



**Arbitration CAS 2016/A/4486 International Association of Athletics Federations (IAAF) v. Ekaterina Poistogova, award of 7 April 2017**

Panel: Mr Jacques Radoux (Luxembourg), President; Mr Efraim Barak (Israel); Mr Ken Lalo (Israel)

*Athletics (middle distance)*

*Doping (oxandrolone)*

*CAS jurisdiction according to IAAF Rule 38.19*

*Applicable law*

*Admissibility of the evidence establishing the violation of IAAF Rule 32(b) "use" of a prohibited substance*

*Determination of the applicable sanction*

1. The applicable 2016 IAAF Competition Rules, expressly permit anti-doping rule violation cases to be filed directly with the CAS as a sole instance adjudicatory body. In this regard, IAAF Rule 38.19 provides that cases asserting anti-doping rule violations may be heard directly by CAS with no requirement for a prior hearing, with the consent of all the relevant stakeholders i.e. the IAAF, the Athlete, WADA and any Anti-Doping Organisation that would have had a right to appeal a first hearing decision to CAS.
2. A case filed directly with the CAS as a sole instance adjudicatory body in accordance with IAAF Rule 38.19 is not an appeal. However, it follows from IAAF Rule 38.3 that in a case directly referred to CAS, the case shall be handled in accordance with CAS rules applicable to the appeal arbitration procedure without reference to any time of limit for appeal. The purpose of the direct hearing at the CAS is to shortcut the otherwise applicable procedure. Given that the substantive outcome of the shortcut should not differ from the outcome of the otherwise applicable procedure, the substantive issues are to be governed by the "applicable regulations" referred to in article R58 of the CAS Code, namely the IAAF Rules in force at the time of the alleged violations.
3. The admittance of means of evidence is subject to procedural laws. In this respect, Rule 33(3) IAAF Rules determines that anti-doping rule violations may be established by "*any reliable means*". Considering the very large scope of means of admissible evidence provided by Rule 33(3), witness statements and recordings should be considered as reliable mean of evidence in the sense of the 2016 IAAF Rules. Even illegally obtained evidence may be admissible if the interest to find the truth prevails. Based on testimonies and recordings, a panel can be comfortably satisfied that an athlete is guilty of using a prohibited substance.
4. Rule 40.2 of the 2012 IAAF Rules provides for a two-year period of ineligibility for a first violation of Rule 32.2(b) prohibiting the use of prohibited substances, unless the

conditions for eliminating or reducing the period of Ineligibility as provided in Rules 40.4 and 40.5, or the conditions for increasing the period of Ineligibility as provided in Rule 40.6 are met. In this regard, one preparation with oxandrolone, an anabolic steroid, involving the intake of ten pills cannot be qualified as use on multiple occasions i.e. aggravating circumstances. If the athlete did not act on his/her own but was part of a training structure, governed by athlete support personnel and/or persons holding certain official functions within the federation, and if it is doubtful whether the athlete would have been selected for the national team if he/she had not followed all aspects of the training program, including the use of prohibited substances, it is not just to go beyond the basic period of ineligibility of two years.

## **I. PARTIES**

1. The International Association of Athletics Federations (the “IAAF”) is the world governing body for track and field, recognized as such by the International Olympic Committee. One of its responsibilities is the regulation of track and field, including, under the World Anti-Doping Code (“WADC”), the running and enforcing of an anti-doping programme.
2. Ms Ekaterina Poistogova (the “Athlete”) is a Russian athlete specialising in middle distance events, in particular the 800 metres. She was born on 1 March 1991

## **II. FACTUAL BACKGROUND**

3. Below is a summary of the relevant facts and allegations based on the parties’ written and oral submissions, pleadings and evidence adduced. Additional facts and allegations found in the parties’ submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.

### **A. Ms Yulia Stepanova**

4. Ms Yulia Stepanova was born on 3 July 1986 in Kursk, Russia. She is a professional athlete of Russian nationality, specialised in the 800m. In the period from 2013 to 2014, Ms Stepanova secretly recorded a number of conversations that she had with Russian athletes and various Athlete Support Personnel.
5. Ms Stepanova made those recordings available to Mr Hajo Seppelt, a German journalist, who used some of those recordings to produce a documentary alleging widespread doping in Russian athletics. The documentary was publically broadcast on 3 December 2014.

**B. The IAAF's investigation regarding the Athlete**

6. On 8 August 2015, the IAAF wrote to its affiliated member, the All-Russia Athletic Federation (the "ARAF") stating that there was evidence that the Athlete had committed anti-doping rule violations by using prohibited substances (the "IAAF Charge Letter"). In particular, the IAAF alleged that the Athlete used Oxandrolone (in 2014), Peptides (in 2013) and EPO (in 2012).
7. The IAAF Charge Letter enclosed a statement from Ms Stepanova (the "Stepanova Statement").
8. On 24 August 2015, the IAAF wrote to the Russian Anti-Doping Agency ("RUSADA") noting that, since the Athlete only generally denied the doping allegations against her, the IAAF would, in accordance with IAAF Rule 38.2, provisionally suspend the Athlete from participating in any Competition or activity in Athletics pending resolution of the case. The IAAF asked RUSADA to immediately communicate the suspension to the Athlete.
9. On 5 September 2015, the Athlete requested a hearing and denied her guilt. She said that she would provide her position on the case after examining all evidence, including audio records.
10. On 29 September 2015, the IAAF asked WADA for its consent to the Athlete's case being heard directly by the Court of Arbitration for Sport ("CAS"), in Lausanne, Switzerland, in accordance with IAAF Rule 38.19. On the same day, WADA provided that consent.
11. On 26 November 2015, ARAF's membership of the IAAF was suspended.
12. On 12 January 2016, the IAAF wrote to the Athlete stating that her case would be referred to the CAS. The letter also asked the Athlete whether she would prefer her case to be dealt with by a Sole Arbitrator sitting at first instance pursuant to IAAF Rule 38.3 or before a Panel composed of three arbitrators (as a single hearing) pursuant to IAAF Rule 38.19.
13. On 19 January 2016, the Athlete informed the IAAF that she would choose to have her case heard by a Panel as a single hearing.
14. On 4 March 2016, ARAF sent an email to the IAAF expressing its consent to the Athlete's case being submitted to a CAS Panel as a single hearing.
15. The Stepanova Statement
16. The following are the core parts of the Stepanova Statement, on which the IAAF relied. Its truth is vigorously contested by the Athlete and its contents do not form any kind of agreed background between the parties. However, the Panel refers to the Stepanova Statement already at this stage in the award because it provides a relevant context to the submissions made by the parties (which are summarised below).
17. The key parts of the Stepanova Statement provide, in summary, as follows:
18. Ms Stepanova first met the Athlete on 2 September 2009 at a competition in Roveretto, Italy.

19. After the London Olympic Games in 2012, Mr Kazarin, who also coached the Athlete, provided Ms Stepanova with doping substances until she was banned in connection with an Athlete Biological Passport (“ABP”) violation in early 2013.
20. On 21 October 2014, Ms Stepanova and the Athlete went on a warm-up run. During this run, Ms Stepanova and the Athlete spoke about doping. The Athlete told Ms Stepanova that her preparation involved a course of ten Oxandrolone pills. Ms Stepanova asked her why she took so few and was told that this was because everything was detectable for 3 months following ingestion. The Athlete was then asked whether she had taken Peptides and was told that she (the Athlete) had tried them, but they did not work. The Athlete then told Ms Stepanova that she had done EPO in 2012. Ms Stepanova filmed this conversation with her mobile phone.
21. On 10 November 2014, Ms Stepanova met with Mr Kazarin in his room in the Kapriz Hotel during a training camp in Cholpon Ata (Kyrgyzstan). He provided her with Oxandrolone pills and gave her specific directions about when to take them in order to avoid a positive doping control. He said that she should only use Oxandrolone and Primabolan. He informed her that she could also take a little EPO in the early stages of preparation. Ms Stepanova filmed this conversation with her mobile phone and recorded the audio with a mobile phone.
22. On 19 November 2014, Ms Stepanova met with Mariya Savinova – a Russian 800m runner who won the Olympic Gold Medal at the London 2012 Olympics – at her house. Ms Savinova told Ms Stepanova that Mr Kazarin (who was also her coach) had given liquid alcohol-based Oxandrolone to Katka (a nickname for the Athlete) to prepare her for the European Championships. Again, Ms Stepanova filmed and recorded this conversation with her mobile phones.

### **III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT**

23. On 8 March 2016, the IAAF filed its Request for Arbitration against the ARAF and Ekaterina Poistogova. The IAAF asked for this Request to be considered as its Statement of Appeal and Appeal Brief for the purposes of R47 and R51 of the Code of Sports-related Arbitration (the “Code”) and in compliance with IAAF Rule 38.19. In its Request for Arbitration, the IAAF nominated Mr Ken Lalo as arbitrator.
24. On 23 March 2016, the Athlete nominated Mr Efraim Barak as arbitrator. That same day, the ARAF was requested to state any objection it may have to the Athlete nomination of Mr Barak as arbitrator. No such objection was filed.
25. On 31 March 2016, the ARAF wrote to the CAS noting that, though it was a Respondent to the arbitration, no relief had been sought against it by the IAAF. It asked the CAS to invite the IAAF to specify the same and detail why ARAF was involved in this case.
26. On 1 April 2016, the Athlete requested the IAAF to provide English translations of the complete conversations which allegedly took place on 21 October, 10 November and 19

November 2014, and to provide context for the excerpts which the IAAF relied on. She also asked for the visual element of the 21 October 2014 recording.

27. On 6 April 2016, the IAAF informed the CAS that it thought the ARAF should remain a Respondent under IAAF Rule 42.19 considering that had the ARAF not been suspended, then it would be responsible for conducting these proceedings. However, to the extent the ARAF maintained its unwillingness to participate, the IAAF accepted that the proceedings should be directed only against the Athlete.
28. In the same letter, the IAAF refused the Athlete's request for full translations as requested. In summary, the IAAF stated that 1) the immediate context had already been provided in the excerpts; 2) the cost of providing full translations would be exorbitant; and 3) if the Athlete wanted to rely on other parts of the recording, she could provide translations on her own volition. As to the visual element of the 21 October 2014 recording, the IAAF said it would provide a link to such recording in the event that the Athlete contended that the conversation did not take place.
29. On 8 April 2016, the Athlete wrote to the CAS confirming her request for the visual element of the 21 October 2014 recording.
30. On 11 April 2016, the ARAF wrote to the CAS confirming that it did not wish to continue as a Respondent in this procedure.
31. On 13 April 2016, the CAS Court Office, on behalf of the President to the Appeals Arbitration Division, informed the parties as follows: 1) the Athlete's request for full English translations to be provided by the IAAF was denied; 2) the decision on the request for the IAAF to provide a video recording was reserved for the Panel, once constituted; and 3) the Athlete's request for an extension to provide her Answer for a period of 30 days after receipt of the video recording was denied as moot, in light of the above determination.
32. On 20 April 2016, the IAAF voluntarily disclosed a copy of the video recording.
33. On 21 April 2016, the Athlete wrote to the CAS objecting to the admissibility of the video recording on the basis that it had been untimely disclosed and, therefore, the IAAF should not be entitled to rely upon it.
34. On 21 April 2016, the IAAF withdrew its claims against the ARAF.
35. On 3 May 2016, the IAAF, upon reviewing certain translations of transcripts provided by the Athlete, suggested the appointment of an independent expert by the CAS to check the accuracy of the transcripts.
36. On 6 May 2016, the Athlete wrote to the CAS taking issue with the IAAF's request for independent review of the transcripts. She stated, among other things, that the IAAF had only relied on parts of conversations and could not now supplement its case. There were no grounds for challenging the work of the professional agencies instructed by the Athlete. The Athlete said that if the IAAF was doubting the accuracy of the Athlete's translations it could

request the Panel to seek an independent third person, whose native language was Russian, to listen to the recordings and testify regarding their audible parts.

37. On 12 May 2016, the IAAF filed new audio conversations between Ms Stepanova and Mr Kazarin.
38. On 23 May 2016, the Athlete objected to the IAAF's new Kazarin recordings as an impermissible filing of new evidence, which should be rejected.
39. On 27 May 2016, the CAS Court Office, on behalf of the President of the Appeals Arbitration Division and in accordance with Article R54 of the Code, informed the parties that the Panel constituted to hear the case was: Mr Jacques Radoux, President of the Panel, Mr Ken Lalo and Mr Efraim Barak, arbitrators.
40. On 29 May 2016, the IAAF filed transcripts and translations of the 10 and 19 November 2014 conversations, along with (1) a table setting out alleged differences between the parties' translations of the 19 November 2014 conversation; and (2) translation of excerpts of the 21 October 2014 conversation. The IAAF requested that:
  - i. The material differences in the competing versions of the 19 November 2014 conversation be submitted to an independent interpreter in advance of the hearing;
  - ii. The correct recording of the 10 November 2014 conversation be admitted (with the Athlete given a chance to file a transcript/translation of that recording; any material differences could then be submitted to an independent interpreter in advance of the hearing); and
  - iii. The Panel to rely on the IAAF's translation of the 21 October 2014 conversation. Subsidiarily, the Panel should submit the IAAF's translation to an independent interpreter for verification in advance of the hearing, with specific instructions regarding audio enhancement.
41. On 3 June 2016, the Athlete noting that (1) the IAAF had still not produced full transcripts or translations of the relevant conversations, only excerpts; (2) the IAAF failed to state who prepared the transcripts, while the Athlete should have a right to question that person; (3) the translations were second degree derivative evidence; (4) it was not possible to compare "competing versions" because the IAAF had not disclosed full versions and contrary to the IAAF's assertion that the Athlete had not provided a version of the 21 October 2014 conversation, the Athlete had in fact done so; (5) given that the 21 October 2014 conversation was the IAAF's principal evidence, it was still unclear why any differences could not be dealt with *ex tempore* at the hearing; (6) the second version of the 10 November 2014 conversation has been submitted too late and such lateness could not be attributable simply to the relevant person at the IAAF not speaking Russian as the videos were shot at different locations that could be identified without speaking Russian; (7) the Athlete reiterated the proposal of having a Russian native speaker attending and testifying at the hearing. In conclusion, the Athlete asked the Panel to dismiss the IAAF's requests contained in its 29 May 2016 letter.

42. On 25 July 2016, the Panel retained the services of Mr Andrei Dolgov to provide translation services, including independent translations of the disputed text and written extracts of the conversations between the parties.
43. On 26 August 2016, the Panel instructed Mr Dolgov to provide independent translations of various passages in advance of the hearing.
44. On 16 September 2016, the CAS sent to the parties Mr Dolgov's translations.
45. On 20 September 2016, the IAAF wrote to the CAS enclosing an affidavit dated 19 September 2016 from Professor McLaren (the "McLaren Affidavit"). The letter stated that the contents of the McLaren Affidavit constituted further evidence that the Athlete used prohibited substances. The letter stated that, in light of the proximity to the hearing, the IAAF would not object if the Athlete sought a postponement of the hearing.
46. On 22 September 2016, the parties signed and returned the order of procedure in this arbitration procedure.
47. On 22 September 2016, a hearing took place at the CAS Court Office. The Panel was assisted by Mr Brent J. Nowicki, Managing Counsel at CAS, Mr Tom Asquith, *ad hoc* Clerk, and Mr Andrei Dolgov, interpreter, and joined by the following participants:

**For the IAAF:**

Mr Ross Wenzel and Mr Nicolas Zbinden (counsel) (in person)  
Ms Yuliya Stepanova (witness) (by skype)

**For the Athlete:**

Mr Artem Patsev (counsel) (in person)  
Ms Ekaterina Poistogova (Athlete) (in person)  
Mr Dmitry Vlasov (by skype)  
Ms Tatyana Myazina (by skype)  
Mr Stepan Poistogov (by skype)  
Mr Denis Kudryavtsev (by skype)  
Ms Ekaterina Kudryavtseva (by skype)

48. At the inception of the hearing, the parties confirmed that they had no objection to the constitution of the Panel. At the conclusion of the hearing, the parties confirmed that their right to be heard has been fully respected.

**IV. SUBMISSIONS OF THE PARTIES**

**A. The IAAF's submissions**

49. In its Request for Arbitration, the IAAF requested the following relief:

*i. CAS has jurisdiction to decide on the subject matter of this dispute;*

- ii. *The Request for Arbitration of the IAAF is admissible;*
- iii. *The Athlete is found guilty of an anti-doping rule violation in accordance with Rule 32.2(b) of the IAAF Rules;*
- iv. *A period of ineligibility of between two and four years is imposed upon the Athlete, commencing on the date of the (final) CAS Award;*
- v. *All competitive results obtained by the Athlete from 8 August 2012, through to the commencement of her provisional suspension on 24 August 2015, be disqualified, with all resulting consequences (including forfeiture of any titles, awards, medals, profits, prizes and appearance money);*
- vi. *Any arbitration costs are borne entirely by the Respondents;*
- vii. *A significant contribution to the legal costs and other expenses of the IAAF.*

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

- The Athlete admitted in the 21 October 2014 conversation that (1) she used EPO in 2012; (2) she used Peptides in 2013; and (3) her (then) current preparation involved the use of Oxandrolone. The Athlete has, therefore, breached Rule 32.2(h) of the 2012 IAAF Rules.
- The Athlete's coach, Mr Kazarin, admitted in the 10 November 2014 conversation that he was using for his athletes a variety of prohibited substances, including EPO, human growth hormone, Oxandrolone and Primabolan. The video recording of this conversation also showed him providing Ms Stepanova with fifteen Oxandrolone tablets, the same prohibited substance used by the Athlete in 2014.
- The 19 November 2014 conversation showed Ms Savinova (also coached by Mr Kazarin) admitting that Mr Kazarin had given the Athlete alcohol-based Oxandrolone in order to prepare her for the 2014 European Championships.
- Accordingly, the November 2014 conversations corroborated what had been admitted by the Athlete herself in October 2014.
- Pursuant to 2012 IAAF Rule 40.2(b), the period of ineligibility should be two years for a (first) violation of Rule 32.2(b) "*unless the conditions for eliminating or reducing the period of Ineligibility as provided in Rules 40.4 and 40.5, or the conditions for increasing the period of Ineligibility as provided by in Rule 40.6 are met...*". Rules 40.4 and 40.5 plainly do not apply. The former applies only to specified substances which were not involved in this case. The latter applies only where there has been (1) a lack of fault or negligence or of significant fault or negligence in respect of the anti-doping rule violation, (2) an admission of the violation in the absence of other evidence at the time of admission or (3) the provision of substantial assistance. Rule 40.6 permits an increase in sanction up to a period of four years unless an athlete can prove to the hearing panel's comfortable satisfaction that he or she did not knowingly commit the anti-doping rule violation. The application of Rule 40.6 can be avoided by an athlete who admits the anti-doping rule violation promptly after being confronted with it. In this case the Athlete knowingly committed the anti-doping rule violation and did not admit it promptly.

- In the present case, there were two categories of aggravating circumstances, namely (1) the use of a prohibited substance or prohibited method on multiple occasions; and (2) the use of multiple prohibited substances. The Athlete used prohibited substances at least from 2012 to 2014 and she used a number of different non-specified prohibited substances including EPO, Peptides and Oxandrolone. The Panel could, therefore, impose on the Athlete a period of ineligibility of between two and four years.
- According to 2012 IAAF Rule 40.10, the period of ineligibility should commence on the date of the (final) CAS Award. Pursuant to Rule 40.8 of the 2012 IAAF Rules, the Athlete will be automatically disqualified of all results from the date of the anti-doping rule violation through the commencement of any period of provisional suspension or ineligibility. Because the Athlete had admitted using EPO in preparation for the London Olympic Games, her competitive results should be disqualified from and including 8 August 2012, being the date of the first round of the 800m event. However, the McLaren Affidavit in fact showed that the Athlete was doping prior to 8 August 2012.

## **B. The Athlete's submissions**

51. In her Answer, the Athlete requested the following relief:

- i. The Answer be deemed admissible;*
- ii. The IAAF's Request for arbitration shall be rejected;*
- iii. The claims raised by the IAAF shall be dismissed;*
- iv. The IAAF shall bear the entirety of the arbitration costs;*
- v. The IAAF is ordered to pay Ms Ekaterina Zaryalova (Poistogova) a contribution towards the legal and other costs incurred by her in the framework of this proceeding, in an amount to be determined at the discretion of the Panel.*

52. The Athlete's submissions may be summarized as follows:

- The Stepanova Statement is a short narration of alleged conversations along with some unfounded allegations. Recordings must be authentic, accurate, without amendment and sufficiently comprehensible in order to be admitted into evidence and support a case against an athlete. These recordings do not form such a basis and cannot be relied upon.
- The transcripts relied upon by the IAAF must be fairly and properly produced. The Athlete referred all of the audio and video files provided by the IAAF to a professional deciphering agency to make complete transcripts and, in turn, complete English translations of those transcripts. The recording of 21 October 2014 is absolutely inaudible. Only some isolated words can be heard and recognized. It, therefore, cannot be considered as part of the evidence.
- For example, Ms Stepanova, at the time, kept asking questions in a low voice about doping substances such that others around her had to repeat the names of the said

substances and thus pronounced these names aloud. Moreover, the Athlete's references to prohibited substances could also be explained by what the Athlete may have learned from lectures and the internet. Indeed, any reference to Peptides may have been to Peptides as natural proteins which can be found in cosmetic creams, such as face creams. The recording was so inaudible that it was impossible to determine in what context such words were being used.

- The 10 November 2014 conversation was not at all about doping. In fact, the conversation reflected the kind of discussion to be expected in a café between a coach and an athlete who had just arrived at a training camp and looked for some directions. In any event, Mr Kazarin was only the Athlete's coach for 11 months. The IAAF should not conclude that the Athlete must have taken prohibited substances just because it is believed that Mr Kazarin dispensed them to some other athletes.
- The 19 November 2014 conversation was a classic example of women discussing day-to-day subjects (not doping). Further, there is no reason to believe that the "Katka" (short for Ekaterina) being referred to in the section relied upon by the IAAF was in fact the Athlete. It is a common Russian name and there are at least six Russian female athletes (of similar age) of international level whose first name is Ekaterina. Ekaterina Generalova (a national-level athlete) is referred to elsewhere in the conversation and is also coached by Mr Kazarin. There are, apparently, 40-50 female athletes at the national level called Ekaterina. Put simply, the recordings and excerpts of transcripts relied upon by the IAAF do not constitute strong evidence or even clear and convincing evidence.
- The multiple hearsay on which the IAAF relied upon should not be given any weight pursuant to, *inter alia*, Article 6 of the European Convention of Human Rights.
- The WADA Independent Commission First Report should not be considered as evidence in this case. It does not establish any new relevant facts. It is based mostly on hearsay.
- Mr Seppelt's documentary, broadcasted on 3 December 2014, is also hearsay and should not be used as evidence in legal proceedings.
- The IAAF's video recording was submitted late and should be excluded, an argument implicitly withdrawn in closing when the Panel was requested by the Athlete to rely upon Mr Dolgov's translation of that recording.
- Ms Stepanova is a well-known cheater and doper, having already been disqualified by the ARAF. It is incredible to consider that she has now become a principled anti-doping activist. She is motivated by money and the fear of having to repay prize money and is simply taking advantage of the IAAF's "*co-operation and substantial assistance scheme*" to protect her assets.
- Ms Stepanova did not want to even provide a statement against the Athlete – paragraph 2 of her statement says that she has been asked by the IAAF to do so.
- The Athlete never missed or failed a single ADAMS (Anti-Doping Administration and Management System) test and she always timely provided her whereabouts information.

- As for the allegation that Ms Stepanova took EPO prior to the London Olympics in 2012, it is noteworthy that she was tested prior to the London Games while in London. No irregularities were found in her samples despite the fact that EPO can be detected for up to 4 months after administration.

## V. JURISDICTION

53. The 2016 IAAF Rules, which are applicable because the Request for Arbitration was filed on 8 March 2016, expressly permit anti-doping rule violation cases to be filed directly with the CAS as a sole instance adjudicatory body. In this regard, IAAF Rule 38.19 provides as follows:

*“Cases asserting anti-doping rule violations may be heard directly by CAS with no requirement for a prior hearing, with the consent of the IAAF, the Athlete, WADA and any Anti-Doping Organisation that would have had a right to appeal a first hearing decision to CAS”.*

54. In this case, ARAF was suspended and all relevant stakeholders provided the necessary consent for the case to be heard by CAS in accordance with Rule 38.19.
55. In the light of the foregoing, the Panel finds that CAS has jurisdiction in this procedure. In addition, the jurisdiction of CAS was not contested by the Athlete. Moreover, both parties confirmed CAS jurisdiction by execution of the order of procedure.

## VI. PROCEDURAL ISSUES

### A. Transcripts and translations

56. Each party prepared its own transcripts and translations of the recordings which Ms Stepanova provided. They did not agree with the content of each other’s respective transcripts and translations. Accordingly, the Panel instructed an independent translator, Mr Dolgov, to prepare translations of the disputed parts of the recordings. The Athlete was content to accept the translations prepared by Mr Dolgov. The IAAF, however, took issue with these translations, contending that the Panel should itself listen to the recordings where appropriate. Further, the IAAF was assisted by a Russian Interpreter at the hearing in order to provide further translations of the submitted recordings.
57. The Panel has considered the parties’ respective translations, as well as their respective objections (both to the counterparty’s translations and those provided by Mr Dolgov) and relies on Mr Dolgov’s translations and his supplementary testimony during the hearing concerning the disputed portions of the text and recordings. It should also be noted that while the Panel relies on Mr Dolgov’s translations, the differences between Mr Dolgov’s translations and those prepared by the parties are not material to the Panel’s decision.

**B. The McLaren Affidavit**

58. As noted above, the IAAF filed, at a very late stage, an affidavit from Professor McLaren. The McLaren Affidavit summarised some of the findings in Professor McLaren's 18 July 2016 report. One of those findings was that the Russian Ministry of Sport directed, controlled and oversaw the manipulation of Russian athletes' analytical results or sample swapping. Further, in advance of the London 2012 Olympic Games, there had been a scheme of developing washout periods for performance enhancing substances being administered to athletes.
59. In the McLaren Affidavit, Professor McLaren wrote that his investigative team spreadsheets produced by the Moscow Laboratory contained three samples relating to the Athlete. The samples were dated 17, 25 and 31 July 2012. According to Professor McLaren, the samples showed positive results, yet all three samples were reported as negative in ADAMS.
60. The Athlete argued that the McLaren Affidavit should not be admitted because it was not submitted in time and there was no plausible evidence as to why it was late. This case has been pending for many months and Professor McLaren could have been asked to provide a report relating to the Athlete long before the hearing. Further, Professor McLaren did not attend the hearing as a witness. He was neither a party nor an expert. Thus, his opinion was inadmissible.
61. The IAAF argued that the recently filed information about the Athlete only arose because of a meeting arranged, for reasons not connected with the Athlete's case, on 13 September 2016. The IAAF had not previously been aware of the information it gained on that day. The report of Professor McLaren dated 18 July 2016 does not mention the Athlete. There has therefore been no reason why the IAAF should have asked questions of Professor McLaren about the Athlete. The IAAF could simply withdraw the present proceedings and then refile with reliance on Professor McLaren's affidavit.
62. Initially, the Panel, after deliberations, reserved the question of admissibility until questions have been asked of Professor McLaren or Mr Martin Dubbey, a member of Professor McLaren's investigative team, about the timing of the affidavit. The Panel asked the Athlete's counsel whether he wishes to have the entire case postponed or dealt with in part. He said he would like to continue with the hearing and decide, after the hearing, if some of the issues raised needed further written submissions.
63. Mr Dubbey was contacted by telephone during the hearing and the Panel asked him questions about the timing of the affidavit. He confirmed that the meeting on 13 September 2016 had not been set up in order to discuss the Athlete's case specifically. It was a general meeting, but the Athlete's name was raised by the IAAF who referred to pending proceedings against her.
64. The Panel declared the evidence admissible and stated that the Athlete's counsel would have time to respond to the affidavit and cross-examine Professor McLaren.
65. After the evidence was heard, the Panel asked the Athlete's counsel if he was content not to cross-examine Professor McLaren but instead address any issues arising in additional

comments to be submitted on paper. The Athlete's counsel confirmed he was content with this approach.

66. On 12 October 2016, the Athlete filed written submissions in relation to the McLaren Affidavit. In those submissions, the Athlete's counsel argued that the McLaren Affidavit should not be relied upon. The Athlete requested to open and to analyse the B Samples of the samples relied upon by Professor McLaren in his affidavit. However, considering that the Panel finds the evidentiary value of the McLaren Affidavit to be *de minimis* to this procedure, and noting that the Appellant only requested the opening of the B Samples in response to the Panel's admission of the McLaren Affidavit, the Panel finds no reason to order the opening of the B Samples at this late stage. Any evidence derived therefrom as it relates to the admission of the affidavit would be of little value, given the limited weight given to the McLaren Affidavit in these proceedings.

## VII. APPLICABLE LAW

67. The present procedure is based on IAAF Rule 38.19. Further, it follows from IAAF Rule 38.3 that in a case directly referred to CAS "*the case shall be handled in accordance with CAS rules (those applicable to the appeal arbitration procedure without reference to any time of limit for appeal)*".
68. Thus, the Code provisions applicable to the appeal arbitration procedure are applicable in the present procedure.
69. Article R58 of the Code provides as follows:
- 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.*
70. IAAF Rule 42.23 provides as follows:
- In all CAS appeals involving the IAAF, CAS and the CAS Panel shall be bound by the IAAF Constitution, Rules and Regulations (including the Anti-Doping Regulation). 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.*
71. This case is not an appeal. However, the purpose of the direct hearing at the CAS is to shortcut the otherwise applicable procedure. The substantive outcome of the shortcut should not differ from the outcome of the otherwise applicable procedure. Therefore, Rule 42.23 must apply by analogy.
72. Pursuant to IAAF Rule 42.24, the governing law shall be Monegasque law. However, the IAAF rules in question are to be interpreted in a manner harmonious with other WADC compliant rules.

73. Rule 30.1 of the 2016 IAAF Rules states that “*the Anti-Doping Rules shall apply to the IAAF, its Members and Area Associations and to Athletes, Athlete Support Personnel and other Persons who participate in the activities or Competitions of the IAAF, its Members and Area Associations by virtue of their agreement, membership, affiliation, authorisation or accreditation*”. The definition of “*Athlete Support Personnel*” includes coaches, trainers or managers working with an athlete participating in, or preparing for, competitions of athletics.
74. The IAAF’s case alleges that the Athlete’s anti-doping rule violations occurred between 2012 and 2014. It submits that the IAAF Rules in force between 2012 and 2014 were similar, in all material respects, in regard to violations and sanctions. Further, according to IAAF, “*the substantive aspects of this appeal shall, subject to the possible applications of lex mitior, be governed by the anti-doping regulations in force at the time of the alleged violation*”. Thus, IAAF argues that the 2014 IAAF Rules should apply.
75. The Athlete submitted that the procedural aspects of the case are to be governed by the 2016 IAAF Rules and that the substantive issues are to be governed by the 2013 IAAF Rules, taking into account *lex mitior* principles.
76. Given that both parties agree on the application of the *lex mitior* and considering that the alleged violations took place until 2014, the Panel holds that the substantive aspects of the present procedure are to be governed by the 2014 IAAF Rules.
77. The Athlete emphasised to the Panel that pursuant to 2016 IAAF Rules 33.1 and 33.2, the burden of proving that an anti-doping rule violation had occurred was on the IAAF. As to the standard of proof, the Panel has to be comfortably satisfied that the alleged violation had occurred. Bearing in mind the seriousness of the allegation being made, the standard is greater than a mere balance of probability but less than proof beyond reasonable doubt.
78. In his written submissions, the Athlete argued that the highest standard of proof had to be surmounted and that the IAAF had to prove its case “*beyond reasonable doubt*”, given the very serious nature of the allegations and the period of ineligibility sought by the IAAF, i.e. between two and four years. However, in his oral submissions, the Athlete’s Counsel contended that the proper standard was little less than “*beyond reasonable doubt*” and much higher than “*the balance of probabilities*”.
79. Regarding this aspect, the Panel adheres to the well-established CAS jurisprudence and holds that the relevant standard is that the Panel must be comfortably satisfied that that Athlete committed an anti-doping rule violation before making findings against the Athlete (see, e.g. CAS 2015/A/4163; CAS 2015/A/4129).

## VIII. EVIDENCE

### A. Evidence relied on by the IAAF

80. The IAAF primarily relied upon the Stepanova Statement, corroborated by the audio and video recordings made by Ms Stepanova of some conversations she had, *inter alia*, with the

Athlete as well as Ms Stepanova's testimony during the hearing. These recorded conversations were translated, first, by the parties and, second, by Mr Dolgov. Mr Dolgov, on request of the IAAF, translated some parts during the hearing.

81. The IAAF referred to Rule 33.3 of the 2016 IAAF Rules which provides that anti-doping rule violations may be proven by any reliable means *"including, but not limited to, admissions[,] evidence of third persons, witness statements, experts' reports, documentary evidence and conclusions drawn from longitudinal profiling"*.

### **B. Oral evidence of the Athlete**

82. The Athlete testified that she and Ms Stepanova were not friends. She said she had never used any prohibited substances, but that Ms Stepanova was very interested in how to prepare for competitions with the help of doping. The Athlete had told her that everything was prohibited and she would easily be caught. She said that, as professional sportspeople, they had to know what they could and could not use. For example, if she wanted to take medicine for a headache, she needed to know what the medicine actually was, look at the prohibited list to ensure that the medicine was not prohibited, and know what the contents of the medicine actually included. She said there were many anti-doping lectures so she could know what was prohibited.
83. With regards to some parts of the conversation the Athlete had with Ms Stepanova, the IAAF questioned how the Athlete knew about the effect of Primabolan on testosterone and more precisely, that it did not increase testosterone. The Athlete said she knew this information from educational lectures by anti-doping agencies. The IAAF's counsel commented that it was unbelievable that an anti-doping body would advise that Primabolan does not increase testosterone. In response, the Athlete stated that the agency advised the athletes in such lectures that it would not give a (female) athlete the body of a man.
84. The Athlete was also asked questions by the Panel. She said that if the team doctor gave her a pill, saying it contained no prohibited substances, she would accept what the doctor said and take such pill without further inquiries.
85. The Athlete denied using the word "EPO" in the conversation of 21 October 2014. According to the Athlete, she said "IKO" and only mentioned prohibited substances in her conversation with Ms Stepanova because Ms Stepanova had mentioned them and she (the Athlete) was repeating such words. She had told Ms Stepanova to never use prohibited substances because she would be caught.

### **C. Evidence of Dmitry Vlasov**

86. Mr Vlasov was asked to describe the situation in October 2014 in the training camp where Ms Stepanova spoke to the other athletes. He said he noticed her husband coming to the training sessions and carrying out filming. He said Ms Stepanova always attempted to initiate conversations with different athletes and coaches about doping. In his view, this was a very

strange conduct, because there was no doping going on. He appreciated that Ms Stepanova had been disqualified but still found this conduct strange.

87. The IAAF did not seek to cross-examine Mr Vlasov.

**D. Evidence of Tatyana Myazina**

88. Ms Myazina said she witnessed Ms Stepanova during the October 2014 and November 2014 training camps approaching different athletes and trying to find out how they prepared for different competitions. At the beginning it seemed unusual to her but later it appeared that Ms Stepanova had an agenda. Ms Stepanova approached her but she did not say anything. She was asked by Ms Stepanova if she was preparing with prohibited substances; she said she was not. She said Mr Kazarin had never used forbidden substances. She assumed this because he never used them with her.

89. The IAAF did not seek to cross-examine Ms Myazina.

**E. Evidence of Stepan Poistogov**

90. Mr Poistogov, the Athlete's husband, said he was at the training camps in October and November 2014. He said Ms Stepanova was talking a lot about doping to the point where he thought she was obsessed, maybe because she was disqualified and envious of others' sporting success. He also noted that Ms Stepanova and his wife were friends.

91. The IAAF did not seek to cross-examine Mr Poistogov.

**F. Evidence of Denis Kudryowtsev**

92. Mr Kudryowtsev said he had participated in the November 2014 training camp, but not the one in October 2014. He spoke to Ms Stepanova at the camp in the cafeteria and she asked about different substances. Mr Kudryowtsev was not familiar with the names of substances.

93. The IAAF did not seek to cross-examine Mr Kudryowtsev.

**G. Evidence of Ekaterina Kudryavtseva**

94. Like Mr Kudryowtsev, Ms Kudryavtseva only attended the November 2014 training camp. She saw Ms Stepanova there and noticed that she spoke on numerous occasions about her disqualification. She did not mention any forbidden substances to her.

95. In reply to a question from the IAAF, Ms Kudryavtseva stated she had not been coached by Mr Kazarin and that she knew nothing about doping by any other Russian athletes.

## H. Evidence of Ms Stepanova

96. Ms Stepanova said that she and the Athlete were discussing doping during their conversation on 21 October 2014. They were talking about blood doping in relation to the London 2012 Olympics and the 2014 European Championships. The Athlete told her that she had doped. Where the transcripts referred to “we” trying Peptides, she said that “we” referred to the Athlete and her coach.
97. Ms Stepanova also said she knew that Mr Kazarin had helped the Athlete with her preparation for the 2014 European Championships and that another trainer had helped her with preparation for the London 2012 Olympics. She herself had not trained under the latter but she had heard about his coaching methods, which involved forbidden substances.
98. Moreover, Ms Stepanova testified about her aspiration to make up the national team ahead of the Athlete. Ms Stepanova said she knew her and the Athlete’s track results in 2014. She said it was a matter of luck as to which one of them had a greater chance to compete for the national team. She said that no one was protected from injuries. She said that in the 800m, she was quicker than the Athlete. This said, she was a fair competitor and was not envious or malicious towards the Athlete.

## IX. MERITS

### A. The Anti-Doping Rule Violations

99. The IAAF claims that the Athlete breached Rule 32.2(b) of the 2012 IAAF Rules. Rule 32.2(b) prohibits the Use or Attempted Use of Prohibited Substances or Prohibited Methods.

### B. Discussion of the evidence

#### a) *The evidence taken into account by the Panel*

100. In reaching its decision, the Panel has accepted into evidence the Stepanova Statement as well as the corroborating audio and video recordings made by Ms Stepanova.
101. In this regard, the Panel recalls that the admittance of evidence is subject to procedural laws. In the present procedure, as the seat of the CAS is in Switzerland, Swiss Private International Law Act (the “PILS”) is, inter alia, applicable. Pursuant to Article 184(1) PILS, “[t]he arbitral tribunal shall take evidence”. Further, it is constant CAS jurisprudence that besides article 184(1) PILS, “[l]e pouvoir de la Formation de statuer sur l’admissibilité de la preuve est repris dans le Code TAS (cf. l’Article R44.2). Il découle de l’Article 184 alinéa 1 LDIP (ainsi que des articles du Code TAS) que la Formation dispose ainsi d’un certain pouvoir d’appréciation pour déterminer la recevabilité de la preuve (Kaufmann-Kohler/Rigozzi, op. cit., no 478)” (TAS 2009/A/1879, para. 36 of abstract published on the CAS website). Finally, the power of the arbitral tribunal related to the taking of evidence is only limited by “procedural public policy”, the procedural rights of the parties, and, where

necessary, by the relevant sporting regulations (DE LA ROCHEFOUCAULD E., *The Taking of Evidence Before the CAS*, CAS Bulletin 2015/1, p. 29).

102. Given that the 2016 IAAF Rule govern the admittance of evidence, the Panel has to refer to Rule 33(3) of these rules, which provides: *“Facts related to anti-doping rule violations may be established by any reliable means, including but not limited to admissions, evidence of third Persons, witness statements, expert reports, documentary evidence, conclusions drawn from longitudinal profiling such as the Athlete Biological Passport and other analytical information”*.
103. Considering the very large scope of means of evidence that the Panel could admit as reliable evidence, the Panel considers that recordings such as those submitted by the IAAF are means of evidence in the sense of the 2016 IAAF Rules and if considered by the Panel to be reliable the Panel can rely on them for the purpose of establishing facts related to an anti-doping violation.
104. Concerning the Athlete’s argument that the recordings are illegal and therefore inadmissible, it has to be recalled that even illegally obtained evidence may be admissible if the interest to find the truth prevails (Art. 152, 168 Swiss Code of Civil Procedure; HAFTER, *Commentary to the Swiss Code of Civil Procedure*, 2nd ed., para. 8). According to the Swiss Federal Tribunal and the ECHR, the courts shall balance the interest in protecting the right that was infringed by obtaining the evidence against the interest in establishing the truth. If the latter outweighs the former, the courts may declare a piece of evidence admissible for assessment even though it was unlawfully acquired (BERGER/KELLERHALS, *International and Domestic Arbitration in Switzerland*, 3rd ed., p. 461).
105. In this regard, a CAS panel has already applied these principles in a doping related arbitration and has, in substance, held that the efficient battle against doping constitutes not only a private interest of the association in question but also a public interest, as it follows from the Conventions to which Switzerland is a contracting state. Thus, the interest underlying the fight against doping can be preponderant over the individual’s interest, whether an athlete or athlete support personnel, in not having an illicitly obtained evidence admitted in an arbitral procedure concerning an alleged anti-doping rule violation (TAS 2009/A/1879, para. 69-74 of abstract published on the CAS website).
106. This balancing test set out by the Swiss Federal Tribunal, and applied by the CAS, is in line with the jurisprudence of the European Court of Human Rights (see i.e. *K.S and M.S v. Germany*, no. 33969/11, ECHR 2016-V, 6 October 2016, and case law cited).
107. In the present case, the Panel considers, first, that the recordings done by Ms Stepanova could not have been obtained by any other means than the ones chosen by her. Second, the recordings were made by a whistle blower in order to denounce widespread doping practices in Russian athletics. Third, given that doping undermines the level playing field of all competing athletes and constitutes a threat to the values that competitive sport stands for, the interest in discerning the truth concerning the doping practices in Russian athletics was of the utmost importance. Fourth, the fight against doping is of a public interest.

108. In light of these considerations, the Panel finds that, even if the recordings were to be qualified as illicit, the interest in discerning the truth must prevail over the interest of the Athlete that the recordings are not used against her in the present proceedings.
109. Furthermore, no evidence was produced that under Russian law such recordings were illegal. This was merely stated by Athlete's counsel. The Panel further notes that the recordings were not made by Ms Stepanova in her capacity as some sort of a “secret agent” for WADA or the IAAF, but rather on her personal initiative to accuse widespread doping in Russian sport. Clearly, Ms Stepanova acted as a “whistle-blower”.
110. For all of these reasons, the Panel comes to the conclusion that the recordings of Ms Stepanova’s conversations are admissible as evidence in the proceedings at hand (in the same way, CAS 2016/O/4504, para 78).
111. The Panel, though having accepted the McLaren Affidavit as evidence, did not find the evidence contained therein as particularly strong as it relates to the allegations brought in this procedure. So while such affidavit was accepted to the file, the Panel did not rely upon it to a substantial extent.
112. The Panel relied on the audio and video recordings, and their translations by the independent translator, Mr Dolgov, in particular when a conflict arose between the parties’ proposed translations (in particular on the conversation between Ms Stepanova and the Athlete on 21 October 2014).

**b) *The evidence of Ms Stepanova and the Athlete***

113. In the Panel’s view, Ms Stepanova was not simply envious of the Athlete and there was no evidence to suggest that her participation in this procedure derived from a personal vendetta. The Panel found Ms Stepanova’s evidence sincere.
114. However, considering that, in contrary to the situation at issue in CAS 2004/O/645, the Athlete denies having admitted to Ms Stepanova any use of Prohibited Substances, the Panel gives evidentiary weight, in particular, to the recording of the 21 October 2014 conversation between Ms Stepanova and the Athlete, where it can be heard that the Athlete clearly knew how many Oxandrolone pills should be used to “prepare” an athlete and how long it would take for these pills to wash out of the athlete’s body.
115. This said, the Panel observes that the IAAF did not provide a convincing explanation as to the slight contradiction that exists between the Stepanova Statement which claims that the Athlete took EPO in 2012 and the 21 October 2014 conversation in which it was mentioned that the Athlete had not been initially taken into consideration as a potential participant at the London 2012 Olympic Games, making the use of EPO implausible considering the costs and risks such a use entails.

**C. Decision on liability**

116. The Panel is comfortably satisfied that the Athlete is guilty of using Prohibited Substances. In particular, the Panel is comfortably satisfied that the Athlete used Oxandrolone during her autumn 2014 preparation.
117. The Panel considers that it follows from the testimony of Ms Stepanova, supplemented by the recording of the conversation between her and the Athlete of 21 October 2014, that the Athlete was fully aware of her personal doping regime and was preparing for the then upcoming events using, around the time of such conversation, a course of 10 pills of Oxandrolone.
118. The Panel is, in contrast, not comfortably satisfied that the evidence presented confirms that the Athlete used other Prohibited Substances at other times during her career (i.e., EPO in 2012 and Peptides in 2013). Given that there is no adverse analytical finding and that the Athlete vigorously denies having taken such substances and further denies having admitted to Ms Stepanova that she took such substances, the Panel considers it has to limit its findings to the substances in regard to which it can rely on a body of concordant factors and evidence. Regarding EPO: (i) Mr Dolgov himself on listening a number of times during the hearing to a section of the recording of 21 October 2014 said that he could not confirm that he heard the word “EPO” and that it could be “EPO”, “EKO”, “ETO” or a similar sounding word. Thus this recording cannot be considered as corroborating Ms Stepanova’s Statement and testimony; (ii) the IAAF did not submit any other evidence corroborating Ms Stepanova’s Statement or capable of establishing, to the Panel’s comfortable satisfaction, the alleged use of EPO by the Athlete prior to the London Olympics in 2012. Similarly, regarding Peptides there were no specifics as to exact timing or method of application and possible other interpretation to the relevant sections of the recordings.

**D. Decision on sanction**

119. Rule 40.2 of the 2012 IAAF Rules provides for a two-year period of ineligibility for a first violation of Rule 32.2(b) *“unless the conditions for eliminating or reducing the period of Ineligibility as provided in Rules 40.4 and 40.5, or the conditions for increasing the period of Ineligibility as provided in Rule 40.6 are met...”*.
120. The Panel agrees with the IAAF that neither Rule 40.4 nor Rule 40.5 are relevant in this case. Rule 40.4 applies only to specified substances. Rule 40.5 applies only where there has been a) lack of fault or negligence or lack of significant fault or negligence in respect of the anti-doping rule violation, b) an admission of the violation in the absence of other evidence or c) the provision of substantial assistance.
121. Rule 40.6 of the 2012 IAAF Rules allows the Panel, where aggravating circumstances are present, to increase the period of ineligibility up to four years unless the athlete can prove to the comfortable satisfaction of the Panel that he or she did not knowingly commit the anti-doping rule violation.

122. In the present case, the IAAF argued that there were two categories of aggravating circumstances, namely (1) the use of a Prohibited Substance or Prohibited Method on multiple occasions – the Athlete allegedly used prohibited substances from 2012 to 2014 – and (2) the use of multiple prohibited substances – the Athlete allegedly used a number of different non-specified prohibited substances including EPO, Peptides and Oxandrolone.
123. In this regard, the Panel notes that it is not comfortably satisfied that the Athlete used Prohibited Substances other than Oxandrolone. Thus, the second category of aggravating circumstances relied upon by the IAAF does not apply.
124. The same conclusion has to be drawn in regard to the first category of aggravating circumstances invoked. Indeed, in its submissions, the IAAF argued that the Athlete took Oxandrolone in Autumn 2014 when the conversation of 21 October took place, and the IAAF did not allege (or submit any evidence) that the Athlete used this substance at another point in her career. Given that one preparation with Oxandrolone involves the intake of ten pills it cannot be considered that after the first pill every new intake of one pill is constitutive of a separate use in the sense that it could be qualified as use on multiple occasions.
125. In any event, the Panel finds that the circumstances of the case do not warrant going further than the basic period of ineligibility. Indeed, as the IAAF pointed out in, amongst others, the case involving the Athlete’s Coach (CAS 2016/A/4480) and the Athlete’s Trainer (CAS 2016/A/4487), the Athlete did not act on her own but was part of a training structure, governed by athlete support personnel and/or persons holding certain official functions within the Russian federation, and it is doubtful whether the Athlete would have been selected for the national team if she had not followed all aspects of the training program, including the use of Prohibited Substances, set up by the Coach and Trainer. In view of these findings, the Panel does not consider it just to go beyond the basic period of ineligibility set out in IAAF Rule 40.2 (b).
126. This is the Athlete’s first violation, and the Panel, pursuant to IAAF rule 40.2 (b), finds that the period of ineligibility shall be two (2) years.
127. Rule 40.10 of the 2012 IAAF Rules provides as follows:
- “Except as provided below, the period of Ineligibility shall start on the date of the hearing decision providing for Ineligibility or, if the hearing is waived, on the date the Ineligibility is accepted or otherwise imposed. Any period of Provisional Suspension (whether imposed or voluntarily accepted) shall be credited against the total period of Ineligibility to be served. [...]”*
128. In the present case, the period of ineligibility should, in principle, start on the date of the present Award, according to Rule 40.10.
129. However, considering that the Athlete’s provisional suspension is still in force, namely since 24 August 2015, the two-year period of ineligibility shall thus start on 24 August 2015.

**E. Disqualification**

130. Rule 40.8 of the 2012 IAAF Rules provides that:

*“In addition to the automatic disqualification of the results in the Competition which produced the positive sample under Rules 39 and 40, all other competitive results obtained from the date the positive Sample was collected (whether In-Competition or Out-of-Competition) or other anti-doping rule violation occurred through to the commencement of any Provisional Suspension or Ineligibility period shall be Disqualified with all of the resulting Consequences for the Athlete including the forfeiture of any titles, awards, medals, points and prize and appearance money”.*

131. In this regard, the Panel notes that there is no clear date on which the anti-doping rule violation first “occurred” for purposes of applying Rule 40.8. The Panel cannot speculate in this regard. Here, the Panel is dealing with array of circumstantial evidence which, on a cumulative basis, confirms an anti-doping rule violation. The Panel must weigh the totality of evidence when coming to determination on liability. But, for purposes of Rule 40.8, the Panel is asked to disqualify the Athlete’s results as from the date in which the anti-doping rule violation first occurred. The Panel must weigh each piece of evidence individually to determine whether it is satisfied that an anti-doping rule violation occurred at that moment. Therefore, in consideration of the evidence, the Panel is satisfied that the anti-doping rule violation occurred no later than on 21 October 2014, the date of the conversation between Ms Stepanova and the Athlete.
132. In accordance with IAAF Rule 40.8, all competitive results achieved by the Athlete from 21 October 2014 through to the commencement of her suspension on 24 August 2015 shall be disqualified, with all resulting consequences, including the forfeiture of any titles, awards, points, prizes and appearance money.

**ON THESE GROUNDS**

**The Court of Arbitration for Sport rules that:**

1. The request filed by the IAAF with the Court of Arbitration for Sport against Ms Ekaterina on 8 March 2016 is admissible and upheld.
2. Ms Ekaterina Poistogova committed an anti-doping rule violation according to IAAF Rule 32.2(b).
3. Ms Ekatarina Poistogova shall be sanctioned with a two-year period of ineligibility, starting on 24 August 2015.

4. All competitive results obtained by Ms Ekatarina Poistogova from 21 October 2014 through to the commencement of her suspension on 24 August 2015 shall be disqualified, with all of the resulting consequences, including the forfeiture of any titles, awards, medals, points, prizes and appearance money.
5. (...).
6. (...).
7. All other or further motions or prayers for relief are dismissed.