



**Arbitration CAS 2016/O/4488 International Association of Athletics Federations (IAAF) v. All-Russia Athletics Federation (ARAF) & Anastasiya Bazdyreva, award of 23 December 2016**

Panel: Mr Hans Nater (Switzerland), Sole Arbitrator

*Athletics (middle distance)*

*Doping (witness statement of whistle blower)*

*Taking of evidence and arbitral tribunals' discretion*

*Law applicable to procedural and to substantive matters respectively*

*Taking of evidence under Rule 33(3) IAAF Competition Rules and illegally obtained evidence*

*Evidence required under IAAF Rules to establish anti-doping rule violation*

1. Article 184(1) of the Swiss Private International Law Act (“PILS”) provides arbitral tribunals in international arbitration proceedings seated in Switzerland with ample latitude in the taking of evidence. It further follows from Article 184(1) of the PILS that CAS panels dispose of a certain discretion to determine the admissibility or inadmissibility of evidence. In general, 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.
2. Pursuant to the legal principle of *tempus regit actum*, procedural matters are governed by the regulations in force at the time of the procedural act in question, whereas the substantive issues are governed by the IAAF Rules in force at the time of the alleged violation.
3. The discretion to admit evidence under Rule 33(3) of the IAAF Competition Rules (“IAAF Rules”) is fairly wide as it determines that anti-doping rule violations may be established by “any reliable means”. Whereas an athlete’s witness statement is undoubtedly admissible, particularly because witness statements are explicitly listed as a means of evidence in Rule 33(3) of the IAAF Rules, the admissibility of recordings which objectively fall under the category “any reliable means” provided for in Rule 33(3) of the IAAF Rules, require a more detailed analysis in case the recordings have been made covertly *e.g.* by an athlete acting as a whistle blower. If a means of evidence is illegally obtained, it is only admissible if the interest to find the truth prevails over the interest in protecting the right that was infringed by obtaining the evidence. Elements to be considered pertinent when performing the above balancing test are *e.g.* the nature of the violation, the interest in discerning the truth, the difficulty of adducing evidence for the concerned party, the conduct of the victim, the legitimate interests of the parties, and the possibility of acquiring the (same) evidence in a legitimate manner. Where it is notorious that doping in a particular country is widespread and has been systematically supported by coaches, clubs and government-affiliated organisations, the interest in finding the truth prevails over a possible reliance of an athlete on the principle of good

**faith as a defence against gathering illegally obtained evidence. This is even more the case if the athlete in question himself/herself relies on the illegally obtained evidence to exculpate himself/herself.**

- 4. The IAAF Rules do not foresee that a conviction of an anti-doping rule violation must be based on multiple pieces of evidence. Therefore a CAS panel can be comfortably satisfied that an athlete committed an anti-doping violation based on (another) athlete's witness statement or/and on recordings or/and on the transcript of such recordings.**

## **I. PARTIES**

1. The International Association of Athletics Federations (the "Claimant" or the "IAAF") is the world governing body for the sport of Athletics, established for an indefinite period with legal status as an association under the laws of Monaco. The IAAF has its registered seat in Monaco.
2. The All-Russia Athletics Federation (the "First Respondent" or the "ARAF") is the national governing body for the sport of Athletics in the Russian Federation, with its registered seat in Moscow, Russian Federation. The ARAF is a member federation of the IAAF currently suspended from membership.
3. Ms Anastasiya Bazdyreva (the "Second Respondent" or the "Athlete") is a Russian athlete specialising in middle distance events (in particular 400 metres, 800 metres and more recently 1,000 metres). The Athlete is an International-Level Athlete for the purposes of the IAAF Competition Rules (the "IAAF Rules").

## **II. FACTUAL BACKGROUND**

4. Below is a summary of the main relevant facts, as established on the basis of the parties' written and oral submissions and the evidence examined in the course of the present arbitration proceedings and during the hearing. This background is set out for the sole purpose of providing a synopsis of the matter in dispute. Additional facts may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, he refers in his Award only to the submissions and evidence he considers necessary to explain his reasoning.
5. The Athlete has been charged with violating Rule 32.2(b) of the IAAF Competition Rules (the "IAAF Rules"): "*Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method*".
6. The evidence of the Athlete's alleged anti-doping rule violation(s) is based primarily on a witness statement of Ms Yuliya Stepanova, an elite Russian athlete who was sanctioned in February 2013 with a two year period of ineligibility in connection with abnormalities in her Athlete Biological Passport (the "ABP").

7. In the period from 2013 to 2014, Ms Stepanova recorded a number of conversations she had with Russian athletes and athlete support personnel, including the Athlete. The Athlete allegedly admitted to Ms Stepanova in one of the recordings that she had used prohibited substances in the course of 2014, notably Trenbolone. Ms Stepanova had also recorded a conversation with Mr Vladimir Kazarin (the “Coach”), who was allegedly the coach of both the Athlete and Ms Stepanova at the time.
8. With a view to exposing the widespread doping practices within Russian athletics, Ms Stepanova made the recordings available to a German journalist, who used extracts from the recordings to produce a documentary alleging widespread doping in Russian athletics. This documentary was broadcasted on the German television channel ARD on 3 December 2014.
9. In the wake of the documentary published by ARD, the World Anti-Doping Agency (“WADA”) announced the establishment of an independent commission (the “WADA IC”), comprised of Mr Dick Pound QC (Chairman), Prof. Richard McLaren and Mr Günter Younger.
10. On 7 August 2015, the IAAF asserted in a letter to the ARAF that there was sufficient evidence that the Athlete had committed an anti-doping rule violation by using prohibited substances and charged her with a violation of Rule 32.2(b) of the IAAF Rules.
11. On 24 August 2015, the ARAF informed the IAAF, on behalf of the Athlete, that she denied the asserted anti-doping rule violation and asked for the audio recordings.
12. Also on 24 August 2015, the IAAF informed the ARAF that the Athlete was provisionally suspended with immediate effect pending resolution of the case in accordance with Rule 38.2 of the IAAF Rules.
13. On 4 September 2015, the Athlete reiterated her request to be provided with the audio recordings, denied the charge and requested a hearing to be held.
14. On 9 November 2015, the WADA IC issued its first report (the “WADA IC First Report”) in which it concluded in general that “[t]he investigation has confirmed the existence of widespread cheating through the use of doping substances and methods to ensure, or enhance the likelihood of, victory for athletes and teams” and specifically in respect of the Athlete that “[t]he secret recordings clearly show Ms. Bazdyreva describing and confirming her doping regime and use of washout periods. Ms. Bazdyreva’s actions confirm that she contravened Code article 3.1 and Code article 2.2 “Use by an Athlete of a Prohibited Substance or a Prohibited Method” and committed an ADRV”.
15. On 26 November 2015, the ARAF’s membership with the IAAF was suspended pursuant to a decision of the IAAF Council.
16. On 18 December 2015, the IAAF informed the Athlete that ARAF’s membership had been suspended, that it took over the responsibility for coordinating the disciplinary proceedings and that her case would be referred to the Court of Arbitration for Sport (“CAS”). The Athlete was offered to choose between the following two procedures:

- “(1) before a sole CAS arbitrator sitting as a first instance hearing panel pursuant to IAAF Rule 38.3. The case will be prosecuted by the IAAF and the decision will be subject to an appeal to CAS in accordance with Rule 42; or*
- (2) before a CAS Panel as a single hearing, with the agreement of WADA and any other anti-doping organisation with a right of appeal, in accordance with Rule 38.19. The decision rendered will not be subject to an appeal”.*

17. On 26 January 2016, the Athlete requested the IAAF to proceed with the first option.

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

18. On 8 March 2016, the IAAF lodged a Request for Arbitration with CAS in accordance with Article R38 of the CAS Code of Sports-related Arbitration (2016 edition) (the “CAS Code”). The IAAF informed CAS that its Request for Arbitration was to be considered as its Statement of Appeal and Appeal Brief and requested the matter to be submitted to a sole arbitrator. This document contained a statement of the facts and legal arguments and included the following requests for 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 be 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 be imposed upon the Athlete, commencing on the date of the (final) CAS Award.*
- (v) All competitive results obtained by the Athlete from 23 April 2014, through to the commencement of her provisional suspension on 24 August 2015, shall be disqualified, with all resulting consequences (including forfeiture of any titles, awards, medals, profits, prizes and appearance money).*
- (vi) Any arbitration costs to be borne entirely by the Respondents.*
- (vii) The IAAF is awarded a contribution to its legal costs”.*

19. On 11 March 2016, the CAS Court Office initiated the present arbitration and specified that, as requested by the Claimant, it had been assigned to the CAS Ordinary Arbitration Division but would be dealt with according to the Appeals Arbitration Division rules.

20. On 22 March 2016, the Respondents were invited to submit their Answer within 30 days.

21. On 31 March 2016, the ARAF requested the IAAF to clarify why the ARAF was involved in this case as a Respondent, not as a witness, and what types of relief are sought by the IAAF against the ARAF.

22. On 11 April 2016, the IAAF informed the CAS Court Office that CAS is effectively acting as a substitute for the ARAF because of its inability to conduct disciplinary proceedings in Russia in

due time and that the IAAF Rules clearly contemplate that, in these circumstances, the costs of those proceedings will be borne by the ARAF. The IAAF therefore maintained its requests for relief against the ARAF.

23. On 19 April 2016, in accordance with Article R54 of the CAS Code, and on behalf of the President of the CAS Ordinary Arbitration Division, the CAS Court Office informed the parties that the arbitral tribunal appointed to decide the present matter was constituted by:

➤ Dr. Hans Nater, Attorney-at-Law, Zurich, Switzerland.

24. Also on 19 April 2016, the parties were further informed that Mr Dennis Koolaard would act as *Ad hoc* clerk.

25. On 21 April 2016, the Athlete filed her Answer in accordance with Article R55 of the CAS Code. The Athlete asked for evidentiary measures to be ordered by the Sole Arbitrator, more specifically to “*claim the data of the biological passport of [the Athlete] from the IAAF as well as the Adverse Passport / Analytical Findings’ reports (if applicable)*”. The Athlete submitted the following requests for relief:

- “1. *Not to satisfy the claim of the IAAF and to declare that Anastasiya Bazdyreva has not violated Rule 32.2 (b) of the 2014 IAAF Competition Rules;*
2. *Not to apply the ineligibility period with regard to Anastasiya Bazdyreva due to the lack of violation;*
3. *To keep valid the competition results of Anastasiya Bazdyreva for the period from 23 April 2014 to 24 August 2015 with all the resulting consequences;*
4. *To leave all the procedural costs to be borne by the IAAF or alternatively the ARAF;*
5. *To order the IAAF to cover the procedural costs of Anastasiya Bazdyreva”.*

26. On 27 April 2016, the IAAF requested the Athlete’s application for data of her ABP to be dismissed as (i) the request was filed late, (ii) the Athlete has access to the blood data of the ABP through the Anti-Doping Administration & Management System (“ADAMS”), (iii) the IAAF’s case is, in its essence, based on an admission by the Athlete in her conversation with Ms Stepanova on 12 November 2014. The IAAF has not sought to rely in any way on the ABP and has not alleged (or even insinuated) that there was an adverse passport finding, (vi) even where an ABP has not (yet) yielded an adverse passport finding, it does not in any way mean that the athlete has not engaged in doping practices. Furthermore, the Athlete produced a huge amount of analytical data in Russian resulting from private tests conducted between 2013 and 2016. The IAAF stated to have some difficulty in understanding the possible relevance of these private tests, but will nevertheless call its own expert to respond. The IAAF also requested the analytical data, as well as certain other exhibits filed together with the Athlete’s Answer, to be translated into English.

27. On 3 May 2016, the CAS Court Office informed the parties that the Sole Arbitrator requested additional information/documentation regarding the scope of the information available via ADAMS, the accessibility of this website for the Athlete and any documentation evidencing the

IAAF's/Athlete's respective observations. The Athlete was further invited to submit the English translation of some of the exhibits she submitted.

28. On 9 May 2016, the Athlete informed the CAS Court Office that the IAAF referred to the allegedly suspicious steroid ABP profile of the Athlete and submitted the WADA IC First Report and that this created the basis for interpreting the conversation recorded by Ms Stepanova in a way that the IAAF had submitted the report and the Athlete has the right to contest any suspicions. The Athlete submitted that the IAAF correctly stated that an athlete can view the test results (negative / positive) in ADAMS. However, the athletes are lacking access to the detailed results which could indicate that the health parameters of an athlete do not include any abnormal features. In case the Athlete had used Parabolan, it would be reflected to a certain extent also in the steroidal module of her ABP.
29. On 11 May 2016, the IAAF announced that it would voluntarily produce the Athlete's steroid ABP and reserved the right to call one or more experts to testify to any matters that arise out of the Athlete's steroid ABP and/or the scientific reports produced by the Athlete.
30. On 12 May 2016, the IAAF produced, as announced, the requested steroid ABP.
31. On 13 May 2016, the CAS Court Office informed the parties that the Sole Arbitrator allowed both parties to file a second written submission in respect of the Athlete's steroid ABP and other scientific material.
32. On 17 May 2016, the Athlete produced the requested translations into English.
33. On 23 May 2016, the IAAF informed the CAS Court Office that it did not deem it necessary to submit a written statement or file further submissions, but called Prof. Ayotte, Director of the WADA-accredited laboratory in Montreal, Canada, as an expert. The IAAF maintained that it voluntarily produced the steroid ABP further to a request of the Athlete and considered it to be for her to make any submissions in respect of the same. The IAAF would then have to be given the opportunity to respond in writing.
34. On 10 June 2016, the Athlete informed the CAS Court Office not to deem it necessary to provide additional scientific statements or submit any evidence and maintained that the data of her steroid ABP failed to prove the use of doping, whereas the opposite opinion of the IAAF is premature.
35. On 5 July 2016, the IAAF informed the CAS Court Office that it was not convinced that it was necessary to hear the scientific experts (Prof. Koks, Dr. de Boer and Prof. Ayotte). However, if the Athlete would insist on calling her experts, then they should all be heard together.
36. On 8 July 2016, the Athlete informed the CAS Court Office that she considered it necessary to hear the experts and that she did not object to the experts being heard in parallel.
37. On 13, 15 and 18 July 2016 respectively, the ARAF, the Athlete and the IAAF returned duly signed copies of the Order of Procedure to the CAS Court Office.

38. On 21 July 2016, a hearing was held in Lausanne, Switzerland. At the outset of the hearing, all parties confirmed that they had no objection to the constitution and composition of the arbitral tribunal.

39. In addition to the Sole Arbitrator, Ms Pauline Pellaux, Counsel to the CAS, and Mr Dennis Koolaard, *Ad hoc* clerk, the following persons attended the hearing:

For the IAAF:

- Mr Ross Wenzel, Counsel;
- Mr Nicolas Zbinden, Counsel;
- Ms Alexandra Volkova, Interpreter.

For the Athlete:

- Ms Anastasiya Bazdyreva, the Athlete, by video conference;
- Mr Aivar Pilv, Counsel, by video conference;
- Mr Jaak Siim, Counsel, by video conference;
- Mr Aleksandr Tsemin, Counsel, by video conference;
- Ms Jekaterina Maadla, Interpreter, by video conference;
- Ms Zanna Markova, Interpreter, by video conference;
- Ms Anneli Uus, Back-up Interpreter from the Counsel law firm, by video conference.

40. The Sole Arbitrator heard evidence of the following persons:

- Ms Yuliya Stepanova, Russian athlete that made recordings of the Athlete, witness called by the IAAF, by video conference;
- Prof. Ayotte, Director of WADA-accredited laboratory in Montreal, Canada, expert called by the IAAF, by video conference;
- Mr Andrei Farnosov, former roommate of the Athlete, witness called by the Athlete, by video conference;
- Mr Rif Tababilov, former coach of the Athlete, witness called by the Athlete, by video conference;
- Dr. Douwe de Boer, Expert in pharmacy and biochemistry, expert called by the Athlete, by telephone conference.

41. The Athlete originally also called Dr. Sulev Koks, Professor of pathophysiology, as an expert, but he was finally not available to attend the hearing as was announced by the Athlete at the start of the hearing.

42. All witnesses and expert witnesses were invited by the Sole Arbitrator to tell the truth subject to the sanctions of perjury. All parties and the Sole Arbitrator had the opportunity to examine and cross-examine the witnesses and expert witnesses in person.
43. The parties were afforded ample opportunity to present their case, submit their arguments and answer the questions posed by the Sole Arbitrator.
44. Before the hearing was concluded, all parties expressly stated that they did not have any objection with the procedure adopted by the Sole Arbitrator and that their right to be heard had been respected.
45. The Sole Arbitrator confirms that he carefully took into account in his decision all of the submissions, evidence, and arguments presented by the parties, even if they have not been specifically summarised or referred to in the present arbitral award.

#### IV. SUBMISSIONS OF THE PARTIES

46. The IAAF's submissions, in essence, may be summarised as follows:
  - The IAAF submits that anti-doping rule violations may be proved by any reliable means and that the witness statement of Ms Stepanova, including the transcripts of the recordings, constitute reliable evidence that the Athlete used prohibited substances.
  - The IAAF maintains that in her conversation with Ms Stepanova, the Athlete admitted to taking Parabolan to prepare for the 2014 Russian championships. She specifically stated that she had left 90 days prior to the event in order for the substance to wash out by then. Parabolan contains Trenbolone, which has at all material times been one of the Exogenous Androgenic Anabolic steroids set out at section S.1.1 (a) of the WADA Prohibited List.
  - Later in the conversation, the Athlete made an explicit admission that steroids gave her cramps. More particularly, she said: *"It's just that some people can't run, but I can run on anabol. It's difficult but I can"*. The Athlete expressed no surprise whatsoever when Ms Stepanova told her that the Coach had provided oxandrolone to her; instead, she asked a number of very specific questions with respect to the specific brand, taste, shape and colour. In short, the Athlete is coached by a person who has been shown to have provided anabolic steroids to his athletes. The Athlete expressly admitted, on more than one occasion in the conversation of 12 November 2014, that she had used anabolic steroids.
  - As to the period of ineligibility, the IAAF argues that pursuant to Rule 40.2(b) of the IAAF Rules, a two year period of ineligibility shall be imposed. There are no reasons to reduce this standard sanction in accordance with Rules 40.4 or 40.5 of the IAAF Rules.
  - The IAAF maintains that Rule 40.6 of the IAAF Rules may be applied in order to increase the period of ineligibility to a maximum of a four-year period of ineligibility due to aggravating circumstances, as the evidence indicates that the Athlete used multiple prohibited substances and on multiple occasions. According to the IAAF it is



open to the Sole Arbitrator to impose a period of ineligibility of between two to four years, which should commence on the date of the (final) CAS Award.

- Finally, the IAAF submits that since the IAAF Rules provide for the automatic disqualification of all results from the date of the anti-doping rule violation through the commencement of any period of provisional suspension and because the evidence indicates that the Athlete was using prohibited substances in 2014, the IAAF seeks the disqualification of all the results of the Athlete for all competitions in which she took part from 23 April 2014, together with the forfeiture of any prizes, medals, prize money and appearance money etc.
47. Although duly invited, the ARAF failed to submit any position on the merits of the present proceedings.
48. The Athlete's submissions, in essence, may be summarised as follows:
- The Athlete fully disputes the accusations and is of the opinion that the content of the recordings presented to the IAAF has been distorted by Ms Stepanova and that all the evidence is therefore unreliable.
  - The Athlete maintains that she followed the anti-doping rules with excellent care during her career, she has never been tested positive and the statements of Ms Stepanova cannot be proven by evidence provided by the IAAF, nor by the expert opinion and other documents gathered by the Athlete.
  - The Athlete maintains that the content of the recordings made by Ms Stepanova does not comply with the actual content of the conversation. An audio recording can be reliable evidence in case it has been presented in an undistorted form, if the presented circumstances can be controlled by other evidence, and if the content of the evidence is unambiguous. The quality of the recording forwarded by Ms Stepanova is confirming that it is unreliable evidence. The Athlete argues that she has not admitted the use of prohibited substances and that the IAAF was mistaken in interpreting the presented recording and therefore regrettably concluded that the Athlete used a prohibited substance in the summer of 2014.
  - The Athlete also argues that the analyses of her samples confirm that the level of testosterone in her body during the period of 2013 to 2015 has been within normal limits and any reference to the use of Parabolon or other prohibited substance is lacking.
  - The Athlete denies that she was training with the Coach during the period she allegedly used doping and provided witness statements of her previous coaches in this respect.
  - Furthermore, the Athlete argues that *"[u]pon gathering the mentioned evidence, the IAAF has significantly violated the provisions of Rule 32.2 (b), has acted against the principle of good faith and has significantly violated the fundamental and procedural rights of the Athlete. Therefore the submitted evidence is unreliable"*.
  - The Athlete is of the opinion that the present dispute has a principal meaning for the practice of CAS as it must give an assessment as to whether the use of "secret agents"

by sport unions with the aim of inducing a competitive athlete to admit the violation of some existing rule or actually violate some rule is in accordance with the principle of good faith, equality of parties, duty of care and the principle of liability in sport.

## V. JURISDICTION

49. The IAAF maintains that the jurisdiction of CAS derives from Rule 38.3 of the IAAF Rules (2016 edition). As a consequence of its suspension, the ARAF was not in a position to conduct the hearing process in the Athlete's case by way of delegated authority from the IAAF pursuant to Rule 38 of the IAAF Rules. In these circumstances, it is not necessary for the IAAF to impose any deadline on the ARAF for that purpose.
50. By means of her email dated 26 January 2016, the Athlete expressly consented to the application of Rule 38.3 of the IAAF Rules.
51. Rule 38.3 of the IAAF Rules determines as follows:

*"If a hearing is requested by an Athlete, it shall be convened without delay and the hearing completed within two months of the date of notification of the Athlete's request to the Member. Members shall keep the IAAF fully informed as to the status of all cases pending hearing and of all hearing dates as soon as they are fixed. The IAAF shall have the right to attend all hearings as an observer. However, the IAAF's attendance at a hearing, or any other involvement in a case, shall not affect its right to appeal the Member's decision to CAS pursuant to Rule 42. If the Member fails to complete a hearing within two months, or, if having completed a hearing, fails to render a decision within a reasonable time period thereafter, the IAAF may impose a deadline for such event. If in either case the deadline is not met, the IAAF may elect, if the Athlete is an International-Level Athlete, to have the case referred directly to a single arbitrator appointed by CAS. The case shall be handled in accordance with CAS rules (those applicable to the appeal arbitration procedure without reference to any time limit for appeal). The hearing shall proceed at the responsibility and expense of the Member and the decision of the single arbitrator shall be subject to appeal to CAS in accordance with Rule 42. A failure of a Member to hold a hearing for an Athlete within two months under this Rule may further result in the imposition of a sanction under Rule 45".*

52. The Sole Arbitrator notes that the Athlete is an International-Level Athlete and that the ARAF is indeed prevented from conducting a hearing in the Athlete's case within the deadline set by Rule 38.3 of the IAAF Rules. The Sole Arbitrator confirms that the IAAF was therefore permitted to refer the matter directly to a sole arbitrator appointed by CAS, subject to an appeal to CAS in accordance with Rule 42 of the IAAF Rules.
53. Further, CAS jurisdiction is confirmed by the signature of the Order of Procedure by all parties. It follows that CAS has jurisdiction to adjudicate and decide on the present matter.

## VI. APPLICABLE LAW

54. The IAAF maintains that the procedural aspects of these proceedings shall be subject to the 2016-2017 edition of the IAAF Rules and the substantive aspects of the asserted anti-doping

rule violations shall be governed by the 2014-2015 edition of the IAAF Rules. To the extent that the IAAF Rules do not deal with a relevant issue, Monegasque law shall apply (on a subsidiary basis).

55. The ARAF and the Athlete did not put forward any specific position in respect of the applicable law. The Sole Arbitrator however observes that the Athlete referred in her submissions to the 2014-2015, 2015 and 2016-2017 edition of the IAAF Rules.

56. Article R58 of the CAS Code provides as follows:

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

57. The Sole Arbitrator observes that it is not disputed that the proceedings are primarily governed by the IAAF Rules.

58. Pursuant to the legal principle of *tempus regit actum*, the Sole Arbitrator is satisfied that procedural matters are governed by the regulations in force at the time of the procedural act in question. Consequently, whereas the substantive issues are governed by the 2014-2015 edition of the IAAF Rules, procedural matters are governed by the 2016-2017 version of the IAAF Rules.

## VII. MERITS

### A. The Main Issues

59. The main issues to be resolved by the Sole Arbitrator are:

- i. Did Ms Stepanova act as some sort of a “secret agent” for WADA and/or the IAAF?
- ii. Are the recordings of Ms Stepanova’s conversations with the Athlete and the Coach admissible as evidence in the proceedings at hand?
- iii. Did the Athlete violate Rule 32.2(b) of the IAAF Rules?
- iv. If an anti-doping rule violation was committed, what sanction shall be imposed on the Athlete?

#### *i. Did Ms Stepanova act as some sort of a “secret agent” for WADA and/or the IAAF?*

60. The Sole Arbitrator observes that the IAAF bases its case solely on the witness testimony of Ms Stepanova, corroborated by recordings of conversations she had with the Coach and the Athlete.

61. The Athlete argues that the present dispute has a principle meaning for the practice of CAS, as it has to make an assessment as to whether the use of “secret agents” by sport organisations with the aim of inducing a competitive athlete to admit the violation of some existing rule is admissible.
62. Delicate as this issue may be, in the case at hand, it has not been established to the satisfaction of the Sole Arbitrator that Ms Stepanova was used as a “secret agent” by WADA and/or the IAAF.
63. The Sole Arbitrator considers Ms Stepanova’s testimony credible insofar as she maintained at the hearing that it was her personal initiative to record her conversations with the Athlete and that she never received any money from WADA or anyone else.
64. The Sole Arbitrator has not failed to notice that Ms Stepanova had met with Mr Jack Robertson, WADA’s Chief Investigative Officer at the occasion of a sporting competition in March or April 2013 in Istanbul, Turkey, several months before the recordings of the conversation with the Athlete were made on 23 November 2013. Ms Stepanova, however, testified that she started making recordings as from February 2013 already, *i.e.* before she met with Mr Robertson. The Sole Arbitrator is satisfied to note that there is no evidence on file on the basis of which it can be concluded that the recordings of the conversations between Ms Stepanova and the Athlete were prompted or in any way supported by WADA and/or the IAAF.
65. In the absence of such a link being established between Ms Stepanova and WADA and/or the IAAF, the Sole Arbitrator considers it considerably more likely that Ms Stepanova acted as a “whistle-blower” on her own initiative rather than as a “secret agent” on the initiative of WADA and/or the IAAF.
66. In addition, the Sole Arbitrator finds that the content of the recordings shows that Ms Stepanova did not provoke the Athlete or the Coach to make confessions. Although the Sole Arbitrator is not convinced that the Athlete started speaking about doping as contended by the IAAF (*i.e.* it rather seems to be the other way around), he concludes that, even assuming Ms Stepanova raised the subject matter of doping, the statements made by the Athlete during the conversations appear to be credible. The conversations seem to have taken place in an open environment without any provocations being made or any duress being exerted by Ms Stepanova. The Athlete has not submitted any facts to the contrary. The Sole Arbitrator finds that the statements made by the Athlete during the conversations with Ms Stepanova should therefore be regarded as such.
67. Consequently, the Sole Arbitrator finds that Ms Stepanova did not act as some sort of a “secret agent” for WADA and/or the IAAF.

**ii. Are the recordings of Ms Stepanova's conversations with the Athlete and the Coach admissible as evidence in the proceedings at hand?**

68. As indicated *supra*, the admittance of means of evidence is subject to procedural laws, *i.e.* the *lex arbitri*. Since the seat of the present arbitration is Switzerland, Switzerland's Private International Law Act (the "PILS") is applicable.

69. Article 184(1) PILS determines as follows:

*"The arbitral tribunal shall take evidence".*

70. This provision provides arbitral tribunals in international arbitration proceedings seated in Switzerland with ample latitude in the taking of evidence. They do not have to follow the rules of taking evidence in state courts in Switzerland. The power to determine the arbitral proceedings in the absence of an agreement between the parties thus allows the arbitral tribunal to freely determine the principles governing evidence to the extent that these are of a procedural nature and not governed by the applicable substantive law (VEIT M. D., Article 184 PILS, in: ARROYO M. (Ed.), *Arbitration in Switzerland – The Practitioner's Guide*, p. 127; with further reference to: POUURET/BESSON, *Comparative Law of International Arbitration*, 2nd ed., 2007, para. 644).

71. It is also contemplated in 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-Kobler/Rigozzi, *op. cit.*, no 478)" (TAS 2009/A/1879, para. 36 of abstract published on the CAS website).

Freely translated into English, without references:

*"[t]he power of the Panel to rule on the admissibility of evidence is also noted in the CAS Code (cf. Article 44.2). It follows from Article 184, paragraph 1 of PILS (as well as the CAS Code) that the Panel disposes of a certain discretion to determine the admissibility or inadmissibility of evidence".*

72. In general, 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).

73. In the matter at hand, the relevant sporting regulations are the IAAF Rules. Rule 33(3) of the IAAF Rules reads as follows:

*"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".*

74. The discretion granted to admit evidence under Rule 33(3) of the IAAF Rules is thus fairly wide as it determines that anti-doping rule violations may be established by "any reliable means". The

Sole Arbitrator has no doubt that, pursuant to Rule 33(3) of the IAAF Rules, recordings can in principle be regarded as a reliable means of evidence, which has also explicitly been confirmed by the Athlete in her written submissions.

75. The evidence against the Athlete in the matter at hand consists of Ms Stepanova's witness statement as well as the corroborating recordings and transcripts thereof.
76. Whereas Ms Stepanova's witness statement is undoubtedly admissible, particularly because witness statements are listed as a means of evidence in Rule 33(3) of the IAAF Rules, the Sole Arbitrator finds that the admissibility of the recordings and the transcripts thereof require a more detailed analysis as they have been made covertly.
77. Objectively, the Sole Arbitrator has no doubt that the recordings and transcripts fall under the category "any reliable means" provided for in Rule 33(3) of the IAAF Rules, as they adequately substantiate the IAAF's submissions regarding an anti-doping rule violation committed by the Athlete. It has to be examined, however, whether the recordings have been illegally obtained.
78. If a means of evidence is illegally obtained, it is only admissible, if the interest to find the truth prevails (Articles 152, 168 Swiss Code of Civil Procedure ("CCP"); HAFNER P., Commentary to the Swiss Code of Civil Procedure, 2<sup>nd</sup> 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 first, 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, 3<sup>rd</sup> ed., p. 461).
79. This view has been endorsed by the Swiss Federal Tribunal:

*"The principle that illicitly obtained evidence is inadmissible is generally recognized in Swiss legal writing, corresponds with the case law of the Federal Tribunal, and is found in both Art. 140 f. of the Swiss Code of Criminal Procedure (CCrP); SR 312.0) and in Art. 152(2) of the Swiss Code of Civil Procedure (CCP; SR 272). The principle is also recognized in other legal orders; it may only be derogated from exceptionally and in a very limited way, particularly in an adversarial system.*

*[...] The Appellant rightly refrains from arguing that illegally obtained evidence would be excluded in all cases according to the Swiss view; the interests at hand must instead be balanced; they are, on the one hand, the interest in finding the truth and, on the other hand, the interest in protecting the legal position infringed upon by the gathering of the evidence (see BGE 140 III 6 at 3.1, p. 8; 139 II 7 at 6.4.1, p. 25; 136 V 117 at 4.2.2, p. 125; 131 I 272 at 4.1.2, p. 279) [...]" (SFT 4A\_362/2013, 3.2.1-3.2.2).*

80. As to such balancing in the context of a doping case where blood bags were apparently illegally obtained, a CAS panel determined the following:

*"L'ordre juridique interne suisse n'établit pas de principe général selon lequel des preuves illicites seraient généralement inadmissibles dans une procédure devant les cours civiles étatiques. Au contraire, le Tribunal Fédéral, dans une jurisprudence constante, est d'avis que l'admissibilité ou la non-admissibilité d'une preuve illicite est le résultat d'une mise en balance de différents aspects et intérêts juridiques (IF, 18.12.1997,*

5C.187/1997 ; TF, 17.2.1999, 5P.308/1999 et TF, 17.12.2009, 8C\_239/2008). *Sont pertinents, par exemple, la nature de la violation, l'intérêt à la manifestation de la vérité, la difficulté de preuve pour la partie concernée, le comportement de la victime, les intérêts légitimes des parties et la possibilité d'acquérir les (mêmes) preuves de façon légitime* (FRANK/STRÄULI/MESSMER, *Kommentar zur zürcherischen Zivilprozessordnung*, 3ème éd.1997, vor § 133 ff no.6 ; VOGEL/SPÜHLER, *Grundriss des Zivilprozessrechts*, 9ème éd. 2008, 10. Kap. No. 101. *La doctrine suisse prédominante suit cette jurisprudence du Tribunal Fédéral* (SPÜHLER, ZZZ 2/2002, p. 148; STAEHELIN, *Der Beweis im schweizerischen Zivilprozessrecht*, in: *Der Beweis im Zivil- und Strafprozess der Bundesrepublik Deutschland, Österreichs und der Schweiz, Mittelbarer oder unmittelbarer Beweis im Strafprozess*, 1996; RÜEDI, *Materiellrechtswidrig beschaffte Beweismittel im Zivilprozess*, 2009, p. 35 ss). *L'approche adoptée par le Tribunal Fédéral et la doctrine dominante a, par ailleurs, été codifiée dans le nouveau CPC suisse (Article 152 alinéa 2), qui entrera en vigueur le 1<sup>er</sup> janvier 2011.*

[...]

*“Dans le cas d'espèce la Formation considère qu'une lutte efficace contre le dopage constitue en tout état de cause non seulement un intérêt privé de l'association mais aussi un intérêt public. Cela est également mis en évidence par des Conventions, dont la Suisse est état contractant (Convention contre le dopage du Conseil de l'Europe no. 135, Convention internationale contre le dopage dans le sport de l'UNESCO). L'intérêt de lutter contre le dopage est – selon l'opinion unanime de la Formation – dans le cas d'espèce prépondérant à ne pas voir les analyses effectuées dans le cadre d'une enquête pénale transmise à une autorité sportive compétente”* (TAS 2009/A/1879, para. 69-74 of abstract published on the CAS website).

Freely translated into English, without references:

*“The Swiss national legal order does not establish any general principle according to which illicit evidence is to be considered generally inadmissible in procedures before state civil courts. On the contrary, the Swiss Federal Tribunal, as set out in its constant jurisprudence, is of the opinion that a decision regarding the admissibility of illicit evidence must be the result of a balancing of various judicial interests. Matters considered pertinent, for example, are the nature of the violation, the interest in discerning the truth, the difficulty of adducing evidence for the concerned party, the conduct of the victim, the legitimate interests of the parties, and the possibility of acquiring the (same) evidence in a legitimate manner. The predominant Swiss doctrine follows this jurisprudence of the Federal Tribunal. This approach adopted by the Swiss Federal Tribunal and the dominant doctrine, moreover, have been codified in the new Swiss Civil Code (Article 152, paragraph 2), which will enter into effect on January 1, 2011.*

[...]

*“[T]he Panel finds that the successful battle against doping constitutes not only a private interest of the association in question but also a public interest. This is also highlighted by the Conventions of which Switzerland is a contracting state. The interest underlying the fight against doping is – according to the unanimous opinion of the Panel – in the present case preponderant over the Athlete's interest in not having the analyses carried out in the context of a criminal investigation transmitted to the competent sport disciplinary authority”.*

81. Finally, the Sole Arbitrator notes that, according to the Swiss Federal Tribunal, not only the interest of a complainant in abstaining from obtaining evidence in an illegal manner is relevant in this balancing, but also the interest of not having this evidence used against him:

*“Insgesamt überwiegt nach der dargelegten Interessenabwägung das private Interesse des Beschwerdeführers, dass der fragliche Beweis unverwertet bleibt, das öffentliche Interesse an der Wahrheitsfindung. Ein Abstellen auf die rechtswidrig erlangten Filmaufnahmen hält deshalb vor dem Fairnessgebot nicht stand. Dies führt zu einem Beweisverwertungsverbot”* (SFT 137 I 218, para. 2.3.5.5).

Freely translated into English

*“Overall, after a balancing of the interests at stake, the private interests of the complainants that the evidence in question remains unutilized prevails over the public interest in discerning the truth. Fairness demands that the unlawfully obtained film recordings are excluded. This leads to a prohibition to rely on the evidence”.*

82. The balancing test applied by the Swiss Federal Tribunal is confirmed by the European Court of Human Rights in *K.S. and M.S. v. Germany*, no. 33696/11, ECHR 2016-V, 6 October 2016.
83. Acknowledging the above general legal framework, the Sole Arbitrator, in the case at hand, proceeds with balancing the interest in finding the truth on the one hand and, on the other hand, the interest of the Athlete in refraining from relying on the recordings.
84. The Sole Arbitrator starts his analysis from the Athlete’s contention that the recordings are illegally obtained evidence and have been gathered in violation of the fundamental and procedural rights of the Athlete as well as the principle of good faith. The Sole Arbitrator notes that the Athlete bases her argument not on any violation of her privacy rights.
85. Furthermore, the Sole Arbitrator considers it important to note that the Athlete herself relies on the content of the recordings in arguing that the conversations were misinterpreted by the IAAF and that the conversations were not related to doping. The Sole Arbitrator finds that the Athlete relies on the recordings and the transcripts to exculpate herself.
86. The Athlete also does not argue that the evidence has been illegally obtained under Russian law but reasoned that Ms Stepanova committed an anti-doping rule violation herself, by ignoring Rule 32.2(h) of the IAAF Rules and point 2.8 of the 2015 WADA Code (encouraging, aiding, abetting of an anti-doping rule violation). Even if Ms Stepanova would have committed a violation of those rules, the Sole Arbitrator considers such violation not relevant in analysing whether the evidence submitted by the IAAF has been obtained illegally.
87. As concluded supra, 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.
88. The actions of Ms Stepanova triggered widespread investigations into the systematic use of doping by Russian athletes. Ms Stepanova’s recordings were used by Mr Hajo Seppelt in a documentary that was broadcasted on German television channel ARD on 3 December 2014, which subsequently triggered large scale investigations into the systematic use of doping in



Russian athletics by the WADA IC, leading to the conclusion that “[t]he investigation has confirmed the existence of widespread cheating through the use of doping substances and methods to ensure, or enhance the likelihood of, victory for athletes and teams”. Following the backdrop of this conclusion, ARAF’s membership of the IAAF was suspended.

89. Therefore, with hindsight, it may be concluded that the interest in discerning the truth concerning systematic doping abuse in Russia was of utmost importance to keep the sport clean and to maintain a level playing field among athletes competing against each other. The Sole Arbitrator deems it unlikely that Ms Stepanova could have acquired the (same) evidence in a legitimate manner.
90. As noted by the Panel in TAS 2009/A/1879, the fight against doping is not only of a private interest, but indeed also of a public interest.
91. It is notorious that doping in Russia is widespread and has been systematically supported by coaches, clubs and government-affiliated organisations. In such a special situation, the interest in finding the truth must prevail and the Athlete should not be allowed to invoke the principle of good faith as a defence against gathering illegally obtained evidence.
92. Finally, the Sole Arbitrator finds that nothing on file indicates that Ms Stepanova may have violated Rule 32.2(h) of the IAAF Rules (encouraging, aiding, abetting of an anti-doping rule violation). First of all, Ms Stepanova indicated that she was provided with prohibited substances by the Coach, however, it cannot be inferred from the recordings that she encouraged, aided or abetted the Athlete to take prohibited substances. Second, whether a disciplinary action is to be taken against Ms Stepanova is a matter outside the scope of the present litigation. Third, in the context of this litigation and in respect of the credibility of Ms Stepanova’s testimony, the Sole Arbitrator has no doubt that Ms Stepanova acted with the idea to clean the sport of athletics in Russia and not in order to encourage other athletes to start using doping. The Athlete and Mr Farnosov testified that Ms Stepanova approached them the night before the recordings in order to find some information in English on prohibited substances. This piece of evidence is not sufficient to establish that Ms Stepanova has violated Rule 32.2(h) of the IAAF Rules.
93. Considering all the elements above, the Sole Arbitrator finds that the interest in discerning the truth must prevail over the interest of the Athlete that the covert recordings are not used against her in the present proceedings. The Sole Arbitrator is not prepared to accept that the principle of good faith has been violated in the proceedings at hand.
94. Consequently, the Sole Arbitrator finds that the recordings of Ms Stepanova’s conversations with the Athlete and the Coach are admissible as evidence in the proceedings at hand.

***iii. Did the Athlete violate Rule 32.2(b) of the IAAF Rules?***

95. The Athlete has been charged with violating Rule 32.2(b) of the IAAF Rules:

*“Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method*

- (i) *it is each Athlete's personal duty to ensure that no Prohibited Substance enters his body. Accordingly, it is not necessary that intent, fault, negligence or knowing Use on the Athlete's part be demonstrated in order to establish an anti-doping rule violation for Use of a Prohibited Substance or a Prohibited Method.*
- (ii) *the success or failure of the Use or Attempted Use of a Prohibited Substance or Prohibited Method is not material. It is sufficient that the Prohibited Substance or Prohibited Method was Used, or Attempted to be Used, for an anti-doping rule violation to be committed".*

96. Rule 33.1 of the IAAF Rules determines the following:

*"The IAAF, the Member or other prosecuting authority shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether the IAAF, the Member or other prosecuting authority has established an anti-doping rule violation to the comfortable satisfaction of the relevant hearing panel, bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt".*

97. The IAAF principally relies on three parts of the recordings of the conversations between Ms Stepanova and the Athlete. The Athlete advances different defences in respect of all three parts of the recordings. The Sole Arbitrator will therefore deal with these three parts separately below.

98. The Athlete also maintains that the recordings made by Ms Stepanova are in general unreliable and have been distorted. Further, the Athlete relies on private doping tests allegedly confirming that she did not use any prohibited substances.

99. Finally, upon the request of the Athlete, the IAAF submitted the Athlete's steroid profile, which was subsequently analysed by different experts.

a) *General reliability of the recordings made by Ms Stepanova*

100. The Athlete maintains that an audio recording can be a reliable means of evidence in case it has been presented in an undistorted form, if the circumstances presented can be controlled by other evidence and if the content of the evidence is unambiguous. She submits that the quality of the recordings taken by Ms Stepanova is to be considered unreliable. The Athlete argues that she is convinced that Ms Stepanova knowingly adapted the content of the recordings. According to the Athlete, many parts of the recordings are inaudible, and it cannot be heard what is said, and that after each inaudible section the subject of the conversation totally changed.

101. The Athlete further maintains that the activities of Ms Stepanova were targeted solely against the Coach and his trainees. In a situation where besides the recordings any other evidence is lacking to prove the use of prohibited substances, the Sole Arbitrator should consider whether such evidence is reflecting objective information or only the subjective opinion of Ms Stepanova based on her wishful thinking. The Athlete is forced to protect her name and reputation only due to the fact that a competitor is suspecting her of the use of prohibited substances.

102. The Sole Arbitrator finds that the recordings are of a reasonably good quality and allow to draw conclusions therefrom. Although certain parts are inaudible, such inaudible parts are only short.

The Sole Arbitrator considers it very unlikely that these short inaudible sections would entirely change the context in which the audible parts must be understood. The specific arguments of the Athlete in respect of inaudible parts will be examined in more detail below, but the Sole Arbitrator concludes that the recordings have not been distorted in any way.

103. As will be examined in more detail below, the Sole Arbitrator considers the admissions made by the Athlete according to the recordings to be so abundantly clear that no further corroborating evidence is needed beyond Ms Stepanova's testimony, the recordings and the transcripts of the recordings. The IAAF Rules do not set forth that a conviction must be based on multiple pieces of evidence and, in any event, the evidence against the Athlete does not consist only of Ms Stepanova's subjective opinion, but also of the recordings of the conversation between Ms Stepanova and the Athlete, which is objective evidence.

104. At this stage, reference may be made to an article by Ms Estelle De La Rochefoucauld:

*"In two longstanding doping-related cases, CAS Panels have admitted that the uncontroverted testimony of a wholly credible witness can be sufficient to establish a doping offence absent any adverse analytical finding. The arbitrators also held the existence of a right and power to draw an adverse inference from the athlete's refusal to testify. However, in the circumstances, the witness' testimonies established the admission by the athlete of the use of a prohibited substance and were sufficient to establish the commission of a doping offence. The evidence alone was therefore sufficient to convict"* (DE LA ROCHEFOUCAULD E., 'The Taking of Evidence Before the CAS, CAS Bulletin 2015/1, with further reference to CAS 2004/O/645, para. 45 ff. and CAS 2004/O/649, para. 46 ff.).

105. Finally, the submission of the Athlete that the translation of the transcripts into English is partially not correct does not impede the reliability of the recordings. Specific arguments of the Athlete in respect of the translation will be discussed in more detail below.

106. Consequently, the Sole Arbitrator finds that the recordings are in general reliable evidence.

*b) Relevance of the Athlete's steroid profile produced by the IAAF upon the request of the Athlete*

107. In her Answer, the Athlete requested her steroid passport to be produced by the IAAF, which was subsequently done by the IAAF.

108. Although no specific expert reports were filed by either the Athlete or the IAAF, the Athlete's steroid passport was discussed by Prof. Ayotte and Dr. de Boer during the hearing by way of an expert conferencing.

109. The Sole Arbitrator noted that during the hearing both the IAAF and the Athlete explicitly confirmed that they did not want to rely on the Athlete's steroid passport as it could neither prove the use of prohibited substances, nor that the Athlete did not use prohibited substances. The Sole Arbitrator will therefore not examine the steroid passport in more detail.

c) *Relevance of the private doping tests of the Athlete*

110. The Athlete maintains that the analysis by Dr. Koks and Dr. de Boer of her testosterone levels shows that the level of testosterone in her body has been within normal limits in the period 2013-2016. More specifically, Dr. de Boer concludes that the overall profile might indicate a trend going down but it would require additional data and analysis to conclude that this is caused by non-natural causes.
111. At the hearing, Prof. Ayotte confirmed that it would not be legitimate to rely on private tests as opposed to the results of official tests subject to the result management process of anti-doping authorities. In her view, the main reason for this conclusion was that the private tests were not taken under a controlled environment and did not have certainty as to the timing and the accuracy of the results.
112. Prof. Ayotte further maintained that even if the tests were permitted as evidence, the tests still do not prove that the Athlete did not take any prohibited substances during the relevant period, as no tests were taken in the period from the end of April to the end of July 2014, *i.e.* the period when the Athlete allegedly used prohibited substances.
113. Dr. de Boer testified that he made his conclusions on the basis of the evidence available to him, *i.e.* only on the basis of the private tests. Dr. de Boer said that private tests were generally subjected to ISO norms, and that he believed that the results should be accepted. Dr. de Boer finally confirmed the IAAF's findings that the results of the private tests did not indicate doping, but that the possibility could not be excluded.
114. The Sole Arbitrator concludes that the private tests are not relevant to the case at hand, because no private tests were taken in the relevant period between the end of April and the end of May 2014 (*i.e.* since the Russian championship started on 23 July 2014 and because the Athlete allegedly stopped using doping 90 days before, she must have stopped using doping around 23 April 2014, following which moment the prohibited substances would have been detectable for around 30 days). As such, it can be left undecided whether and to what degree the results of private tests would be admissible as evidence or not.
115. Consequently, the Sole Arbitrator concludes that the private tests as well as the expert reports based on the private tests do neither prove the use of doping by the Athlete nor exclude the possibility of the use of prohibited substances.

d) *First part of recordings*

116. Between minute 1:50 and 3:17 of the recordings, the following conversation took place between Ms Stepanova and the Athlete:

Stepanova: *“Well ... He just gave me ox. and calculated that it's detectable for 40 days”.*

Athlete: *“No. No ... Ob-ob-ob! Well, in short I’ll ask Andrei how long it shows up for. And tell you. Tomorrow there or .... Well, we’ll see. I’ll just tell you the number. And that’ll be that”.*

Stepanova: *“[inaudible]”.*

[11 seconds of silence]

Stepanova: *“And what other drugs did you say?”*

Athlete: *“Parabolan and [inaudible]”.*

Stepanova: *“And they?”*

Athlete: *“When everyone got themselves ready for summer”.*

Stepanova: *“Ab”.*

Athlete: *“No-one in the group knew how many days they needed in actual fact. They suggested 30 days”.*

Stepanova: *“And was it okay?”*

Athlete: *“Well, Tanya Veshkurova, she’s okay. It’s just that .... I had already run at the Russian championship when I was on 90 days. In other words I didn’t have anything to worry about myself there, i.e. our team took them there .... And in July, it would appear, they took more .... They approximately [inaudible] he calculated 28 days for them”.*

Stepanova: *“Ab”.*

117. The IAAF maintains that this conversation is about the use of prohibited substances and that Ms Stepanova and the Athlete are talking about washout periods. The Athlete mentioned that she had nothing to worry about because she already had a washout period of 90 days, which was considered to be more than enough in order to be clean at the start of the Russian championship.
118. The Athlete submits that during the 11 seconds of silence, which has not been saved for unknown reasons, Ms Stepanova allegedly complained about how difficult it had been lately to train in the mountains and inquired how other athletes had been able to bear such load. Because the recordings are partially inaudible, it must be clarified that the Athlete confirmed that she was not aware of any other substance besides Parabolan. The reference to preparation for summer was made in respect of the training camp in Kyrgyzstan in March 2014. The reference to *“they took more”*, is misinterpreted from Russian to English and would allegedly mean *“train harder”* rather than *“take more”*. Finally, the reference to the number of days is explained by the Athlete by the fact that because the training course in the mountains lasted for 30 days. The Athlete finished the training at high altitude 90 days prior to the Russian championship. The Athlete submits that if the speculation of the IAAF that she had ended the use of prohibited

substances 90 days prior to the start of the Russian championship on 23 July 2014 were true, she could not have participated in the team competitions on 23-30 May 2014 in Sochi and on 12 June 2014 in Chelyabinsk because of the risk of getting caught.

119. The IAAF submits that there was no conversation between Ms Stepanova and the Athlete during the 11 seconds before minute 2:29 of the recordings.
120. The Sole Arbitrator notes that indeed no conversation takes place during the 11 seconds before minute 2:29 of the recordings, but that this silence has been saved. The recordings were made during a warming-up of the athletes what can clearly be heard from the noise of their footsteps and heavy breathing. The Sole Arbitrator notes that the running and heavy breathing continues during the 11 seconds of silence. Consequently, it does not appear that the recordings during the 11 seconds are distorted.
121. The Athlete's explanation that the conversation between minute 2:29 and 3:17 must be understood in the light of a discussion that took place in the 11 seconds before is therefore not accepted.
122. Furthermore, the Sole Arbitrator finds that the Athlete's explanation in respect of finishing altitude training 90 days prior to the Russian championship does not make sense, as altitude training shortly before an event does not hamper performances, so there would be nothing to worry about if this period would have been considerably shorter, whereas if she would have been talking about a washout period, she might have to worry about being detected if the period was considerably shorter than 90 days.
123. As to the Athlete's argument that the IAAF's theory about the 90 days before the Russian championship does not make sense, the Sole Arbitrator observes that the Russian championship undisputedly started on 23 July 2014. According to the IAAF, the Athlete stopped using prohibited substances at around 23 April 2014 (*i.e.* 90 days before 23 July 2014). The Sole Arbitrator observes that the event in Sochi started on 23 May 2014, *i.e.* 30 days after the Athlete allegedly stopped using doping and that the Athlete stated the following in her conversation with Ms Stepanova: "*They approximately [inaudible] he calculated 28 days for them*". In view of these circumstances, the Sole Arbitrator finds that the fact that the Athlete participated in a competition starting on 23 May 2014 does not exculpate her, since according to her own contentions the prohibited substances would have been fully excreted from her body 28 days after the last administration, whereas the competition in Sochi started after 30 days. It must be added that both Prof. Ayotte and Dr. de Boer confirmed that the detection time would be around 30 days. As such, this contention of the Athlete in fact corroborates the suspicion that she doped in preparing for the Sochi competition.
124. The inaudible parts only constitute a very minor part of the recordings. The Sole Arbitrator is convinced that the missing parts would not have changed the context and the essence of the conversation to such an extent that it would have led him to a different conclusion. Likewise, the Sole Arbitrator is also not convinced by the arguments of the Athlete that certain parts of the conversations were not correctly translated and that this caused the impression that the

conversation was about doping. The Sole Arbitrator finds that the conversation clearly was about doping.

125. In the view of the Sole Arbitrator, the fact that the drugs Parabolan and Ox(androlone) were discussed in combination with remarks about periods must be understood as if they were talking about washout periods. This clearly derives from Ms Stepanova's remark in the beginning of this part of the conversation that Ox(androlone) is "*detectable for 40 days*".
126. This finding is further confirmed by Ms Stepanova's convincing testimony: she confirmed that the discussion was clearly about Parabolan and the time period it takes to get the substance out of the body.
127. It is indeed a well-known fact that prohibited substances such as Parabolan are excreted from the human body after a certain period. After this period they can in principle no longer be detected. Since anti-doping controls frequently take place on the eve of important sport events, an athlete using doping would have to make sure that no prohibited substances can be found in his or her body during and shortly before an event.
128. Although the Sole Arbitrator finds that the majority of the conversation related to prohibited substances and washout periods in general does not constitute an admission of the Athlete, the Athlete's specific statement that "*I had already run at the Russian championship when I was on 90 days*" is to be considered a clear admission by the Athlete that she had used a prohibited substance.

e) *Second part of recordings*

129. Between minute 3:41 and 5:04 of the recordings, the following conversation took place between Ms Stepanova and the Athlete:

Stepanova: "*You gave me a right fright. I haven't even raced ... and then I ...*".

Athlete: "*No, wait ...*".

Stepanova: "*After the last test .... Allee oop! They ban you for life!*"

Athlete: "*Are you sure that it was ox?*"

Stepanova: "*Well yeah, he showed me the box*".

Athlete: "*Which one? What company? 'British dragons'? Oy .... 'British Drugs' or ...*".

Stepanova: "*I don't know. A white square box. Of about this sort of size*".

Athlete: "*What colour are they?*"

Stepanova: "*The tablets? Light, light pink*".

Athlete: "*Square, round?*"

Stepanova: "*Square. [inaudible] But that's just the job ...*".

Athlete: "*What number is there on there?*"

Stepanova: *“One. Zero”.*  
Athlete: *“He gives 10, yes?”*  
Athlete: *“And what do they taste like?”*  
Stepanova: *“What do you mean, how do they taste? Not very nice”.*  
Athlete: *“No. Do they burn or not?”*  
Stepanova: *“No, just kind of .... Bitter”.*  
Athlete: *“Bitter? But they don’t burn on the tongue?”*  
Stepanova: *“Well not really. Today is my [inaudible] first day on the tablets. [inaudible]”.*  
Athlete: *“What are you saying, no!”*

130. The IAAF submits that the Athlete showed no surprise when Ms Stepanova stated that the Coach had provided her with Oxandrolone but that she asked a number of very specific questions with respect to the specific brand, taste, shape and colour.
131. The Athlete maintains the following: She warned Ms Stepanova for getting easily caught once again. The Athlete had only limited knowledge of prohibited substances and the knowledge that she had was the consequence of a previous meeting between the Athlete and Ms Stepanova. As corroborated by the witness statement of Mr Andrei Farnosov, the Athlete’s former partner and athlete himself, Ms Stepanova came to their room on the eve before the recordings were made. During that meeting, Ms Stepanova allegedly complained about difficulties in keeping up with the other members of the team and that it was difficult for her to be at the training camp with her child. Ms Stepanova noticed the dietary supplement called “Anabol 5” on the table, which is a common supplement in Russia. Ms Stepanova then asked the Athlete and Mr Farnosov to help her search for information about prohibited substances on the internet as her English was not so good and because she did not trust the information available in Russian. The Athlete proceeded to help Ms Stepanova. It was also for this reason that the Athlete was not surprised that Ms Stepanova raised the topic of doping again when the recordings were made.
132. The Sole Arbitrator finds that this part of the conversation is suspicious in so far as the Athlete showed considerable interest in Ox(andro)lone). He notes that she also showed knowledge about prohibited substances, as it was clarified by Ms Stepanova during the hearing that “British Dragons” is a brand of Oxandrolone.
133. Nevertheless, the Sole Arbitrator does not go as far as to accept that the Athlete admitted in this part of the conversation to using prohibited substances.
134. In view of this conclusion, the Sole Arbitrator does not deem it necessary to examine whether Ms Stepanova indeed came to the room of the Athlete and Mr Farnosov on the eve before the recordings were made.



f) *Third part of recordings*

135. Between minute 9:13 and 9:56 of the recordings, the following conversation took place between Ms Stepanova and the Athlete:

Athlete: *“You see, and then you even compare yourself with how you were before .... For example anabol is now giving me stiff muscles, but I can run with it”.*

Stepanova: *“Does it do the job?”*

Athlete: *“Ah?”*

Stepanova: *“Does it do the job?”*

Athlete: *“It’s just that some people can’t run, but I can run on anabol. It’s difficult but I can”.*

Stepanova: *“Oh, I can’t. If I get stiff muscles, that’s it. I just want to walk on the track”.*

Athlete: *“You know, it also varies. You see they are also varied. And your condition from anabol also varies”.*

Stepanova: *“When the stiff muscles go, then it’s easy to run. When the stiff muscles are over, before a race then it works fine. But if I have stiff muscles during a race I am simply dying on my feet”.*

136. The IAAF argues that the Athlete clearly admitted to having used anabolic steroids, Oxandrolone more specifically. It is true that anabolic steroids can give stiff muscles. In any event, the IAAF considers it to be extraordinary that athletes would use certain dietary supplements if it would give them stiff muscles.
137. The Athlete argues that the stiff muscles came from the use of the dietary supplement “Anabol 5”. The Athlete and Mr Farnosov testified that they used this product and that it had been clearly visible on a table in their room, when Ms Stepanova met them on the eve before the recordings were made.
138. As determined *supra*, the Sole Arbitrator does not deem it necessary to examine whether Ms Stepanova indeed visited the Athlete and Mr Farnosov in their room on the eve before the recordings were made.
139. The Sole Arbitrator does not consider it credible that Ms Stepanova and the Athlete discussed the dietary supplement “Anabol 5” (which indeed exists) during their warm up lap.
140. First of all, even if the Athlete’s explanation that Ms Stepanova visited her and Mr Farnosov in their room the night before the recordings were made and asked them to find some information about prohibited substances, it is not plausible that they would discuss only the dietary supplement “Anabol 5” on the day after and not the information allegedly found on the internet in respect of prohibited substances.
141. Second, the Sole Arbitrator finds the explanations of the Athlete extraordinary because it appears unlikely that a professional athlete would insist on using dietary supplements if it would

give her stiff muscles, whereas it is a known feature that anabolic steroids can cause stiffness in the muscles.

142. The Athlete's explanations in respect of her statements are therefore dismissed.
143. The Sole Arbitrator finds the Athlete's statement that *"It's just that some people can't run, but I can run on anabol. It's difficult but I can"* is a clear and unequivocal admission of the Athlete of having used prohibited substances.

*g) Conclusion*

144. In view of the above findings that the Athlete in her conversation of 12 November 2014 with Ms Stepanova admitted the use of prohibited substances, the Sole Arbitrator is comfortably satisfied pursuant to Rule 33.1 of the IAAF Rules that the Athlete used prohibited substances and thereby violated Rule 32.2(b) of the IAAF Rules.

***iv. If an anti-doping rule violation was committed, what sanction shall be imposed on the Athlete?***

145. Rule 40.2 of the IAAF Rules determines as follows:

*"The period of Ineligibility imposed for a violation of Rules 32.2(a) (Presence of a Prohibited Substance or its Metabolites or Markers), 32.2(b) (Use or Attempted Use of a Prohibited Substance or Prohibited Method) or 32.2(f) (Possession of Prohibited Substances and Prohibited Methods), unless the conditions for eliminating or reducing the period of Ineligibility as provided in Rules 40.4 and 40.5, or the conditions for increasing the period of Ineligibility as provided for in Rule 40.6 are met, shall be as follows:*

*First Violation: Two (2) years' Ineligibility"*

146. The Sole Arbitrator finds that Rule 40.4 of the IAAF Rules dealing with specified substances is not applicable in the matter at hand and no circumstances could be demonstrated by the Athlete as to the application of Rule 40.5 of the IAAF Rules (Elimination or Reduction of Period of Ineligibility Based on Exceptional Circumstances). The Athlete in fact disputed to have committed an anti-doping rule violation, but did not put forward any arguments that could lead to the reduction of the otherwise applicable standard sanction of a two year period of ineligibility in case an anti-doping rule violation would be established.
147. The remaining question to be examined by the Sole Arbitrator is therefore whether there are aggravating circumstances that should lead to an increase of the standard sanction, up to a maximum of a four year period of ineligibility.
148. The IAAF maintains that if aggravating circumstances are considered to be present, a period of ineligibility of up to four years may be imposed, unless the Athlete can demonstrate to the comfortable satisfaction of the Sole Arbitrator that she did not knowingly commit the anti-doping rule violation.

149. The IAAF argues that the Athlete very much appears to be saying that she is generally able to run whilst on anabolic steroids, not that she did so on a single occasion. Even assuming that the Athlete had only run once whilst on steroids, this cannot have been the same occasion as the Russian championship, where she allowed for 90 days for the steroid to clear from her system beforehand. The Athlete showed an intimate knowledge of Oxandrolone pills. The Athlete is coached by the Coach, that has been shown to provide prohibited substances to his athletes. The Athlete shows no surprise when finding out that the Coach gave Ms Stepanova Oxandrolone pills. The Athlete also casually refers to groups of athletes that were preparing with Parabolan in the summer but were leaving 30 days for the substance to wash-out before competition.
150. The IAAF maintains that, in view of these circumstances, it is open to the Sole Arbitrator to impose a period of ineligibility of between two to four years.
151. The Athlete argues that the mutual relations between the Coach and Ms Stepanova are irrelevant in this case. The Athlete requests the Sole Arbitrator not to consider the explanations of Ms Stepanova regarding her meeting with the Coach as well as the recordings of their meeting. The Athlete maintains that the Coach was not training her at the time when she allegedly used doping. This is corroborated by a witness statement of Mr Rif Tababilov, who confirmed his statement during the hearing. The conclusion of the IAAF that the Coach both trained Ms Stepanova as well as the Athlete and that the Athlete therefore definitely used doping, is incorrect.
152. Rule 40.6 of the IAAF Rules determines as follows:

*“If it is established in an individual case involving an anti-doping rule violation other than violations under Rule 32.2(g) (Trafficking or Attempted Trafficking) and Rule 32.2(h) (Administration or Attempted Administration) that aggravating circumstances are present which justify the imposition of a period of Ineligibility greater than the standard sanction, then the period of Ineligibility otherwise applicable shall be increased up to a maximum of four (4) years unless the Athlete or other Person can prove to the comfortable satisfaction of the hearing panel that he did not knowingly commit the anti-doping rule violation.*

- (a) *Examples of aggravating circumstances which may justify the imposition of a period of Ineligibility greater than the standard sanction are: the Athlete or other Person committed the anti-doping rule violation as part of a doping plan or scheme, either individually or involving a conspiracy or common enterprise to commit anti-doping rule violations; the Athlete or other Person used or possessed multiple Prohibited Substances or Prohibited Methods or used or possessed a Prohibited Substance or Prohibited Method on multiple occasions; a normal individual would be likely to enjoy performance-enhancing effects of the anti-doping rule violation(s) beyond the otherwise applicable period of Ineligibility; the Athlete or other Person engaged in deceptive or obstructing conduct to avoid the detection or adjudication of an anti-doping rule violation. For the avoidance of doubt, the examples of aggravating circumstances referred to above are not exclusive and other aggravating factors may also justify the imposition of a longer period of Ineligibility.*
- (b) *An Athlete or other Person can avoid the application of this Rule by admitting the anti-doping rule violation as asserted promptly after being confronted with the anti-doping rule violation (which means*

*no later than the date of the deadline given to provide a written explanation in accordance with Rule 37.4(c) and, in all events, before the Athlete competes again”.*

153. The Sole Arbitrator accepts the Athlete’s explanation that she was not coached by the Coach at the time she used doping. This contention also remained undisputed by the IAAF. As a consequence, the IAAF’s argument that the Athlete showed no surprise after Mr Stepanova told her that the Coach had provided her with prohibited substances, does not prove that the Athlete used multiple prohibited substances or used prohibited substances on multiple occasions.
154. The Sole Arbitrator further agrees with the IAAF that the Athlete confirmed having used anabolic steroids before and that she was not prevented from running because of stiff muscles, however, the Sole Arbitrator finds that this does not prove that she used anabolic steroids on multiple occasions.
155. As set out *supra*, although the Sole Arbitrator considers it suspicious that the Athlete was interested in Ox(androlone) and that she showed some knowledge about this prohibited substance, this is however not sufficient to determine that the Athlete had used prohibited substances on multiple occasions before.
156. Since the Sole Arbitrator is not satisfied that the Athlete used multiple prohibited substances or used prohibited substances on multiple occasions, the Sole Arbitrator finds that no aggravating circumstances are present.
157. As a consequence, the period of ineligibility to be imposed on the Athlete remains 2 years.
158. Finally, turning to the disqualification of the Athlete’s results, the Sole Arbitrator observes that Rule 40.8 of the IAAF Rules, determines as follows:

*“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 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”.*
159. The IAAF maintains that the evidence indicates that the Athlete was using prohibited substances in 2014. She clearly stated that she used Parabolan to prepare for the Russian championship which took place from 23 to 26 July 2014. She added that she stopped taking the above-mentioned prohibited substance 90 days prior to the event, *i.e.* on 23 April 2014.
160. The IAAF therefore seeks the disqualification of all the results of the Athlete for all the competitions in which she took part from 23 April 2014, together with the forfeiture of any prizes, medals, prize money and appearance money.
161. The Athlete did not make any submissions in this respect besides stating that her results during the period from 23 April 2014 until 24 August 2015 should not be disqualified.

162. As determined *supra*, the Sole Arbitrator is convinced that the Athlete doped at least as from 23 April 2014, *i.e.* 90 days prior to the Russian championship that started on 23 July 2014.
163. As a consequence, the Sole Arbitrator finds that a period of ineligibility of two years is to be imposed on the Athlete from 24 August 2015 and that all results of the Athlete since 23 April 2014 are to be disqualified through to the commencement of her provisional suspension effective since 24 August 2015, including the forfeiture of any titles, awards, medals, points and prize and appearance money.

## **B. Conclusion**

164. Based on the foregoing, and after taking into due consideration all the evidence produced and all arguments made, the Sole Arbitrator finds that:
- i. Ms Stepanova did not act as some sort of a “secret agent” for WADA and/or the IAAF.
  - ii. The illicit recordings of Ms Stepanova’s conversations with the Athlete and the Coach are admissible as evidence in the proceedings at hand.
  - iii. The Athlete violated Rule 32.2(b) of the IAAF Rules.
  - iv. A period of ineligibility of two years from 24 August 2015 is to be imposed on the Athlete and all results of the Athlete since 23 April 2014 are to be disqualified through to the commencement of her provisional suspension effective since 24 August 2015, including the forfeiture of any titles, awards, medals, points and prize and appearance money.

(...)

173. The present award may be appealed to CAS pursuant to Rule 42 of the IAAF Rules.

## ON THESE GROUNDS

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

1. The claim filed on 8 March 2016 by the International Association of Athletics Federations against the All-Russia Athletics Federation and Ms Anastasiya Bazdyreva is upheld.
  2. A period of ineligibility of two years is imposed on Ms Anastasiya Bazdyreva starting from 24 August 2015.
  3. All results of Ms Anastasiya Bazdyreva since 23 April 2014 are disqualified through to the commencement of her provisional suspension effective since 24 August 2015, including forfeiture of any titles, awards, medals, points and prize and appearance money.
- (...)
7. All other and further prayers or requests for relief are dismissed.