

**IN THE MATTER OF PROCEEDINGS BROUGHT UNDER THE ANTI-DOPING RULES OF
WORLD ATHLETICS**

Before:

Charles Hollander QC (Chair)
Anna Bordiugova
Steve Bainbridge

BETWEEN:

WORLD ATHLETICS

Anti-Doping Organisation

and

**ARTUR KARAMYAN
DMITRY SHLYAKHTIN**

Respondents

DECISION OF THE DISCIPLINARY TRIBUNAL

A. Introduction

1. This decision relates to two cases arising from the fraudulent scheme effected by the Russian Athletics Federation (“**RusAF**”) and certain employees and related personnel to cause the Russian high jumper Danil Lysenko to submit false documents and explanations to the Athletics Integrity Unit (“**AIU**”) in order to explain his whereabouts

failure (non-submission of whereabouts information for the second and the third quarters of the year 2018).

2. Mr Karamyan, at the time of the relevant events, was an Executive Board Member of RusAF, the World Athletics Member Federation in Russia, as well as the President of the Moscow-Region Athletics Federation, itself a member of RusAF.
3. Mr Shlyakhtin, at the time of the relevant events, was the President of RusAF, the World Athletics Member Federation in Russia.
4. These cases were consolidated by the Chair on 31 March 2020 because of their common facts and issues. They were originally consolidated with a further case against Mr Evgeny Zagorulko, but in the event Mr Zagorulko chose not to contest the charges against him and subsequently gave evidence at the hearing for the AIU.
5. Mr Ross Wenzel and Mr Adam Taylor appeared for the AIU. Mr Andrew Smith (instructed by Steptoe & Johnson LLP) appeared for Mr Shlyakhtin. Mr Chris Burrows, who acted pro bono, appeared for Mr Karamyan. The Panel is grateful to all the advocates for their assistance in what was a very complex matter.

B. Applicable Rules

6. The asserted Anti-Doping Rule Violations (“**ADRVs**”) took place in 2018 and 2019. The 2018 IAAF Anti-Doping Rules (“**ADR**”) were in force from 6 March 2018 until the entry into force of the 2019 IAAF ADR on 1 January 2019. In view of the above, the relevant facts occurring in 2018 are subject to the 2018 IAAF ADR and the relevant facts occurring in 2019 are subject to the 2019 IAAF ADR. As concerns the applicable procedural rules, the 2019 IAAF ADR apply.
7. Article 1.2 of the 2019 IAAF ADR states as follows:

“In accordance with Article 16.1 of the IAAF Constitution, the IAAF has established an Athletics Integrity Unit (“**Integrity Unit**”) with effect from 3 April 2017 whose role is to protect the Integrity of Athletics, including fulfilling the IAAF’s obligations as a Signatory to the Code. The IAAF has delegated implementation of these Anti-Doping Rules to the Integrity Unit, including, but not limited to the following activities in respect of International-Level Athletes and Athlete Support Personnel: Education, Testing, Investigations, Results Management, Hearings, Sanction and Appeals. The references in these Anti-Doping Rules to the IAAF shall, where applicable, be references to the Integrity Unit (or to the relevant person, body or functional area within the Unit)”.

C. Jurisdiction

8. The application of the IAAF Rules to Athletes, Athlete Support Personnel and other Persons is set out in Article 1.6 of the 2019 IAAF ADR, as follows:

“These Anti-Doping Rules also apply to the following Athletes, Athlete Support Personnel and other Persons, each of whom is deemed, by condition of his membership, accreditation and/or participation in the sport, to have agreed to be bound by these Anti-Doping Rules, and to have submitted to the authority of the Integrity Unit to enforce these Anti-Doping Rules:

- (a) all Athletes, Athlete Support Personnel and other Persons who are members of a National Federation or of any affiliate organisation of a National Federation (including any clubs, teams associations or leagues);
- (b) all Athletes, Athlete Support Personnel and other Persons participating in such capacity in Competitions and other activities organized, convened, authorized or recognized by (i) the IAAF (ii) any National Federation or any member or affiliate organization of any National Federation (including any clubs, teams, associations or leagues) or (iii) any Area Association, wherever held;
- (c) all Athlete Support Personnel and other Persons working with, treating or assisting an Athlete participating in his sporting capacity; and
- (d) any other Athlete, Athlete Support Person or other Person who, by virtue of an accreditation, licence or other contractual arrangement, or otherwise, is subject to the jurisdiction of the IAAF, of any National Federation (or any member or affiliate

organization of any National Federation, including any clubs, teams, associations or leagues) or of any Area Association, for purposes of anti-doping.”

9. The IAAF ADR therefore apply to all Athlete Support Persons or other Persons who are members of a National Federation, those working with, treating or assisting an Athlete participating in his sporting capacity, and those who, by virtue of an accreditation, licence or other contractual arrangement, or otherwise, are subject to the jurisdiction of World Athletics, of any National Federation (or any member or affiliate organization of any National Federation, including any clubs, teams, associations or leagues) or of any Area Association, for purposes of anti-doping.

10. In view of the foregoing, Mr Karamyan and Mr Shlyakhtin are subject to the IAAF ADR. This was not disputed.

11. Article 7.2 of the 2019 IAAF ADR confers jurisdiction for results management on the AIU in certain circumstances, including:

7.2 The Integrity Unit shall have results management responsibility under these Anti-Doping Rules in the following circumstances: [...]

7.2.3 For potential violations arising in connection with any investigation conducted in accordance with Article 5. [...]

7.2.5 For potential violation of these Anti-Doping Rules where no Testing is involved and where the potential violation involves:

(a) Any International-Level Athlete, Athlete Support Person or other Person who has an involvement in any capacity in International Competitions or with International-Level Athletes; or

(b) Where the IAAF is the Anti-Doping Organisation which first provides notice to an Athlete or other Person of an asserted Anti-Doping Rule Violation and then diligently pursues that violation.

12. Thus, the AIU has results management responsibility in this matter.

13. World Athletics has established the Disciplinary Tribunal (the “**Tribunal**”) in accordance with Article 1.4 of the 2019 IAAF ADR, which provides that the Tribunal shall determine ADRVs committed under the rules.

14. Article 8.1(a) of the 2019 IAAF ADR sets out that the Tribunal shall have jurisdiction over all matters in which:

(a) An Anti-Doping Rule Violation is asserted by the Integrity Unit against an International Level Athlete or Athlete Support Person in accordance with these Anti-Doping Rules;

15. By Article 1.6 of the 2019 IAAF ADR, the rules apply to the Athletes, Athlete Support Personnel and other Persons, each of whom is deemed, as a condition of his membership, accreditation and/or participation in the sport to have agreed to be bound by the 2019 IAAF ADR, and to have submitted to the authority of the AIU to enforce those rules. In particular:

(a) those that are members of a National Federation or of any member or affiliate organisation of a National Federation,

(b) those working with, treating or assisting an athlete participating in his sporting capacity, and;

(c) those who, by virtue of an accreditation, licence or other contractual arrangement, or otherwise, is subject to the jurisdiction of World Athletics, of any National Federation (or any member or affiliate organization of any National Federation, including any clubs, teams, associations or leagues) or of any Area Association, for purposes of anti-doping.

16. Therefore, the Tribunal has the requisite jurisdiction to hear and determine the anti-doping and other rules violations alleged against Mr Shlyakhtin and Mr Karamyan.

D. Rule Violations

17. Article 2.5 of the 2018 and 2019 IAAF ADR provides:

“Tampering or Attempted Tampering with any part of Doping Control

Conduct which subverts the Doping Control process but which would not otherwise be included in the definition of Prohibited Methods. Tampering shall include, without limitation, intentionally interfering or attempting to interfere with a Doping Control official, providing fraudulent information to an Anti-Doping Organization or intimidating or attempting to intimidate a potential witness.”

18. Tampering is defined in the 2018 and 2019 IAAF ADR as meaning:

“Altering for an improper purpose or in an improper way; bringing improper influence to bear; interfering improperly; obstructing, misleading or engaging in any fraudulent conduct to alter results or to prevent normal procedures from occurring.”

19. Further, under Article 5.10.9 of the 2018 and 2019 IAAF ADR:

“If an Athlete or other Person obstructs or delays an investigation (e.g., by providing false, misleading or incomplete information or documentation and/or by tampering or destroying any documentation or other information that may be relevant to the investigation), proceedings may be brought against him for violation of Article 2.5 (Tampering or Attempted Tampering).”

20. Article 2.9 of the 2018 and 2019 IAAF ADR provides:

“Complicity

Assisting, encouraging, aiding, abetting, conspiring, covering up or any other type of intentional complicity involving an Anti-Doping Rule Violation, Attempted or violation of Article 10.11.1 by another Person.”

21. Article 5.10.2 of the 2018 and 2019 IAAF ADR provides:

“Where an Athlete or other Person knows or suspects that any other Athlete or other Person has committed an Anti-Doping Rule Violation, it shall be the obligation of the first Athlete or other Person to report such knowledge or suspicion to the Integrity Unit as soon as possible.

The first Athlete or other Person shall have a continuing obligation to report any new knowledge or suspicion regarding any Anti-Doping Rule Violation to the Integrity Unit even if his prior knowledge or suspicion has already been reported. In case of refusal or failure to comply without acceptable justification, Article 12 shall apply.”

22. Article 5.10.3 of the 2018 and 2019 IAAF ADR provides:

“Athletes and other Persons must co-operate fully with investigations conducted pursuant to this Article 5 (and in cases of refusal or failure to do so without compelling justification, Article 12 shall apply).”

Period of Ineligibility

23. Article 10.3.1 of the 2019 IAAF Rules provides that the consequences to be imposed for a first violation of Article 2.5 (Tampering) (and thus applicable in this case) shall be:

“[...] four years unless, in a case of failing to submit to Sample collection, the Athlete can establish that the commission of the Anti-Doping Rule Violation was not intentional (as defined in Article 10.2.3), in which case the period of Ineligibility shall be two years.”

24. Article 10.3.4 of the 2019 IAAF Rules provides that the consequences to be imposed for the violation of Article 2.9 (Complicity) shall be “a minimum of two years, up to four years, depending on the seriousness of the violation.”

25. Article 12 of the 2018 and 2019 IAAF ADRs provides at Article 12.1, relating to refusal or failures to report an anti-doping rule violation or to co-operate with investigations, that:

“Where an Athlete or other Person refuses or fails without compelling justification to comply with any provision of these Anti-Doping Rules, but such refusal or failure does not fall within any of the anti-doping rule violations defined in Article 2, the Athlete or Athlete Support Person shall not be deemed to have committed an Anti-doping Rule Violation and he shall not be subject to any of the Consequences set out in Articles 9 and 10. However, disciplinary proceedings may be brought against him before the Disciplinary Tribunal in accordance with Article 8, and if the Disciplinary Tribunal finds that there has been such refusal or failure

without compelling justification then it shall impose upon the Athlete or Athlete Support Person such sanctions as it sees fit (which may include, if it sees fit, a period during which the Athlete or Athlete Support Person shall not be eligible to participate in the sport).”

E. The Charges

26. On 21 November 2019, the AIU brought charges against both Mr Karamyan and Mr Shlyakhtin, and both have been subject to Provisional Suspension from that date.

The charges were:

“in connection with your participation in (i) a scheme by RusAF officials to submit false narratives to the AIU, supported by fake documents, in explanation for the Whereabouts Failures of Russian athlete, Danil Lysenko and (ii) a concerted and co-ordinated attempt by RusAF officials to obstruct the AIU’s efforts to investigate the matter.”

27. Mr Karamyan was charged with:

- a. Tampering or attempted Tampering;
- b. Complicity;
- c. Refusal or Failure to report an Anti-Doping Rule Violation;
- d. Refusal or Failure to co-operate with investigations.

28. In particular:

- a. “You procured the first fake Epicrisis document at the request of Evgeny Zagorulko on 26 July 2018. You knew when doing so that there was no treatment of the Athlete and therefore the document was falsified.
- b. You procured a second fake Epicrisis document and supporting medical documents upon receipt of the Athlete's Birsk test results on 17 August 2018. Again, you knew there was no treatment of the Athlete and therefore that the documents were falsified. You knew that the fake medical documents were to be submitted on the Athlete's behalf to the AIU.

- c. You have provided false, misleading or incomplete information to the AIU during the course of its investigation.
- d. You took specific steps in May 2019 with a view to deleting documents from your electronic devices. Documents on your device(s) have been deleted or were attempted to have been deleted, some of which may have been relevant to the case. Some relevant documents and communications missing from your device(s) have been found either sent or received on other persons' devices.”

29. Mr Shlyakhtin was charged with:

- a. Tampering or attempted Tampering;
- b. Complicity;
- c. Refusal or Failure to report an Anti-Doping Rule Violation;
- d. Refusal or Failure to co-operate with investigations.

30. In particular:

- a. “You knew as a recipient of the "float up" e-mail¹ that the medical documents demanded by the AIU to support the Epicrisis were to be fabricated and you were aware of, participated in and were complicit in that process, including making arrangements with the Athlete for him to undergo the medical tests required for the preparation of such documents.
- b. You have provided false, misleading or incomplete information to the AIU during the course of its investigation.
- c. You have made public statements denying yours and the Federation's involvement in the scheme that you knew to be false.”

¹ The email of 8 August 2018 referred to later was referred to as the “float up” email because of the original translation relied on by the AIU. In the event a replacement translation has been agreed which does not use this expression.

F. Issues covered in this decision and issues raised before the Tribunal

31. The Tribunal sat (by remote hearing) for two days on these cases. They sat long days (8.30-5.30 London time) to ensure that the evidential hearing completed. There were many issues raised and innumerable disputes of evidence. The hearing was complicated, with simultaneous Russian/English translation but ran generally smoothly, with the assistance of the parties and their representatives, Sport Resolutions' assistance, and the excellent interpreters.
32. Not surprisingly, the AIU's case focused heavily on what they saw as the central part of the case, namely whether Messrs Karamyan and Shlyakhtin were party to the conspiracy to fabricate explanations and documents.
33. In this judgment the Panel have similarly focused on what seems to it to be the central issues, and in particular the alleged involvement of the two Respondents in the fabrication of explanations and documents. One particular point is that (for reasons explained below) we do not consider that resolving further disputes of facts or allegations would have affected any potential sanction available to the Panel. The Panel has therefore not dealt with a number of issues of fact which do not seem to it to be material to its final determination. The chronology below is also deliberately selective.
34. Danil Lysenko was a very successful Russian high jumper and an important prospect for RusAF. In July 2018, the AIU sought to charge him with three Whereabouts Failures. At the time he was 21. Although the charge was not brought until 3 August 2018, he received a letter from the AIU on 25 July 2018 notifying him of his third Whereabouts Failure.
35. Members of RusAF devised a plan to provide a potential defence to this charge by fabricating documents. Lysenko had failed to provide whereabouts information for the second quarter of 2018 by the deadline of 31 March 2018 (the Second Failure) and had

failed to provide whereabouts information for the third quarter of 2018 by the deadline of 30 June 2018 (the Third Failure). The plan was:

- a. To explain the Second Failure by falsely claiming Lysenko had been taken ill during a training camp in Portugal in late March 2018 and had been treated immediately on his return to Moscow in a clinic known as the SD Clinic.
- b. To explain the Third Failure by falsely claiming Lysenko had been involved in a car accident on 20 June 2018.

36. The existence of what amounted to a fraudulent conspiracy is not now in dispute. Charges have been successfully brought in relation to this fraud by the AIU against RusAF itself, Mr Alexander Parkin (Executive Director of RusAF), Ms Elena Ikonnikova (RusAF Anti-Doping Coordinator), Ms Elena Orlova (Senior Manager at RusAF) and Mr Evgeny Zagorulko (Lysenko's personal coach). The issue before the Tribunal is whether the two Respondents, Artur Karamyan and Dmitry Shlyakhtin, were party to the conspiracy.

37. Although the false explanation relating to the Third Failure involved a fraud in relation to a subsequent (real) car accident which Mr Lysenko had, in the event it was not alleged that either Respondent was involved in that fraud.

38. There were a number of allegations made in relation to intimidation of Mr Lysenko, and events in 2019 intended to subvert the investigation and keep the names of certain RusAF individuals out of the firing line. The Panel deals with these matters only where necessary because they were generally concerned with disputes of oral evidence and inferences as to whose instructions Mr Patsev (see below) acted on. The Panel was not satisfied to the requisite standard of proof that either of the Respondents were responsible for those matters.

39. For convenience, the plan to provide false medical certificates in relation to the Second Failure is referred to as "the conspiracy".

G. Factual summary

40. The conspiracy was concocted at a meeting at RusAF's offices in Moscow on 26 July 2018 arranged by Mr Parkin on behalf of Mr Shlyakhtin to discuss the whereabouts failure allegations against Mr Lysenko. The meeting was attended by Mr Parkin, Ms Ikonnikova, Ms Orlova, Mr Zagorulko, Mr Lysenko and others. Mr Lysenko told the meeting he had been ill during the March 2018 training camp (i.e., around the time of the Second Failure) and had had a car accident in July 2018 (i.e., after the Third Failure). Mr Shlyakhtin phoned in, and scolded Mr Lysenko for his negligence.
41. After the meeting, Mr Zagorulko phoned Mr Karamyan (who was not at the meeting) to ask whether he could provide Mr Lysenko with a fake medical certificate. Mr Karamyan's family member worked in a medical facility. Mr Karamyan agreed to ask his family member. Mr Karamyan's evidence was that he asked his family member, who said it was not possible and he responded to Mr Zagorulko to that effect.
42. The following day, 27 July 2018, a fake certificate referring to Mr Lysenko, which has been referred to as the "Epicrisis" certificate ("**Epicrisis**") from a medical centre in Moscow called "SD Clinic" was delivered to Mr Zagorulko at his hotel room in Novogorsk sports center. He gave it to Mr Lysenko who delivered it to Ms Orlova at RusAF.
43. On the same day Mr Shlyakhtin wrote to the AIU on behalf of RusAF in effect asking for clemency on behalf of Mr Lysenko. The letter refers to poor personal organisation but does not suggest Mr Lysenko had any defence to the whereabouts failures.
44. Also on 27 July 2018, Mr Lysenko provided his first explanation to the AIU and submitted a request for an administrative review of the AIU's decisions to confirm the Second and Third Failures against him:
- a. In respect of the Second Failure, Mr Lysenko explained that he was admitted to hospital for a week following a training camp in Portugal. He submitted documents, including the Epicrisis, from SD Clinic.

b. In respect of the Third Failure, he stated that he had been in a car accident in “mid-June” and had become so distracted by his injuries and by the damage to his car that he had neglected to make a Whereabouts Filing as required.

45. On 6 August 2018 the AIU requested further information and documentation in respect of the medical explanation. On the same day, Mr Lysenko replied that the document he had provided from his stay at what he described as the “Krasnogorsk clinic” contained all the information needed. Krasnogorsk is not in Moscow so there was an obvious inconsistency between the Epicrisis (previously stated to have been documented by the SD Clinic, in Moscow) and the reference to a clinic in Krasnogorsk.

46. On 8 August 2018 Ms Orlova sent another email to Mr Lysenko, Mr Parkin, Mr Andrei Kruporushnikov, RusAF's Sports Director, and copied in Mr Shlyakhtin, stating;

“Good evening the point is that the additional documents requested by IAAF, in any case, would, with no great haste, have to be prepared – all the full ultrasound and X-ray records with [***]² little by little need to be prepared - all the complete notes on blood tests and basically on everything mentioned in the hospital discharge notes, will emerge.”

47. Mr Shlyakhtin’s evidence was that he was on holiday and does not believe he read this email. He agreed in evidence that it was an incriminating email; and, he stated that if he had read it, he would have reacted to it.

48. On 8 August 2018 Mr Parkin wrote a Viber³ message to Mr Karamyan concerning the AIU e-mail of 6 August 2018 requesting supporting information for the Epicrisis stating that:

² This word is unclear and is thought may be a typo

³ Similar to WhatsApp

“Artur, IAAF is asking Danil for certificates, the ones set out in the certificate. I don't know what sort of certificate was that...I think you need to task him to go to the hospital, to yours, and have the necessary X-rays and whatever else is needed done, such that later everything hangs together.”

49. On 9 August 2018 Mr Shlyakhtin forwarded a message via WhatsApp from Mr Parkin to the Athlete, stating that:

“needs to be done, in any laboratory, fasting clinical blood, urine and faeces tests, and in any medical center – pneumonography, ultrasonography of kidneys, ultrasonography of the abdominal organs; later will tell where all the reports would have to be delivered.”

50. Mr Shlyakhtin accepts he phoned Mr Lysenko a number of times on and after 9 August 2018, telling him to undergo these medical tests urgently.

51. Between 14 and 15 August 2018, the Athlete duly underwent the (genuine) medical tests at a hospital in Birsk (where he lives) and later received the test results (Birsk Certificates).

52. Mr Shlyakhtin spoke to Mr Zagorulko to press him about the medical results, asking him to chase Mr Lysenko and make sure that he sent everything to Mr Karamyan. Mr Lysenko received further calls from Mr Shlyakhtin telling him to send the results of the medical tests to Mr Karamyan urgently, which he eventually did.

53. On 22 and 24 August 2018, Mr Karamyan e-mailed Mr Parkin with the subject line being:

“Finished Epicrisis” with two attachments entitled “Lysenko 1” and “Lysenko 2”.

These attachments comprised separate pages of a new two-page Epicrisis document from the fake SD Clinic containing a blend of information from the initial fake one-page

Epicrisis document and from the more detailed, genuine medical results reflecting details found in the Birsk Certificates.

54. On 31 August 2018, Mr Karamyan sent Mr Lysenko four medical documents from the fake SD Clinic (the “Four Documents”) in an email with the subject line “Certificates”. The four documents contained many of the results and values found in the Birsk Certificates.

55. On 8 September 2018 Mr Lysenko e-mailed Mr Karamyan:

“Hello! I would like to ask you, could you send me photos of clinic in Krasnogorsk? I need to know how it looks like at least. Thank you.”

At this stage, Lysenko still thought the fake clinic was in Krasnogorsk.

56. On 14 September 2018, the AIU informed Mr Lysenko’s counsel that it was investigating another anti-doping rule violation by Mr Lysenko (Tampering).

57. On 20 September 2018, Mr Lysenko’s counsel, US lawyer Paul Greene⁴, informed the AIU that Mr Lysenko had been mistaken regarding the “Krasnogorsk clinic”, and that he had in fact stayed at the “Moscow clinic” (i.e., the SD Clinic). The four documents were provided (urine analysis results, biochemical blood screening, abdominal ultrasound, and a fluorography) as relevant to Mr Lysenko’s April stay in the SD Clinic.

58. On 24 September 2018 Mr Lysenko and Mr Karamyan travelled by car to see the site of the fake SD Clinic. In fact, it appears there had at one time been a clinic there but that it closed in 2016 and the relevant building was demolished. Mr Karamyan accepted that he gave Mr Lysenko a lift to see the clinic but says he had other engagements and simply

⁴ For the avoidance of doubt, there is no suggestion Mr Greene acted improperly at any stage.

dropped him off. The following day Mr Lysenko took photos of the demolished building and sent them to Mr Greene.

59. On 4 October 2018, the Athlete submitted a sworn written statement explaining the circumstances of his purported treatment at the SD Clinic between 1 and 7 April 2018.

60. Due to inconsistencies in the documents and explanations provided, the AIU proceeded between July and November 2018, in co-operation with the Russian Anti-Doping Agency (“**RUSADA**”), to investigate Mr Lysenko’s explanations. The conclusions of the investigation were that the SD Clinic did not exist, and purported to operate from a fake address in Moscow using licences that had been issued to other companies, and the medical explanation for Mr Lysenko’s Second Failure was false and supported by fabricated documents.

61. In December 2018 or January 2019, Mr Lysenko told Paul Greene the truth about the conspiracy. Mr Greene told Mr Lysenko either to attend an interview with the AIU and tell the whole truth or he would withdraw as counsel. Mr Lysenko said for personal safety reasons he could not do so and Mr Greene withdrew as Mr Lysenko’s counsel on 5 February 2019.

62. In February 2019, Mr Artem Patsev, a lawyer who has previously acted for RusAF, and who was appointed by the RusAF President to sit on its Disciplinary Commission in 2017 and 2019, informed the AIU that he had been retained by the Athlete as his new legal counsel. Mr Lysenko told Mr Patsev about the fabrication.

63. On 10 April 2019, the Athlete was interviewed by the AIU in the presence of Mr Patsev. Mr Lysenko started the interview by sticking to the false story. Mr Patsev, although knowing that the story had been fabricated, sought himself to support and corroborate the false story. Under pressure during the course of the interview, Mr Lysenko admitted that the documents and explanations that he had provided to the AIU relating to his

medical explanation and his stay at the SD Clinic were false and fabricated, and that “people from Federation” had helped him create the story, and that “it was a commonly made decision to develop this story.”

64. On 24 May 2019, a number of documents were deleted from Mr Karamyan’s files. A forensic report prepared by Deloitte found that anti-forensic tools had been used by Mr Karamyan to delete a number of files. Mr Karamyan later told the AIU that these were routine deletions and he remembered something went wrong with the computers in his office.

H. The hearing

65. The hearing took place on 26 and 27 January 2021. The Panel heard oral evidence from:

- a. Mr Danil Lysenko
- b. Ms Irina Sergeeva (the Athlete’s mother)
- c. Mr Evgeny Zagorulko
- d. Mr Artur Karamyan
- e. Mr Dmitry Shlyakhtin
- f. Mr Artem Patsev
- g. Mr Valentin Borodin
- h. Mr Ivan Gordienko

66. Mr Alexander Green of Steptoe & Johnson LLP was not required to attend for cross-exam. Nor was Ms Anna Kerod, who provided certain translations of documents (which were accepted). Ms Irina Khorolskaya was intended to give oral evidence but through a combination of technical difficulties and limited availability, her evidence could not be heard and the Panel has had to rely on her witness statement.

I. Approach to the oral evidence

67. This was a case in which it was necessary to approach the central oral evidence with very considerable caution. The Panel does not refer in this respect to the evidence of Messrs Borodin, Mr Gordienko, Mr Green or Ms Khorolskaya, which was in each case relatively peripheral.
68. Mr Lysenko was a young man who had in our view been manipulated by those in authority at RusAF. He said he had been threatened on several occasions and that accounted for his conduct, initially denying the conspiracy, then admitting to it but not naming those involved. The Panel accepts that much of his subsequent conduct was conditioned by his concerns as to his own safety. However, he has changed his story in the course of this matter so many times that the Panel would be very cautious about relying on his evidence unless corroborated.
69. His mother's evidence was limited. Although she came across well and credibly, the Panel has in mind that she would have a natural desire to act in what she perceived to be her son's interests.
70. Mr Zagorulko had difficulty in evidence in distinguishing between what he knew and what he thought. As a participant in the fraud himself, who had not admitted his own involvement until a very late stage, the Panel must again treat his evidence with great caution unless corroborated.
71. Mr Patsev's evidence was conspicuous for the fact that, when he attended Mr Lysenko's first interview with the AIU on 10 April 2019 as Mr Lysenko's lawyer, although he knew at that stage that Mr Lysenko's story was false, he nevertheless continued to represent his client whilst, to his knowledge Mr Lysenko told a false story to the AIU. Unbelievably, he then sought to corroborate that false story in comments he made himself to the AIU about the (fake) clinic. The Panel took the view (i) that his actions were disreputable and dishonest and (ii) his objective was not to look after his client, Mr Lysenko's, interests

but to protect senior members of RusAF. The AIU submitted that in this regard it was obvious that he was acting on the instructions and behest of the then RusAF President, Mr Shlyakhtin. However, such a case was neither properly put (either to Mr Patsev or Mr Shlyakhtin) nor made out and the Panel does not consider it was proved to the relevant standard of proof. The Panel gives no credibility at all to anything said by Mr Patsev in his evidence.

72. The Panel's approach has therefore been to avoid giving too much weight to matters where there was a conflict of evidence and to focus on the conclusions which can properly be drawn from the documentation.

73. The Panel has also been shown transcripts of interviews with not only Mr Lysenko but also Mr Karamyan and Mr Shlyakhtin. Concern has been expressed by those acting for the Respondents (i) that the translations have not always been reliable (ii) where questions are asked and answered through interpreters there is a danger that the nuances of question or answer are often lost and the written word does not always fairly encapsulate what the interviewee was seeking to get across, or sometimes what he understood to be the question. Problems with the actual translations have, the Panel believes, largely been resolved now but the Panel accepts in principle the second "lost in translation" point and has taken care in having these concerns in mind when it seeks to refer to points made in transcripts.

J. Standard of proof

74. The standard of proof of these allegations is one of comfortable satisfaction. The Panel applies that standard. The Panel was reminded by counsel for the Respondents that the more serious the charge, the higher the burden and the Panel have kept this in mind.

K. Mr Karamyan's case

75. Karamyan's case is, as it has been since the investigation commenced, that:

- (a) He did not procure false medical documents;
- (b) He did not knowingly provide false documents to the AIU, whether directly or indirectly;
- (c) He did not deliberately provide false or misleading information to the AIU during the course of its investigation; and
- (d) Any deletion of documents and files from electronic devices was carried out as part of regular 'housekeeping'.

76. Mr Karamyan accepted that when asked to provide through his family member a false certificate on 26 July 2018, he should simply have refused. However, he says his family member said it was not possible, that he relayed that response to Mr Zagorulko, and regarded the matter at an end. He says he should have paid more attention to the documents sent to him, but, partly because he was on holiday, he did not, and failed to focus on the documents sent to him for passing on.

77. It was also emphasised on his behalf that his central function was to arrange and sort out certification for athletes. Thus, a huge number of certificates and medical documentation passed through his email accounts. It was therefore hardly surprising if he did not focus on such documents sent to him.

78. As for the deletion of documents from his account in May 2019, his case was this was done in the normal course of business and there was nothing suspicious. He noted that he had been having trouble with his computer and his IT skills were limited. His evidence was that deletions were made to try to keep to his official computer from crashing and that anything more than simple deletions was carried out either by his organisation's IT staff or done without his knowledge.

L. Mr Shlyakhtin's case

79. Mr Shlyakhtin also denies all the charges against him. He was not at the meeting on 26 July 2018, but phoned in and scolded Mr Lysenko for his negligence. His letter to the AIU the following day, which asked for clemency but put forward no defence to the whereabouts failures, was inconsistent with involvement or knowledge on his part. He does not believe he read the 8 August 2018 email from Ms Orlova which was copied to him and he does not remember reading a WhatsApp message that he forwarded to the Athlete on 9 August 2018. He submits there is no evidence of his involvement in the scheme, other than from witnesses whose evidence cannot be relied upon.

M. The case against Mr Karamyan: discussion

80. In the Panel's view, there is overwhelming evidence of Mr Karamyan's involvement from the outset in the fraudulent scheme.

81. Mr Karamyan accepts that on 26 July 2018 he was asked by Mr Zagorulko to procure a fake medical certificate. Mr Karamyan's family member worked in a medical facility. He says (rather than expressing shock at the suggestion) he asked his family member whether it could be done and his family member said it was not possible. He says he relayed this to Zagorulko and thought the matter was at an end. The fake certificate appeared at Mr Zagorulko's hotel the next day, although that does not of itself prove involvement of Mr Karamyan. There are a series of phone messages on 27 July 2018 recorded between Mr Karamyan and Mr Zagorulko. At the interview with the AIU, Mr Karamyan denied that he had ever been asked to provide a false certificate for Mr Lysenko. That was untrue. He was asked by the AIU whether he knew anyone who worked in a hospital. He denied that he did. That was also untrue. His response in evidence was that his family member was not "anyone" and that was why he denied knowing anyone. That was unconvincing.

82. On 8 August 2018 Mr Parkin sent the Viber message to Mr Karamyan. Mr Karamyan said he was on holiday and had no recollection of reading it. However, the message

assumes Mr Karamyan knows what is going on and seeks his help in getting Mr Lysenko to do tests (in the context of references to Mr Lysenko). The Viber message is incriminatory, and speaks of tests for Mr Lysenko notwithstanding he has already been charged with whereabouts failures.

83. The emails sent by Mr Karamyan on 22, 24 and 31 August 2018 are particularly damning. They enclose a blend of fake and genuine information in relation to Mr Lysenko. Mr Karamyan says he was simply passing on medical certificate information he had been sent, but is unable to demonstrate from who, in this case, he received them. Why and in what circumstances was he sending Mr Parkin these fake documents? Why was he sending Mr Lysenko medical certificates from the fake SD Clinic on 31 August 2018? He said he was asked to scan and pass them on but paid no attention to them. Mr Karamyan's evidence is replete with incriminating documents being sent by him to others and passed on by him in relation to which he claims ignorance.

84. On 8 September 2018 Mr Lysenko sends Mr Karamyan an email asking for photos of the (fake) clinic "I need to know how it looks like at least". Thereafter, and having received that incriminating message, Mr Karamyan goes with Mr Lysenko on 24 September 2018 to do exactly what Mr Lysenko had asked, namely visit the site of the clinic. Mr Karamyan's evidence was that he gave him a lift and dropped him off.

85. It is also relevant that these events occurred against the background of Mr Karamyan having been asked at the outset to procure a false medical certificate for Mr Lysenko and having accepted the request to ask his family member to procure that (and thus obviously being aware that such a course of action was, at the very least, being considered).

86. Then, in the midst of the AIU investigation, Mr Karamyan's computer was wiped. He admits that (at this crucial stage in the investigation of what by now was an admitted fraud) he made deletions from his computer. He said this was an old computer and these

were routine deletions. The Panel does not accept that. His phone contains Internet searches at that time as to how to delete documents and emails. The Panel concludes he deliberately deleted documents to avoid their coming to light. The consequence is that the AIU has been deprived of potential evidence. Mr Karamyan was responsible for that and the Panel finds the charge of failure to co-operate with the AIU's investigation proved in consequence.

87. The Panel has no doubt Mr Karamyan was involved in the conspiracy from the outset. The Panel also finds that he failed to co-operate with the AIU investigation in that (i) he deleted documents from his computer to prevent them being accessed in May 2019 (ii) he lied to the AIU in claiming he had not been involved in the conspiracy.

N. The case against Mr Shlyakhtin: discussion

88. The starting point of the case against Mr Shlyakhtin is the email of 8 August 2018 from Ms Orlova, which is copied to Mr Shlyakhtin. Mr Shlyakhtin says he never read it. He accepted that it was an incriminating email which he would have reacted to if he had read it.

89. This email is seeking to further the conspiracy. Ms Orlova copies it to Mr Shlyakhtin without the need for explanation. The obvious inference is that she does so because he is party to the conspiracy. It was suggested she might have sent it to him by mistake. But it stretches credibility to believe that Ms Orlova sends Mr Shlyakhtin such an incriminating email in error (or otherwise incorrectly) and that it provokes no response when received.

90. On the contrary, the messaging in furtherance of the fraud continues. Mr Parkin sends a message to Mr Shlyakhtin the following day making clear that Mr Lysenko needs to do a series of intrusive medical tests. Mr Parkin is party to the conspiracy and these tests are to further the conspiracy in the light of the AIU's request for further medical information. The 9 August 2018 message makes no sense without the context of the 8

August 2018 email, rather it assumes that the reader is aware of the context. If hypothetically (and as Mr Shlyakhtin claimed), Mr Shlyakhtin had read the 9 August 2018 message without knowledge either of the contents of the 8 August 2018 email from Ms Orlova or of the conspiracy, it makes no sense. As counsel for AIU put it in closing: in such circumstances how would the explanatory conversation with Mr Parkin have gone? It is impossible to imagine. Why is Mr Lysenko having intrusive tests when he is suspended after whereabouts failures? Why is Mr Parkin asking Mr Shlyakhtin to press Mr Lysenko to have these tests and chasing him to get them done urgently?

91. Then Mr Shlyakhtin contacts Mr Lysenko and his coach Mr Zagorulko a series of times to press Mr Lysenko to have the tests. Why on earth is the President himself in regular contact with Mr Lysenko pressing him to have these tests? What is going on? It is notable that there are a number of calls between Mr Shlyakhtin and Mr Zagorulko in this period: on the key day of 8 August 2018, as well as on 14 and 16 August 2018.
92. It is not possible for there to be an innocent explanation of this conduct. It is also notable that in interview Mr Shlyakhtin told the AIU that he had never seen the 9 August 2018 message from Mr Parkin or that he forwarded it to Mr Lysenko. He said that *"I had no part in that whatsoever" "I didn't send anything."* His witness evidence was that what he had meant was that he was not the (original) author of the message. However, his strong adverse reaction to being shown this message which arguably incriminated him (describing it as a "provocation") was equally unconvincing. He also claimed that generally he and Mr Lysenko did not keep in touch, but he had a number of communications with him about the tests.
93. The Panel should also point out that Mr Shlyakhtin was the President of RusAF, the highest official. There inevitably comes a time on his own case when it becomes apparent to him that there has been a conspiracy. What is his reaction? Is it to express shock and to insist on a full investigation of the outrageous fraud that has pervaded the organisation which he leads? Nothing of the sort. His concern seems to be exclusively with his own position.

94. Two matters were relied upon in Mr Shlyakhtin's defence. The first was his letter of 27 July 2018 to the AIU asking for clemency on behalf of Mr Lysenko. It is said this is inconsistent with knowledge of the conspiracy. However, as of 27 July 2018 the AIU had not formally alleged an ADRV and it must have been possible that they would have been persuaded not to, so the conspiracy might be unnecessary. It is not necessary for the Panel to reach a conclusion as to whether Mr Shlyakhtin had knowledge of the conspiracy before or after he drafted this letter. However, the Panel is satisfied he was so aware no later than 8 August 2018.

95. Secondly, an email exchange between Mr Lysenko and Paul Greene in January 2019 is said to be premised on Mr Shlyakhtin knowing nothing about the conspiracy at that stage. The Panel does not accept this. The email is at a time when Mr Lysenko has made clear to Mr Greene what occurred and is discussing how to deal with the matter and whom to tell what. The issue is: how in the interests of Mr Lysenko to communicate with members of RusAF and what to tell them. The Panel does not think any conclusion can be drawn from this exchange as to whether Mr Shlyakhtin was party to the conspiracy.

96. The Panel considers the case against Mr Shlyakhtin proved as to Tampering and Complicity. The Panel finds he lied to the AIU about his own involvement and to that extent it finds the failure to co-operate charge proved.

O. Which charges are proved?

99. The Panel finds that in each case, Mr Karamyan and Mr Shlyakhtin were party to, and involved in, the conspiracy. Central to the fraudulent scheme was the tampering with evidence (by creating fraudulent documents) and complicity in an ADRV.

100. In relation to Mr Karamyan, the Panel also finds the allegation of destroying documents (failure to co-operate with the AIU investigation) proved.

101. The Panel finds for the same reasons the charge of failing to report an ADRV proved in each case, although that does not add to the sanction.

102. The Panel also finds in both cases the charge of failing to co-operate with the AIU investigation proved, in that it follows from what is said above that in both cases the Respondents' denials to the AIU investigation of personal involvement were untrue.

P. Sanction

103. There is a compulsory sanction of a four-year ban for intentional Tampering. There is a ban for Complicity of a period between 2 and 4 years.

104. These are offences of the utmost seriousness committed by persons right at the top of RusAF, a World Athletics Member Federation. It appears that most if not all of the senior management of RusAF were involved in this major fraud. That is quite shocking. Mr Shlyakhtin and Mr Karamyan, as senior individuals (the President and an Executive Board Member, respectively), must bear great responsibility for what happened. In the Panel's view, a sanction of four years can be described as grossly inadequate on the facts of this case. If for any reason the Panel was wrong on the Tampering charge, it would impose the maximum four-year penalty for Complicity.

105. The period of Provisional Suspension from 21 November 2019 will, in each case, count against the period of ineligibility.

Q. Disposition

106. Based on the foregoing, the Tribunal:

- a. Finds that the Respondent Mr Karamyan was party to a conspiracy to provide false documents and evidence and in particular:

- i. was guilty of Tampering within ADR 2.5
 - ii. was guilty of Complicity within ADR 2.9
 - iii. was guilty of failing to report an Anti-Doping Rule Violation within ADR 5.10.2
 - iv. was guilty of failing to co-operate with the AIU investigation under ADR 5.10.3

- b. Imposes a period of Ineligibility of four (4) years upon the Respondent Mr Karamyan pursuant to Article 10.3.1 ADR, Article 10.3.4 ADR (in respect of the Tampering and Complicity violations respectively) and Article 10.7.4(a) ADR and in accordance with Article 12 ADR (with respect to the breached of the ADR pursuant to Article 5.10.2 and Article 5.10.3), starting from 21 November 2019.

- c. Finds that the Respondent Mr Shlyakhtin was party to a conspiracy to provide false documents and evidence and in particular:
 - i. was guilty of Tampering within ADR 2.5
 - ii. was guilty of Complicity within ADR 2.9
 - iii. was guilty of failing to report an Anti-Doping Rule Violation within ADR 5.10.2
 - iv. was guilty of failing to co-operate with the AIU investigation under ADR 5.10.3

- d. Imposes a period of Ineligibility of four (4) years upon the Respondent Mr Shlyakhtin pursuant to Article 10.3.1 ADR, Article 10.3.4 ADR (in respect of the Tampering and Complicity violations respectively) and Article 10.7.4(a) ADR and in accordance with Article 12 ADR (with respect to the breached of the ADR pursuant to Article 5.10.2 and Article 5.10.3), starting from 21 November 2019.

R. Right of appeal

107. This decision may be appealed to the Court of Arbitration for Sport (“CAS”), located at *Château de Béthusy, Avenue de Beaumont 2, CH-1012 Lausanne, Switzerland* (*procedures@tas-cas.org*), in accordance with Article 13.2.2 ADR.

108. In accordance with Art.13.7.1 ADR, parties shall have 30 days from receipt of this decision to lodge an appeal with the CAS.

Charles Hollander QC

For the Tribunal



8 February 2021

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