CAS 2008/A/1718 IAAF v. All Russia Athletic Federation & Olga Yegorova
CAS 2008/A/1719 IAAF v. All Russia Athletic Federation & Svetlana Cherkasova
CAS 2008/A/1720 IAAF v. All Russia Athletic Federation & Yuliya Fomenko
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CAS 2008/A/1723 IAAF v. All Russia Athletic Federation & Yelena Soboleva
CAS 2008/A/1724 IAAF v. All Russia Athletic Federation & Darya Pishchalnikova

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

Sitting in the following composition:

President: Mr David A.R. **Williams QC**, Barrister, Auckland, New Zealand

Arbitrators: Mr Ulrich **Haas**, Professor, Zurich, Switzerland
Mr Massimo **Coccia,** Professor and attorney-at-law, Rome, Italy

Ad hoc Clerk: Mr Nicolas **Cottier**, attorney-at-law, Lausanne, Switzerland

in the arbitration between

The International Association of Athletics Federations ("IAAF"), Monaco,
Represented by Mr Mark Gay and Ms Sally Barnes, solicitors, London, United Kingdom,

As Appellant

and

All Russia Athletic Federation ("ARAF"), Moscow, Russia

Represented by Mr Victor Berezov, ARAF legal advisor and Mr Valentin Balakhnichev, President ARAF Federation

As 1st Respondent

and

Olga Yegorova, c/o ARAF, Moscow, Russia,

Not represented;

Svetlana Cherkasova, Yuliya Fomenko, Gulfiya Khanafeyeva, Tatyana Tomashova, Yelena Soboleva and Darya Pishchalnikova,

Represented by Mr Takhir Samakaev and Mr Artem Patsev, attorneys-at-law, Moscow, Russia

As 2nd Respondents

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I. Introduction

1. This appeal to the Court of Arbitration for Sport ("CAS") is brought by the International Association of Athletics Federations (hereinafter "the Appellant" or "the IAAF"), that is the world governing body for the sport of athletics, with corporate seat in the Principauté de Monaco. It seeks to increase the penalties imposed on seven female Russian track and field athletes by the All Russia Athletic Federation (hereinafter "the 1st Respondent" or "the ARAF") for anti-doping rule violations. As the national governing body for athletics in Russia, ARAF is a member of the IAAF, in accordance with Art. 4 of the IAAF Constitution. The athletes filed counterclaims with CAS challenging the ARAF decisions that they had committed anti-doping rule violations. The athletes concerned are as follows:

2. Olga Yegorova (hereinafter also referred to as "Ms Yegorova" and, together with the other athletes "the 2nd Respondents" or "the Athletes"), a Russian athlete of international level in the long distance (5000m) category.

3. Svetlana Cherkasova (hereinafter also referred to as "Ms Cherkasova" and, together with the other athletes "the 2nd Respondents" or "the Athletes"), a Russian athlete of international level in the middle distance (800m) category.

4. Yuliya Fomenko (hereinafter also referred to as "Ms Fomenko" and, together with the other athletes "the 2nd Respondents" or "the Athletes"), a Russian athlete of international level in the middle distance (1500m) category.

5. Gulfiya Khanafeyeva (hereinafter also referred to as "Ms Khanafeyeva" and, together with the other athletes "the 2nd Respondents" or "the Athletes"), a Russian athlete of international level in the hammer throw. She has been previously sanctioned on 12 September 2002 with a public warning and a disqualification from competition for having been tested positive to ephedrine.

6. Tatyana Tomashova (hereinafter also referred to as "Ms Tomashova" and, together with the other athletes "the 2nd Respondents" or "the Athletes"), a Russian athlete of international level in the middle distance (1500m) category.

7. Yelena Soboleva (hereinafter also referred to as "Ms Soboleva" and, together with the other athletes "the 2nd Respondents" or "the Athletes"), a Russian athlete of international level in the middle distance (1500m) category.

8. Darya Pishchalnikova (hereinafter also referred to as "Ms Pishchalnikova" and, together with the other athletes "the 2nd Respondents" or "the Athletes"), a Russian athlete of international level in discus throwing.

II. Chronological Summary of Primary Facts

9. There was little or no dispute as to the general sequence of events in this case and the Tribunal finds the primary facts as follows. (The question of the inferences to be drawn from the primary facts is dealt with later).

10. In March 2007, the IAAF commenced a vast investigation in Russia as it suspected that certain irregularities had arisen from its "out of competition" testing program conducted in that country.

11. The suspected irregularities that concerned the IAAF were two-fold. First, although the IAAF had found that some of the Russian athletes in its Registered Testing Pool had suspicious blood profiles, none of them had ever returned positive test results. Secondly, the number of missed tests, namely when an athlete is unable to be located for testing by a doping control officer at the whereabouts, arising from out of competition testing in Russia was significantly less than in other jurisdictions in which the IAAF conducted its out of competition program. Based on the foregoing, the IAAF was concerned that its requirements for no notice out of competition testing were not being fully observed in Russia, thereby leaving the doping control process open to manipulation.

12. The IAAF thus started to investigate the possible manipulation of samples collected under its out of competition testing program in Russia. In particular, the IAAF decided to compare the DNA profiles of out of competition urine samples that had been collected from selected Russian athletes with the DNA profiles of "in competition" urine samples collected from the same athletes in conditions that could guarantee the origin of the samples.

13. Between March and August 2007, the IAAF proceeded to collect and centralise, in cooperation with the WADA-accredited Laboratory in Lausanne, the Laboratoire Suisse d'Analyse du Dopage (hereinafter "LAD"), a number of in competition and out of competition samples provided by selected Russian athletes.

14. The 2nd Respondents provided out of competition samples between 7 April 2007 and 23 May 2007, namely:

    on 7 April 2007 Ms Yegorova;

    on 10 April 2007 Ms Pishchalnikova;

    on 26 April 2007 Ms Cherkasova and Ms Soboleva;

    on 27 April 2007 Ms Fomenko;

    on 9 May 2007 Ms Khanafeyeva;

    on 23 May 2007 Ms Tomashova.

15. The IAAF then arranged for pairs of samples attributed to the same athlete, being one out of competition sample and one in competition sample, to be transferred for DNA analysis. DNA analysis was carried out at the Laboratoire de Genetique Forensique ("LGF") at the Institut Universaire de Medicine in Lausanne, Switzerland.

16. Initially, four pairs of samples were subjected to DNA analysis in August 2007. In mid-August, the IAAF was informed that, out of the four pairs of samples, the DNA profiles did not match in three of the cases.

17. As a result of the conclusions obtained from the first round of DNA analyses, the IAAF decided to continue its investigations and to select further Russian athletes for comparative DNA analysis. A second round of DNA analyses, including samples collected from the Athletes was therefore initiated from 25 October 2007, and a third round from 5 December 2007. In total, fifty-one samples from twenty-three Russian athletes were submitted to DNA analysis and compared between August and December 2007. The DNA analyses revealed that, for 7 female Athletes, the samples compared presented different genetic profiles, thereby excluding the possibility that the same person had provided both samples.

18. On 21 June 2008, Dr Gabriel Dollé, the IAAF's Anti-Doping Administrator, wrote to the President of the ARAF presenting the results of the DNA analyses and informing him that, in light of the IAAF's investigation, the Athletes would be charged with breaching IAAF Rules 32.2(b) and 32.2(e) on account of a fraudulent manipulation of their urine samples. Dr Dollé advised the ARAF at the same time that the IAAF would collect a further sample from each of the Athletes for additional DNA analysis.

19. The Athletes denied the charges against them and refused to accept a voluntary provisional suspension from competition pending the outcome of their cases before the ARAF.

20. Six of the Athletes attended at the headquarters of the ARAF in Moscow on 22 July 2008 to provide the IAAF with a further sample for DNA analysis, in the form of a buccal swab. Ms Yegorova did not attend and did not take part in the anti-doping proceedings before the ARAF.

21. On 30 July 2008, Dr Dollé wrote to the ARAF President informing him of the results of the further DNA profile comparisons. Dr Dollé reported that, in all cases, (i) the DNA profiles of the samples collected from the Athletes in Moscow on 22 July 2008 were identical to the DNA profiles of samples previously collected from the same Athletes in competition; and (ii) the DNA profiles of the samples collected from the Athletes in Moscow on 22 July 2008 were different from the DNA profiles of samples that had been previously collected from the Athletes out of competition. Dr Dollé advised the ARAF that in his view these results confirmed the findings that the Athletes had committed anti-doping rule violations under IAAF Rules 32.2(b) and 32.2(e).

22. In the same letter, Dr Dollé further informed the ARAF President that the Athletes were provisionally suspended by the IAAF from all competitions pending resolution of their case. Dr. Dollé therefore asked the ARAF President to confirm to the Athletes their provisional suspension immediately.

23. On 31 July 2008, the ARAF President wrote to Dr Dollé to confirm that the Athletes had been informed of their provisional suspension as well as of their right to request a hearing within fourteen days, in accordance with IAAF Rules 38.6.

24. Following the provisional suspension of the Athletes, the ARAF established on 1 August 2008 a Special Commission in order to consider their disciplinary cases (hereinafter the "ARAF Special Commission").

25. The ARAF Special Commission held hearings on 3 and 16 September 2008 to consider the facts and to make its recommendations to the ARAF Council.

26. On 20 October 2008, the IAAF received a letter from the ARAF General Secretary in which he informed the IAAF that the ARAF Council had decided to suspend the Athletes from competition for a period of 2 years from the date of the out of competition testing which provided the foundation for the IAAF investigation and to disqualify all their results from the same date.

27. On 24 October 2008, the IAAF received a further letter from the ARAF General Secretary which set out in details the terms of the ARAF Council's Decisions with regard to the Athletes. The letter informed the IAAF that they would receive a translation in English of the Resolutions of the Special Commission setting out the reasons for the Council's decisions.

28. On 27 October 2008, the IAAF received an English translation of the Resolutions of the ARAF Special Commission, which set out the reasoning of the ARAF Council's Decisions.

29. The decisions of the ARAF Council in the Athletes' cases can be summarized in essence as follows:

> "The ARAF Council ruled:
>
> On the basis of the Resolution of the ARAF Special Commission dated 17 October 2008 and in accordance with the Rule 40.1 of the IAAF Anti-Doping Rules (...) [the Athletes are] declared ineligible for participation in all international and national competitions for a period of 2 (two years) for violation of the Art.s 32.2(b) and 32.2(e) of the IAAF Anti-Doping Rules.
>
> Taking into account that after the moment of the anti-doping rule violation more than 16 (sixteen) months passed and the delays in the hearing process and other aspects of doping control not attributable to athlete in this case, in accordance with the Art. 10.8 of the World Anti-Doping Code the period of ineligibility shall start on the date of the sample collection [between 7 April 2007 and 23 May 2007 depending on each of the Athletes].
>
> The ARAF General Secretary M. Butov shall immediately notify the IAAF about the decision rendered by the ARAF Council."

30. The Resolution of the ARAF Special Commission, on which the ARAF Council relied in reaching its seven Decisions against the Athletes on 20 October 2008, stated in relevant part as follows:

> "The All-Russia Athletic Federation special commission set up by order of the ARAF N59 on August 1 2008 (hereinafter referred to as Commission) consisting of the Chairman Igor Ter-Ovanesyan and the members Nikolay

Durmanov, Tagir Samokayev and Vladimir Usachev considered in the meetings on September 3 2008 and September 16 2008 the materials connected with the charge (...) [of the Athletes] on the usage of a prohibited method and commitment of an Anti-Doping Rule violation in accordance with IAAF Rule 32.2(b) and 32.2(e). Having heard the explanation of (...) [the Athletes], the Commission ascertained:

1. Facts

(...)

The Commission held two meetings (September 3 and September 16, 2008) at which the athletes provided explanations in response to Anti-doping rule violation charges and the Commission examined the written materials that were available.

(...)

3. Athlete[s]' explanation and IAAF reply to ARAF enquiry

In [their] official letter[s] sent on 30.06.2008 the Athlete[s] dismissed all the charges and did not admit the anti-doping rule violation, namely, usage of a prohibited method "urine substitution". The Athlete[s] also pointed out that in all the cases of doping control testing, (...), [they] followed all the instructions and requirements of the IAAF Anti-Doping Regulations, and the signatures of the authorized IDTM representatives (hereinafter referred to as DCO) that were responsible to the testing procedure can prove [their] words.

The Athlete[s] also mentioned Rules C.3 and C.4.8 of the International standards of testing where the duties of DCO during the collection of urine samples are given in full detail. In particular, the list of DCO duties includes the witnessing "the sample leaving the athlete's body" and "record the witnessing in writing".

In conclusion, the Athlete[s] mentioned that since the moment [they] provided the urine sample in the DCO presence,[they are] not any more responsible for any further actions with the sample.

During the Commission meetings (03.09.2008 and 16.09.2008) the Athlete[s] confirmed all the explanations stated in [their] official letters (30.06.2008) and did not admit (...) guilt in anti-doping rule violation.

In the opinion of the Athlete[s], IAAF had no reasons to delay the DNA analysis of the samples and the announcements of the results of the analysis and should have informed the Athlete[s] about any claims as soon as the investigation started in 2007, so that the Athlete[s] could have the possibility to adequately protect [their] rights before the commence of the Olympic Games- 2008.

Moreover, the Athlete[s] think that IAAF had no rights to analyse [their] samples with DNA analysis because the DNA analysis as a method to find

prohibited substances or methods will be introduced only in the new issue of the World Anti-Doping Code since the 1st of January, 2009. And the DNA test without [their] prior approval is the violation of [their] human rights.

On 9th October, 2008 following the Athlete's request ARAF sent the official enquiry to IAAF in order to receive the following information:

Which probe (A or B) has been used for DNA analysis? And if sample B was used, then why the standard WADA procedure was not implemented (official request to the national sport federation and athletes as well as getting her formal consent);

Why those particular probes had been kept in storage above usual terms - 3 months?
Was DNA analysis performed just in WADA accredited laboratory or outsourcing team was invited to participate?
Why did the standard DNA analysis take such a long time?
In WADA official documents there is no single mentioning of any other material to be taken from the athlete except for urine and blood samples. So, there are doubts on the reasons for taking the material for the third sample (21.07.2008), including the technical side (storage, transportation, analysis, etc.)
Did IAAF try to ask DCO of IDTM for any details and could IAAF provide to ARAF their written explanation if any.

In the letter sent on 17 October, 2008, IAAF replied to all the questions of the Athletes. In IAAF opinion, the use of DNA analysis as a method to ascertain the case of the anti-doping rule violation is allowed under the IAAF Anti-Doping Regulations (33.4) and WADA Code (3.2) that state that the circumstances of the anti-doping rule violation can be ascertained by any reliable mean including DNA analysis.

IAAF also thinks that all the claims concerning the fulfillment of the requirements of the collection, transportation and storage of the samples that were used for DNA analysis are groundless because IAAF has all the necessary relevant laboratory documentation package.

Concerning the time limits for sample storage IAAF refers to WADA International standards for the laboratories (5.2.2.8) according to which the organisation responsible for Doping control can ask the laboratory to store the analyzed samples longer than 3-months' time.

IAAF explained that DNA analysis based on the urine samples was carried out by a specialized scientific research laboratory in Lausanne (Switzerland). In order to guarantee independence and objectivity of the investigation the Athlete[s]' DNA sample[s] taken on 22 July, 2008 [were] analyzed in a different laboratory in Zurich (Switzerland), the latter was not aware of the analysis results of the above mentioned laboratory in Lausanne.

IAAF also pointed out that WADA accredited laboratories specialize in finding prohibited substances and do not have the equipment to carry out DNA analysis.

IAAF also informed that the long time period of the investigation could be explained by the fact that during this investigation (started in 2007 and finished in 2008) 51 samples from 23 Russian athletes were collected and sent for DNA analysis.

4. Conclusion of the Commission

Having examined all the available documents during the meetings on 3 September and 16 September, 2008 and having heard the Athlete[s]' explanations, the Commission came to conclusion that the evidence provided by IAAF that the Athlete[s] used prohibited method is enough to consider that the Athlete[s] committed anti-doping rule violation. The Athlete[s] did not provide any convincing evidence explaining the fact that finding in [their] urine sample other person's urine was the result of the third party action but not of the Athlete[s]' action.

On the base of the long term experience of hearings the anti-doping rule violation cases in CAS, the legal presumption of "chain of custody" was worked out. This presumption states that since the moment of sealing the sample during the testing and until the analysis of the sample is over in the laboratory, the sample is stored, transported and analyzed according to the WADA international standards.

According to IAAF Rules in order to overturn the presumption an Athlete supposed to have committed the anti-doping rule violation must prove the fact that during the transportation, storage or analyzing of samples the departure from the International standard for the Laboratories occurred and that the departure can influence the correctness and reliability of the analysis.

The Commission concludes that in this case the Athlete failed to provide convincing evidence that during the storage, transportation and analysis of the sample (...) the departure from the Standard occurred and caused the finding of another person's urine in the sample[s] (...).

In absence of such evidence that can overturn the presumption, the Commission has to conclude that the reason of finding another person's urine in the sample No. 965015, collected 26.04.2007, was the urine substitution that could not take place without Athlete's involvement.

Moreover, the Commission supposes that the Athlete is the only person interested in urine substitution as in another person's urine sample there were no prohibited substances.

5. Recommendations

According to IAAF Anti-Doping Regulation (40.1) the use of a prohibited method is considered an anti-doping rule violation with the subsequent sanctions of two years' ineligibility.

> But the Commission pays attention to the _fact that the Athlete committed the antidoping rule violation 17 months ago and there were the delays in the hearing process and other aspects of the doping-control not attributable to athlete.
>
> Thus, the Commission leaves without the final decision the issue of what date should be considered the commencement of the period of ineligibility of the Athlete.
>
> The Commission supposes that the ARAF Council should resolve this issue taking into consideration the concepts of WADA Code and IAAF Anti-Doping Regulations.
>
> The Commission recommends the Council to consider the fact that according to the IAAF Rules if the Athlete is considered guilty in anti-doping rule violation, all the results shown in the period since 26 April 2007 will be disqualified."

III. Proceedings before the Court of Arbitration for Sport

31. The IAAF submitted its Statements of Appeal to CAS on 26 November 2008. On 19 January 2009, further to extensions of time granted pursuant to Article R32 of the Code, the IAAF filed its appeal briefs.

32. ARAF filed its answers on 20 March 2009.

33. The Athletes, apart from Ms Yegorova, filed their Answers on 19 March 2009. The Answers stated, inter alia, that "pursuant to Art. 55 of the CAS Code Answer of the Respondent may contain ... counterclaims. Therefore this Answer will not touch the IAAF appeal and its grounds and will be totally devoted to challenging the ARAF decision of 20 October 2008".

34. On 15 April 2009, the Appellant requested the authorization to file a reply brief. Its reasoning for the request was as follows:

> "At the time of filing its seven Appeal Briefs, the IAAF made it clear that the appeals were solely concerned with the appropriate sanction to be imposed on the Second Respondents for the anti-doping rule violations that they had committed under IAAF Rules. The IAAF agreed with the First Respondent that the Second Respondents were guilty of anti-doping rule violations and noted that none of the Second Respondents had sought to appeal against the ARAF decisions to CAS (as they had been entitled to do under IAAF Rules). Accordingly, the IAAF limited the scope of its Appeal Briefs and supporting evidence to issues of sanction only.
>
> In the Answers recently served by the Second Respondents, the athletes have now for the first time sought to challenge the decisions of the ARAF that they committed anti-doping rule violations under IAAF Rules by filing what they

refer to as "counterclaim". The Second Respondents expressly state (at para 6 of their Answers) that "this Answer will not touch the IAAF appeal and its grounds and will be totally devoted to challenging the ARAF decision of 20 October 2008."

In their Answers, the Second Respondents have raised at least the following new issues in the case under specific hearings:

(i) the standard and burden of proof of the relevant anti-doping rule violation under IAAF Rules (and related issues):

(ii) the sample collection procedure (and related issues):

(iii) the DNA analysis made by the Genetic Forensic Laboratory (and related issues).

If the Answers of the Second Respondents are to be admitted in these appeals (together with any further evidence that they might file in the form of witness statements), the IAAF respectfully submits that both the First Respondent and the IAAF must be given a full opportunity to respond to the new issues that have been raised. The IAAF considers for its part that, in addition to a Reply Brief, this will mean filing a number of additional witness statements and expert reports. It is accepted by the IAAF that the Second Respondents would have a right to respond to the Replies of the First Respondent and the IAAF in advance of the hearing."

Since CAS R55 allows a counterclaim the Panel considered that the Answers of the Second Respondents were admissible and that fairness required that the Appellant's request be granted. Accordingly the Appellant's request was granted.

35. By letter dated 12 May 2009, Ms Soboleva supplemented her answer.

36. On 14 May 2009, the Panel fixed a deadline for the Appellant of 1 June 2009 to file its reply brief and a deadline for the Respondents to file any response to the Appellant's reply brief until 10 June 2009.

37. In compliance with the assigned deadline, the IAAF filed a consolidated reply brief in order to address the numerous submissions of the ARAF and the Athletes as to the collection of the samples, the chain of custody of those samples and the execution of the DNA analysis at the LGF.

38. The ARAF claimed in letters dated 4 June and 12 June 2009 that the Appellant's reply brief was in breach of Art. R56 of the Code of Sports-related Arbitration (hereinafter the "Code") since the parts of the Appellant's reply brief related to the starting date and the extent of the sanction and were in the ARAF's view to be considered as new submissions rather than a mere reply to the Athletes' submissions related notably to the chain of custody of the samples. For the same reason, the ARAF requested that the witness statements of Mr. Capdevielle and Ms. Radcliffe filed by the IAAF with its reply brief be disregarded.

39. On 12 June 2009 and 19 June 2009 the Athletes requested to cross-examine the Doping Control Officers ("DCOs"), the courier Mr Leonenko, the DCOs' coordinator, Ms Ilina, as

well as the Appellant's medical experts, namely Dr Saugy and Dr Castella. The Athletes claimed further that Ms Radcliffe's witness statement should be disregarded and the latter not be heard by the Panel since Ms Radcliffe expressed only its personal opinion and had "her own interest in the cases, because of her long-term strained relationship with Russian female athletes (and Ms Olga Yegorova, one of the Second Respondents, in particular) (...)".

40. The IAAF replied to the ARAF's objections on 17 June 2009. It argued that by putting in its reply brief the objections it had against the ARAF's submissions expressed in the ARAF's answer, the IAAF was giving the ARAF notice of its position and allowing it to counter its arguments, while at the same time making the position clear to the Panel. It was giving this notice promptly rather than presenting its position only at the hearing, as would have been legitimate under the Code. As to Mr Capdevielle's statement, the IAAF stressed that in his statement Mr Capdevielle explained the background to the IAAF's investigation and addressed the issue of the delay in the results management process, which were essential issues in the present case. Regarding Ms Radcliffe's statement, the IAAF claimed that such statement was not personal but reflected the views of athletes generally, which was important.

41. On 22 June 2009, the Panel ruled, inter alia, that:

> " (...)
> (1) To the extent that the IAAF needs permission under Art. R56 of the Code (...) to raise these arguments [in the IAAF's reply brief], permission is granted by the President of the Panel. (...) and
> (2) Both the ARAF and the IAAF may raise such arguments as they wish on all matters contained in the IAAF Consolidated [reply] Brief either in supplementary written submissions filed before the hearing or in oral argument at the hearing. (...).
>
> B. (...)
> (1) The witness statements of Mr Capdevielle and Ms Radcliffe are admitted. The question of the weight to be given to the statements is reserved for later consideration. The ARAF is granted leave to file reply briefs in answer to the statements no later than Friday 26 June 2009 if the ARAF so elects and/or to make oral submissions at the hearing as to the weight to be given to the statements. (...)
>
> D. (...) all of the IAAF's witnesses are authorized to give evidence by telephone, pursuant to Art. R44.2 (...)."

42. The ARAF and the Athletes acknowledged receipt of the procedural rulings and directions on 24 June 2009 and did not raise any objection to them. With reference to a previous question raised by the Appellant, the ARAF mentioned that it would not submit any medical or scientific evidence or expert report.

43. Thereafter, all Parties except Ms Yegorova signed the Procedural Order, with the IAAF making a reservation to the effect that the applicable law should be the law of the Principauté de Monaco, where the IAAF has its corporate seat. Paragraph 7 of the Procedural Order (law applicable to the merits) did not refer to Monegasque law.

44. The hearing was held on 3 July 2009. Two Athletes attended, namely Ms Soboleva and Ms Pishchalnikova. They were both assisted by Mr. Samakaev and Mr. Patsev, attorneys-at-law in Moscow who represented all athletes except for Ms Yegorova. Ms Yegorova did not attend nor was she represented at the hearing. The IAAF was represented by Mr Mark Gay and Ms Sally Barnes, solicitors of DLA, London. The ARAF was represented by its President, Mr Valentin Balakhnichev and Mr Victor Berezov, the ARAF internal legal advisor.

45. At the commencement of the hearing the President of the Panel raised the question of the applicable law and the IAAF reservation. The President noted that the Panel and the other parties agreed with the IAAF that IAAF Rules 60.28 and 60.29 (Monegasque law) applied. On that basis the IAAF expressed its agreement with the Procedural Order and signed it subject to the agreed reservation that Monegasque law was the applicable law. The parties all confirmed orally that they had no objection to the constitution of the Panel.

46. During the hearing and notably during the final oral pleadings, the Parties confirmed the factual background and legal arguments made in their previous written submissions. The ARAF renounced its right to cross-examine the DCOs. The Panel confirmed to all the Parties that the proper time would be granted to them in order to ask their questions of the witnesses. The Parties agreed that the Panel should issue one award which would address all seven Athletes.

47. After the parties' final submissions, the Panel closed the hearing and reserved its award. The Panel carefully considered in its discussion and subsequent deliberation all the evidence and the arguments presented by the parties. Neither during nor after the hearing did the parties raise with the Panel any objection in respect of their right to be heard and to be treated equally in the present arbitration proceedings.

IV. CAS Jurisdiction, admissibility and right to appeal

48. According to Art. R47 of the Code an appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body.

49. The IAAF Rule 60 provides that:

> **"Appeals**
>
> 9. All decisions subject to appeal under these Rules, whether doping or non-doping related, may be appealed to CAS in accordance with the provisions set out below. All such decisions shall remain in effect while under appeal, unless determined otherwise (see Rules 60.23-24 below).
>
> 10. The following are examples of decisions that may be subject to appeal under these Rules:
>
> (a) Where a Member has taken a decision that an athlete, athlete support personnel or other person has committed an anti-doping rule violation…

(...)

11. In cases involving International-Level athletes (or their athlete support personnel), or involving the sanction of a Member by the Council for a breach of the Rules, whether doping or non-doping related, the decision of the relevant body of the Member or the IAAF (as appropriate) may be appealed exclusively to CAS in accordance with the provisions set out in Rules 60.25-60.30 below.

(...)

Parties entitled to appeal decisions
13. In any case involving International-Level athletes (or their athlete support personnel), the following parties shall have the right to appeal a decision to CAS:

(...)

(c) The IAAF

(...)

The CAS Appeal
25. Unless the Council determines otherwise, the appellant shall have 30 days from the date of communication of the written reasons of the decision to be appealed (in English or French where the IAAF is the prospective appellant) in which to file his statement of appeal with CAS. Within 15 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."

50. The jurisdiction of CAS was not disputed. All parties, except for Ms Yegorova, signed the order of procedure where a specific reference was made to the competence of CAS based on the IAAF Rule 60 paragraphs 9 and 25, from which CAS jurisdiction derives. As to Ms Yegorova who did not sign the order of procedure, the jurisdiction derives from the IAAF rules to which she has submitted as a member of the ARAF athletic team.

51. As to the time limit to lodge an appeal before CAS, the IAAF Rule 60 paragraph 25 provides that the statement of appeal must be lodged "30 days from the date of communication of the written reasons of the decision to be appealed (in English or French where the IAAF is the prospective appellant) (...). Within 15 days of the deadline for filing the statement of appeal, the appellant shall file his appeal brief with CAS."

52. The seven statements of appeal were filed with CAS on 26 November 2008 and the seven appeal briefs were filed on 19 January 2009 against the decisions of the ARAF Council (hereinafter "the Decisions"), which are all dated 24 October 2008 and were all communicated in English to the IAAF the same day. The Decisions were completed by a translation in English of the seven resolutions of the ARAF Special Commission dated 17 October 2008 providing in writing the reasons for the Decisions and transmitted to the IAAF

on 27 October 2008. It was not disputed that the statement of Appeal and the Appeal brief were thus lodged within the statutory time limit set forth by the IAAF Rules,

53. The IAAF filed its statements of appeal against Decisions issued in cases involving international-level athletes as provided under IAAF Rule 60 paragraph 11. It was not disputed that the IAAF thus had the right to appeal in the present cases.

54. The other requirements of Art. R47 of the Code, including that of exhaustion of internal remedies, have been satisfied. It follows that all appeals are admissible.

V. Applicable law

55. Art. R58 of the Code provides the following:

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

56. As noted in paragraph 45, the parties agreed that the relevant IAAF Rules and Monegasque law applied. The only other question as to the applicable law which arose was whether the World Anti-Doping Code (the "WADC") was applicable.

57. The Panel notes that the Decisions were issued by the ARAF Council which is a jurisdictional body of the ARAF, a Russian sport federation with registered seat in Moscow, Russia. The Decisions relate to an anti-doping procedure against international-level athletes.

58. Art. 60, par. 28 and 29, of the IAAF Rules provides that:

> "28. In all CAS appeals involving the IAAF, CAS and the CAS Panel shall be bound by the IAAF Constitution, Rules and Regulations (including the Procedural Guidelines). 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.
>
> 29. 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."

59. The ARAF is member of the IAAF and, as such, is bound by the IAAF Rules. The Athletes were participating in the IAAF's and ARAF's competitions and are thus subject to the IAAF Rules as defined under the IAAF Rules in the section Definitions, under IAAF Rule 1 par.1. and IAAF Rule 30 par. 1, The IAAF is the Appellant.

60. The Panel must therefore decide the present dispute according to the IAAF Constitution and its Rules and Regulations. Furthermore, as noted above it was agreed that Monegasque law was subsidiarily applicable

61. The Parties submitted, each of them for different reasons, that the WADC should be applied by the Panel. The Panel refers first to the clear wording of the WADC 2003 and 2009, notably under the first paragraph of the Introduction chapter where it is mentioned that international federations are "*responsible for adopting, implement or enforcing anti-doping rules within their authority (...)*".There are numerous CAS cases on the question of the direct applicability of the WADC: see for example CAS 2008/A/1627 WADA v/ Malta Football Association & Gilbert Martin nr 62, 81 and 82; CAS 2007/A/1445 WADA v/ Qatar Football Association & Ali Jumah A.A. Al-Mohadanni nr 6.2). The Panel considers that it follows from this wording of the WADC that it does not claim to be directly applicable to athletes. Furthermore, it follows that the associations have autonomy to regulate their internal matters – subject to mandatory provisions of law – at their discretion. By issuing its anti-doping rules, the IAAF has exercised this discretion exhaustively and exclusively without any possibility that other regulations could apply unless there was a specific reference in the IAAF Rules.

62. Based on the foregoing, the Panel rejects all submissions of the Parties which suggested the application, either directly or by implication, of the WADC. It thus finds in particular that Art. 10.8, last sentence (of the 2003 WADC) related to the commencement of the period of ineligibility is not applicable to the present dispute.

VI. The Hearing on July 2 – 3 2009

63. At the commencement of the hearing each party made brief opening oral submissions based on their written briefs. Then nine witnesses whose witness statements had been lodged by the IAAF in support of its consolidated Reply were cross-examined, namely:

(a) Dr Vincent Castella
(b) Mr Evgeny Antilskiy
(c) Ms Elena Malevanaya
(d) Mr Andrei Leonenko
(e) Ms Katya Ilina
(f) Ms Paula Radcliffe
(g) Ms Tatyana Dymova
(h) Dr Giuseppe d'Onofrio
(i) Mr Thomas Capdevielle.

All witnesses first confirmed the truth and accuracy of their written statements and, in accordance with Article R44.2, were solemnly invited by the Panel to tell the truth, subject to the sanctions of perjury under Swiss law. Their written and oral evidence may be summarized as follows.

Dr. Castella

64. Dr. Castella was director at the LGF laboratory which was involved with the DNA analysis of the Athletes' out of competition samples. The LGF is a scientific laboratory which carries out specifically DNA analyses for criminal cases and paternity testing. It has received ISO 17025 accreditation from the Swiss Accreditation Service. Such certification

guarantees that its procedures and results are technically valid. Dr Castella was director of the LGF laboratory which conducted the DNA analysis of the Athletes' out of competition samples. He confirmed that the method used for the DNA analysis of the samples was a common one. The witness confirmed that the results were clear, reliable and that no DNA diversion could have taken place. A genetic file belongs to only one person and cannot be falsified. Dr. Castella said that his laboratory was not WADA accredited and that he did not know about the IAAF anti-doping rules. He noted, however, that there were no applicable WADA rules for DNA testing. He confirmed that his laboratory was utilized by the Swiss criminal authorities for penal procedures and that the results of analyses performed by his laboratory were always considered as reliable by those authorities. As to the question of time taken to conduct the analyses and issue the report, Dr. Castella confirmed that it was necessary to check the profiles one by one in order to exclude any cross contamination, and then to translate the report from French into English, which took some time as well. Dr. Castella excluded any contamination of the samples in the LGF as all employees have their DNA profile registered as requested by the Swiss criminal authorities.

The DCOs

65. Mr Evgeny Antilskiy, Ms. Elena Malevanaya and Ms Tatyana Dymova are all sampling and doping controllers (DCOs). They were all involved in the out of competition sample collection in this case. They were all employed by the Swedish company International Doping Tests and Management AB ("IDTM"), which is deputed by the IAAF to collect and transport urine samples taken in out of competition tests. IDTM has provided such services to various sporting bodies around the world since 1991. All DCOs confirmed that they had never attempted to tamper with samples. All DCOs further noted that they had not observed anything remarkable during the collection that would have justified them in writing any remarks on the Doping Control Forms. They did not recall any difficulties or problems arising during the out of competition testing. They explained that they could not immediately find the Athletes when they arrived in the respective training sites. In some cases it took a little time to locate them and proceed with the sample collection. Therefore, they could not exclude the possibility that the Athletes had been warned beforehand of their presence, bearing in mind that the DCOs are normally recognized by the Athletes since the DCOs regularly perform urine tests with them.

66. The DCOS confirmed that all samples, A and B, were selected and sealed by the Athletes and the DCOs checked that the seal had been correctly affixed under the Athletes' control. The DCOs confirmed that they did not check whether the Athletes were using a manipulation device. They recalled that some of the Athletes had turned their backs towards them so that the DCOS could not see the Athletes collecting their urine samples. The DCOs explained that once the samples had been collected they had to deliver them to Ms Ilina, the sample coordinator in Moscow. The DCOs did not accept that any damage or interference could have taken place during the transportation from the collection point to Ms Ilina's office.

Ms Ilina

67. Ms Ilina is a coordinator within IDTM and is in charge of collecting the urine samples for the purpose of conducting in and out of competition drug tests on sports men and women in Russia. She is also a certified DCO. In this respect, Ms Ilina confirmed that she was aware of the IAAF anti-doping rules and that she was in charge of coordinating the collection of the Athletes' out of competition urine samples. She personally collected Ms Yegorova's

and Ms Pishchalnikova's urine samples. Ms Ilina confirmed that she had never attempted to tamper with samples. She stated that the practice was that all urine samples were centralized at Ms Ilina's office. There she would place them in a refrigerator and then arrange for the transport of the samples to the relevant WADA accredited laboratory. As the direct export of biological material from Russia was subject to restrictions, Ms Ilina explained that they were taken to Minsk (Belarus), from where the samples would be sent via DHL to the appropriate WADA accredited laboratory, in this case, the WADA accredited laboratory in Lausanne. The trip from Moscow to Minsk would be made by train by the DCO who had collected the samples or by a personal courier. In this case, the personal courier was Mr Leonenko. Mr Ilina considered him a reliable and trustworthy person. As a former doping control assistant, Mr Leonenko was aware of the procedures and knew that he had to ensure the integrity of the samples.

68. In relation to the samples collected from the Athletes, Ms Ilina did not mention any fact that would have involved a departure from the procedures. Ms Ilina was directly involved in Ms Yegorova's and Ms Pishchalnikova's sample collection. Ms Ilina stated that nothing unusual had happened during those sample collections. Ms Ilina stressed however that the mission for the collection of the samples lasted two days and both Athletes were located only the second day. This meant in Ms Ilina's view, that Mr Yegorova and Ms Pishchalnikova could have easily been warned by other athletes of the DCOs' presence. Ms Ilina confirmed that she did not check whether the two Athletes were using a manipulation device or not since such a check was not part of the procedures and instructions given to the DCOs.

69. In conclusion, Ms Ilina confirmed that the samples were collected, stored and transported to the WADA accredited laboratory in accordance with the IAAF Rules and with due consideration of the need to ensure their integrity.

Mr Leonenko

70. Mr. Leonenko works in the automotive industry but also acts as a courier in relation to the transport of urine samples for doping control from Moscow to Minsk on behalf of DCOs employed by IDTM. In his written statement, Mr Leonenko confirmed that he had never attempted to tamper with samples. Mr Leonenko confirmed Ms Ilina's statements, namely that he acted as a courier for the all seven samples collected by Ms Ilina and his team in relation with the Athletes. The samples were handed over, anonymoused, by Ms Ilina or her husband, Mr Antilskyi. He then travelled to Minsk by train and then headed straight to the DHL office, handing over the transport documents, which had been filled in by Ms Ilina. According to Mr Leonenko, no interference could take place during the journey. During the hearing, Mr Leonenko mentioned that he did not actually remember the particular samples of the Athletes and that his written statement was thus based on his usual practice as to transportation of the samples. He confirmed that he knew about the Russian prohibition to export the samples without proper authorization but that he had never been checked or searched at the border. He said it was unfortunately necessary to proceed in that way. He said that his services were paid after each journey by IDTM but that he could not remember having signed any form in relation to his services or the transportation of the samples.

Ms Radcliffe

71. The Panel heard Ms Paula Radcliffe, an international athlete competing for Great Britain. Ms Radcliffe holds the current world record for the Women's marathon as well as the Women's world best performance for 10,000 metres on the road. Ms Radcliffe has been since 2003 a member of the IAAF's Athletes Commission, whose role is to provide a forum for bringing the opinions and views of athletes to the attention of the IAAF Council. Ms Radcliffe stated that the Athletes Commission has frequently lobbied the IAAF for an increase in the minimum 2 year sanction. Indeed the Commission had argued that a life sanction for a serious first offence is the only way to truly root out the problem of doping in athletics. Hence, Ms Radcliffe expressed the opinion that where a systematic and intentional anti-doping violation takes place a longer sanction than 2 years should be imposed. Ms Radcliffe, however, admitted that she did not really know the facts concerning the alleged misconduct by the Athletes but said she had heard that it had to do with tampering with urine samples. On the question of her rivalry with Ms Yegorova, Ms Radcliffe contested having anything personal against her and confirmed that she had already made similar statements in the media against doping in several other cases.

Professor d'Onofrio

72. Professor d'Onofrio first confirmed his expert report of 19 January 2009. Professor d'Onofrio is a specialist in hematology and an Associated Professor of Clinical Pathology at the Catholic University of Rome. Professor d'Onofrio is currently Director of the blood transfusion service at the University. He has been conducting research in the areas of blood cells and hematological test standardization since 1980 and has performed more than 300 blood profiles. He has published extensively on such topics. Professor d'Onofrio is member of the WADA and UCI panels of experts in hematology. He had participated as court-appointed expert in some criminal trials on blood doping in Italy. After having reviewed the facts and the laboratory data of some of the Athletes, Professor d'Onofrio concluded on the basis of several medical and scientific evaluations that the blood profile of some of the Athletes, namely Cherkasova, Fomenko, Sobaleva, Tomashova and Yegorova, showed a number of abnormalities and a level of variability which were not compatible with normal physiology and could not be attributable to external factors such as training or stays in altitude. In the Professor's opinion those blood profiles were indicative of the long term use of rh-EPO, the ideal drug for endurance for middle and long distance races, or other forms of blood doping.

Mr Capdevielle

73. Mr Capdevielle is the IAAF Results Manager. He works in the Medical and Anti-Doping Department of the IAAF and manages the results management programme of the IAAF. Mr. Capdevielle was involved in the investigations against the Athletes and others. After discussing the nature of the investigations directed by the IAAF in respect of athletes worldwide, Mr. Capdevielle explained that IAAF's attention was drawn to Russia due to the very low percentage of missed tests in that country. (The ratio of missed tests in Russia was one in every 44 tests, whereas it was one in every 5 tests in the USA and one in every 2.5 tests in France. The average ratio worldwide was one missed test to five conducted tests.) This was interpreted by the IAAF as a sign that athletes in Russia were getting advance notice of tests, which would open the tests to manipulation. This fact, combined with suspicious blood profiles obtained from certain Russian athletes, gave great concern to the IAAF. This lead the IAAF to conduct a comparative DNA analysis from samples collected in and out of competition. Mr. Capdevielle then explained all the different steps taken by the IAAF, the Laboratoire Suisse d'Analyse Du Dopage (LAD) and the Laboratoire de

Génétique Forensique (LGF) in order to collect and analyse the DNA in the Athletes' urine samples. After having discovered that in seven cases the DNA did not match, the IAAF set up a file documenting the internal and external chain of custody. Only after the files were complete for all seven Athletes, did the IAAF launch disciplinary proceedings on 21 and 22 June 2008. As to the possible methods of manipulation, Mr. Capdevielle declared that he did not know how the Athletes had carried out the manipulation but suggested that they might have used a catheter containing urine belonging to another individual. By the use of a catheter, an athlete is able to appear to pass urine naturally, since the instrument is hidden in the athlete's own body. Another method might have been the replacement of the urine collection vessel as, unlike the bottles which eventually contain the samples, the plastic collection vessels are usually not coded and are freely available.

74. Addressing questions from the ARAF counsel concerning the duration of the investigations, Mr. Capdevielle explained that the overall operation was complex and that further investigations were needed from January until June 2008 in order to properly document the file against the Athletes. There was a lot of logistical work involved. He noted that during the ARAF proceedings, the ARAF asked that the DCOs be called as witnesses but the IAAF asked first for a list of questions in order to avoid any kind of pressure on the DCOs. Mr. Capdevielle said that the IAAF never received this list. In any case, the IAAF held a meeting with IDTM and it emerged from this meeting that, despite its investigations, IDTM had not found any kind of irregularity on the part of the DCOs. Professor Richard Mc Laren, a professor of law, and not a member of IDTM, had conducted an inquiry on the side of the IAAF and was satisfied with IDTM's oral report. To Mr. Capdevielle's knowledge, the ARAF had started its own internal investigation which may be lengthy. Mr. Capdevielle then explained to the Panel that the sanction between two and three years for a second violation provided under the IAAF Rule 40 paragraph 8 was applicable for use of a "specified substance" whereas here the anti-doping violation refers to tampering.

Ms Soboleva and Ms Pischalnikova

75. The Panel heard evidence from Ms Soboleva and Ms Pischalnikova. Both stated that they had never used prohibited substances and that the current proceedings had had a devastating impact on their careers. They explained that they had noted nothing wrong during the out of competition sample collection which took place in April and May 2007. They could not explain how the DNA of the two samples could differ. Nor could they explain how seven Athletes from the same team were facing the same accusations. They both expressed their wish to come back as soon as possible to competition.

Final Oral Submissions

76. In their final submissions at the hearing, the IAAF reminded the Panel that according to the IAAF Rule 33 paragraph 4, "facts related to anti-doping violations may be established by any reliable means" and submitted that a DNA analysis must be considered as a "reliable means". The IAAF thus brought the proof of anti-doping violations committed by the Athletes. The fact that the LGF was not a WADA accredited laboratory was therefore irrelevant. The IAAF also noted that the B sample procedure was not needed as these were not cases of an adverse analytical finding. As to the period of sanction, the IAAF contends that the Panel should understand the views of clean athletes such as Ms Radcliffe and take an appropriate decision.

77. The ARAF stressed its earlier submissions that aggravating circumstances did not exist under the IAAF Rules applicable to the present cases. The delays in the investigation procedure should not be attributable to the Athletes. It suggested that the IAAF failed to prove the existence of organized and systematic tampering.

78. The Athletes contended that the IAAF had failed to meet the relevant burden of proof. They contested the validity of the analytical findings and claimed that the evidence proved that the substitution took place after the sample collection. They argued that a sanction of four years would be disproportionate. The Athletes, who had already been excluded from the Beijing Olympics, would miss the London Olympics.

79. At the end of the hearing, counsel for the Athletes advised that they did not wish to question Dr. Saugy of the LAD who had provided a witness statement dealing with the chain of custody. The IAAF and the ARAF confirmed that they would share the costs of the CAS proceedings to the exclusion of the Athletes.

80. As requested by the Panel, after the hearing the Athletes provided a copy of the document which they had presented at the hearing in PowerPoint format. In this document, the Athletes had outlined their various legal submissions and described in detail the analysis procedures of urine samples, the chain of custody, the procedural rights of the Athletes, notably with regard to the opening of the B sample.

VII. The Parties' Written Submissions and their Respective Requests for Relief

81. The parties' positions may be summarized as follows:

The Appellant – IAAF

82. The IAAF grounded its appeal on IAAF Rules 32.2, 39.4, 40.1, 40.9 and 60.28 and observed that it raised two issues for determination:

83. The first was whether, having found the Athletes guilty of an anti-doping rule violation pursuant to IAAF Rules 32.2(b) and (e), the ARAF Council was correct in imposing the minimum period of ineligibility for such violation of 2 years. The IAAF submitted that, in light of the serious nature of the violation that was committed by the Athletes in this case, a 2-year sanction was not appropriate and the ARAF Council should have imposed a greater sanction on the Athletes of up to 4 years' ineligibility in accordance with IAAF Rule 40.1.

84. The second was whether the ARAF Council was correct in determining that the commencement date for the Athletes' 2-year period of ineligibility was the date of sample collection. The IAAF submitted that, in accordance with Rule 40.9, the commencement date should have been the date of the hearing less any period of provisional suspension previously served.

85. As to the first issue, namely the appropriate length of the sanction imposed by the ARAF on the Athletes, the IAAF advanced five grounds why a sanction of more than 2 years and up to 4 years was justified in this case. These five grounds were:

(i) the nature of the violation committed by the Athletes;

(ii) that additional evidence in the form of some of the Athletes' blood profile data was indicative of the long term use of rh-EPO or other form of blood doping;

(iii) that a sanction of more than 2 years was consistent with the disposition of similar cases in the sport of Athletics in the past;

(iv) that this case was consistent the increased sanctions of up to 4 years on account of aggravated circumstances under the 2009 WADC; and

(v) that sanctions of more than 2 years were needed in order to succeed in the fight against doping in sport.

86. As to ground (iii) the IAAF submitted that it is for violations precisely of the nature of the Athletes' that Rule 40.1 prescribed that the 2 year sanction was a "minimum" sanction only. The IAAF argued that these were not cases of young and inexperienced athletes. The Athletes were experienced and had been competing on the international circuit with considerable success for a number of years. The IAAF claimed that they had set out deliberately to deceive the authorities by substituting another person's urine for their own. According to the IAAF, the only explanation for this manipulation, as the ARAF Special Commission concluded, was that the other person's urine was clean and that the Athletes knew that they would otherwise test positive for a prohibited substance under IAAF Rules. The Athletes' acts were cynical, deliberate and cut to the very heart of anti-doping testing and of the sport itself. The IAAF quoted a note on Art. 10.3.2 of the 2003 WADC which stated that "*those involved in covering up doping should be subject to sanctions which are more severe than those who test positive.*".

87. The IAAF then referred to the attitude of the Athletes when confronted with clear evidence that they had acted in breach of the IAAF anti-doping rules. It stressed that the Athletes refused to accept any responsibility for their actions and indeed denied all involvement in the matter. The IAAF contended that without its in-depth investigation, the Athletes would have continued to defraud the system using prohibited substances to provide them with a direct competitive advantage over their fellow competitors. The IAAF concluded that, by tampering with the doping control process as they did, the Athletes committed a serious violation of the IAAF Rules.

88. As to the second ground, the IAAF provided the expert witness statement of Dr d'Onofrio, an expert in blood analysis, who had reviewed some of the Athletes', notably Ms Soboleva's blood profile over the 2-year period in question. Dr d'Onofrio's conclusion was that those blood profiles showed a number of abnormalities and a level of variability which were not compatible with normal physiology, at times when they were competing in major championship events. According to Dr d'Onofrio's expert opinion, these blood profiles were indicative of the long term use of recombinant EPO or other form of blood doping.

89. Based on the foregoing, the IAAF contended that there was evidence of an abnormal blood profile for some of the Athletes. This evidence should be taken into consideration as an additional aggravating factor when assessing the appropriate sanction to be imposed on those Athletes. If some of the Athletes were in fact engaged in blood doping as the expert opinion of Dr d'Onofrio indicated, the IAAF stressed that this would have provided those Athletes with every incentive to ensure that their urine samples were not subject to analysis by the IAAF.

90. As to its third ground, the IAAF argued that a sanction of more than 2 years in the present cases would moreover be consistent with past decisions in similarly serious cases in the sport of athletics.

91. The IAAF referred to the BALCO case which came to light in the United States in 2003, involving a doping conspiracy consisting in the distribution and use of doping substances. The BALCO doping scheme was in short elaborately designed to hide the doping violations of its participating athletes. The IAAF noted that the US athletes who were sanctioned for their involvement in the BALCO doping conspiracy were sanctioned, not only according to the seriousness of the violations which they committed, but also according to their conduct once the conspiracy was finally discovered. Kelli White, who was the first athlete to come forward and admit her participation in BALCO, was given a minimum 2-year suspension but this was conditional upon her providing substantial assistance to the anti-doping authorities (USADA and the IAAF) in the prosecution of other BALCO cases. Other BALCO athletes such as Alvin Harrison and Regina Jacobs who admitted their guilt but did not agree to cooperate with the relevant authorities were given suspensions of 4 years. Michelle Collins who did not admit her guilt and who, initially at least, refused to cooperate with authorities was given a suspension of 8 years following a hearing before the North American Court of Arbitration for Sport.

92. The IAAF contended the BALCO cases were analogous, arguing that the Athletes had all been found guilty of involvement in the same deliberate act of sample manipulation by which they set out to escape detection by the testing authorities. None of the athletes admitted their guilt when they were charged and none of the athletes came forward and offered to co-operate with the IAAF. The IAAF thus submitted that if they were to be treated in a manner consistent with their US counterparts in the BALCO cases, the appropriate sanction for the Russian athletes in these circumstances would be 4 years or more. The IAAF acknowledged however that the corresponding sanction in the 2009 version of the IAAF Anti-Doping Rules in force from 1 January of this year (replicating the 2009 WADC in this regard) provides for a maximum ineligibility of 4 years for first-time violations of this nature.

93. The IAAF then cited two tampering cases where a sanction of more than 2 years was pronounced. The first tampering case involved Mr Christos Tzekos who was coach to the Greek athletes, Konstantinos Kenteris and Ekatherina Thanou. In 2004, Mr Tzekos was charged by the IAAF with tampering with the doping control process on account of his having provided the authorities with deliberately misleading whereabouts information for his athletes, a move that was designed to avoid them being tested in the lead up to the 2004 Olympic Games in Athens. Mr Tzekos denied the charges against him but was found guilty of a violation of IAAF Rules in a hearing before the Greek Athletics Federation and was duly sanctioned for a period of 4 years in light of the seriousness of the violation.

94. In the second tampering case a Bulgarian athlete, Tezzhan Naimova, was found guilty of tampering with the doping control process after DNA analysis proved that a sample collected out of competition in Bulgaria had not been provided by her but by her sister. The Bulgarian Federation treated the case as a serious violation of IAAF Rules that warranted an increased sanction of more than 2 years but ultimately took into consideration a number of factors in the athlete's mitigation, including her timely admission of guilt and her explanation to the authorities of exactly how the fraud had been perpetrated. In the

circumstances, the Bulgarian Federation was prepared to impose the minimum available sanction of 2 years.

95. As to its fourth ground, although the IAAF conceded that it did not seek to rely on the 2009 WADC in this case, it suggested that the Panel might nevertheless consider it instructive to note that the type of violations committed by the Athletes fall squarely within the examples cited in the new WADC of cases of "aggravated circumstances" that warrant a sanction of up to 4 years for a first-time violation.

96. The Comment to Art. 10.6 of the 2009 WADC provided as examples of aggravating circumstances the cases "when the Athlete or other Person committed the anti-doping rule violation as part of a doping plan or scheme, either individually or involving a conspiracy or common enterprise to commit anti-doping rule violations; the Athlete or other Person Used or Possessed multiple Prohibited Substances or Prohibited Methods or Used or Possessed a Prohibited Substance or Prohibited Method on multiple occasions; a normal individual would be likely to enjoy the performance-enhancing effects of the anti-doping rule violation(s) beyond the otherwise applicable period of Ineligibility; the Athlete or other Person engaged in deceptive or obstructing conduct to avoid the detection or adjudication of an anti-doping rule violation".

97. The IAAF pointed out that Art. 10.6 of the WADC has been incorporated expressly into the 2009 version of the IAAF Anti-Doping Rules which came into force on 1 January 2009.

98. The IAAF contended that there was clear evidence in this case that the Athletes committed a serious breach of IAAF Rules as part of a doping plan or scheme, either acting on their own or in conjunction with others. Alternatively, it was clear that they engaged in "deceptive or obstructing conduct" in order to avoid the detection of an anti-doping rule violation, namely testing positive for a prohibited substance. Furthermore, the expert evidence of Dr d'Onofrio was that some Athletes' blood profile data were indicative of the use of rh-EPO or other blood doping on multiple occasions. As such, had those Athlete's offences been committed under the 2009 WADC after 1 January 2009, they would clearly have warranted an increased sanction of up to 4 years on account of "aggravated circumstances".

99. The IAAF then turned to its fifth ground in support of a sanction of up to four years against the Athletes, namely that serious sanctions are needed in the fight against doping. It submits that it needs to seek the imposition of serious sanctions in cases such as the Athletes' in order to maintain the credibility of its sport. The IAAF claimed that it was the first of the leading international sport federations to face a major doping scandal when Ben Johnson tested positive at the 1988 Olympic Games in Seoul and it has since been involved in a number of other high profile doping cases and investigations, including the BALCO doping conspiracy. Although track and field is no more prone to drug problems than many other comparable federations, there is a perception that track and field athletics has a "problem" with drugs and therefore the IAAF must remains at the forefront of the fight against doping. This was why, in 2004, the IAAF chose to retain a "minimum" sanction of 2 years' ineligibility for a serious first-time violation (at a time when the 2003 WADC was seeking to impose a standard 2-year sanction for all doping violations regardless of their nature or extent). It was also why the IAAF Congress (which included representatives of the ARAF) unanimously resolved at its meeting in Helsinki in 2005 that four years was the most appropriate period of ineligibility for a serious first-time doping violation and mandated the

IAAF to seek increased sanctions in such cases in the next version of the WADC (an objective in respect of which the IAAF was finally successful in 2007).

100. In short, the IAAF argued that it must continue to take the lead in the fight against doping in sport and when serious cases such as those of the Athletes' arise, the IAAF must be seen to enforce its Rules by pursuing equally serious sanctions. Unless it does so, there is a risk that the ongoing fight against doping in the sport of which the IAAF claims to be "the guardian" may never succeed.

101. The IAAF then made various submissions on the second issue, namely the commencement date of the period of ineligibility.

102. The IAAF contended that the ARAF Council was entirely wrong to apply Art. 10.8 of the WADC in determining the start date for the Athletes' period of ineligibility in these cases. The IAAF argued that, as a member federation of the IAAF, the ARAF was required to apply the relevant provisions of the IAAF Rules to the Athletes' case and not the WADC.

103. The IAAF stresses that the IAAF Rules and Regulations form a separate and independent code governing the abuse of doping in track and field, to which the Athletes are bound. The WADC is neither expressly nor implicitly incorporated into those Rules.

104. Under IAAF Rules, the relevant date for the commencement of any period of ineligibility is the date of the hearing decision minus any period of provisional suspension or voluntary suspension served. The IAAF relied upon various CAS precedents, notably CAS 2005/A/831 IAAF vs Hellebuyck, CAS 2008/A/1462 Gatlin vs USAA & IAAF.

105. The IAAF also referred to IAAF Rule 60.28 which provided that "in all CAS appeals involving the IAAF, CAS and the CAS Panel shall be bound by the IAAF Constitution, Rules and Regulations (including the Procedural Guidelines). As no reference was made to the WADC, the IAAF contended that the WADC was not applicable in the case at hand.

106. The IAAF then noted that 31 July 2008 was the date of the Athletes' provisional suspension and that the period from that date until the date of the Panel's decision should be discounted against any period of ineligibility imposed on the Athletes.

107. Based on these submissions, the IAAF presented the following requests for relief:

- that the ineligibility period in the Athletes' case be increased up to 4 years;
- that in any event, the Athletes' ineligibility should start from the date of the CAS Panel's decision, less any period of suspension already served by the Athletes;
- that all competitive results achieved by the Athletes since the date of the anti-doping rule violation throughout their provisional suspension be annulled with all resulting consequences under IAAF Rule 39;
- that the IAAF be granted a contribution towards its legal fees and other expenses incurred in connection with the present arbitration case.

The 1st Respondent ARAF

108. The position of ARAF may be summarized, in essence, as follows. First, the ARAF accepted CAS jurisdiction and the admissibility of the IAAF's Appeal.

109. As to the merits of the case, the ARAF claimed that a period of ineligibility of two years imposed on the Athletes was in line with the IAAF Rules and that it exercised its discretionary authority in a correct manner and did not misapply or abuse it. ARAF contends that the IAAF's submissions with regard to the length of the period of ineligibility are unpersuasive. It stressed in particular that the concept of "aggravating circumstances" has been introduced in the WADC only in 2009 and is not applicable to the present case.

110. ARAF submitted that the lengthy process of the DNA analysis must not be disregarded when it comes to the determination of the commencement date of the ineligibility period. However, departing from its previous Decisions, which are the subject of the appeal, ARAF conceded that new information provided to it led it to conclude that the correct commencement date should be the 15 December 2007 and not the date of the sample collection.

111. The ARAF stressed that there was no direct evidence available to support IAAF's allegation that the athlete substituted the urine sample. Neither had the athlete admitted any such act, nor had the DCOs responsible for testing witnessed the alleged sample substitution, nor was there any other evidence of such manipulation. Thus, the breach of the anti-doping rule violation was proven only indirectly, as the Athletes had not provided any explanation why the urine provided at the out of competition testing was not theirs. It stressed further that the DCOs had the responsibility for ensuring that each sample was properly collected, identified and sealed and for directly witnessing the passing of the urine sample. The ARAF then observed that the DCOs certified on the doping control forms that "sample collection was conducted in accordance with the relevant procedures" and no additional comment was made.

112. As to the chain of custody, the ARAF noted that the DNA-tests had not been carried out by a WADA-accredited laboratory. It therefore suggested that the IAAF could not take advantage of the presumption provided under the IAAF Rule 33.4 and had to demonstrate that the International Standards had been followed by the laboratory.

113. Returning to the period of ineligibility, the ARAF explained that the Athletes committed an anti-doping violation according to the IAAF Rules 32.2 (b), the use of a Prohibited Method, and (e), tampering. In the ARAF's view, the present case is therefore not one dealing with a multiple violation. Furthermore, the ARAF did not found any aggravating circumstance on the Athletes' side. The two years sanction imposed by the ARAF's competent commission corresponds to Rule 40.1 (a) and (b) of the IAAF Rules, bearing in mind that nothing under this Rule forces the sanctioning body to depart from the minimum two years sanction. In this respect the ARAF claimed further that the IAAF's request in this appeal for an increased penalty was lacking in precision.

114. The ARAF then examined the five reasons put forward by the IAAF in support of an increased penalty and submitted that none offered a sufficient ground for increasing the minimum sanction of two years provided under Rule 40.1 (a) and (b). The ARAF indeed noted that the Athletes were convicted of tampering, which is not subject to a specific longer period of ineligibility. Their experience or their attitude cannot justify the extension of the

minimum period of ineligibility. As to the IAAF's submissions on the use of rh-EPO, the ARAF submitted that those were irrelevant as blood doping is beyond the scope of the appeal. It should be disregarded notably because the Appellant did not refer to it before the ARAF Commission and because the ARAF never had the opportunity to verify the blood tests mentioned by the IAAF.

115. Commenting on the jurisprudence put forward by the IAAF, the ARAF asserted that the quoted cases could not support the IAAF's standpoint. It submitted that there was no similarity with the BALCO cases and stressed that in fact, in relation with the Tzekos case quoted by the IAAF, the athletes were sanctioned for tampering with an ineligibility period of 2 years, after having set up a spectacular motorbike accident and committed a series of further serious anti-doping rules violations. In the quoted Naimova case, the ARAF noted that the sanction was eventually two years. Furthermore, the ARAF claimed that in all of these cases where the athletes were sanctioned with an ineligibility period of more than two years, it was the competent anti-doping authority of first instance which imposed that sanction, and not CAS. To the ARAF's view, this showed that there was no existing practice in athletics to sanction tampering with an ineligibility period of more than 2 years and that, in any case, the authority of first instance has the discretionary power and not the obligation to impose a longer period of ineligibility. It quoted the Fazekas and Annus CAS cases (CAS 2004/A/714 Fazekas v IOC, 2005/A/718 Annus v IOC), which both included elements of tampering, and where a two years period of ineligibility was pronounced against those athletes.

116. The ARAF argued that the new IAAF anti-doping Rules based on the WADC 2009 were not applicable to the present case. As to the need for longer sanctions in order to succeed in the fight against doping in sport, the ARAF contends that this IAAF submission was a pure policy statement which cannot offer any legal ground to support the IAAF appeal.

117. Passing to the Panel's scope of review under Art. R57 of the Code,, the ARAF expressed the view that where the applicable rules grant the prior instance a margin of discretion, the CAS must not substitute such discretion with its own discretion, except where the prior instance acted in an arbitrary or abusive manner.

118. As to the commencement date of the ineligibility period, the ARAF referred to the following explanations in the appealed Decisions to justify the departure from the IAAF Rule 40.9, namely.

> "Taking into account that after the moment of the anti-doping rule violation more than 16 (sixteen) months passed and the delays in the hearing process and other aspects of the doping control not attributable to the athlete in this case, in accordance with Art. 10.8 of the World Anti-Doping Code, the period of ineligibility shall start on the date of the sample collection."

119. The ARAF maintained its claim that there was indeed an unacceptable delay in the anti-doping procedure not attributable to the Athletes and that the WADC must in this respect be taken into consideration. It agreed that an ineligibility period starting only on the 31 July 2008 would be disproportionate and would violate the fundamental rights of the Athletes. The ARAF reviewed the analytical process and points out that on 25 October 2007 the samples were transferred to the laboratory in Lausanne for DNA analysis, that such analysis was performed between 1 and 15 November 2007 and that on 17 June 2008, the laboratory's

reports were handed over to the IAAF, which then notified the results only on 21 June 2008 to the ARAF and the Athletes. The ARAF stressed that it took the laboratory in Lausanne 7 months and 22 days to perform the DNA analysis.

120. The ARAF therefore submitted that a period of at least 7 months and 15 days must be deducted from the date when the provisional suspension was imposed, namely 30 July 2008, to set the commencement date of the ineligibility period which therefore must start on 15 December 2007.

121. The fact that IAAF Rule 40.9 does not follow the wording of Art. 10.8 of the 2003 WADC does not mean, in the view of ARAF, that any delay in the doping control process which is not at all attributable to the Athletes but to the IAAF and its agents, shall simply be disregarded. Rule 40.9 does not address the delays in the results management-process caused by the IAAF and the ARAF sees in this an obvious lacuna since it would be bizarre if such delays would simply be charged to the detriment of the athlete, as the Appellant suggests. The ARAF claims that such lacuna must be filled by reference to the 2003 WADC.

122. The ARAF then submitted that the period of disqualification cannot be disregarded when assessing the gravity and effect of the sanction which is imposed upon the Athletes. It asserted that the disqualification from past competitions and the ban from future competitions constituted one single penalty, namely being removed from competition sports for a certain period of time. That period should begin, according to ARAF, with the disqualification date and end with the expiration of the period of ineligibility. It would be artificial and formalistic to disregard the period of disqualification when looking at the effect of the sanction and the commencement date of the ineligibility period. The ARAF stressed that if the Panel followed the Appellant's request regarding the commencement date of the period of ineligibility it would lead to the consequence that the Athlete would be disconnected from their competitive activities for a period of three years three months and four days, notwithstanding any prolongation of the term of ineligibility as requested by the IAAF.

123. The ARAF conceded that in addition to the two years' period of ineligibility a certain period attributable to the results management must be accepted. But it did not accept that by a delay of the procedure not caused by the Athlete, a ban of two years eventually leads to a period of ineligibility of about three years. It argued that such prolongation of the sanction would be disproportionate and contradict the principles of *nulla poena sine lege* embodied in Art. 7 of the European Convention on Human Rights (ECHR). The ARAF argued that it was therefore appropriate to set the commencement date for the ineligibility period as if the results management process had been carried out without undue delay and add to the period of ineligibility of two years only such period of time required for an effective results management process.

124. Based on the above, the ARAF submitted to CAS the following requests for relief:

> "The Appeal of the IAAF shall be dismissed, and the Decision[s] of the Council of the All Russian Athletics Federation dated 20 October 2008 shall be confirmed, with the following amendment:
>
> Point 2 of the Decision shall be amended as follows: "The period of ineligibility

shall start on the 15 December 2007.

All competitive results achieved by (...) [the Athletes] since [the date of the out of competition test] throughout the start of the period of ineligibility shall be annulled with all resulting consequences under IAAF Rule 39.

The CAS shall order the IAAF to bear the costs of this arbitration;

The CAS shall award to the Respondent a contribution towards its legal costs."

125. At the hearing the ARAF confirmed that it did not question the chain of custody and the results of the DNA testing. It was however opposed to the IAAF's request for a longer period of ineligibility.

The Athletes

126. The Athletes' position (with the exception of Ms Yegorova who took no active part in the proceedings) can be summarized as follows.

127. From a procedural point of view, the Athletes stressed that under Art. R57 of the Code the Panel is required to hear the case de novo, considering new facts and new legal submissions and to issue a new decision with respect to the ARAF decision dated 20 October 2008. They also pointed out that in accordance with Art. R55 of the Code there was the possibility to file a counterclaim with their answers and by that challenge the ARAF Decision. This was what they had done.

128. As to the substance of the case, the Athletes claimed that the ARAF did not produce sufficient evidence of anti-doping rule violations. They blamed ARAF for having relied exclusively on the allegations of the IAAF without conducting its own investigation in order to determine what really had happened with the samples and to determine whether the athletes were guilty of an anti-doping rule violation. They argued that no evidence existed as to any tampering attempt from the Athletes. The IAAF allegations were founded only on the fact that different DNA profiles were found in the Athletes' samples, which, according to them did not by itself automatically constitute an anti-doping rule violation. Additional evidence which could prove the participation of the athlete in the process of sample manipulation was required and the ARAF should thus have joined the investigation of the DCOs. The procedures applied by the Genetic Forensic Laboratory of Lausanne, which was in charge of the DNA analysis, should also have been investigated in more detail.

129. The Athletes claimed that they had asked for more information during the proceedings before the ARAF concerning the analysis process and the chain of custody concerning both the out of competition samples as well as the DNA samples. Furthermore, they had wanted to know about the condition in which these A-samples were kept and why the B-samples, if any, were opened without their notification and participation.

130. Referring to their numerous negative test results in the past, the Athletes claimed that they would never use prohibited substances and methods. This would go against their nature and principles of fair play and clean sport. They explained that they suffered from not participating in the Olympic Games in Beijing.

131. Referring to the burden of proof in anti-doping proceedings, the Athletes added that whereas an anti-doping rule violation envisaged by Art. 32.2 (a) of the IAAF Rules ("the presence of a prohibited substance or its metabolites or markers in an athlete's body tissues or fluids") does not require any additional evidence other than an adverse analytical finding by the WADA-accredited laboratory, an anti-doping rule violation envisaged by Art. 32.2 (b) of the IAAF Rules ("the use of a prohibited method"), namely the urine substitution, was of a different nature. The Athletes claimed that this anti-doping rule violation implied that the competent body had established a conscious violation of the anti-doping rules by the Athletes, thus departing from the strict liability principle of Art. 32.2 (a) of the IAAF Rules. The competent body should have proven and demonstrated that the urine substitution was at the origin of the different DNA profiles in the samples, that the Athletes did the substitution, and how they did it.

132. Having explained the level of evidence required for their conviction, the Athletes then indicated various circumstances which, in their view, made it unlikely that they had manipulated the taking of the samples.

133. As to the sample collection and the role played by the DCOs, the Athletes explained that they underwent standard doping-control procedures in accordance with international regulations and guidelines. The procedure was conducted by DCOs representing the company IDTM, which collects the samples under authorization of the IAAF.

134. The Athletes stressed that to achieve the goal of ensuring the identity of the sample the International Standard for Testing (hereinafter referred to as the "IST") endows the DCOs with powers which allow them to follow and witness the athlete during all stages of the doping control session. It is exactly the DCO who is obliged to record "any behavior by the Athlete and/or persons associated with the Athlete or anomalies with potential to compromise the Sample collection", according to Art. 7.4.2. of the IST. They inferred from the DCO's powers during the sample collection process that an athlete does not have any chance to manipulate the sample if the DCO properly executes his duties related to the sample collection procedure. An athlete is indeed under total and permanent supervision of the DCO.

135. In the Athletes' Doping Control Forms the DCOs had made the following statement:

> "I certify that the sample collection was conducted in accordance with the relevant procedures".

136. The Athletes therefore contended that the DCOs certified that they had witnessed how the urine left the Athletes' body. As no observation or remark concerning irregularities during the sample collection procedure was made, no tampering could have taken place at the moment of the sample collection, which is the only moment when the Athlete is involved in the anti-doping procedure.

137. The Athletes then claimed that the IAAF was obliged to rebut the presumption of conformity of the testing procedure by proving that irregularities occurred before sealing the samples. As the presence of different DNA profiles in the Athletes' samples may just indicate that manipulations or irregularities with the samples could have taken place at one stage or the other of the anti-doping procedure, the Athletes contended that the ARAF and

the IAAF had to determine at what stage of the whole process of collecting and analyzing samples such manipulation or irregularities had happened.

138. The Athletes then referred to the case CAS 2004/A/607 Galabin Boevski vs IWO, where three Bulgarian weightlifters were accused of manipulating their urine samples as the same urine had been found in all three samples. In that case the Panel found that the conditions under which the test took place were not satisfactory and offered several opportunities for the Appellant and the other two athletes to engage in manipulation. The Athletes mentioned that in that case the Panel concluded that there was a very high probability that manipulation occurred before or during urination and securing of the Berlinger Bottle caps, and that a weightlifter's device or catheter could have been used.

139. The Athletes' submitted that the Appellant was under a duty to provide specific information about their behavior, conditions of the sample collection procedure and other circumstances which could be useful for understanding the chain of events surrounding the sample collection procedure.

140. As to the DNA analysis made by the LGF laboratory, the Athletes did not question its technical competency but had questions concerning several details of the analysis. They stressed first that the LGF is not a WADA-accredited laboratory and does thus not benefit from the presumption contained in the IAAF Rules. They then claimed that they never had access to the LGF Documentation, which should have been thoroughly investigated, notably due to what the Athletes consider as an "unexplainably long duration of the LGF analysis and further notification of the IAAF", stressing that the DNA analyses of the Athletes' buccal swabs took only two days. This delay might indicate that irregularities had taken place. The Athletes suggested further that the LGF had faced some problems with obtaining DNA from the samples taken almost six months before or that there had been confusion with other samples which could have led to some unexpected troubles. They suggested that it was more probable that a manipulation took place at that stage rather than during the sample collection.

141. The samples which were unsealed for testing were brought out of the WADA-accredited laboratory and transferred by hand to the LGF. The Athletes argued that from this very moment the legal presumption of chain of custody no longer applied.

142. The Athletes concluded their submissions by contending that the ARAF decisions dated 20 October 2008 should be set aside because the ARAF and the IAAF had not succeeded in proving that they had committed an anti-doping rule violation envisaged by the Art.s 32.2 (b) and 32.2 (e) of the IAAF Anti-Doping Rules. The presence of the different DNA profiles in their samples did not constitute an anti-doping rule violation and was not sufficient evidence that fraudulent urine substitution had taken place and had been done by the Athletes.

143. Based on the above, the Athletes submitted to CAS the following requests for relief:

> "1. the Decision of the ARAF Council dated 20 October 2008 shall be declared null and void.

2. to order that the ARAF and the IAAF did not provide sufficient evidence to prove that (...) [the Athletes] had committed an anti-doping rule violation (Rule 32.2 (b) and 32.2 (e)).

3. to order (...) [that the Athletes] did not commit an anti-doping rule violation.

4. to order that (...) [the Athletes are] eligible for participation in all national and international athletics competition from the date of the CAS Award in this arbitration."

144. By letter dated 12 May 2009, Ms Soboleva supplemented her answer by stating that she was not in a position to question scientifically the results of the DNA analysis and could thus only question them by stating that she never took doping substances and showing through media articles that DNA analysis errors can occur in the sphere of criminal matters. She then referred to various cases where DNA analysis errors were apparently made but stressed that she did not question the competences of the LGF and its employees.

Consolidated Reply Brief of IAAF

145. In its further submissions dated 2 June 2009, the IAAF responded to the new issues raised by the ARAF and the Athletes in their counterclaims as to the collection of the samples, the chain of custody of those samples and the execution of the DNA analysis at the LGF. The reply brief of the IAAF may be summarized as follows:

146. The IAAF first noted that the counterclaims in this appeal represented the first time that the commission of anti-doping rule violations has been questioned by the Athletes. It acknowledged that there was no direct evidence of tampering contrary to IAAF Rule 32.2(e) or manipulation contrary to IAAF Rule 32.2(b) but contended that the indirect evidence, namely the analytical results, the chain of custody, the DCOs and laboratory evidence and the blood tests, sufficed.

147. The IAAF said it was proper to infer from the evidence that each of the Athletes was involved in a "sophisticated, and initially successful, attempt to cheat the IAAF's anti-doping system". The IAAF view was that the simple fact that bogus urine samples were used by the Athletes proved that they wanted to disguise the use of prohibited substances, and at least for some of them that included recombinant erythropoietin ("rh-EPO"). Going through the various tests passed by each Athlete, the IAAF contended that the analytical results showed that the Athletes provided substituted urine samples, when tested out of competition in 2007. When tested in competition, where manipulation and tampering was more difficult and when subject to further DNA analysis by means of a swab, their true DNA profiles had been revealed. That all demonstrated organised, systematic and sophisticated cheating.

148. Going through the chain of custody of the samples taken out of competition, which were the only samples questioned by the Athletes, the IAAF provided the Panel with all the documents related to the whole chain of custody as well as witness statements from the DCOs, scientific analysts and others involved in the anti-doping procedure. Based on the evidence provided to the Panel, the IAAF claimed that such evidence relating to all seven Athletes demonstrated that "there is a clear, clean and unbroken chain of custody for all of the suspicious samples from the time at which they were sealed by the athlete to the time at which they were analysed at the laboratory".

149. Based on the above, the IAAF asserted that if the DNA gathered from the out of competition samples differed from the DNA of samples tested subsequently in competition and by buccal swabs, the only conclusion that could be drawn was that the Athletes substituted another person's urine for their own when providing a sample out of competition in 2007.

150. The IAAF then referred to the witness statements of five DCOs involved in the out of competition anti-doping procedure conducted with the Athletes. It claimed that those statements not only showed that the chain of custody of each suspicious out of competition sample provided by the Athletes was complete, but that the possibility that the samples could have been interfered with in transit by third parties could be excluded. The IAAF however acknowledged that the chain of custody was undocumented as to the sample courier, Mr Leonenko, who collected the samples from Moscow, where they had been centralized in order to be dispatched to Switzerland, and delivered them to Minsk, from where they were then sent by DHL. It submitted however that there was no possibility of interference with the sample from the time the sealed sample was handed to the DCOs by the Athletes to the time at which the sample was delivered to the WADA-accredited laboratory in Lausanne.

151. The IAAF also referred to witness statements of Dr Saugy and Dr Castella, which in its view, clearly demonstrated a full and complete chain of custody of the samples within the LAD and from the LAD to the LGF and within the LGF. The IAAF submitted that there was no possibility that samples may have been tampered with, manipulated and substituted maliciously after they left the Athletes' possession. Equally, there was no possibility of cross-contamination or confusion within the laboratory.

152. Passing to the blood tests, the IAAF asserted that those tests individually and collectively demonstrated suspicious results which were consistent with the use of rh-EPO or other forms of blood doping. The IAAF saw in the fact that the Athletes tampered with the samples, a motive to avoid their own sample being tested and contended that it could therefore be inferred that the Athletes were knowingly taking performance enhancing drugs. The IAAF asserted that the results of the blood tests of the Athletes Cherkasova, Fomenko Soboleva, Tomashova and Yegorova, which show abnormal values, supported its claim.

153. The IAAF then put forward additional arguments regarding the commencement date of the period of ineligibility in response to the Respondents' submissions on this issue. On the question of the period of disqualification of the Athletes' results, the IAAF stated that the annulment of results and the period of ineligibility were separate matters and that there is therefore no reason why the period of annulment should connect to the period of ineligibility as the ARAF alleged. The IAAF stressed that the sanction for committing an anti-doping rule violation under IAAF Rules was twofold. First, there is the period of ineligibility set out in IAAF Rule 32. Secondly, there is the period of disqualification of results set out in IAAF Rule 39. The rules clearly created separate and distinct sanctions, which sought to attain separate objectives. The back dating of the disqualification of results is necessary because all results obtained after the date of the anti-doping rule violation are tainted. They should not be allowed to stand because they occurred after a positive finding, or, as in the present case, after it was clear that the athlete was tampering with the sample in order to avoid a positive finding. Any results after the positive finding, or after the tampering, are clearly open to the criticism that they are unreliable, tainted and unfair.

154. The IAAF then alleged that the true sanction on an athlete is the period of ineligibility that he or she is compelled to serve. Under IAAF Rules, the period of ineligibility starts from the date of the hearing, less any period of provisional suspension served prior to being declared ineligible, as set out in IAAF Rule 40.9.

155. The disqualification of results and the imposition of ineligibility do not form a single penalty. They are two separate consequences which flow from the commission of an anti-doping rule violation. The IAAF submitted that it would not be appropriate to link them together because in such case, with a minimum sanction of 2 years as requested by the ARAF, the period of ineligibility that would be appropriate would be, for most Athletes, something like 6 months, namely from October 2008 until April 2009. The IAAF contended that such result would be absurd and overly lenient, and would bring the sport into public disrepute. The IAAF counterargument was that the two consequences of an anti-doping rule violation were not linked because they are aimed at two different objectives. Disqualification of results was aimed at maintaining the integrity of competition. All results that are tainted must be removed. The sanction of ineligibility was aimed at punishing the athlete and seeking to deter other athletes from taking performance enhancing substances. The two matters were entirely different and it was entirely reasonable and legitimate that both matters be imposed upon Athletes as a consequence of an anti-doping rule violation.

156. As to the allegation of delays in the management of the anti-doping procedure, the IAAF referred to Mr. Capdevielle's witness statement, where the latter explained that the charges initiated by the IAAF were the result of a wide scale investigation of a large number of Russian athletes. Like many complex criminal investigations, the period of enquiry was quite long. It started in early 2007 and it was not until 21 and 22 June 2008 that the IAAF had completed its investigation and was in a position to charge the Athletes. Once it was in a position to do so, the IAAF did not delay the proceedings, but charged the Athletes instantly. The ARAF's Special Commissions were established to hear the cases on 6 and 16 September 2008. Following the hearings, on 20 October 2008 the ARAF Council, on the basis of recommendations it received from the ARAF Special Commissions, determined that the Athletes had committed anti-doping rule violations and stated that the period of ineligibility should commence on the date of collection of the out of competition sample as issued in the particular case. Therefore, the period from the time the Athletes found out that they were being charged to the time of completion of the process was about four months. The IAAF therefore contended that there was no undue delay.

157. The IAAF then stressed that the Athletes were not prejudiced by the length of the time the investigation took because they were not subject to any form of preliminary suspension and did not know that the investigation was taking place until they were charged on 21 and 22 June 2008.

158. The IAAF, therefore, expressed the view that this case could be distinguished from one involving a very slow results management process. When the results management process is very slow, the athlete has to endure the ordeal of having disciplinary proceedings hanging over his or her head for a very long time. The IAAF conceded that in those circumstances, which were not present in this case, it could be appropriate for the period of ineligibility to be shortened. The IAAF submitted that, by analogy, if an investigation takes ten years to find that one person murdered another, no-one could seriously suggest that the murderer should obtain a discount from his sentence of the period of investigation. Therefore, "the Panel should give no 'discount' for the period of the investigation".

159. In order to support its request for four years' suspension, the IAAF repeated that this was an exceptional case. Here there was widespread and systematic sophisticated cheating which represented, like the Balco case, a conspiracy on behalf of the Athletes to systematically cheat the system. What the IAAF calls "the plot" was not an amateurish attempt to defraud the system but was highly professional. Considering that the appeal before CAS involved a de novo hearing, the IAAF submitted that the Panel was fully entitled to take a more serious view of this case than the ARAF.

160. Referring to the WADC, which the IAAF claimed to be of significance in evaluating the seriousness of this case, despite the fact that it is not incorporated in the IAAF Rules, the IAAF submitted that this was an exceptional case akin to Balco and where an exceptional sanction should be imposed. Seven top athletes from one country had chosen to engage in a common form of illegal activity. It was very difficult to believe that there was not some form of co-ordination at work here. As such, this constituted a serious, concerted and initially successful attempt to breach IAAF Rules. This was a major conspiracy and should be treated as such. The IAAF observed that the sophistication of the conspiracy was demonstrated by the fact that this form of cheating would have gone undetected had the IAAF not taken the unusual and expensive step of subjecting urine samples provided to DNA analysis. The success of the scheme could be shown by the fact that, although professional sampling officers witnessed the taking of the samples, they did not detect manipulation at the time. In retrospect, some matters appeared to the sampling officers to be suspicious. However, there was nothing sufficiently suspicious at the time for the sampling officer to believe that manipulation of the samples was taking place. The IAAF argued further that this was not a case involving a junior athlete who mistakenly takes a supplement, attracting a two year period of ineligibility. The IAAF then stressed that IAAF Rules do not afford decisions taken at national level a margin of appreciation, such as to limit CAS' right to review only those cases where a discretion has been wrongly exercised. On the contrary, IAAF Rule 60.26 provides for a hearing de novo. The IAAF thus claimed that the ARAF's submission that the Panel should accord the ARAF's Decisions a margin of appreciation is without substance as a matter of both CAS Code and IAAF Rules.

161. Claiming that the WADC embodies the current thinking in the field of anti-doping of the IOC, all major International Federations, National Olympic Committees and Associations, Athletes and Governments, the IAAF submitted that the 2009 WADC was of significance in evaluating the sanction that should be imposed in this case and that it should influence the Panel.

162. The IAAF noted in the comment to Art. 10.6 of the new WADC that the behavior of the Athletes is an aggravating circumstance. The IAAF referred to the evidence of Ms Paula Radcliffe to the effect that, as a representative of athletes, she was frequently called upon to lobby for a life sanction for a first offence and for the most serious possible sanctions to be imposed upon offenders, particularly those who are part of an organised conspiracy. The IAAF claimed that it would be in keeping with the wishes of the athletes themselves were the Panel to impose an increased sanction. The IAAF submitted therefore that, in these circumstances, a sanction far greater than two years was just and appropriate.

VIII. Scope of Panel's Review – Burden of Proof – Standard of Proof

163. Art. R57 of the Code provides that:

> "The Panel shall have full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance. (...)"

164. Art. 60 par. 26 of the IAAF Rules provides that:

> "26. All appeals before CAS (save as set out in Rule 60.27 below) shall take the form of a rehearing de novo of the issues raised by the case and the CAS Panel shall be able to substitute its decision for the decision of the relevant tribunal of the Member or the IAAF where it considers the decision of the relevant tribunal of the Member or the IAAF to be erroneous or procedurally unsound."

165. The ARAF claims that the Panel can only depart from the Decisions if it finds that the ARAF Council abused what the ARAF calls its "*discretionary power of decision*". In other words, only "abusive" or "arbitrary" decisions could be annulled and replaced by CAS.

166. Based on the clear wording of Art. 60 para. 26 of the IAAF Rules as well as on Art. R57 of the Code, the Panel finds that nothing supports the ARAF's view on the scope of the Panel's review. Not only can the Panel review the facts and the law contained in the Decisions but it can as well replace those Decisions if the Panel finds that the facts were not correctly assessed or the law was not properly applied leading to an "*erroneous*" decision. The procedure before CAS is indeed a de novo appeal procedure, which means that if the appeal is admissible, the whole case is transferred to CAS for a complete rehearing with full devolution power in favor of CAS. CAS is thus only limited by the requests of the parties (the so called "*petita*"). The Panel takes comfort from the fact that its view on this issue is consistent with the opinion constantly maintained by CAS panels discussing their scope of review under the CAS Code (see e.g. CAS 2008/A/1515 WADA vs Swiss Olympic Association & Simon Daubney; CAS 2004/A/607 Galabin Boevski vs IWF; CAS 2004/A/633 IAAF vs FFA & Chouki; CAS 2005/A/1001 Fulham FC vs FIFA; CAS 2006/A/1153 WADA vs Portuguese Football Federation & Nuno Assis Lopes de Almeida).

167. The Panel thus rejects the submission from ARAF concerning the Panel's scope of review. The Panel holds that it has no duty of deference towards the Decisions of the ARAF Council and that it has the full authority to review the facts and the law of the case and render an award fully superseding the Decisions.

168. With regard to proof, as mentioned by the IAAF, IAAF Rule 33 para. 4 provides that: "*Facts related to anti-doping rule violations may be established by any reliable means.*"

169. As to the burden of proof to establish the facts related to anti-doping rule violations, IAAF Rule 33 para. 1 provides that "*The IAAF (...) shall have the burden of establishing that an anti-doping rule violation has occurred under these Anti-Doping Rules*". IAAF Rule 33(2) provides that "*the standard of proof shall be whether IAAF ... has established an anti-doping rule violation to the comfortable satisfaction of the [Tribunal], bearing in mind the seriousness of the allegation .... The standard of proof is greater than a mere balance of probability but less than proof beyond a reasonable doubt*".

170. IAAF Rule 33 para. 4 lit (a) provides that:

> "WADA-accredited laboratories are presumed to have conducted sample analysis and custodial procedures in accordance with the International Standard for Laboratories. The Athlete may rebut this presumption by establishing that a departure from the International Standard for Laboratories has occurred, in which case the IAAF (...) shall have the burden of establishing that such departure did not undermine the validity of the adverse analytical finding."

171. IAAF Rule 33 para. 4 lit. (b) provides further that:

> "A departure from the International Standard for Testing (or other applicable provision in the Procedural Guidelines) shall not invalidate a finding that a prohibited substance was present in a sample or that a prohibited method was used, or that any other anti-doping rule violation under these Anti-Doping Rules was committed, unless the departure was such as to undermine the validity of the finding in question. If the athlete establishes that a departure from the International Standard of Testing (or other applicable provision in the Procedural Guidelines) has occurred, then the IAAF (...) shall have the burden of establishing that such departure did not undermine the validity of the finding that a prohibited substance was present in a sample, or that a prohibited method was used, or the factual basis for establishing any other anti-doping rule violation was committed under these Anti-Doping Rules."

IX. Analysis and findings of the panel as to alleged tampering

172. According to IAAF Rule 32 paras. 2 (b) and (e), "*the use or attempted use of a prohibited substance or prohibited method*" and "*tampering or attempting to tamper, with any part of the doping control process or its related procedures*" constitute anti-doping rule violations. It must be noted that the IAAF relied not only upon para. 2(e), related to "tampering", but also upon para. 2(b) of IAAF Rule 32, related to the "use of a prohibited method", because within the definition of prohibited methods the following can be read: "*M2. CHEMICAL AND PHYSICAL MANIPULATION. 1. Tampering, or attempting to tamper, in order to alter the integrity and validity of Samples collected during Doping Controls is prohibited. . These include but are not limited to catheterisation, urine substitution and/or alteration.*" The Panel accepts that what allegedly occurred in this case may come within both para. 2(b) and para. 2(e) of IAAF Rule 32.

173. The first issue for determination is whether the facts said to establish the anti-doping violations have been established to the comfortable satisfaction of the Panel by "reliable means".

174. As noted earlier, the case for the IAAF was that while there was no direct evidence of tampering with the out of competition doping control process contrary to IAAF Rule 32.2(b) or under Rule 32.2(e) in the sense that none of the Athletes were "caught in the act", the cumulative effect of the indirect evidence of breaches was overwhelming. As noted earlier, the IAAF argued that that evidence consists of four parts:

(i) What the analytical results showed?

(ii) What the chain of custody evidence showed?

(iii) What the LGF Laboratory DNA evidence showed?

(iv) What the blood tests showed?

175. As to (iv), the IAAF submitted that there was evidence that the possible objective of some of these athletes in providing bogus urine samples out of competition was to disguise the use of recombinant erythropoietin ("rh-EPO"), a performance enhancing drug which is a prohibited substance under IAAF Rules. For athletes whose performance in their chosen event is unlikely to be assisted by rh-EPO, such as Ms Khanafeyeva (hammer throw) and Ms Pishchainikova (discus), IAAF suggested that the samples were manipulated to cover up the use of other substances, which would be performance enhancing in their events, such as anabolic agents.

176. Returning to the other three elements of the evidence, the first question is whether the analytical results showed that all of the athletes provided substituted urine samples, rather than their own, when tested out of competition in 2007. The IAAF submitted that when tested in competition (where manipulation and tampering is more difficult) and when subject to further DNA analysis by means of a swab, their true DNA profiles were revealed.

177. Individually, the analytical results relied upon by the IAAF were as follows:

Ms Soboleva

Ms Soboleva provided an out of competition sample on 26 April 2007 in Zhukovisky in Russia. She provided an in competition sample at the World Championships in Osaka on 2 September 2007. On 22 July 2008, she provided a buccal swab sample which was subject to DNA analysis. The results of DNA analysis on the three samples demonstrate that the DNA profile of the out of competition sample is different from that of the sample provided in competition in Osaka and from that provided by swab collection on 22 July 2008. The IAAF argued that the only inference that could be drawn was that the sample provided on 26 April 2007 was not that of the athlete. Therefore, the athlete had breached IAAF Rules 32.2(b) and 32.2(e).

Ms Fomenko

Ms Fomenko provided an out of competition sample on 27 April 2007 in St Petersburg in Russia. She provided an in competition sample at the Gaz de France Meeting in Paris, France on 6 July 2007. On 22 July 2008, she provided a buccal swab sample which was subject to DNA analysis. The results of DNA analysis on the three samples demonstrate that the DNA profile of the out of competition sample is different from that of the sample provided in competition in Paris and from that provided by swab collection on 22 July 2008.

Ms Yegorova

Ms Yegorova provided an out of competition sample on 7 April 2007 in Kislovosk in Russia. She provided in competition samples at events in Lausanne on 10 July 2007 and in Brussels on 14 September 2007. She was requested to, but did not provide a buccal swab sample. The results of DNA analysis on the three samples demonstrate that the DNA profile

of the out of competition sample is different from that of the two samples provided in competition in Lausanne and Brussels.

Ms Khanafeyeva

Ms Khanafeyeva provided an out of competition sample on 9 May 2007 in Podolsk in Russia. She provided an in competition sample at the World Championships in Osaka on 26 August 2007. On 22 July 208, she provided a buccal swab sample which was subject to DNA analysis. The results of DNA analysis on the three samples demonstrate that the DNA profile of the out of competition sample is different from that of the sample provided in competition in Osaka and from that provided by swab collection on 22 July 2008.

Ms Pishchalnikova

Ms Pishchalnikova provided an out of competition sample on 10 April 2007 in Sochi in Russia. She provided an in competition sample at the World Championships in Osaka on 29 August 2007. On 22 July 2008, she provided a buccal swab sample which was subject to DNA analysis. The results of DNA analysis on the three samples demonstrate that the DNA profile of the out of competition sample is different from that of the sample provided in competition in Osaka and from that provided by swab collection on 22 July 2008.

Ms Tomashova

Ms Tomashova provided an out of competition sample on 23 May 2007 in Podolsk in Russia. She provided an in competition sample at the World Championships in Lausanne on 10 July 2007. On 22 July 2008, she provided a buccal swab sample which was subject to DNA analysis. The results of DNA analysis on the three samples demonstrate that the DNA profile of the out of competition sample is different from that of the sample provided in competition in Lausanne and from that provided by swab collection on 22 July 2008.

Ms Cherkasova

Ms Cherkasova provided an out of competition sample on 26 April 2007 in Zhukovisky in Russia. She provided an in competition sample at the Weltklasse Meeting on 7 September 2007 in Zurich. On 22 July 2008, she provided a buccal swab sample which was subject to DNA analysis. The results of DNA analysis on the three samples demonstrate that the DNA profit of the out of competition sample is different from that of the sample provided in competition in Zurich and from that provided by buccal swab collection on 22 July 2008. The IAAF argued that the only inference the IAAF can draw from this is that the sample provided on 26 April 2007 was not that of the athlete. Therefore, the athlete has breached IAAF Rules 32.2(b) and 32.2(e).

178. The IAAF contended that in each case the only inference that could be drawn was that the sample provided on 23 May 2007 was not that of the athlete. Therefore, the Athletes had breached IAAF Rules 32.2(b) and 32.2(e).

Reliability of the DNA Analysis

179. The Panel accepts the expert evidence of Dr Castella that the method of DNA analysis was a common and well established one, that the results were clear and reliable, that no DNA diversion could have taken place, and that since a genetic file belongs to only one person it cannot be falsified. The Panel is thus of the view that DNA analysis is a reliable evidentiary means to establish an anti-doping rule violation such as the use of a prohibited substance or method or the tampering or attempted tampering with doping controls. The Panel finds that the natural, if not irresistible inference, is that the Athletes have somehow arranged to have the urine of third persons used in their out of competition testing.

180. However, the Panel notes that, although many courts around the world routinely base criminal convictions on DNA evidence, some courts have warned in criminal cases that DNA evidence should not be relied upon as a complete substitute for proof beyond reasonable doubt. The court should consider the DNA evidence in combination with all the other evidence in the case: see e.g. *R v GK* (2001) 53 NSWLR 317, 323 per Mason P (New South Wales Court of Appeal, Australia).

181. The Panel observes that such comments have no application where, as here, the standard of proof is not that of beyond reasonable doubt. Nevertheless it is prudent, especially since the allegations are of a most serious kind, to consider first, any relevant circumstantial evidence to see whether, in combination with the DNA evidence, it supports the initial assessment that anti-doping violations occurred and, secondly, to consider the quality-control and chain of custody questions which might affect the probative value of the DNA results.

Supporting Circumstantial Evidence

182. As to circumstantial evidence, the Panel agrees with IAAF that there was circumstantial evidence of significant probative value which supports the inference of tampering which can be drawn from the DNA results.

183. First, the Panel finds the very fact that the seven Athletes came from a group of experienced highly ranked international level of athletes in one general discipline, track and field, from one country supports the view that a collaborative system of tampering was in effect.

184. Secondly, since motive is one of the items of circumstantial evidence which is often admitted to establish guilt, there is significant circumstantial evidence in the findings of Professor d'Onofrio that several of the Athletes, namely Cherkasova, Fomenko, Sobaleva, Tomashova and Yegorova had blood profiles indicative of the long term use of rh-EPO or other forms of blood doping. This evidence does provide a motive for tampering with the out of competition samples, namely a need to disguise the use of prohibited substances.

185. Against this background it is not necessary for the IAAF in proving an anti-doping violation to establish exactly how the tampering was carried out. When faced with the incontrovertible evidence that the out of competition samples were not theirs and asked how the discrepancy could be explained and how the non-matching urine samples could have been substituted the Athletes responses ranged from "I don't know" to "there must have been manipulation of the samples by others". They argued, in a nutshell, that the fact that the DCOs made no remark about irregularities on the official forms proved that the out of competition urine sample collected by the DCOs was indeed the Athletes' urine sample and inferred that at a later stage in the transportation process substitution of the non-matching

urine samples must have occurred. The Panel rejects this submission. Following the Athletes' reasoning would mean that a tampering which remained unnoticed by the DCOs could never be sanctioned. It is clear that any DCO's remark on the form aims at either alarming the IAAF when DCOs detected an attempt to tamper the samples or to inform the IAAF of any other particularity noted by the DCOs during the sample collection. The lack of any remark by the DCOs clearly cannot be considered as proof that no tampering took place at the moment of the sample collection.

186. On this topic the Panel gives weight to the evidence from Mr Thomas Capdevielle, the experienced IAAF Results Manager as to how urine substitution can be effected. His evidence was that:

> "In the case of female athletes, I understand that urine substitution is usually effected through the use of a catheter containing urine belonging to another individual. By the use of a catheter, the athlete is able to appear to pass urine naturally, when what they are actually producing is coming from the catheter rather than their own body. If an athlete uses a catheter, which is hidden within the athlete's own body, it is virtually impossible for a Doping Control Officer witnessing the passing of the urine to be able to tell that such a device is being used."

187. He also said that:

> "... another possible explanation is the replacement of the urine collection vessel with another collection vessel containing "clean" urine from another individual. Unlike bottles, the plastic collection vessels are usually not coded and are freely available. As a result, the Doping Control Officer cannot verify that the urine collection vessel presented to him after the athlete has urinated is actually the same collection vessel that the athlete selected at the beginning of the sample to collection process. Such an exchange can easily be made in a momentary lack of attention from the Doping Control Officer. Such practice can only be carried out in circumstances where the athletes are warned in advance that they are going to have to produce a sample and also suggests organised and systematic tampering.

188. Dr Capdevielle also referred to IAAF concerns in relation to the out of competition testing of Russian athletes that the requirements of no advance notice of testing appeared to be disregarded in some cases. There was evidence from the DCOs in this case that supported the view that some of the Second Respondent Athletes may have had advance notice that the DCOs were coming to perform out of competition testing.

189. For all of the foregoing reasons the Panel finds that the out of competition samples provided by the Athletes were not those of the Athletes. Furthermore, the Panel finds that the out of competition samples were not substituted by third parties. The latter would, in principle, not have any motive to do so. If a person wanted to harm the Athletes that person would not have proceeded by replacing the urine of the Athlete with "clean" samples by other persons. As other CAS panels dealing with unsupported explanations provided by athletes accused of anti-doping violations have repeatedly stated, mere speculation is not proof that a fact did actually occur (see e.g. CAS 2006/A/1067 IRB vs Keyter). The Panel therefore concludes

that the only plausible course of events is that the Athletes or their agents or accomplices had provided the urine of other persons to the DCOs.

Was the Chain of Custody of any Sample broken or compromised at any Stage?

190. Before a dispositive finding of guilt can be made, it is necessary to examine the chain of custody evidence and the Athletes' assertions that there were defects and discrepancies in the handling and transportation of some of the samples.

191. The Panel notes that the Athletes did not contest the chain of custody of the samples taken in competition, nor did they contest the chain of the custody where the buccal swabs were taken. The sole challenge was to the chain of custody of the out of competition samples which the IAAF labelled as the bogus samples.

192. The primary thrust of the challenge by the Athletes to the chain of custody was with regard to the transportation of the samples from Russia to Lausanne. The Tribunal finds that there was an unbroken chain of custody of the out of competition samples from Russia to Lausanne. The Athletes drew attention to the admitted facts that the samples had been exported from Russia unlawfully and without proper authorization from the Authorities. The Tribunal found no connection between the apparent violation of Russian administrative or customs law and the sanctity of the samples. To the extent there was a departure from local administrative or customs procedures, it was not such as to in any way undermine the ultimate finding that tampering by the Athletes had occurred. Mr Leonenko, the courier, was a very experienced courier and one who certainly understood the importance of ensuring the samples were at all times in his proper custody. The Tribunal accepts his evidence as truthful and reliable.

193. As to the Athletes' argument that weight should be given to the fact that the DCOs made no remarks on the official forms that anything unusual occurred during the taking of the out of competition urine samples, the Panel did not find it persuasive. The DCOs testified that it was not possible to see the Athletes at all times and in some cases the Athletes had their backs turned to the DCOs. The Panel rejects the suggestion that unless some note of tampering was recorded by the DCOs, one must assume that no such tampering ever occurred either during the sampling or thereafter.

194. The Panel has carefully considered the submissions of the Athletes alleging inadequate proof of the chain of custody and suggestion that the chain has broken during the transportation of the samples from Russia to the LAD in Lausanne or from the moment the samples left the LAD to go to the LGF laboratory. Taking into account the sampling and transportation evidence presented to the Panel and summarised in Section VI above, namely the documentation provided to the Panel by the IAAF, the evidence, both written and oral of the DCOs and the members of IDTM in charge of the transportation of the samples, as well as the evidence of Dr Castella of the LGF laboratory and Dr Martial Saugy of the LAD, the Tribunal finds to its comfortable satisfaction, bearing in mind the seriousness of the allegation, that the chain of custody was never interrupted or interfered with.

Validity and Reliability of the Testing Procedures

195. The LAD is a WADA-accredited laboratory and thus benefits from the presumption of compliance with applicable procedure. However, the LGF, where the DNA analysis was performed is not WADA-accredited and, thus, cannot benefit from the presumption of proper application of the custodial procedures. However, this does not of course render the analysis performed by the LGF unreliable. The Athletes themselves admitted that they had no doubts as to the professionalism of the LGF. To the extent that the Athletes claimed that they had never had access to the LGF documentation, it is to be recalled that the burden on the IAAF was to prove an intact chain of custody, not an intact chain of documentation: see *Jovanovic v USADA* CAS 2002/A/360 at paragraph 28. As to the complaint by the Athletes about the long duration of the LGF investigation, the Tribunal finds that the time taken was more than adequately explained in the evidence of Dr Castella summarized at paragraph 64 above and in the evidence of Mr Capdevielle summarized at paragraphs 73–74 above. The fact that the LGF acts in criminal cases for the Swiss confederation, that it is ISO 7025 accredited, and that the officers within the LGF know very well the measures to be taken in order to avoid any DNA contamination eliminates any doubts about the reliability of DNA testing procedures.

Testing of B Sample

196. Finally, the Tribunal addresses the submission raised for the first time in the submissions of the Athletes at the hearing to the effect that "an athlete's right to be given a reasonable opportunity to observe the opening and testing of a B sample is of sufficient importance that it needs to be enforced, even in situations where all of the other evidence available indicates that an athlete committed an anti-doping violation": CAS 2002/A/385 *Tchachina v. FIG;* CAS 2008/A/1607 *Varis v IBU.* The IAAF justifiably complained about the introduction of this argument at the hearing without prior notice in breach of Art. R56 of the Code, which prohibits the supplementation of the appeal brief unless the President of the Panel allows it on the basis of exceptional circumstances. But in any event the Panel rejects this argument. A distinction must be made between the results management process applicable to the case of an anti-doping rule violation detected through an Adverse Analytical Finding and one where there is no such finding.

197. IAAF Rule 37, para 1 governs the results management processes "following notification of an adverse analytical finding or other anti-doping rule violation". IAAF Rule 37 paras 3 to 10 delineates rules which are applicable "on notification of an adverse analytical finding" (IAAF Rule 37 para. 3), whereas IAAF Rule 37 para. 11 defines the results management process "in the case of any anti-doping rule violation where there is no adverse analytical finding".

198. The athlete's right to request promptly for the B sample analysis is mentioned under IAAF Rule 37 para. 4 lit (d), which lists the information to be notified to an athlete by the IAAF Anti-Doping Administration "if the initial review under Rule 37.3 above does not reveal an applicable TUE or departure or departures from the International Standard for Testing (or other applicable provision in the Procedural Guidelines) or the International Standard for Laboratories such as to undermine the validity of the finding". IAAF Rule 37 paras. 4 lit (e) to (g), and 6 to 10 govern in details the procedure applicable to the B sample analysis.

199. As mentioned above IAAF Rule 37 para. 11 provides for a different results management process in case of an anti-doping rule violation where there is no adverse analytical finding. In this case, IAAF Rule 37 para. 11 provides that:

> "In the case of any anti-doping rule violation where there is no adverse analytical finding, the IAAF Anti-Doping Administrator shall conduct any investigation based on the facts of the case that he deems to be necessary and, on completing such an investigation, shall promptly notify the athlete concerned whether it is asserted that an anti-doping rule violation has been committed. If this is the case, the athlete shall be afforded an opportunity, either directly or through his National Federation, within a time limit set by the IAAF Anti-Doping Administrator, to provide an explanation in response to the anti-doping rule violation asserted."

200. The clear wording of IAAF Rule 37 para. 11 thus shows that the results managements processes and notably the duties of the IAAF Anti-Doping Administrator related to them are different depending on the way the anti-doping rule violation is presented, i.e., whether it is by way of an adverse analytical finding or not. The B sample analysis is clearly not part of the results management process of IAAF Rule 37 para. 11.

201. In the present case, there is no Adverse Analytical Finding and therefore the results management process is the one of IAAF Rule 37 par. 11 and not of IAAF Rule 37 paras. 3 to 10. As IAAF Rule 37 para.11 does not provide for the athlete's right to request the analysis of the B sample, the Athletes' submissions with respect to the B sample management process necessarily fail.

Conclusion

202. For all of the foregoing reasons and taking into account all the evidence presented to the Panel and after carefully considering the competing submissions of the parties, the Tribunal finds that the anti-doping violations under IAAF Rule 32 paras. 2(b) and (e) alleged against each of the Athletes have been established to its comfortable satisfaction, bearing in mind the seriousness of the allegation..

X. Period of sanction

203. As noted earlier, the IAAF requests a period of sanction of four years to be imposed on the Athletes. The ARAF claims that a two years sanction is proportionate. Both parties referred to CAS jurisprudence on the matter.

204. The Panel first deals with the procedural submission made by the ARAF as to the alleged uncertainty of the IAAF's request when it asks that "the ineligibility period in the Athletes' case be increased up to 4 years". The ARAF submitted that the IAAF had left it up to the Panel to decide on a period of sanction between two years and four years and therefore claimed that the request was not clear enough. The Panel does not agree and finds that the IAAF made clear in its request, which was confirmed at the hearing upon the ARAF's request, that the IAAF was requesting the Panel to impose a four years sanction, by increasing the sanction imposed by ARAF from two years up to four years.

205. The competing submissions of the parties have been summarized above at paragraphs 84–106 (IAAF) and 108–116 (ARAF). It will be recalled that the IAAF advanced five grounds in support of its request for a four year sanction. For ease of understanding the five reasons are set out again:

(i) the nature of the violation committed by the Athletes;

(ii) that additional evidence in the form of some of the Athletes' blood profile data was indicative of the long term use of rh-EPO or other form of blood doping;

(iii) that a sanction of more than 2 years was consistent with the disposition of similar cases in the sport of Athletics in the past;

(iv) that this case was consistent the increased sanctions of up to 4 years on account of aggravated circumstances under the 2009 WADC; and

(v) that sanctions of more than 2 years were needed in order to succeed in the fight against doping in sport.

206. As to the second reason, it is to be observed that the IAAF does not complain that the blood profiles establish an anti-doping rule violation. Rather it contends that those blood profiles signify that the Athletes had something to hide and therefore a motive to tamper with the samples. The Panel is not persuaded that any significant weight should be given to this factor.

207. As to the fourth ground advanced by the IAAF, it will be recalled that the Panel has already rejected this submission: see paragraphs 61–62 above. The Panel holds that since the 2009 WADC had not been adopted by the IAAF at the material times relevant to the present case, the new IAAF Anti-doping Rules as well as the 2009 WADC cannot be taken into consideration by the Panel.

208. Having rejected the second and fourth grounds advanced by the IAAF, the Panel finds that the only applicable rule is that contained in IAAF Rule 40(1)(b) which states the case of tampering should be sanctioned with "a minimum period of 2 years ineligibility". Beyond that, it is obvious the question of the appropriate sanction is a matter for the overall discretion of the Panel taking into account all relevant circumstances. As a starting point, however, it has to be kept in mind that the IAAF Rules do not provide for differing sanctioning regimes for the use of a prohibited substance or for tampering. Both infractions are regarded as "standard type" violations and treated exactly the same according to the rules. Assistance for finding the appropriate sanction can of course be obtained from other comparable cases.

209. The precedents cited by the Appellant, however, are not particularly helpful. In the BALCO case cited by the IAAF, the North American Court of Arbitration for Sport sanctioned an athlete with a suspension of eight years, because she did not admit her guilt, did not agree to cooperate and covered up the facts. In addition, her doping took place over an extended period of time. Another athlete received a two year suspension because she had admitted the facts and cooperated. Most athletes were sanctioned with four years because "the BALCO scheme was elaborately designed to hide the doping offenses of its athletes" (AAA, United States Anti-Doping Agency v. Michelle Collins, 9 December 2004, nr 5.5). Whether or not this case has any relevance here is rather doubtful, since the case was judged at the time on a completely different legal basis than the one that is applicable here. While the applicable IAAF provisions applicable in this case correspond – substantially - to the 2003 WADC, the cases referring to the BALCO affair date back to a pre-WADC era. For the same reason not much guidance can be drawn from the cases of Montgomery and Gaines. Both athletes were sanctioned with the minimum period of ineligibility of two years at the

time. The panel accepted the uncontradicted evidence of a credible witness who testified that they had both admitted to the witness their use of prohibited substances: (CAS 2004/O/645 USADA v. T. Montgomery, nr 60).

210. The USADA's list of sanctions against athletes produced by the IAAF in its appeal brief revealed sanctions between two years and four years of ineligibility, with EPO cases leading to a four year period of ineligibility.

211. The IAAF also quoted two tampering cases. The first was CAS 2005/A/898 which related to the Greek athletics trainer Tzekos. He admitted the IAAF rules had been breached and under the settlement reached in that case he was sanctioned with a four years suspension for tampering with the doping control process by providing the authorities with deliberately misleading whereabouts information for his athletes. This reference, however, is not conclusive for the case at hand. The applicable IAAF rules at the time (which are basically the same as the ones applicable in the case at hand) expressly provided for a different sanctioning regime for athlete support personnel (such as trainer and coaches) and athletes. Anti-doping violations committed by athlete support personnel were considered (and still are considered) by the IAAF anti-doping provisions as particularly serious offenses requiring a minimum sanction of four years. It is, therefore, not surprising that the athletes, to whom a different legal regime applied, were only declared ineligible for two years.

212. The second tampering case quoted by the IAAF is comparable – at least at first sight to the present case – since, not only was the Bulgarian sprinter Tezdzham Naimova found guilty of tampering but it required a DNA analysis to prove the anti-doping violation. The athlete was sanctioned with two years as she had admitted her guilt and explained how the offence had taken place. However, the difference with the case at hand is that the decision relating to the Bulgarian athlete was never appealed before CAS. Whether or not the decision of the federation applying the IAAF rules would have stood up to CAS scrutiny and jurisprudence is unknown.

213. The ARAF gave two more examples of tampering cases, namely the Fazekas and Annus cases (CAS 2004-A-714 Fazekas vs IOC; CAS 2004/A/718 Annus vs IOC), where a two years period of ineligibility was pronounced against the athletes for a first violation.

214. Summing up, the only conclusion which can be drawn from the jurisprudence cited is that – unsurprisingly – the length of the sanction depends on the particular facts of the case. Based on the structure of the IAAF rules as they stood at the relevant time and these precedents, the Panel finds that the trend for a first offense with tampering seems to be a two years period of ineligibility. Depending on the attitude of the athlete and the nature and complexity of the scheme set in place, a tribunal obviously may increase the sanction. In the view of the Panel the circumstances that justify an increase must be serious. In addition, there is an upper limit for an increase of the sanction. Contrary to what the wording of the provision might suggest, the upper limit for the length of a sanction for a "standard infraction" must not exceed the lower limit of those anti-doping violations the IAAF rules consider to be particularly serious, ie 4 years of ineligibility. This follows from the overall context of the IAAF provisions on ineligibility.

215. Now that the extent of the discretionary powers have been determined, the Panel turns to the specific circumstances of the case to determine the precise length of the period of

ineligibility. In doing so the Panel considers that the Athletes did set up a "doping program" which they hoped would result in negative testing. It involved the seven Athletes who belonged to the same team, namely the Russian International Athletics team. The Panel has no doubt that the Athletes participated together in this "doping program" which aimed at deceiving the anti-doping authorities on a large scale and not only on an individual basis. The Athletes adopted a coordinated approach when confronted with the out of competition and in competition tests. The collective attitude of all seven athletes constitutes an aggravating circumstance which should be taken into consideration.

216. *On the other hand, the Panel finds that the circumstances of the case do not warrant to go to* the upper limit of the range of the period of ineligibility, ie up to 4 years. The extent of the doping program of which the Athletes were undoubtedly part of has not been completely uncovered. It is hardly conceivable that the Athletes could have acted the way they did without the assistance of athlete support personnel or persons holding certain official functions within the federation. The Panel is of the view that the Appellant may not have used all efforts at its disposal to uncover the full extent of the "doping program". It appears that the athletes were not offered the possibility of reducing their sanctions by providing substantial assistance in uncovering the "doping program". This could have been an effective tool to uncover the true extent and the details of the "doping program". In view of these persisting uncertainties the Panel does not find it just and equitable to go to the upper limit of discretion at its disposal concerning the length of the sanctions.

217. The ARAF submitted that the period of disqualification of the Athletes' results should be taken into consideration by the Panel when fixing the length of the period of ineligibility. The IAAF submitted, (see paragraph 153 above) that those two sanctions are distinct from each other under the IAAF Rules. It argued that the jurisprudence on this matter did not support the ARAF's approach: see especially CAS 2004/O/645 USADA v. Tim Montgomery where the athlete was sanctioned with a two years period of ineligibility commencing on 6 June 2005, whereas all awards of the athlete were cancelled retroactively from 31 March 2001 until 13 December 2005. The Panel takes a different view. It finds that CAS 2004/O/645 is not conclusive because the legal regime was completely different at the time. The Panel considers that the relevant rules, properly construed, require that sanctions must be proportionate. Proportionality means, however, that even though disqualification and ineligibility are different in nature they both are sanctions and, thus, both have to be taken into account to come to a proportionate solution.

218. Taking into account the provisions of IAAF Rule 40(1)(b), the relevant precedents and the specific circumstances of this case, the Panel decides that the appropriate sanction for the Athletes is a period of ineligibility of two years and nine months.

219. The Panel records that it has not given weight to the evidence of Ms Radcliffe which supported the imposition of the heaviest possible sentence on the Athletes. The Panel means no disrespect to Ms Radcliffe but her evidence was very general in nature. She acknowledged that she did not really know the facts concerning the alleged misconduct by the Athletes. It appeared that she was simply expressing a view on the part of others that there should be strong penalties in all cases

Ms Khanafeyeva

220. The Panel considered particularly the case of Ms Khanafeyeva, who had already committed a first doping offense. It decided to impose the same sanction on Ms Khanafeyeva as on the other Athletes for the following reasons:

221. First, in neither the IAAF and ARAF cases against Ms Khanafeyeva was the fact that Ms Khanafeyeva stood accused of a second anti-doping rule violation ever considered. The ARAF Decision against Ms Kanafeyeva did not sanction Ms Khanafeyeva differently from the other Athletes. In its appeal brief, the IAAF did not request the Panel to pronounce ineligibility for life against Ms Khanafeyeva, which is the sanction provided under IAAF Rule 40(1)(a) and (b), in cases of a second anti-doping rule violation.

222. While the IAAF mentioned in its submissions against Ms Khanafeyeva that it was a second anti-doping rule violation in her case, the content of the appeal brief was identical to that of the other Athletes.

223. The Panel therefore infers that the IAAF's request was that the Panel issues the same sanction against Ms Khanafeyeva as for the other Athletes.

224. The Panel does thus not find it appropriate to depart from the approach of the ARAF Committee, confirmed by the IAAF in its appeal brief. It therefore decides to impose the same sanction on Ms Khanafeyeva as applies to the other Athletes, namely a period of ineligibility of two years and nine months.

Commencement of the period

225. IAAF Rule 40 par. 9 provides that:

> "The period of ineligibility shall start on the date of the hearing decision providing for the ineligibility or, if the hearing is waived, on the date the ineligibility is accepted or otherwise imposed. When an athlete has served a period of provisional suspension prior to being declared ineligible (whether imposed or voluntarily accepted) such a period shall be credited against the total period of ineligibility to be served".

226. The ARAF Commission held an hearing on 3 September 2008 for all Athletes except for Ms Yegorova. She did not take part to the procedure before ARAF and her period of ineligibility commenced on 20 October 2008. All other Athletes were subjected to a provisional suspension commencing 31 July 2008.

227. Based on the foregoing and in application of IAAF Rule 40(9), the Panel decides that the period of ineligibility of two years and nine months shall start on 3 September 2008 for all Athletes but Ms Yegorova, who shall have the same period commence on 20 October 2008. However, credit is given to all Athletes for the period of ineligibility already served because of the provisional suspension dated 31 July 2008. The period of ineligibility of all Athletes will therefore expire on 30 April 2011.

228. For the avoidance of doubt, the Panel rejects the ARAF submissions based on the application of the last sentence of Art. 10.8 of the 2003 WADC. As already explained previously, the WADC is neither directly nor indirectly applicable to the present cases and the Panel cannot therefore apply a rule, namely the possibility to fix the start of the ineligibility period at an earlier date "*because of delays in the hearing process or other aspects of Doping Control not attributable to the Athlete*", which was not incorporated in the IAAF Rules. There is no reason to follow the ARAF's thesis of a *lacuna* in the IAAF Rules. The IAAF Rules take over word for word the whole of Art. 10.8 of the 2003 WADC with the exception of the last sentence of this Art.. There is thus no doubt that the IAAF deliberately did not adopt the exact same wording of Art. 10.8 of the 2003 WADC in its Rules. The Panel is thus solely bound by the content of the IAAF Rules: see CAS 2005/A/831 IAAF v. Hellebuyck, nr 7.3.4 et seq.

Disqualification of Results

229. IAAF Rule 39 par. 4 provides that:

> "Where an athlete has been declared ineligible under Rule 40 below, all competitive results obtained from the date (...) [an] anti-doping rule violation occurred through the commencement of the period of provisional suspension or ineligibility shall, unless fairness requires otherwise, be annulled, with all resulting consequences for the athlete."

230. The Athletes tampered the out of competition samples and thus the anti-doping rule violation occurred on the following dates:

(i) As to Ms Olga Yegorova on 7 April 2007

(ii) As to Ms Svetlana Cherkasova on 26 April 2007

(iii) As to Ms Yuliya Fomenko on 27 April 2007

(iv) As to Ms Gulfiya Khanafeyeva on 9 May 2007

(v) As to Ms Tatyana Tomashova on 23 May 2007

(vi) As to Ms Yelena Soboleva on 26 April 2007

(vii) As to Ms Darya Pishchalnikova on 10 April 2007

231. In accordance with IAAF Rule 39(4), all competitive results achieved by the Athletes since those respective dates are annulled.

232. All other prayers for relief are dismissed.

Costs

233. Art. R65(1) of the CAS Code provides in disciplinary cases of an international nature ruled in appeal that "subject to Art.s R65.2 and R65.4, the proceedings shall be free" and that "the fees and costs of the arbitrators, calculated in accordance with the CAS fee scale, together with the costs of the CAS are borne by the CAS". R65(2) provides that:

> "Upon submission of the statement of appeal, the Appellant shall pay a minimum Court Office fee of CHF 500 (five hundred Swiss francs) without which the CAS shall not proceed and the appeal shall be deemed withdrawn. The CAS shall in any event keep this fee."

234. Art. R65(2) provides that:

> "The costs of the parties, witnesses, experts and interpreters shall be advanced by the parties. In the award, the Panel shall decide which party shall bear them or in what proportion the parties shall share them, taking into account the outcome of the proceedings, as well as the conduct and financial resources of the parties."

235. As this is a disciplinary case of an international nature brought by the IAAF, the proceedings shall be free, except for the minimum Court Office fee, already paid by the Appellant, which is retained by CAS.

236. The IAAF and the ARAF agreed that the Athletes should not be ordered to contribute to the IAAF's and ARAF's expenses. Having taken into account the outcome of the arbitration, the financial resources of the parties and their conduct during the proceedings, the Panel is of the view that the Parties shall bear their own legal costs and all other expenses incurred in connection with this arbitration proceeding.

* * *

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeals filed by The International Association of Athletics Federation are partially upheld.

2. The Decisions of the ARAF Council dated 20 October 2008 regarding the Athletes Olga Yegorova, Svetlana Cherkasova, Yuliya Fomenko, Gulfiya Khanafeyeva, Tatyana Tomashova, Yelena Soboleva and Darya Pishchalnikova, are set aside.

3. The Athletes Olga Yegorova, Svetlana Cherkasova, Yuliya Fomenko, Gulfiya Khanafeyeva, Tatyana Tomashova, Yelena Soboleva and Darya Pishchalnikova are sanctioned with a suspension of two years and nine months.

   a. For Svetlana Cherkasova, Yuliya Fomenko, Gulfiya Khanafeyeva, Tatyana Tomashova, Yelena Soboleva and Darya Pishchalnikova the period of ineligibility shall start on 3 September 2008. However, credit is given for the period of ineligibility already served because of the provisional suspension dated 31 July 2008. The period of ineligibility, therefore, expires on 30 April 2011.

   b. For Olga Yegorova the period of ineligibility shall start on 20 October 2008. However, credit is given for the period of ineligibility already served because of the provisional suspension dated 31 July 2008. The period of ineligibility, therefore, expires on 30 April 2011.

4. All competitive results achieved by the Athletes since the out of competition testing are annulled, namely:

   a. All competitive results achieved by Olga Yegorova since 7 April 2007

   b. All competitive results achieved by Svetlana Cherkasova since 26 April 2007

   c. All competitive results achieved by Yuliya Fomenko since 27 April 2007

   d. All competitive results achieved by Gulfiya Khanafeyeva since 9 May 2007

   e. All competitive results achieved by Tatyana Tomashova since 23 May 2007

   f. All competitive results achieved by Yelena Soboleva since 26 April 2007

   g. All competitive results achieved by Darya Pishchalnikova since 10 April 2007

5. All other motions or prayers for relief are dismissed.

6. This award is pronounced without costs, except for the court office fees of total CHF 3'500.- paid by the International Association of Athletics Federation, which are retained by CAS.

7. Each party shall otherwise bear its own legal costs and all other expenses incurred in connection with this arbitration.

Operative part of the award notified on 22 July 2009.

Lausanne, 18 November 2009

THE COURT OF ARBITRATION FOR SPORT

David A. R. **Williams QC**
President of the Panel

Massimo **Coccia**
Arbitrator

Ulrich **Haas**
Arbitrator

Nicolas **Cottier**
Ad hoc Clerk