instead, the wording of the transitional rule in Rule 21.3 2018 IAAF ADR clearly speaks to the contrary. This is even more so considering that in the Memorandum (issued by the AIU) the IAAF invited the QAF, based on Rule 38.1 2016-2017 IAAF ADR, to convene a hearing to determine whether or not the Athlete committed an ADRV. Thus, the whole proceedings before the DTQAF were based on the application of the 2016-2017 IAAF ADR. This was also the understanding of the Athlete at the time, because he never challenged the procedure before the DTQAF. Consequently, the Panel finds that the 2018 IAAF ADR do not apply based on considerations of agreement or venire *contra factum proprium.*

D. Application of Rule 42.15 2016-2017 IAAF ADR

157. In view of all of the above, the Panel applies Rule 42.15 2016-2017 IAAF ADR to the deadline for appeal. According to the aforementioned provision the deadline for appeal is 45 days. Furthermore, the provision provides that in case the IAAF is the Appellant the *dies a quo* is the day after the "*receipt of both the decision to be appealed and the complete file relating to the decision, in English or French.*"

158. The Respondents submit that even if Rule 42.15 2016-2017 IAAF ADR was applicable, the IAAF failed to comply with the deadline. The Respondents argue that in the case at hand the deadline – contrary to the explicit wording of the provision – starts on the day after the receipt of the Appealed Decision (i.e. 2 September 2018). The Respondents argue that this follows from the fact that the IAAF at this point in time was already in possession of the complete case file. The QAF's email dated 16 September 2018 – in response to IAAF's request for the full case file – did not contain a single new element. If, however, the deadline for the appeal started on 3 September 2018, then the 45 days have elapsed by the time the IAAF filed its Statement of Appeal on 31 October 2018.

159. The Panel notes that the Respondents' interpretation of Rule 42.15 2016-2017 IAAF ADR is not in line with its clear wording. Respondents seek to add additional wording to the rule. The Panel is not prepared to follow this. This is even more so considering that the purpose of the provision as expressed in Rule 42.15 2016-2017 IAAF ADR makes sense and is perfectly legitimate. The provision wants to enable the IAAF to know what the contents of the full case file is before filing an appeal to the CAS. However, the contents of the case file is only known to the IAAF once the respective ADO complies with the IAAF's request for information. If – as submitted by the Respondents – the deadline for appeal would start to run prior to whether or not the IAAF knows what the contents of the case file is, the IAAF's right to appeal could easily be manipulated by the member federation that has issued the appealable decision. The Panel, therefore, finds that there is no reason to deviate from the clear wording of the provision and to – exceptionally – let the deadline run from an earlier point in time.

160. An exception to the above rule could only be envisaged in cases in which the IAAF acted contrary to good faith. However, there are no elements on file indicating this. Well to the contrary, the Panel finds that the IAAF legitimately could assume that there would be new elements in the QAF case file. The Athlete could have filed additional (and new) written submissions. Furthermore, one would have expected the QAF to interview the Athlete's roommate if it had doubts as to who had possession of the Nike-bag. One could have legitimately assumed that the QAF would interview some of the other athletes of the team and/or the Coach. Finally, the Panel notes that in the Appealed Decision, the DTQAF referred in the section titled "Preliminary Observations" to *"...the further investigations carried out by QAF..."* (see para. 46 above). This reference rather indicates that the QAF may well have had additional material in the case file that the IAAF would be entitled to review. To conclude, therefore, the Panel finds that the IAAF was legitimate to ask for the full case file even if it had already a lot of evidence in its possession.

161. In the light of the foregoing, the Panel finds that the appeal is admissible.

VII. OTHER PROCEDURAL ISSUES

A. Request for Additional Information dated 24 December 2018

162. With letter dated 24 December 2018, the Second Respondent requested the Appellant to provide the following documents or information pursuant Article R44.3 of the CAS Code:

> (1) The full Athlete's Biological Passport of Musaeb Abdulrahman Balla.
> (2) The complete and full list of all doping control tests, which have been performed on the athlete Balla, with their results and a specific whether EPO test have been conducted or not.
> (3) The full criminal file in the hands of the Spanish Police.
> (4) A full and completed explanation by the Spanish Police about the concrete analyses made concerning the fingerprints collected on the medication boxes found in the Nike-bag. In particular, *"the Spanish police shall be required to disclose (i) with whom such fingerprints have been compared, (ii) which fingerprints from members of the Qatari team or other individuals have been*

collected during the enquiry and (iii) whether exploitable fingerprints have been collected on the box of Epotin."

163. The Appellant objected to the Second Respondent's request for additional documents (with its letter dated 9 January 2019) and stated in essence that:

- In accordance with Article R44.3 of the CAS Code, a party seeking production of documents must establish that they are (i) likely to exist, (ii) in custody/control of the other party and (iii) relevant to the issues at stake.
- Two of the Second Respondent's production requests are irrelevant to the possession charge (ABP and testing data) and one request is patently outside the scope of Article R44.3 of the CAS Code (explanations from the Spanish Police). The remaining request is for a criminal file that the Second Respondent himself had (and has) the right to access.

164. With letter dated 5 February 2019, the Panel rejected the Second Respondent's requests and advised that the full reasons would be provided in the Award. The Panel notes that:

- the Athlete has access through ADAMS to the blood data in his ABP. The Athlete has not explained why such data would not be sufficient. It is true that the Athlete cannot access the charts that reflect (based on the so-called Adaptive Model) the degree of abnormality of the blood data (the "Charts"). However, the Panel finds that the IAAF has good reasons not to disclose these Charts, since athletes could use such information to develop (or refine) their anti-detection strategies. Furthermore, the Panel finds that the case at hand concerns an alleged ADRV based on possession and that, consequently, such data is not relevant in this case.
- The Athlete has full access to the data relating to the doping controls performed on him. However, it is true that the data inserted in ADAMS does not show for what Prohibited Substances and Methods the analysis was performed. The Panel finds, however, that the Appellant has failed to show the relevancy of the information requested. First of all the case at hand concerns an alleged ADRV based on possession (and not presence or use of a Prohibited Substance). Furthermore, a negative test result does not disprove doping; this is particularly true for substances such as EPO that are excreted within a short window from the system and where the detection is based on conservative identification criteria required to distinguish exogenous from endogenous EPO.
- A request for document production requires that the party requesting the information cannot access the relevant information itself. The Second Respondent does not explain why – even though it was a party to the proceedings before the Spanish Courts – it has been "truly difficult" to obtain access to the case file. The Athlete did not specify which measures he has undertaken in this regard. The Panel notes that the IAAF obtained a copy of the criminal file in August 2017 and that such file amounts to over 1,500 pages of Spanish language material. The IAAF has already disclosed (and translated) those documents that it considers relevant to these proceedings. Consequently, failing any substantiation in this regard, the Panel rejected the request for additional information.

- With respect to the Athlete's request in relation to the fingerprint analyses, the Panel finds that such request is not covered by Article R44.3 of the CAS Code which reads as follow:

> *"A party may request the Panel to order the other party to produce documents in its custody or under its control. The party seeking such production shall demonstrate that such documents are likely to exist and to be relevant. If it deems it appropriate to supplement the presentations of the parties, the Panel may at any time order the production of additional documents or the examination of witnesses, appoint and hear experts, and proceed with any other procedural step. ..."*

According thereto, a party can only request information in the possession of the other party. However, the information requested stems from a third party and the Appellant denies having such information in its possession.

165. Finally, the Panel notes that in the further course of the proceedings the Second Respondent no longer upheld his requests. When being asked at the outset of the hearing whether there were any pending/outstanding procedural issues, the Second Respondent answered in the negative. Furthermore, also at the end of the hearing the Second Respondent took no issue with the decision of the Panel to deny his requests for further information.

B. Request for Bifurcation

166. On 18 February 2019, the Second Respondent filed an application for bifurcation of the procedure and applied the Panel to rule as follows:

> *"I. The procedure CAS 2018/A/5989 IAAF v QAF and Balla is bifurcated and a preliminary award is issued by the CAS Panel or the President of the Panel on the issue of IAAF's compliance or non-compliance with the deadline to appeal;*
>
> *II. The Statement of Appeal filed by IAAF in the procedure CAS 2018/A/5989 is late;*
>
> *III. The Appeal filed by IAAF in the case CAS 2018/A/5989 is dismissed;*
>
> *IV. The CAS does not have jurisdiction to entertain the appeal in the case CAS 2018/A/5989;*
>
> *V. All costs of the CAS procedure shall be paid by the IAAF;*
>
> *VI. The IAAF shall be ordered to pay to Mr. Musaeb Abdulrahman Balla a contribution towards his legal and other costs incurred within the framework of these proceedings, an amount to be determined at the discretion of the Panel."*

167. The Second Respondent submitted in support of its request for bifurcation, that the purpose of bifurcation is to have the Panel deciding in a preliminary award, in accordance with Article R49 of the CAS Code, whether the appeal filed by IAAF in the matter of the Athlete is late or not.

168. The Appellant objected to the Second Respondent's request for bifurcation.

169. Article R55(5) of the CAS Code provides:

> *"When an objection to CAS jurisdiction is raised, the CAS Court Office or the Panel, if already constituted, shall invite the parties to file written submissions on jurisdiction. The Panel may rule on its jurisdiction either in a preliminary decision or in an award on the merits."*

170. Whether the above article is directly applicable or only applicable by analogy appears questionable. The Panel notes the Second Respondent in fact did not object to the jurisdiction of the CAS. Instead, the Second Respondent is of the view that the appeal by the IAAF was not filed in time. Be it as it may, the Panel notes that the question whether or not to bifurcate proceedings is a procedural question that is either governed (directly or by analogy) by Article R55 of the CAS Code or by Article 182(2) of the of the Swiss Private International Law Act ("PILA").

171. In both cases the Panel has discretion whether to render a preliminary decision on the admissibility of the appeal or to rule upon this issue together with the merits in the final award. When applying such discretion the Panel – in principle – also takes account of the reasoning submitted by the party requesting a preliminary decision, in particular why a preliminary decision – according to the requesting party's opinion – is necessary to safeguard its interests and to prevent it from possible harm or why a decision on jurisdiction, for some other reasons, is urgent or, otherwise, how and why the requesting party should legitimately benefit from a preliminary decision.

172. The Panel was and is therefore of the view that no compelling reason and no urgent necessity for a preliminary decision on jurisdiction and/or admissibility is ascertainable in the case at hand. Thus, it dismisses the Seconds Respondent's request to bifurcate.

C. Provisional Relief

173. On 1 March 2019, the First Respondent requested that if the Panel renders a Preliminary Award on the timeliness of the appeal, such Preliminary Award should be rendered at the earliest convenience and that, in addition, the Panel shall clarify/rule whether the Athlete is eligible to compete. The First Respondent submitted that:

- After the DTQAF had rendered the Appealed Decision, it assumed that the Athlete was no longer provisionally suspended, as he had been acquitted from the charges brought against him.
- That if the IAAF and/or the AIU had wanted to re-impose a provisional suspension, they could have done so for example based on Rule 38.7 2018 IAAF ADR with a proper notification – which was neither send by the IAAF nor the AIU – and respecting all the procedural rights of the Athlete.
- It was of the utmost urgency for the Athlete to receive clarity about his status as quickly as possible.

174. On 6 March 2019, the CAS Court Office invited the First Respondent to formulate a specific request for provisional relief that it wants the Panel to decide upon.

175. In reply to the CAS Court's letter the First Respondent – on 11 March 2019 – declared its request moot.

D. Testimony of the Policemen only identified by TIP

176. On 17 April 2019, Second Respondent objected to the Appellant's witness list. The Appellant (in the witness list) had identified two of the policemen that had participated in the search on 20 June 2016 only by their TIP, i.e. TIP 3697 and TIP 15303 and not by their names.

1. The Position of the Parties

177. The Second Respondent submits that identifying the policemen only by TIP is in breach of Article R51(2) of the CAS Code. Furthermore, it impacts – according to the Second Respondent – on his procedural rights. He, therefore, requests that the CAS declare their testimony as inadmissible and remove their witness statements from the case file.

178. The Appellant requested the Panel to dismiss the Second Respondent's objections on the following grounds:

- The TIP is issued by the (Spanish) State to the particular individual and holds the requisite value to enable officers to testify under their TIP in Spanish Court proceedings.
- The officers of the Spanish Police operate using their TIP rather than their names when acting in a professional capacity.
- As seen in the documents relevant to this case, the officers operated and signed documents under their respective TIP.

179. The Panel advised the Parties in its letter dated 13 May 2019 that the issue of the admissibility of the testimony of the two officers of the Spanish Police would be addressed at the outset of the hearing. At the hearing the Parties reiterated their previous positions.

2. The Findings of the Panel

180. Article R51(2) of the CAS Code provides the following:

> *"In its written submissions, the Appellant shall specify the name(s) of any witnesses, including a brief summary of their expected testimony, and the name(s) of any experts, stating their area of expertise, it intends to call and state any other evidentiary measure which it requests. The witness statements, if any, shall be filed together with the appeal brief, unless the President of the Panel decides otherwise."*

181. The CAS Code does not provide for any consequences in case a party fails to provide the name of a witness. Whether or not to admit a witness that is not identified by name is a procedural question in accordance with Article 182 of the PILA. In the absence of specific rules agreed upon by the Parties it is – according to Article 182 (2) of the PILA – up for the Panel to decide the issue taking due consideration of the Parties inalienable

procedural rights enshrined in Article 182 (3) PILA. The latter provision reads as follows: "*[r]egardless of the procedure chosen, the arbitral tribunal shall ensure equal treatment of the parties and the right of the parties to be heard in adversarial proceedings.*"

182. The Panel is aware that in certain cases other CAS panels exceptionally allowed testimony by witnesses that were not identified at all to the opposing party. An example of this can be found in CAS 2009/A/1920, para 13 et seq. The panel in this proceeding ultimately decided that the witness could be heard without disclosing its identity, provided that specific modalities for cross-examination of the witnesses were accepted by the parties.

183. In coming to its conclusion the panel in CAS 2009/A/1920 noted that admitting facts based on anonymous witness statements affects the right to be heard, as guaranteed by Article 6 of the European Convention on Human Rights ("ECHR") and Article 29(2) of the Swiss Constitution. However, according to Swiss jurisprudence on the matter, such breaches may be permissible subject to certain conditions and the requirement that the witness statements support the other evidence provided to the court.[1] Furthermore, there must be – according to the jurisprudence of the Swiss Federal Tribunal – interests worthy of protection when not disclosing the identity of the witness.

184. The Panel notes from the above jurisprudence that there are exceptions to the rule established in Article R51(2) of the CAS Code and that it may be permissible – subject to a proportionate balancing of the interests involved – to grant exceptions from the strict wording of Article R51 (2) of the CAS Code. The Panel first and foremost notes that the purpose of identifying a witness by name shall enable the opposing party to question the witness's role in the course of the contested events and to challenge the credibility of that person's testimony.

185. Whether these procedural rights of the Athlete are affected in the case at hand appears questionable. The two officers are identified (not by name, but) with their unique TIP under which they act in a professional capacity. This is evidenced – e.g. – when looking at the Court Clerk Minutes. The latter were signed by two officers with their respective TIP (15303 and 1639). Thus, the involvement of the respective officers in the course of the events can also be tracked and verified by looking at their unique TIP. In addition, the Panel notes that both agents gave testimony via video-conference and, therefore, could be identified by sight. Furthermore, the Athlete could directly question and cross-examine the evidence given by the two policemen.

186. It is true, however, that not knowing the names of the officers makes it difficult to perform a background check on them or call character witnesses with respect to their (overall / general) credibility. However, this appears to be only a minor prejudice to the Athlete's rights considering that:

- such background checks on persons involved in covert police actions would be equally difficult if the Athlete were in possession of the officers' names and

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1 Referring to the decision ATF 133 I 33

- considering that the Second Respondent during the course of the first-instance proceedings never felt the need to ask for the names of the officers in order to perform such background checks.

187. When balancing the interests of both Parties, i.e. the procedural rights of the Second Respondent and the right of the Appellant to present evidence in the search of the truth, the Panel comes to the conclusion that the Appellant's interests outweigh the Second Respondent's interests. In this context the Panel, in particular took into account of the fact that:

- the Second Respondent only took issue with the lack of identification by name at a very late point in time in these proceedings, i.e. only a couple of days prior to the hearing;
- the testimony provided by the two officers is not the only evidence and only supports other evidence already on file; and that
- the two officers in question are part of a squad that is involved in covert or sensitive police operations. The Spanish provisions allowing police officers to testify in Court under their TIP serves a private and public purpose, i.e. to protect the safety of the agents and not to jeopardize sensitive operations by dispersing their names into the public domain.

188. In view of all of the above, the Panel finds that the testimony of the police officers identified by TIP 3697 and TIP 15303 was admissible.

VIII. APPLICABLE LAW

189. Article R58 of the CAS Code provides the following:

> *"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 the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision."*

190. The "applicable regulations" within the above meaning are the rules and regulations of the IAAF. It is undisputed between the Parties that the Athlete has submitted to the IAAF ADR. As stated above (para. 150 seq.), the 2016-2017 version of the IAAF ADR apply to the case at hand. Rule 42.23 of the 2016-2017 IAAF ADR reads as follows:

> *"In all CAS appeals involving the IAAF, CAS and the CAS Panel shall be bound by the IAAF Constitution, Rules and Regulations (including the Anti-Doping 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."*

191. Further, Rule 42.24 of 2016-2017 IAAF ADR provides that in *"all CAS appeals involving the IAAF, the governing law shall be Monegasque law and the arbitrations shall be conducted in English, unless the parties agree otherwise"*.

192. Rule 30.1 of the 2016 IAAF Rules states that *"[t]he Anti-Doping Rules shall apply to the IAAF, its Members and Area Associations and to Athletes, Athlete Support Personnel and other Persons who participate in the activities or Competitions of the IAAF, its Members and Area Associations by virtue of their agreement, membership, affiliation, authorisation or accreditation".*

193. As already set out above, the Second Respondent is an "International-Level Athlete" in the sense of the 2016-2017 IAAF ADR.

194. In view of the above, the Panel decides that the merits of the case shall be governed by the 2016-2017 IAAF ADR and, subsidiarily, by Monegasque law Law.

IX. MERITS

195. This case circles around the question whether or not the Athlete has committed an ADRV in the form of possession of a Prohibited Substance according to Rule 32.2(f)(i) of the 2016-2017 IAAF ADR.

196. It is undisputed between the Parties that the medicine EPOTIN contains a Prohibited Substance and that EPOTIN was found in the Nike-bag in the hotel room no. 120 shared by the Athlete and his roommate. What is disputed between the Parties is whether or not the Athlete had possession of the Prohibited Substance within the meaning of Rule 32.2(f)(i) 2016-2017 IAAF ADR.

197. The term possession is defined in the IAAF ADR as follows:

> *"Prohibited Substance or Prohibited Method (which shall be found only if the Person has exclusive control or intends to exercise control over the Prohibited Substance or Prohibited Method or the premises in which a Prohibited Substance or Prohibited Method exists); provided, however, that if the Person does not have exclusive control over the Prohibited Substance or Prohibited Method or the premises in which a Prohibited Substance or Prohibited Method exists, constructive Possession shall only be found if the Person knew about the presence of the Prohibited Substance or Prohibited 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 a Prohibited Method constitutes Possession by the Person who makes the purchase."*

198. Since the Athlete shared the hotel room no. 120 with another person and, therefore, did not have exclusive control over the premises, in which the Nike-bag (containing the Prohibited Substance) was found, the Panel proceeds first and foremost with the analysis

whether or not the Athlete had constructive possession of the Prohibited Substance. In order to accept constructive possession, two prerequisites must be fulfilled, i.e. (A) the Athlete must have known about the presence of the Prohibited Substances in room no. 120 and (B) the Athlete must have intended to exercise control over them.

A. Did the Athlete have knowledge of the Prohibited Substances?

199. While the Appellant submits that the Athlete knew about the Prohibited Substances, the Second Respondent submits that he was unaware of the contents of the Nike-bag. The Panel deems the following evidence important in coming to its conclusion.

1. The Athlete's behaviour at the time of the notification

200. The two policemen (TIP 3697 and 15303) testified at the hearing that they had been tasked to search for the Athlete on the athletic track close to the Hotel and to issue the Notification Form to him. Once they identified him, they explained to him the procedure of the search and asked for some information to be filled in on the Notification Form. In this context the policemen asked the Athlete – *inter alia* – about his room number in the Hotel. The policemen stated in their testimony that the Athlete indicated that he was staying in the room no. 211 and that he was sharing this room with Abu Bakar Abdala. The police officers testified at the hearing that they knew at that time that this information was incorrect, because they had intelligence on the Athlete's correct room number.

201. The Athlete acknowledged that he was notified by two policemen of the search at the athletic track. However, he submits that the Notification Form had been filled out beforehand, including the room no. 211. He never told the policemen that he occupied room no. 211. According to the Athlete the Notification Form also contained other mistakes. Thus, e.g. his name was misspelled therein and, in addition, the Notification Form indicated a wrong roommate (Abu Bakar Abdala instead of Yaser Salam).

202. The Athlete claimed that he advised the policemen that room no. 211 was not his. He also told them that most of the hotel rooms of the team were booked in his name. He never lied or tried to deceive the policemen. He said that he signed the Notification Form despite the wrong room number contained therein, because the policemen told him that they would check the correct room number later. In addition, the Athlete stated at the CAS hearing that he had never seen or met the police officer TIP 3697 before. However, he accepted that policeman TIP 15303 was among the two officers that notified him at the track.

203. The Panel is persuaded that the Athlete lied to the police officers and tried to deceive them with respect to his room number. The Panel does not believe that the policemen had filled out the Notification Form with the wrong room number and the wrong roommate beforehand, because the Spanish police was aware of the (correct) room number occupied by the Athlete (i.e. room no. 120) at the relevant time. This follows from:

- the testimony of Sergeant Francesc Xavier Tarrés Campréciós. The latter explained at the hearing that the Spanish Police had placed an undercover agent in the hall of the Hotel to monitor the movements of the Qatari team. The undercover agent observed the athletes and recorded the room numbers of the suspects in the Hotel.

Thus, the Spanish Police knew before the search on 20 June 2016 in which room the Athlete was residing.

- The testimony of the police officers (TIP 3697 and TIP 15303) and Mr Francesc Xavier Tarrés Campréciós is further corroborated by the fact that the Search Warrant issued on 17 June 2016 expressly indicates as follows: *"**Room number 120** used by Musaeb Abdulrahman Balla"*.
- A further indication that the Notification Form was filled out by the policemen following the information provided by the Athlete is the fact that it indicates the passport no. of the Athlete. The policemen, however, could not know the Athlete's passport number at this point in time. This must have been information provided by the Athlete (together with the room number and the name of the roommate).

204. Rule 33.3 of 2016-2017 IAAF ADR provides that *"facts related to anti-doping rule violations may be established by any reliable means [...]"*. The Panel finds that the above testimony by the policemen (TIP 3697 and TIP 15303) and Mr Francesc Xavier Tarrés Campréciós is reliable and – above all – preferable to the testimony of the Athlete. Not only that the course of events described by the police officers is free of contradictions and consistent, in addition, and very differently from the Athlete, there is no motive for the policemen not telling the truth. There is nothing to gain for them by twisting the true course of events.

205. In addition, the Panel finds that the objection made by the Athlete vis-à-vis policeman TIP 3697 is not credible. The Athlete acknowledges that he was contacted at the track by two police officers. He recognized Sergeant Mr Francesc Xavier Tarrés Campréciós and agent TIP 15303 at the hearing. Both, however, confirmed that the agent TIP 3697 was among the policemen notifying the Athlete of the search.

206. To conclude, therefore, the Panel finds that the Athlete lied to the police officers (TIP 3697 and TIP 15303) when being notified of the search by indicating a wrong hotel room and a wrong roommate. The Athlete's only motive to do so was – obviously – to lead the Police away from his hotel room (no. 120) and the Nike-bag containing the EPOTIN.

2. The Athlete's behaviour in the hall of the Hotel

207. Mr Francesc Xavier Tarrés Campréciós testified at the hearing that the search of the various hotel rooms was performed one after the other and that the Athlete's hotel room was the last one to be searched. Thus, the Athlete had to wait in the hall of the Hotel – according Mr Francesc Xavier Tarrés Campréciós – until his room was up for the search. According to Mr Francesc Xavier Tarrés Campréciós the Athlete – while waiting in the hall of the Hotel – continued to insist that he was residing in room no. 211. Once the police officers told the Athlete that it was up for his room to be searched, the Athlete made a sign to the accompanying police officers to go upstairs in order to get to his hotel room.

208. It was then that Mr Francesc Xavier Tarrés Campréciós advised the Athlete that the police knew that he was staying in room no. 120 (on the ground level of the Hotel). According to the testimony of Mr Francesc Xavier Tarrés Campréciós the Athlete emphatically objected to this and reiterated that he was staying upstairs in room no. 211.

209. The Athlete denies that he tried to mislead the police and submits – essentially – that all of this was a misunderstanding because of his and the officers' poor command of English.

210. The Panel is not prepared to follow the Athlete's explanations, because it finds:

- Mr Francesc Xavier Tarrés Campréciós' evidence to be credible and reliable. It matches the police report on the video images where it is stated that *"[i]t should be remembered that the athlete denied that this room was his at all times [...]"*.
- Furthermore, his testimony is backed by the testimony of corporal TIP 3697 who explained that the Athlete during all the time prior to the search insisted that he was not staying in room no. 120.
- Also corporal TIP 15303 indicated in his testimony that the Athlete denied that he was staying in room no. 120 at all times. When the Athlete was advised that his room was now up to be searched, the Athlete indicated that the police needed to go upstairs in order to get to his room. Once the Athlete realized that the room no. 120 would be searched, he became very nervous.
- Finally, also the Court Clerk Minutes corroborate the course of events described by the Spanish Police. The Court Clerk Minutes expressly state that "*Mr Balla stated that this was not his room and that his room was No. 211. Nevertheless, the entry and search of it was carried out.*"

211. All of the above shows that the Athlete – also during the time following the notification of the search – continued to deceive the officers about the hotel room he was occupying. Such persistent behaviour cannot be the result of a misunderstanding due to a lack of command of English. Instead, the Panel is persuaded that the Athlete – at all costs – tried to prevent the Spanish Police to search room no. 120. The only plausible explanation for such behaviour is that the Athlete knew that there was the Nike-bag in is room containing Prohibited Substances.

3. The issue with the Athlete's Passport

212. The officer TIP 3697 testified that when the Athlete was notified of the search, policeman TIP 15303 asked the Athlete to provide him with his identification card. The Athlete provided his passport number, but stated that he could not show his passport because the latter was at the embassy.

213. In the hearing the Athlete submitted that he did not give his passport number to the officers. The Notification Form had been filled out beforehand (including the passport number). The police must have gotten his passport number from the reception of the Hotel. The Athlete denies having provided the passport number to the police officers. However, the Athlete admits that he was asked by the policemen to show his ID. However, he told them that his passport was in his hotel room. He denies having lied to the officers that his passport was with the embassy.

214. The Panel finds that the Athlete's submissions are not credible, because:

- The statements made by the Athlete over time are not very consistent. At the hearing the Athlete stated that he did not provide any information with respect to his passport

number and that the police must have gotten the information from the Hotel. The question is, however, why would the Police go to the reception of the Hotel to obtain the passport number before executing the search? This would be implausible and even irrational, because it could jeopardize the confidentiality of the whole police operation.

- Instead, it is obvious that the passport number was provided by the Athlete at the time of his notification. This is all the more true considering that the Athlete admits that he was being asked by the police officers to provide his ID.
- Also, the Athlete's statements with respect to the location of the passport are contradictory. In his pre-trial statement before the Court No. 1 of Sabadell, he is recorded as having said as follows: "*That he leaves his passport in the safe in the room when he goes out for training.*" As a matter of fact, however, the passport of the Athlete was found at the end of the search by agent TIP 15303 in room no. 120 in the bedside drawer and not in the safe of the hotel room.
- Furthermore, the testimony of agent TIP 3697 is corroborated by the testimony of agent TIP 15303. The latter submitted at the hearing that he asked the Athlete to provide him with his ID, but that the Athlete told him that he did not have the passport with him, because it was in the embassy.
- Also Sergeant Francesc Xavier Tarrés Camprécios testified that before the search of the hotel room the Athlete had explained that his passport was at the embassy.

215. In the view of the Panel there is only one likely reason why the Athlete lied with respect to the whereabouts of his passport. The Athlete knew that if the officers searched room 211 (indicated by him), no passport would be found in the room, since the passport was in room 120. Consequently, the Athlete had to invent a story to cover up for this mismatch, i.e. the missing passport. It is for this reason that the Athlete lied about the passport and stated that the latter was with the embassy.

4. Conclusion

216. The Panel finds that there is substantial amount of detailed evidence which draws a rather clear picture, namely of an athlete who persistently tried to keep the policemen away from searching his room no. 120. The only plausible reason for this is that the Athlete knew about the presence of the Prohibited Substances in his hotel room no. 120 and wanted to hide the Prohibited Substances from the Police.

B. Did the Athlete intend to exercise control over the Prohibited Substances?

217. The Athlete submits that he never intended to exercise control over the Prohibited Substances, since the Nike-bag was not his, but belonged to his roommate Yaser Salam instead. The Appellant however, submits that the Athlete intended to exercise control over the contents of the Nike-bag and, therefore, also over the Prohibited Substances. The Panel deems the following evidence important in coming to its conclusion.

C. No evidence that the Nike-bag belonged to Yaser Salam

218. It is undisputed that there was no name tag on the Nike-bag attributing it to the roommate Yaser Salam. In addition, the Athlete said in the hearing that he never saw Yaser

Salam taking anything from the Nike-bag or even open it. Furthermore, there were no other items found in the Nike-bag that could attribute the Nike-bag to the roommate.

219. There are only the following declarations of the Athlete that attribute the Nike-bag to Yaser Salam:

- First, there is the statement made at the hearing that the Nike-bag was located close to Yaser Salam's bed, i.e. between Yaser Salam's bed and the window/wall. This, however, is contradicted by the Police report according to which the Nike-bag was found in the area of the stool or low table for suitcases at the entrance of the room, between the wall and the television table, i.e. opposite of the two beds, i.e. at a location accessible to both athletes.
- Furthermore, the Athlete declared that Yaser Salam allegedly said to him and to other teammates that the Prohibited Substances found in the Nike-bag were his.

220. However, these declarations by the Athlete do not seem credible:

- They are contradicted by the statements made by Yaser Salam. The latter on 21 June 2016 declared before the Spanish Police that "he had not consumed banned substances or doping substances". Furthermore, he denied the Athlete's allegation that he had admitted that the EPOTIN was his and called such statement "a lie". On 6 July 2016, Yaser Salam provided a pre-trial statement before the Court No. 5 of Sabadell. Therein he confirmed his previous statement of 21 June 2016 according to which he did not know anything about the medication found in room no. 120.
- Furthermore, the Athlete's submissions are not very consistent, but evolve and meander as time goes by. In his statement of 20 June 2016 before the Police, the Athlete is being recorded as having said that Yaser Salam had declared that the medication belonged to him. In the pre-trial statement on 22 June 2016 to the Criminal Court No. 1 of Sabadell the Athlete is then recorded with the statement that *"the medicines were his teammate's because he is subject to testing, but his teammate is not subject to testing"*. Furthermore, the minutes say that "*his teammate is afraid and [this] is why he says that they are his* [i.e. the Athlete's]".
- In his letter of 8 July 2016 to the IAAF, the Athlete all of a sudden declares that *"Yasser Salam ... began by saying the 'vitamins' in the room were his and reassured an overwhelming majority of the team that they were only vitamins. Not less than a day later, Yasser went to the police station and said that the items did not belong to him. He came back to the hotel with a different story to the athletes and claiming to have admitted that he possessed the 'vitamins'. Notwithstanding this, Yasser changed his story numerous times to numerous athletes. While I was away, the police came to Yasser and manipulated him saying that I had already admitted the EPO was mine and agreed on the suspension. That being said, Yasser changed his story once again to fit the situation thinking this would be beneficial to him and myself. Upon discussing the issue with him, he told me that he was scared of the consequences he would have to face if he admitted the EPO belonged to him but would admit that the EPO belonged to him in court, this was once again changed. [...] To conclude, the case is still ongoing in court, considering Yasser once again changed his story to court on July 6th."* (emphasis added)

221. In addition, the Panel does not find the above statements consistent with the Athlete's behaviour at the time of the search. The Court Clerk Minutes record the Athlete as having said that *"what had been found in the room did not belong to him"*. However, the Athlete at the time of the search did not say that the EPOTIN discovered in the Nike-bag belonged to Yaser Salam. This, however, would have been the obvious reaction, if the Prohibited Substance (or the Nike-bag in which the Prohibited Substances were found) belonged to the roommate.

222. Finally, the Panel finds that – assuming the Athlete's statement were true – it is rather peculiar that the Athlete did not call Yaser Salam or any of the other athletes to whom Yaser Salam allegedly admitted that the EPOTIN was his as a witness in these proceedings.

223. To conclude, therefore, the Panel finds that there is no evidence whatsoever that the Nike-bag belonged to Yaser Salam.

1. The Athlete had access to the Nike-bag

224. There is evidence on file that the Nike-bag belonged to the Athlete or that the latter at least had access and opened the Nike-bag.

a) The photographs of the Athlete

225. The Court Clerk Minutes record that photographs of the Athlete were found in the Nike-bag. This is corroborated by the police report that describes in detail how the entry and search of the room no. 120 was conducted and what was found in the Nike-bag.

> Take 84: *The corporal with TIP 3697, who searches another black sports bag of the suitcase type (Nike brand), observes that this is full of medications and syringes. It also contains a green plastic bag from the fashion shop SPLASH (www.splashfashions.com, which is set up in the United Arab Emirates, Bahrein and Saudi Arabia). The sports bag is in the same part of the room. [...]*
>
> Take 86: *Take of the (laminated) wooden floor of the room where the corporal has now placed all the medications remaining in the sports bag, along with the green plastic SPLASH bag and the seven I.D. photos of Mr Musaeb Abdulrahman BALA (two different models of photograph).*
>
> *[...]*
>
> *It can be seen that the action taken by the corporal with TIP 3697 (at the end of the last take) consists in drawing closer the used 5 ml Royal Group brand syringe, the empty phial of TAD 600 and the plastic SPLASH brand bag towards the I.D. photos of Mr Musaeb Abdulrahman BALA. This indicates that the photos were located inside the bag.*

226. It appears from the above that the Prohibited Substances were found in the same Nike-bag in which there was a green plastic bag (SPLASH brand) with the ID photos of the Athlete. Mr Francesc Xavier Tarrés Campréciós confirmed at the hearing that the green plastic bag was in the Nike-bag. The corporal TIP 3697 confirmed that the photographs were in the green plastic bag.

227. The Respondents claim that the above evidence adduced by the Appellant is not reliable, because:

- the whole search was flawed. The Spanish police wrongly assumed that the Athlete was the only person staying in room no. 120 and that therefore, everything in the room belonged to him. In order to conduct the search properly, the Spanish Police should have established at the outset which items in the room belonged to the Athlete and which items belonged to his roommate.
- Furthermore, the Respondents argue that the video tapes are useless, because the most relevant parts of the video (i.e. when the photographs were allegedly taken out of the green plastic bag) have been edited out. Thus, there is no clear evidence that the photographs were in the Nike-bag together with the Prohibited Substances.
- In addition, the Respondents submit that the Court Clerk Minutes cannot be relied upon, since they also record that the Athlete's ID had been found in the green plastic bag, which is – undoubtedly – wrong.
- The Second Respondent submits that the ID photographs were not in the plastic bag, but on the TV table and that the police officers grouped them together with the contents of the Nike-bag on the floor when taking the video footage.

228. Despite the Respondents' observations, the Panel is persuaded that the photographs of the Athlete were in the green plastic bag that in turn was in the Nike-bag together with the Prohibited Substances. In particular, the Panel is not prepared to accept that the search was somehow flawed. The Panel notes that:

- The Search Warrant allowed the Spanish Police to search room no. 120 ("***Room number 120*** *used by Musaeb Abdulrahman Balla*"). The Search Warrant was not limited to the belongings of the Athlete, but instead allowed for a complete search of room no. 120. This is exactly what the Spanish Police did. Consequently, the Spanish Police neither exceeded its powers nor conducted the search wrongly by not establishing at the outset which of the items belonged to the Athlete or to his roommate.
- The Panel also rejects the Respondents' allegation that the video clips were manipulated. There is no evidence for this. Instead, the Panel finds the explanations provided by Mr Francesc Xavier Tarrés Campréciós and the Court Clerk to be credible and plausible. According thereto there is no need to videotape the whole search according to Spanish law, since the video footage does not qualify as evidence *per se*.
- According to Spanish law only the minutes of the court clerk that assists the search qualify as evidence in criminal proceedings. Thus, video clips of a search are never mandatory: They are only taken for practical purposes, i.e. to visualize the findings of the search recorded in the minutes of the court clerk. This conclusion is further backed by the text of the Search Warrant. The latter provides that if "*the execution*

of the search warrant is recorded, the recordings must be properly stored and may not be used for purposes unrelated to these proceedings." Since it is not mandatory to videotape the whole search, any manipulation of the tapes can be excluded.

- This is all the more true, considering that the videos were made (and later on stored) by a special police unit (scientific group) that is different from the unit that conducted the search. Thus, it would have been extremely difficult for the policemen conducting the search to manipulate or edit the videos at a later point in time.

The Panel is also not prepared to dismiss the Court Clerk Minutes as unreliable evidence altogether. It is true, that Court Clerk Minutes record that the following items were found in the Nike-bag: "*algunas fotos y carnets*" ("*photographs and ID cards*"). It is uncontested that no ID cards were found in the plastic bag. This mistake, however, is – obviously – due to a typo. What the minutes intended to say was that "*algunas fotos de carnet*" ("photos in ID card format") were found in the Nike-bag. Indeed the photos found in the plastic bag / Nike-bag were in ID card format. The Athlete acknowledged that he brought these photographs with him to Spain for visa purposes.

229. Finally, the Panel is not prepared to follow the Second Respondent's submission that the ID photos were on the TV table (and not in the Nike-Bag) and that the police officers placed the ID photos together with the items of the Nike-bag on the floor before taking the video footage. First of all, it is completely unclear what motive the police officers would have to arrange the evidence in such a way. Secondly, this submission of the Athlete is contradicted by the statement he made on 20 June 2016 before the Spanish Police. The minutes of the interview read as follows: "*When asked why he asserted that they were not his, despite them being found in his room and in a suitcase containing photographs of the declarant, he RESPONDED that he could not comment on their origin as he did not know*". Thus, there was no mentioning by the Athlete of the police (re-)arranging the evidence on the floor of the hotel room at the time.

230. When evaluating the evidence, the Panel also took into account:

- that the Court Clerk, Mr Francesc Xavier Tarrés Campréciós, the officers TIP 3697 and TIP 15303 and Mr Antonio de Campos Gutierrez could not remember how many bags were in hotel room no. 120 and where exactly they were located;
- that the Court Clerk claimed to remember that room no. 120 was a single and not a double room; and that
- the Court Clerk Minutes contained a mistake in relation to the "ID cards".

231. Despite the above, the Panel determines that all the evidence adds up to a rather clear picture, i.e. that personal items (the photographs) of the Athlete were found in the Nike-bag and that consequently, the Athlete must have had access to it. In coming to this conclusion the Panel also considered that the police officers conducting the search had no obvious motive to lie and place photographs of the Athlete into a green plastic bag and hide the latter in the Nike-bag. On the other hand, the Athlete has a significant motive to deny that his photographs were in the Nike-bag.

232. The Panel observes in this respect that the Athlete had previously already made inaccurate declarations, e.g. with respect to his hotel room (see supra no. 200 et seq.) or the location of his passport (see supra no. 212 et seq.). In addition, the Athlete had declared

in his pre-trial statement to the Criminal Court No. 1 of Sabadell on 22 June 2016 that the Spanish Police had "*made him stay at the side during the search and he didn't see anything.*" At the hearing, however, the Athlete stated the contrary, i.e. that he was standing in the room between the two beds and clearly saw what was going on. When asked about this contradiction at the hearing, he could not provide any plausible explanation.

b) The connection between the Nike-bag and the sports bag

233. It follows – *inter alia* – from the video footage and the police report that the police agents searched not only the Nike-bag, but – in addition – also a black sports bag. The police report states in relation to the black sports bag as follows:

> Take 83: *The corporal with TIP 3697 is seen, searching a black sports bag, in which there are three ICO brand 10 ml PCV syringes, presumably used (outside their original packaging).*
> *The bag is in the area of the stool or low table for suitcases found at the entrance to the room on the left, between the wall and the television table.*
> *The corporal leaves the three syringes on the television table to the right. On this there are several jars of food complements for sportspersons and a box of DECAN medication and one of Omeprazol are seen.*
> *The bag also contains a white belt, some black sports shoes and different clothing items black tee-shirt, white trousers etc.).*

234. The Athlete does not deny that there was a black sports bag and he does not object to the contents of the police report. The Athlete also stated that the three used syringes found in the black sports bag were his. He said that he used the syringes to treat his injuries. Thus, without doubt the Athlete had access and control over the black sports bag.

235. The Panel finds that there is a link between the two bags located in the same area of the room. While the Nike-bag is used to stock the supplies of medicines, the other black sports bag is used as a garbage can, since the used products and syringes could not be disposed with the normal hotel rubbish without attracting attention. Instead they needed to be disposed secretly. To this end the used products and syringes needed to be stored temporarily in a secure location. This finding of the Panel is backed by:

- the extensive surveillance reports of the Spanish Police from 31 May 2016 until 9 June 2019 that provide ample evidence of a refined system of secret waste disposal by the Coach.
- Furthermore, this secret systems of waste disposal is directly linked to the Athlete's hotel room. This follows from the Court Decision that states as follows:

  "*Page 31 of the operational police report on the organisation overseen by Mr Jama Mohamoud Aden which reached this court on the date of 10 March 2017 [...] illustrates that the medication DECAN found in his* [the Athlete's] *room was part of the same batch purchased by Mr Mounir in the Perpignan pharmacy and several vials of MAGNESIUM SULPHATE INJECTION belonged to the same batch as the vial thrown away by Mr Jama Mohamoud Aden on the date of 2 June 2016 [...]*"

236. It is obvious to the Panel, therefore, that both bags (Nike-bag and sports bag) have a functional connection. If however, the Athlete had access and managed the "waste-bag", it is very likely that he also had also had access to and controlled the "storage bag". This is all the more true considering that the Athlete's testimony in relation to his three used syringes in the sports bag was not credible. The Athlete stated at the hearing that "*the syringes are for his injury and he uses them to reduce the pain*". Not only does this statement contradict the Athlete's previous statement before the Spanish Police on 20 June 2016, where he is recorded as having said that *"he only ever [took] tablets orally"*.

237. In addition, the Athlete's explanation as to the therapy for using the syringes were implausible. He stated that he used syringes to inject Voltaren and that the Voltaren syringes came in packages of three, which is – however – not true. He could not say how many syringes he had bought, when and where. Whether he bought them himself or someone else bought them. He could not describe the treatment prescribed to him, i.e. whether he needed the injections on a regular basis (one per week, per day, etc.) or not. This is all the more striking considering that the Athlete was injured over a longer period of time. In addition, the treatment with Voltaren syringes was mentioned by the Athlete in the hearing for the very first time. To conclude, therefore, the Panel finds that the Athlete was an integral part of the cycle between the storage and the garbage bag and, therefore, had access to and exercised control over both bags.

c) Status of the Athlete within the Team

238. The above finding is further corroborated by the status of the Athlete within the Qatari team. The Athlete was the oldest and most senior athlete in the team. He was very close to the Coach, whom he referred to at the hearing as a "second father". The Coach had disposed a considerable amount of used medical products outside of the Hotel on several walks. This is recorded in various monitoring reports of the Spanish Police.

239. The Athlete must have been aware of this, because – at least on one occasion – he accompanied the Coach on a nightly walk, when the Coach disposed of used medical products. The Athlete denies that he knew what the Coach had thrown away. However, this is not credible, because the Athlete's statements are contradictory.

240. The minutes of the Spanish Police on 20 June 2016 stated as follows: "[he] *did not go with JAMA ADEN to throw away any syringe*". In his pre-trial statement before the Court on 22 June 2016 *"[the Athlete did] not recall having left the hotel with Mr Jama on 2 June". "[...] He does not recall whether they passed some containers and whether Mr Jama threw a syringe and a box of medicines into the container. [...] Mr Jama does not ask him what he has in his hand if he is going to throw it away."* In the Appealed Decision the Athlete is referred to as follows: *"When asked about why he left the hotel late at night with the Coach, the Athlete explained as follows: On one occasion, when he was about to leave the hotel, the Coach approached him and said 'let us walk together'. The Coach then threw away some stuff. However, the Athlete did not know what the Coach was throwing away, as he was not interested in this at all"*.

241. To conclude, therefore, the Panel finds that also the Athlete's senior position within the Qatari team and his close relationship with the Coach speak in favour of the Athlete having control over the Nike-bag, rather than the significantly younger Yaser Salam.

d) Other issues

242. In coming to its conclusion, the Panel also took into account:

- The fact that the Athlete – as stated above – persistently tried to prevent the search of room no. 120. It follows from this that the Athlete not only knew of the Prohibited Substances, but that he also feared that the Prohibited Substances would be attributed to/associated with him, i.e. that he had some kind control over the Nike-bag.
- The fact that no fingerprints of the Athlete were detected on six boxes of medication found in the Nike-bag. However, the Panel finds that whether or not there were fingerprints of the Athlete is not material to the question whether the Athlete had access to and/or control over the Nike-bag. In order for the Athlete to have constructive possession it is not necessary that the boxes of medication belonged to him. It suffices, on the contrary, that the Athlete stored the contents of the Nike-bag for someone else (e.g. the Coach) in order to have constructive possession.

2. Conclusion

243. In the case at hand there is no direct evidence that the Athlete had constructive possession, but only circumstantial evidence. However, the Panel finds that – comparable to a puzzle – there are abundant tiny pieces of reliable and corroborated evidence and information that add up to a clear picture of an Athlete that tried persistently to divert from the search of his room, because he was hosting and controlling a system of storage and waste disposal for medical products (including Prohibited Substances) in his room and, thus, had constructive possession of the Nike-bag and the Prohibited Substances contained therein. What added to this picture was that most of the Athlete's submission were contradictory, evasive or incoherent. The Panel is, therefore comfortably, satisfied that the Athlete had (constructive) possession of the Prohibited Substances within the meaning of Rule 32.2(f) 2016-2017 IAAF ADR.

D. Consequences of the ADRV

244. As a result of the foregoing, it is for the Panel to determine the appropriate sanctions to be imposed on the Athlete for the ADRV.

245. Under Rule 40.2(a)(i) of 2016-2017 IAAF ADR the period of Ineligibility imposed for a violation of Rule 32.2(f) (Possession of Prohibited Substance or Prohibited Method) shall be as follows:

> *"(a) The period of Ineligibility shall be four years where:*
> *(i) the anti-doping rule violation does not involve a Specified Substance, unless the Athlete or other Person can establish that the anti-doping rule violation was not intentional."*

246. Rule 40.3 of 2016-2017 IAAF ADR states that the term intentional is meant to identify those Athletes who cheat. The term therefore requires that the Athlete or other Person engaged in conduct which he knew constituted an anti-doping rule violation or knew

that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk.

247. According to point S2 of the WADA Prohibited List (Peptide Hormones, Growth Factors, Related Substances and Mimetics) EPO is a prohibited substance.

248. The question before this Panel is, therefore, whether the Athlete established that his violation was not intentional. The Athlete contests that the EPO belongs to him. Thus, he at least conclusively denies that the intended to commit the ADRV.

249. The Panel does not concur with this view. The Athlete knew about the Prohibited Substances and intended to exercise control over them. Thus, in the view of the Panel he acted intentionally. As a result, the Panel concludes that the "standard" sanction for the infringement of Rule 32.2(f) of 2016-2017 IAAF ADR applies and that the Athlete is declared ineligible for a period of four years.

250. The Appellant submitted that the Athlete was provisionally suspended, pursuant to Rule 37.16 2016-2017 IAAF ADR, on 11 October 2016 until the date the Appealed Decision was issued on 31 August 2018. The Appellant stated that this period of time shall be taken into account when imposing/deciding on the total period of ineligibility to be served.

251. In addition, the Panel takes note of the fact that on 22 February 2019, the AIU confirmed that the Athlete had been under provisional suspension since 31 October 2018, further to an alleged conversation with Mr Mohammed Al Fadhala, General Secretary of the Qatar Athletics Federation. The AIU took the position that it had re-imposed the provisional suspension against the Athlete already in October 2018. The Athlete demands that all periods of provisional suspension served since 11 October 2016 shall be deducted from any sanction imposed on him.

252. Rule 40.11 of the 2016-2017 IAAF ADR reads as follows:

> *"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. [...]*
>
> *(c) Credit for Provisional Suspension or Period of Ineligibility Served: If a Provisional Suspension is imposed and respected by the Athlete or other Person, then the Athlete or other Person shall receive a credit for such period of Provisional Suspension against any period of Ineligibility which may ultimately be imposed. If a period of Ineligibility is served pursuant to a decision that is subsequently appealed, then the Athlete or other Person shall receive a credit for such period of Ineligibility served against any period of Ineligibility which may ultimately imposed on appeal."*

253. On the basis of such rules, the starting date of the period of ineligibility to be imposed on the Athlete would be the date of this Award, which is *"the final hearing decision providing for Ineligibility"*, with credit given for the period of provisional suspension

served by the Athlete. The operative part of this Award has been issued on 6 June 2019. Consequently, the period of ineligibility shall start on such date. However, the Athlete shall receive credit for the provisional suspension served from 11 October 2016 until 6 June 2019.

X. COSTS

A. Arbitration costs

254. 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. The advance of costs already paid by the parties are not reimbursed by the CAS with the exception of the portion which exceeds the total amount of the arbitration costs."*

255. Furthermore, 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."*

256. In the present case, in consideration of the loser-pays principle and the outcome of the proceedings the Panel rules that the Respondents shall bear the arbitration costs of these proceedings in equal shares. The final amount of the arbitration costs shall be communicated separately to the Parties by the CAS Court Office.

B. The Parties' legal fees and expenses

257. It is standing practice at CAS to only award a fairly modest contribution to the respective legal fees and expenses of the other party. The underlying rationale of this standing

practice is to not overly burden access to justice, since arbitration costs as well as contributions to legal fees and expenses may constitute – in principle – a significant barrier to access to justice. In the case at hand the Panel finds that there are no reason to deviate from this practice as a starting point. Taking account of the behaviour of the Parties, the outcome of the case and, also, the abundant submissions and (procedural) requests by the Parties, the Panel finds that the Respondents shall be jointly and severally liable for the contribution to the legal fees and expenses of the IAAF in the amount of CHF 10,000 (ten thousand Swiss francs).

* * * * *

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed on 31 October 2018 by the International Association of Athletics Federations against the decision issued by the Disciplinary Tribunal of the Qatar Athletics Federation on 31 August 2018 is admissible.

2. The decision issued on 31 August 2018 by the Disciplinary Tribunal of the Qatar Athletics Federation is set aside.

3. Mr Musaeb Abdulrahman Balla is found to have committed an anti-doping rule violation.

4. Mr Musaeb Abdulrahman Balla is sanctioned with a period of ineligibility of four (4) years starting on the date on which the CAS award enters into force. Any period of provisional suspension effectively served by Musaeb Abdulrahman Balla before the entry into force of the CAS award shall be credited against the total period of ineligibility to be served.

5. The costs of the arbitration, to be determined and served by the CAS Court Office, shall be borne by Mr Musaeb Abdulrahman Balla and the Qatar Athletics Federation in equal shares.

6. Mr Musaeb Abdulrahman Balla and the Qatar Athletics Federation are ordered to pay jointly and severally to the International Association of Athletics Federations a total amount of CHF 10,000 (ten thousand Swiss francs) as a contribution to its legal fees and other expenses incurred in connection with these arbitration proceedings.

7. All other motions and prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland
Date: 12 December 2019
Operative part of the award issued on 6 June 2019

THE COURT OF ARBITRATION FOR SPORT

Ulrich Haas
President of the Panel