



**Arbitration CAS 2016/O/4702 International Association of International Federations (IAAF)
v. All Russia Athletic Federation (ARAF) & Maksim Dyldin, award of 6 January 2017**

Panel: Prof. Luigi Fumagalli (Italy), Sole Arbitrator

Athletics (sprint)

Doping (evading sample collection)

CAS jurisdiction under Rule 38.3 of the IAAF Competitions Rules

Burden and standard of proof regarding the doping violation

Determinations of the applicable sanction

Commencement of the period of ineligibility

1. Where a national federation is suspended by IAAF and the national anti-doping agency is suspended by WADA, no entity has jurisdiction in the relevant country to conduct a hearing in a doping case. Against this background, IAAF can take over the responsibility for coordinating the relevant disciplinary proceedings and to inform the athlete and its national federation that the case will be referred to the CAS for a hearing. In this regard, where the proceedings are based on a request for arbitration for the conduct of a first instance hearing and do not involve an appeal against a decision rendered by a sports-related body, they are considered as ordinary arbitration proceedings, within the meaning, and for the purposes, of the CAS Code. However, in accordance with Rule 38.3 of the IAAF Competitions Rules, these proceedings are handled in accordance with CAS rules applicable to the appeal arbitration procedure without reference to any time limit for appeal. Therefore, the conditions for the CAS jurisdiction under Rule 38.3 of the IAAF Competitions Rules are met.
2. IAAF has the burden to establish to the comfortable satisfaction of the relevant hearing panel that an athlete is responsible for the violation contemplated by Article 32.2(c) of the IAAF Competitions Rules (evading sample collection). The facts related to an anti-doping rule violation may be established by any reliable means. In this respect, the convincing statements of a doping control officer (DCO) and the uncontested declarations of an athlete present at the relevant time, can establish that the athlete deliberately tried to avoid the DCO to evade notification and testing without any “*compelling justification*” excusing his actions.
3. An athlete who evades sample collection (violating Article 32.2(c) of the IAAF Competitions Rules) is subject to a “standard” sanction of 4 years’ ineligibility, or a “reduced” sanction of 2 years’ ineligibility if the athlete can establish that the violation was not intentional (a) because he did not know that his behaviour constituted an anti-doping rule violation or (b) because (i) he did not know that there was a significant risk that the conduct in question might constitute or result in an anti-doping rule violation and (ii) did not manifestly disregard that risk. The fact for an athlete to run away when

verbally notified of the doping control, to give a false name to the DCO and to be an expert of doping related matters, having undergone several tests in his career, excludes the absence of intent.

4. According to the applicable rules, the starting moment of the period of ineligibility to be imposed on the athlete is the date of the award, with credit given for the period of provisional suspension served by the athlete provided the athlete did not breach the period of provisional suspension by participating in any sporting activity.

1. BACKGROUND

1.1 The Parties

1. The International Association of Athletics Federation (“IAAF” or the “Claimant”) 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 the running and enforcing of an anti-doping programme consistent with the World Anti-Doping Code (“WADC”).
2. The Russian Athletics Federation (ARAF) (the “Russian Federation” or the “First Respondent”) is a member, currently suspended, of the IAAF as the national athletics federation for Russia. On 2 November 2015, the Russian Federation changed its name from ARAF into RusAF.
3. Mr Maksim Dyldin (the “Athlete” or the “Second Respondent”; the Russian Federation and the Athlete are the “Respondents”) is a Russian athlete affiliated to the Russian Federation, born on 19 May 1987. The Athlete specializes in the 400m event and has been competing at international level since 2006.

1.2 The Dispute between the Parties

4. The circumstances stated below are a summary of the main relevant facts, as submitted by the parties in their written pleadings or in the evidence given in the course of the proceedings.¹ Additional facts may be set out, where relevant, in connection with the legal discussion which follows.
5. On 22 May 2015, Ms Elena Gorodilova-Shamsutdinova, a doping control officer (the “DCO” or “Ms Gorodilova”) employed by International Doping Tests and Management (“IDTM”) visited, together with her assistant, Mr Cyrille Gan, the Yunost Sports Complex in Adler

¹ Several of the documents submitted by the parties and referred to in this award contain various misspellings: they are so many that the Sole Arbitrator, while quoting them, could not underscore them all with a “*sic*” or otherwise.

(Russia) (the “Complex”) in order to test out-of-competition, among others, the Athlete, upon request of IAAF.

6. The Doping Control Form (the “DCF”) signed by the DCO and her assistant indicates that the Athlete was notified of the control at 8:34 am. In addition, the DCF reads, in the portion relating to the comments on the sample collection session, as follows:

“The athlete was verbally notified, but refused to sign the DCF. He went out of the building. I followed him. He said he is another person, not an athlete, someone on vacation walking on the street. He said he will call the police if I’ll follow him. He did not stop and finally run away by crossing the street and disappeared. He never came back. I was at center until 16h38”.

7. An additional report signed by the DCO described, with the support of several photos, the events of 22 May 2015 as follows:

“We arrived at the training camp “Yunost” on the 22.05.15 at 07h00.

We spoke with the receptionist, young woman Maria. She said that she has no right to provide us with the personal information about the athletes (room number). She must receive the permission from Mr Julikov (chef of the training camp). I asked her to contact him. She tried one time and said that he did not answer. I asked her to contact him again. She was embarrassed to contact him again. I explained that the athletes must be notified in a one hour slot, if not they may have sanctions and it is very important that she provide us with the information. I said, “ok, if you can not provide me the room numbers without the permission (she confirmed one more time that if she will do so, she will lose her job immediately), please have a look on a list and just tell me if all athletes are here, without the room numbers, just yes or no, they are here, all of them or someone is not here”. She agreed. I showed her the list. She have checked and said all of them are here, but she can not provide the room numbers. She contacted Mr Julikov again. He did not answer. I insisted she contact him again. She said that she will contact someone else. She contacted a woman, who advised to contact a doctor Igor Pavlovich. The doctor answered and she gave me the phone. I presented myself and said that I’m waiting since 30 minutes and can not obtain the athlete’s rooms numbers. He said that of course she must provide me with this information. I asked him to say this to the receptionist. Instead of this, he said that I must wait for him and he is coming. He arrived and asked whom I need to test. I asked to see the list of the athletes who are located at the hotel (training camp) to see myself who is here. He said that we have no right, because it is a private hotel, and they have no access to such information, only the receptionist has. Maria said that she can not provide this information. The doctor said that he does not know exactly who is here, the athletes are moving all the times. The doctor said we must wait for Julikov. I was obliged to show the list. The doctor said that only Ivashko and Lesnoy are at the hotel. Other athletes are not at the training camp, not in this hotel, not in Adler. He informed me that Ryzhova is in Portugal, Mamina and Zadorina are in Krasnodar, Dyldin and Hutte (Khiutte) were not at the training camp. Only two athletes are here. He said to Maria to tell us the room numbers: 338 – Ivashko and 330 Lesnoy. He said he must leave, and I must wait for Julikov. I did not wait for Mr Julikov, we went to notify Ivashko. We knocked at the door 338, a young man opened the door and said that Ivashko is in a bed.

We went in, we saw a butterfly needle on the floor, the young man picked it up very quickly. They removed them very quickly. We notified Ivashko. Before the mission I was looking for the athlete’s pictures on the web. The face of the athlete who opened the door looks familiar to me. I was using the internet on my phone to check the pictures of the athletes to be tested and discovered that the young man who opened the door is Hutte (Khiutte). Then I asked his name, and he said that he is Hutte (Khiutte). I notified him as well. At this moment Ivashko received a phone call from his coach Zukhra Vereschagina, who informed him that he will be tested. After Hutte

(Khiutte) received a phone call from the same coach. She informed him about something, he said that it is too late, they are in a room. She said something else; it was not possible to hear what she is speaking about. There were lots of medications and some syringe in the nightstand. I could not see what it was as medications. Hutte (Khiutte) was very nervous. Ivashko provided the sample and left for the breakfast. Hutte said that he is not ready, we finished the paperwork and was waiting. He drink two glasses of water, and was not ready to provide the sample. He asked to go for the breakfast because there are special opening hours and it is impossible to eat outside of these hours. We went all together at the restaurant. We sat at the table next to the entrance door.

He started to eat and sat on the next table with another athlete. While waiting, I tried to search for other athletes on the internet. The doctor said that the athletes were not here, the receptionist said they were here. We have located suddenly Hutte (doctor said he was not here). I looked on pictures and found that one of the athletes looks like Dyldin Maksim. I showed several pictures of this athlete to my assistant, he also found that it is the same person as on a picture.

This athlete came to Hutte (Khiutte) and spoke with him very quickly. As soon as he went to take some food, I came close to Hutte (Khiutte) and asked with whom he was speaking. He said with Dyldin Maksim. I went and verbally notify Dyldin at 08h34, while he was taking some food. He perfectly heard me, but went and sat down at the table and eat. He was on phone during eating. There were 3 other athletes sitting with him at the same table (2 male and one female). I was filling in the DCF, in order to ask Dyldin to sign. At this time Dyldin stood up and walked quickly to the exit. I was sitting just in front of the exit, I stood up as well, took the DCF, which was filled in (name, date, MO number, location, notification time) and went to meet him. He quickly walked past me and did not stop even I spoke to him. He left the restaurant. I followed him and repeated again that he has been selected to the out of competition urine test on behalf of IAAF. He did not stop and walked through a corridor. I asked him to stop and to sign the DCF. I presented myself again and repeated again why I'm following him, asked him to stop and to sign the DCF and provide the sample. He went out to the hall and moved toward the door to the street. At this moment he put on the sunglasses. He did not say anything to me and kept going outside. I followed him. He went outside and walked on the street. I showed him my DCO card and authorization letter from IAAF, he did not look. I started to tell him that if he behaves like this means that he refuses to comply with the antidoping rules and he might receive the sanctions from the federation. He refused to sign the DCF, he did not stop when I speak to him. I explained to him, that what is he doing now is a refusal, he is failing to submit to the sample collection and to provide the sample. This is the antidoping rules violation. I explained to him that if he does not comply with the antidoping rules or refuse to sign a DCF or provide the sample, he might have the sanctions from his federation. I asked him to stop and to speak. He replayed that he is not an athlete, he is someone else, his name is "Petya Vasichkin", and not Dyldin Maksim. He said that he is not an athlete at all, he is just on vacation, a person who swims in a sea, walking on a street, he said that he does not know me. I showed him my DCO card again and presented myself again. I explained that I notified him in a restaurant on behalf on the IAAF for the out of competition urine test. I said that he was verbally notified and now must sign the DCF and comply with the antidoping rules and regulations if not he might have sanctions. I asked him to stop, so I can explain him. He said that he is not Dyldin, that I can not prove that he is Dyldin, that he does not know me and that he will call the police because I follow him. I continued to repeat again and again that I'm a DCO, I have verbally notified him during the breakfast on behalf of the IAAF that he has been selected for the out of competition urine test, showed him my DCO card again, reminded him one more time that he must comply with the antidoping rules, explained that what he is doing now is a refusal, evading and failure to comply with the antidoping rules, failure to provide the sample and he might be suspended up to 4 years, he was smirked and continued to walk very fast. I was speaking with him and tried to take a picture of him.

He turned on the left, started to cross the street, went behind the track and after run away. I was unable to catch

him. I returned at the restaurant.

When later during this day I spoke with Julikov and the doctor they said that Dyldin is not here. When I said that I have notified him and he run away they were very surprised that I have located Dyldin. They were sure that I'll be not searching for him because they said he is not at the hotel (training camp). At the beginning they both said that Dyldin is not here, when I have started to speak about the refusal and the sanctions, Mr Julikov said that Dyldin informed him yesterday that he must leave to Volgograd for the competition, and he was sure that Dyldin left, because of this he told me that Dyldin is not at the training camp. I asked them to help me to find Dyldin and explained to him that he might have sanctions for the refusal. Mr Julikov said that he left to Volgograd, I asked to write this information on the DCF and signed. They refused to write and sign. They said that after the German film they received the instructions to do not speak, and do not sign anything. My assistant was with Lesnoy who was not ready to provide the sample. I tried to convinced Mr Julikov and the Doctor to find the athletes. They were on phone. Two men arrived. When I asked their names they refused to say, they said I do not need to know their names, but they must know my name and see my documents. I presented my DCO card, the letter of the authority. Somebody informed them that Dyldin did not signed the DCF, they looked very happy and said as he did not signed, there will be no any problems. They did not what to speak about Dyldin anymore. They said that he did not sign, so no problems, no sanctions, nothing. They said that IAAF has no right to test these athletes because they are not in a testing pool. I tried to explain that IAAF can test any athlete any time anywhere. They did not listen. They did not want to know anything. I asked them to explain to the athletes that they must come back, because they might have sanctions. They said that Dyldin will have no sanctions because he did not sign. I asked Jasmina to call me and passed the phone to one of the chiefs (coaches???) He did not want to speak; he said that Jasmina must call Ludmila. He provided her phone number, but he gave the wrong number. Mr Julikov corrected the number and provided me with the real one: ... Jasmina spoke with Ludmila, explained the situation. Ludmila contacted the chief, he went out to speak. Mr Julikov and the doctor tried to explain to me that the situation in Russia is very sensitive and they were informed to do not speak with the DCOs, the athletes have received the same instructions (because of the German film). I said ok, let's wait for your superior who is on phone, he might understand that the situation is very bad for both the athletes.

Mr Julikov and the doctor said that RUSADA always informed them in advance and they were prepared and wait for the DCO, nobody comes like we came, without no advance notice. We stirred up all the training camp, all the athletes, all coaches, all federation. The chief came back and all of them left to speak. I returned to Lesnoys room.

We finished the testing with Lesnoy. We went down at the reception.

I spoke with Mr Julikov and the Doctor again, but they did not want to speak about Dyldin saying "he did not sign, so no problems, everything is good". They did not want to hear about the possible sanctions. I tried to explain the situation with Dyldin and Hutte. They said that they are trying to find Hutte (Kbiutte) but are unable to find him. Nothing about Dyldin. I explained again that it would be better for them to come and provide the sample; even if there will be positive results. It is better than to have a refusal. I said that I'll wait for half an hour and after I'll leave. They said that Hutte did not answer on phone, even his friends have contacted him, he did not answer. Mr Julikov said that probably Hutte left with Dyldin to Volgograd. During all this, while we were waiting for Hutte, I went everywhere, where I had an access and tried to locate Hutte and Dyldin. I knocked several times at Hutte's room. Nobody opened. One time when I arrive, the cleaning person was there, I asked her is there someone in a room, she answered no, I had a look in a room (I did not see in a bathroom), there was nobody in a room. Another time we went with the doctor, the doctor knocked at the door, said he is alone and would like to speak, nobody opened the door.

At 12h05 Mr Julikov informed us that they found the athlete and that the athlete is coming and will arrive in

5 min.

We were waiting. At 12h38 Hutte arrived. He provided the diluted samples. We were at the training camp until 16h40 collecting the samples. When we finished, we went around having a look if Dyldin is here.

We did not see him anywhere and left. During the whole the day from 07h00 until 16h40 we were at the hotel (training camp). Dyldin did not show up after his evading”.

8. On 29 May 2015, the Athlete took part in the U23 Volgograd Regional Championship, where he won the 400m competition.
9. On 9 June 2015, the DCO provided a further declaration answering some questions in the following terms²:

“Who was in the mission Team? The DCFs suggest two DCOs – Gorodilova and Shamsutdinova – and there seems to have been at least one assistant. Please confirm the full names and responsibilities of each of the mission team members. There was only one Mission Team: one DCO and one assistant. Gorodilova and Shamsutdinova is the same person, it is me. I have dual nationality – Russian/French. I exist in France only on the name of Gorodilova and in Russia only on the name of Shamsutdinova. I know that it is very confusing for the European people. I have a French passport on the name Gorodilova Elena and Russian passport on the name Shamsutdinova. Gorodilova is my maiden name. Shamsutdinova is my ex husband name. In Russia in general we keep the ex husband name (because of children, diplomes and all official documents) So, during this mission there was only one DCO Gorodilova (Shamsutdinova) Elena and only one assistant Gan Cyrille. ...

Is the Yonost Sports Complex used exclusively for athletes or is it open to the public as well? Would the DCO describe it as a “private hotel”? Did the DCOs have to announce their arrival at a security point or were they able to proceed directly to the reception? There are several entrances at this complex (I used two of them). It is a gated complex. At one entrance there is a gate and a security point. The security officer is sitting in a small cabin, does not go out. This cabin is out side. His job is to open the metallic gate and let the people or car going in or outside. We spoke this him upon arrival, we just said we are the doping control team. The security officer asked us to go to the second (hotel) entrance and speak with the receptionist. At this, 2d entrance there is a reception and a security point as well. It is the hotel entrance. On one of the pictures I have sent after the mission, you can see the table in a hall. The security officer is sitting behind this table (of course I took a picture when he was not at this place: the security officer is moving, not sitting all the time at his place (not like at the 1st entrance, where the security officer does not move nowhere), this security officer walks in a hall, goes close to the elevators, close to the reception, close to the entrance and close to the exit to the stadium). The doctor described this hotel as a “private hotel”. I think he would like to say that it is not government or ministry of sport hotel. He would like to say that they have no power on the receptionists. At the day when we arrived there was like a conference of the bailiffs. It looks like some of their people were located in the hotel during the night but I’m not sure. I saw a well-dressed men in white shirts, some of them were accompany by another men in black uniform: may be the bodyguards. One of them can be seen close to me at the reception on one of the pictures. He was checking out. It is possible to book a room on ... But the rooms do not look like the athletes the rooms. Maybe there is a “public part” and “athletes part”. ...

Could we have a copy of the list of athletes the DCO showed to the receptionist upon arrival at Yunost Sports Complex? It was a list I have received from IDTM: “The athletes are training

² The questions are highlighted in bold – bold not in the original.

at the Sochi “Yunost” Sport complex, and are as follows:

- Zadorina Ksenya Ivanovna, (02/03/1987)
- Ryzhova Ksenya Olegovna, (19/04/1987)
- Mamina Alena Aleksandrovna
- Dyldin Maksim Sergeevich (DOB 19/05/1987)
- Ivashko Pavel Andreevich
- Hutte Aleksandr Engenievich

When the receptionist confirmed to the DCO that all athletes on the list were there, did she just read down the list and immediately confirm as much or did she take time to check off each name on the DCO list against a separate room list? She did not confirm immediately. I presented myself, explained what we are going to do, said that I have several athletes to test and I want to see the room number. She asked for the names, who must be tested. I showed her the list on my phone screen. She had a look, read the list. Then I asked her for the rooms number for the athletes from the list. She said that she has no right to provide us this information, she must receive the permission from Mr Julikov, she does not know exactly, may be they are here, may be not. She was looking on the papers on her desk (I do not know if it was the list of the people who are staying in this hotel, or she was looking for the phone number or something else), She was contacted Mr Julikov, who did not answer, she asked us to sit down and wait for him. We were waiting for 5-10 minutes. She was doing something on her desk (maybe ready, may be writing – I could not see exactly from my place, I saw her head and the shoulders, I did not see her arms behind the counter). After I came to see her again and explain about 60 min slot (I said it is 07h00-08h00, even I did not have the 60 min slot, I was instructed to arrive at 07h00). She can not do anything without Mr Julikov permission, she asked us to wait. I said that we wake up very early, we are tired and of course we do not want to wait for nothing. If the athletes are not here, we will leave and do not need to wait for Mr Julikov. I asked her just to confirm who is there, I said it is only for our information, to know if we need to wait for Mr Julikov. I asked are all of them are here, I showed her the list again, she said that all of them are here, but refused to provide the room numbers and said we must wait for Mr Julikov.

Does the DCO know the name of the woman whom the receptionist contacted before being put in touch with Dr Pavlovich? (Name and/or responsibility of the woman). No, I do not know. I was waiting close to the counter, she was looking for the phone number (probably on a list on her desk). After she took the phone, apologized, explained we are here and insist to see the athletes and Mr Julikov is not answering the phone. I did not hear her name.

The doctor's family name is not Pavlovich. I do not know his family name. In Russia there is family name, name and patronymic name (father's name). For example on the athletes list: Dyldin Maxim Sergeevich. Dyldin is family name, Maxim is the name and Sergeevich is patronymic name (means his father's name is Sergei). In Russia when you speak officially with someone you use the name and patronymic name of this person. The receptionist called him Igor Pavlovich (Igor – is name, Pavlovich patronymic name, his father's name is Pavel). She did not pronounced his family name. The doctor is not Mr Pavlovich. I was searching on the web (I did not find his picture, I found that in the athletics there a Doctor Gubchenko Igor Pavlovich, date of birth 24.02.1967 ..., who accompanied the athletics team during the Universiade in Kazan Bur there is no picture, so I could not confirm that he is right person (it could be him or another one).

How long did it take for Dr Pavlovich to come down to the lobby after being called by the receptionist? Dr Igor Pavlovich was outside, he was running or doing physical exercises. He arrived from outside (from the street). He was wearing red shorts and a red T-shirt, his tee shirt was wet, he was sweating. I am not say the exact time, maybe 5-7 minutes.

Did Dr Pavlovich make a call to anybody whilst in the DCO's presence in the lobby area? Yes, he tried to call Mr Julikov as well. Mr Julikov did not answer. The doctor said that Mr Julikov is running, doing exercises or swimming and will come in a few moments. He said we must wait for him in a lobby.

What was the approximate length of time it took from Dr Pavlovich leaving the lobby to the DCO and assistant arriving at Ivashko/Hutte's room 338? One or two minutes. The Doctor left by taking the stairs and we took an elevator and went on the 3d floor.

Once in Hutte's room and the DCO saw Hutte pick up the butterfly needle, was there any comment made by the DCO or the athlete? If so, what? Did Hutte try and hide the fact that there was a butterfly needle there? No comments from no one. I just saw a needle on the floor, he removed it immediately. All was done in one second.

How did the DCO know that the person who contacted Ivashko and Hutte in their room by telephone was their coach, Zukhra Vereshagina? Did either one confirm as much? How otherwise did the DCO know Zukhra Vereshagina to be the athletes' coach? Both athletes said that their coach was Zukhra Vereshagina. Hutte wrote the coach's name on the DCF in Russian ... and Ivashko (as far as I remember) wrote Zukhra (to be checked on the DCF). I heard a lady's voice on phone, impossible to hear what she is saying. I supposed that it must be a coach. I can not recall exactly but it seems to me they were speaking about the training. When Hutte run away, just before did this, he received a text message or a call on his phone. When later I asked him who told him to run away, he said that it was the coach.

Which DCO followed Dyldin out into the street? Did he/she go alone? Only one DCO was during this mission. I = Gorodilova-Shamsutdinova Elena followed him by myself, alone. The assistant could not help me, because he was observing Hutte and Lesnoy eating.

Who remained in the cafeteria observing Hutte and Lesnoy during this period? The assistant Cyrille was observing Hutte ad Lesnoy.

Who accompanied Lesnoy and Hutte ("me and my assistant") out of the cafeteria? Me = DCO = Gorodilova/Shamsutdinova Elena and the assistant.

When Ivashko "did not let" the DCO enter the room to look for Hutte, did he physically obstruct her from doing so? Did the DCO insist? I knocked at the door, Ivashko opened the door. I asked for Hutte, he said that Hutte is not in a room. The door was half open, Ivashko stood in a doorway. I did not push him in order to enter the door, he did not move himself, he was polite, he answered my question. There was a loud music inside. I saw the part of the room (the room was small, I saw nobody).

Who was in the room when Hutte eventually provided a sample? At what moment? The 1st sample provided in a room, after he asked to speak with me? We were 4 in a room: assistant, Hutte, me and Ivashko. Ivashko and me, we were in a room, the assistant and Hutte went in a bathroom, Hutte provided the sample and they both returned in a room.

Please explain in as much detail as possible the attempt to? Is this the reference in the e-mail account of events to the words: "He asked what he can do in such a situation?". If not, please explain this further. Did the assistant or anybody else witness the bribery attempt? No one, Ivashko who was in a room and

who was playing video games on line, finished to play and left for the lunch, the athlete asked me to go out of the room to speak in private. I proposed him to speak in a room, he said that he would like to speak with me in private. We left the room and went in a corridor. We spoke during several minutes when we came back in a room Ivashko was already in the room (he had not enough time to eat, he probably left to let Hutte to speak without witnesses).

When the e-mail account states that Hutte “said that the coach asked him to run away” , did the DCO understand that to be a reference to the phone call that he received when they first entered Ivashko and Hutte’s room ... or to a subsequent conversation that Hutte had with his coach? *No, he received this phone call or text message when we left the cafeteria or when he was eating. I had an impression that Dyldin run away and Hutte did the same, may be both of them were instructed to do so, or Hutte was instructed after Dyldin “successfully” run away”.*

10. In a letter dated 25 June 2015, IAAF informed the Russian Federation of the opening of an investigation of a possible anti-doping rule violation committed by the Athlete with regard to the attempted test on him in Adler on 22 May 2015. In such letter, IAAF summarized the facts, as they had been reported, and requested the Russian Federation, *inter alia*, to notify the Athlete of the pending investigation and to invite him to respond in writing to the reported events.
11. In an email to IAAF of 30 June 2015, Mr Alexander Khiutte (“Khiutte”), another athlete mentioned by the DCO in her reports, provided his description of the events of 22 May 2015. In such message, Khiutte declared that:

“The day before, on the 21st of May I spent on the beach and got a heat-stroke as I understood later.

Towards evening I felt indisposition and fever. I asked the doctor to give me a tablet of Aspirin.

Next morning on the 22nd of May DCO came to me. I fulfilled all demands of her. I filled in the form, indicated all the medications I was taking due to my recent surgical operation, I put my signature, and I also asked the DCO whether she knows if the medications I specified could cause a positive doping-test and that I am very much concerned about it.

I guess it was my words that the DCO interpreted as “my concerns about the test being positive”.

But because of my bad condition and sleepless night after heat-stroke when I spent it in toilet because of diarrhea and inclination to vomiting I was unable to provide a sample immediately.

I informed the DCO about it. They suggested me to go for breakfast. During our walk to the dining-hall I felt giddiness and nausea. I was not able to eat and only drank tea.

I spent about 40 min in the dining-hall. For some time I could not stand up because of the pain in the stomach. Then I came to the DCO. I wanted to inform them about my condition but there were many guys around and I was ashamed to speak about my problems especially as the DCO was a woman.

We went to my room 338. When we were in the lobby of the hotel I felt giddiness and inclination to vomiting. I began to look for toilet urgently.

DCO was walking slowly behind me and spoke constantly with somebody. I felt an acute pain and a fit of diarrhea which I could not control.

I walked quicker to the toilet which I knew was nearby on the 4th floor near the stairs. I did not run away and did not refuse to provide a sample.

I respect the rules of WADA and always try to follow them. But I was ashamed to say the doctor about diarrhea.

Then I left the toilet and spent some time on the sofa in the corridor. After that I went to my room 338 to provide a sample. Later the coach called me and said that DCO was waiting for me in the lobby. I went downstairs and met them. Then we came to my room.

Tough it was 30 degrees outside I felt fever and a bout of pain in the stomach. That is why I constantly called my mother for her advice. In order to avoid dehydration I tried to drink water but DCO did not permit me to do it. I provided many samples under observation of DCO.

Dear Mr. Capdevielle, I would like to pay your attention to the fact that I am about 8 years in professional Athletics and I have no any warning or censure from Anti-Doping organizations.

I always strictly fulfilled all their demands. But the situation which has happened on the 22nd of May was Force majeure and I could not foresee it.

I kindly ask you to understand it. I do not consider me to be guilty”.

12. On 1 July 2015 the Athlete provided his explanation as follows:

“On the 22nd of May I had to depart to Volgograd for competitions. I informed the leader of the training camp in advance when I did not know the exact time of my departure.

At 8 o'clock in the morning I was in my room. Nobody had come to me or called before that time.

I ordered a taxi and went to the dining-hall for breakfast. When I was putting meal on the tray somebody's unknown voice behind me asked: “Are you Maxim Dyldin?” And then continued: “Eat calmly”. And nothing more. At that moment I stood back to that women. I did not pay attention to these words and went directly to my table. During the breakfast I received sms that taxi had come. I got up at once and went to the exit. In the street I heard from afar that the same unknown voice was calling for me. Without turning I was moving to the car. When I covered some meters I felt that somebody brutally seized my hand and T-shirt shouting: “I am WADA officer!” And without showing any documents ordered to go for doping control.

Please understand that after well-known film the situation is rather nervous. We were recommended to avoid provocations and contacts with unknown persons. So I told that woman that if she would continue to bother me I would call for police.

Then I sat in the car and travelled to the airport. I departed to Volgograd where I took part in the competitions. Results you can see on the site of RusAthletics.

To my great grief my coach called me in the evening and said that it was really representative of anti-doping service.

Mostly at each training camp we have seminars with the people from RUSADA who explain us the rules and procedure of doping control. They say that DCO has to contact the leader of the training camp and the doctor and present its ID card of DCO. After than an athlete has to sign the form of consent to provide a sample.

In my case I think the DCO made some mistakes. This incident would not happened if in the dining-hall she came to me from the front and showed her documents. Besides this she shouted at me and used force. All this did not make impression of an official representative of such respective organization as WADA.

I am more then 10 years in sport and provided samples more the 30 times but I have never met such DCO.

I was participant of 6 World Championships, two Olympic Games, 6 European Championships and many other meetings. Sometimes it was 2-3 times during one competition. I have never avoided from providing tests or hided from DCO of WADA or RUSADA. There was no any remarks from these organizations. I always ready to corporate with them as it is part of my work.

I kindly as you to be lenient to me. From my side I promise to take into consideration this bitter experience”.

13. On 1 July 2015, the DCO provided additional comments regarding the attempted doping control on the Athlete of 22 May 2015:

“If I stopped him and if I forced him as he described, why I did not obtain anything. If someone keeps another person and force ... at the end this person could obtain something. I have obtained nothing: no signature, no sample, he did not even bother to glance, or to stop.

As I understood from his explanation he was taking a taxi. “During the breakfast I received sms that taxi had come. I got up at once and went to the exit ... Then I sat in the car and travelled to the airport”.

He is a lucky person to travel without any bags ... I would like to travel like him – hands free ... Hope he did not forget his passport and his wallet, and put them in his pocket. I did not verified his pockets but it seemed there were nothing (the passport and the wallet take some place). You can see on the pictures he has nothing in his hands, no bags. I can imagine that the athletes do not need lot's of stuff, but as minimum underwear to change (he was leaving for 10 days!), shirt and tee-shirt for the competition and a pair of running shoes for the competition ...

Ok, leaving to Volgograd on the 22.05 ... for the very small competition of Volgograd region on the 29 and 30.05. It is not a World or European or Russian championship, it is small region championship, no need to arrive one week before ...

From this explanation I can see that he understood that I'm a DCO and he understood that I have notified him for the tests. He describes me as “WADA officer”, who tried to stop him. Why he did not stop to have a look on my documents? I, according his description “brutally seized my hand and T-shirt”. He must not be able to move, but he “sat in a car” without any delay or resistance ...

I had a binder with the documents all the time (even there is a picture when I speak with Mr Julikov). And I showed him the documents several times without any success (he did not look at all).

Even he understood that I'm a DCO, he refused to stop, to see the documents, my DCO card and “I told that woman that if she would continue to bother me I would call for police”. The DCO are very welcome ...

On a picture he is crossing the street, no taxi in a view. And I could take a taxi on a picture as well, if there was one ...

According to the athlete: “Mostly at each training camp we have seminars with the people from RUSADA who explain us the rules and procedure of doping control. They say that DCO has to contact the leader of the training camp and the doctor and present its ID card of DCO. After that an athlete has to sign the form of consent to provide a sample”. Strange approach ... notify the 3d party first ...

As far as I know, according to the WADA rules the athlete must be the 1st person to be notified. The third party must be notified only if the minor athletes are notified or the disabled athlete are notified. I believe that Mr Dyldin do not need a third-party to be presented during the notification ...

Anyway, in this situation, I was obliged to notify the third party first. Dr Gubchenko and Mr Julikov were aware who must be tested long before I have notified Mr Dyldin in cafeteria. They have verified my documents and saw my DCO ID and the letter of the authority. Before to notify Mr Dyldin I have already finished one test (Ivashko) and notified Khiutte ...

It will be great to know which kind of force I used (he wrote “used force”) and if I used force why I did not obtain even one second of his attention ... even one quick look on the documents, stop for a moment to speak....

He spoke with Khiutte, and of course was informed that he is going to be tested ...

Also if he is “more then 10 years in sport and provided samples more the 30 times”. And when he knows that the “WADA officer” tried to speak with him. He must know that the name of this action is “the notification

for the doping control test” and he have to stop, have a look in the documents, to sign the DCF, to ask the explanations about the process, to ask for the representative and provide the sample, and not cross the street and disappear somewhere ...”.

14. In a letter of 5 August 2015 IAAF confirmed to ARAF the charge against the Athlete for the violation of Article 32.2(c) of the IAAF Anti-Doping and Medical Rules (the “IAAF ADR”) [“*Evading, Refusing or Failing to Submit to Sample Collection*”], and imposed on the Athlete a provisional suspension as of 5 August 2015. As a basis for the foregoing, IAAF indicated to be satisfied of the following:

1. *The DCO on more than one occasion showed Mr Dyldin her DCO card and letter of authorization from the IAAF and notified him verbally that he was required to provide an out-of-competition urine sample.*
2. *Mr Dyldin ignored all the DCO’s attempts to notify him for testing despite the fact that, by his own admission, he understood that she was holding herself out to be a doping control officer.*
3. *The DCO advised Mr Dyldin more than once that, if he refused or failed to submit to sample collection, he would be committing a breach of the IAAF Anti-Doping Rules for which he could be sanctioned.*
4. *Mr Dyldin nevertheless ran away from the DCO in order to avoid being tested and he did not return.*
5. *The DCO specifically rejects any suggestion that she in any way manhandled Mr Dyldin in seeking to notify him on 22 May 2015 or indeed acted in any way other than professionally at all times.*
6. *The DCO also disputes Mr Dyldin’s account of events when he states that, after she had approached him for testing, he got into a taxi and left for the airport to travel to a competition taking place in Volgograd a week later. The photographs that the DCO took of Mr Dyldin as she attempted to notify him for testing (including the one attached) are not of a person who was about to leave for the airport for an extended period of time.*
7. *Finally, Mr Dyldin’s attempts to suggest that an out-of-competition test can only be conducted if the DCO has first contacted the head of the training camp and team doctor are entirely incorrect. Athletes such as Mr Dyldin are required to acquaint themselves fully with IAAF Rules and Regulations (see paragraph 1.1 of the Anti-Doping Regulations) and those Rules and Regulations are quite clear in stating that, save in exceptional circumstances (which did not occur here), out-of-competition testing is to be conducted strictly on non advance notice to the athlete or his athlete support personnel or national federation (Rule 35.14 and paragraph 4.2 of the Anti-Doping Regulations). The DCO’s approach to notify Mr Dyldin for testing in Adler on 22 May 2015 followed the correct procedures under the Rules”.*

15. On 6 August 2015, the Antidoping Laboratory of Cologne, Germany, reported an adverse analytical finding for the presence of Ethiocholanolone in the sample provided by Khiutte on 22 May 2015.

16. In a statement intended to explain the presence of a prohibited substance in the sample of 22 May 2015, Khiutte wrote the following:

“I became the Russian 200m champion in 2013. In September 2014 I made the decision to become a 400m runner and this necessitated a coach change on my behalf. I switched to the coach camp of Zukerba Vereschagina, who happens to be one of the top trainers in Russia for 400m.

Before May 2015 I had never breached any anti-doping regulations and had passed multiple doping tests both in Russia and at international events.

With the transfer to a new coach I noticed an increase in the amount of drugs given to me. My coach, who personally handed me the substances, convinced me that they were legal. At that point I had no reason to doubt it. All this time I had absolutely no knowledge whatsoever that substances were illegal. It was only later, after my tests came back positive for Etiocholanolone, did I find out that this was not the first time that athletes working under my coach have tested positive for illegal performance enhancing drugs

On May 22nd 20105 anti-doping officers came into my room at the Yunost Sports club. I was ready to take the test, however my coach called me and told me that I should not take the test. After this news I attempted to evade the officers and was absent for several hours. After this I got another call from my coach who said that I had to come back and take the test, which I did.

The situation of my departure from the anti-doping officers looked strange and I had to provide some explanation regarding it. I wrote my previous statement under pressure from my coach, its main goal was to protect the honor and dignity of the coach. Also I was convinced that I wasn't misleading anyone, since I didn't receive the tests results for a long time, and my coach kept convincing me that everything would be fine. ...

I would like to say the following in my defense. The revealed substance had been given to me by my coach. I did not suspect that I was taking an illegal substance. I fully support and am open to a detailed investigation of the case. Additionally I am ready, should it prove to be necessary, to present all the evidence available to me. Should the coach come under investigation I am ready to testify. I do not want other athletes training with Zukhra Vereshagina to find themselves in a similar predicament.

I understand that the events that have unfolded are a serious breach of anti-doping regulations.

However, in light of the circumstances detailed above, and in virtue of the fact that this is the first such incident in my professional career I would like to ask for a less austere punishment. ...

The first letter where was talked about my bad health it everything not the truth and nonsense I swear the letter was written under threat and pressure of trainers of Zukhra Vereshchagina and Maslakov Valentin.

I ask you to reconsider my case, to weigh the facts.

And to give me disciplinary punishment of 6 months because I all the life dreamed to get on the Olympic Games.

With pleasure I answer questions

1) It is the truth! In the room really there were needles. Their owner Pavel Ivashko. I bought Zukhr Vereshchagina's needles. Once a week it came to us to the room for droppers.

2) All the officers of WADA wrote in the report it is the truth. When to me came to the room everything was good. I filled a sample for an analysis dope. Phone it called there was Zukhra Vereshchagina. She told Run!!!!!! I wrote the message why I have to run away?!! She answered that will explain me everything later.

3) Near my bed many tablets and syringes were valid!!!! All medicines were given to us by the sports doctor and they were allowed for the use of WADA. Syringes were new and sealed. I them use for vitamins of group B and antibacterial preparations because underwent an operation on a nose recently.

4) Yes I Saw Maxim Dyldin. He approached me and asked that I do here???? I answered that has to hand over procedure of a drug test. He laughed and went for other little table.

5) Petya Vasechkin is the hero of comedy series in Russia. It doesn't exist in reality.

6) Standard procedure in RUSADA same as well as in WADA. Never reported to me about Rusada arrival. Rusada task it to check a certain number of people. For example 50 people. And who these people to them all the same. The main thing that was 50 people. Valentin Maslakov has the list. He writes down there who has to pass a doping test. During all the time I do not time didn't see that someone from his athletes handed over a

drug test.

7) *The doctor was Gubchenko Igor.*

8) *I was called by Zuehbra Vereshchagina and told that I drank a lot of water. I drank about 2 liters. I didn't want to do 6 attempts so left.*

9) *I was called by Zuehbra Vereshchagina told that I was silent and not cooperate with WADA officers. I told that will solve my problem if I is silent.*

10) *Because I was forced to write so Zuehbra Vereshchagina*

11) *Because I was forced to write so Zuehbra Vereshchagina*

12) *Other athletes at Zuehbra Vereshchagina too escaped not to hand over a drug test*

13) *I saw many times as Zuehbra Vereshchagina gave tablets without markings and names to other athletes. That for tablets I don't know it, but if it is necessary I will be able to find out.*

14) *No, I am the honest athlete.*

15) *Yes I heard about it much and I know as many athletes train.*

1) *Do my current testimony contained in the answers to your questions, alleviate my punishment? If Yes, what kind of mitigation can be discussed at this stage?*

2) *The Questions you asked me in your last letter to relate to a large number of persons and go beyond those people who directly worked with me and gave me illegal drugs. I fear that my testimony may adversely affect the fates of those who I would not want to cause harm as well as cause serious reputational harm to myself. Please, what punishment will be assigned to me if I can assist you with information you now request.*

3) *Also for me it is very important to know how and for what purposes will be used in my written statement with my signature that you request. In particular, whether they will be transferred to Russia? Does anybody in Russia know you have this information.*

4) *If I will officially give you my written statement with my signature, can I count that suspension lasting not more than 6 months? Because of my age, for me a very important opportunity to participate in the upcoming Olympic games.*

- *All details about how you started to train with her;*

I started to train with her from October 2014. Another details there are in my Explanation. Which aspects can be important to investigation?

- *When was the first time that she spoke to you about taking either drugs or supplements;*

It was November 2014.

- *Was it always her who brought you the drugs;*

Yes, but sometimes she wrote on the paper the list of the drugs which I'll need to buy in the drugstore by myself. And I have one of this list. If it important for investigation, I can send you a photo-copy.

- *Did you know what you were taking;*

I was convinced that it was allowed drugs to help me recover from workouts, because my coach was told me this.

- *Why did you agree to take what she was giving to you;*

Because she was my coach. If I don't agree, I need to change a coach.

- ... where she was also present; Please describe one or many specific examples of times when you took drugs (especially any time sorry, but I don't understand the question.
- Did she ever threaten you;
Yes, one time, when I wrote my first explanation to Mr. Capdeville. She threatened to ruin my career and deprive me the money allowance.
- Please list all other athletes currently being coached by her;
1) Aleksey Kenig
2) Pavel Ivashko
3) Maksim Dyldin
4) Maria Mikhailyuk
- From whom does she get the substances that she gives to you;
I don't know.
- Has she ever told you to take other substances?
What do you mean?
- Could you please write down as much as possible about the conversation that you had with her in November, where she spoke to you about taking drugs?
- Please do send through a photocopy (with a translation, if possible) of the list she wrote down for you.
- Did she always tell you exactly which drugs you were taking?
- How and where did you take the drugs? Was she with you when you took them?
- How did she threaten you? What did she say?
- Do you know if the other athletes trained by her take drugs?
- Would you be prepared to make a statement saying that the syringe on the floor in the room was Pavel IVASHKO's? What was in that syringe?

I happen to know that our Federation, RUSADA wants to give the minimum penalty to the athlete Maksim Dyldin ...

I heard that Zukhra Vereshchagina and Maksim Dyldin write documents, expository documents. I can officially declare that on may 22, I saw Maxim Dyldin he felt well and the problems he had. After he was approached by the doping Officer he just took, it and ran away because he's been with for 10 years and she Zukhra Vereshchagina distribute in the national team prohibited substances in the national team and take money for it some people.

I want to ask you. Why I was suspended from sports and coach Zukhra Vereshchagina continues to work, goes to a training camp. I believe that this is unfair. The coach should be responsible in the first place. Maksim Dyldin quiet trains with everyone although it had to be removed from the training process. Students Zukhra Vereshchagina is Pavel Ivashko, Alexei Kenig, Maksim Dyldin, Maria Mykhailin, Denis Alekseev.

Zukhra Vereshchagina wrote these leaves us with the medicines every month and there were drugs and a

dropper which she kept a secret and we didn't know what it is. She said it all the good Vitamins from America. These leaves had each student in her group.

Send you a Sheet with the medicines which I wrote Zukhra Vereshchagina and translation. If you are interested in something I'm willing to answer any questions.....

That you had documents RUSADA? I have none of it. I received a phone call on September 23 and heard that I was disqualified. Then I received a notice somewhere but lost it".

17. On 26 November 2015, the IAAF Council decided to suspend the ARAF's membership to IAAF.
18. On 4 December 2015, Khiutte was interviewed by IAAF. On such occasion, Khiutte rendered some declarations concerning the events of 22 May 2015 and the Athlete. More specifically, Khiutte confirmed that the coach, Ms Zukra Vereshchagina, had told him and the Athlete to run away in order to evade sample collection, that the DCO had recognized the Athlete at the cafeteria of the Complex, and that, later on the same day, he met the Athlete at the beach. In addition, Khiutte indicated that the Athlete was at that time (December 2015) training with the Russian team at a camp in Portugal.
19. In a letter of 18 January 2016, IAAF informed the Athlete that, as a result of the suspension of the Russian Federation from IAAF's membership, and of the suspension of the Russian Anti-Doping Agency ("RUSADA") by the World Anti-Doping Agency ("WADA"), IAAF had taken over responsibility for coordinating disciplinary proceedings in his case. In such letter, IAAF also advised the Athlete of the options for the subsequent steps. He 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".*
20. The Athlete did not respond to this letter.
21. Following a request for information of IAAF dated 20 April 2016, the Russian Federation forwarded a statement of the Athlete, dated 21 April 2016, in which he claimed that he was on vacation at the Alfamar Hotel in Albufeira (Portugal) from 10 November 2015 until 24 December 2015.
22. On 9 June 2016, the Russian Federation, answering a further request by IAAF, indicated that the coach Ms Zukra Vereshchagina, participated in the training camp in Albufeira (Portugal) from 10 November 2015 until 30 November 2015, and that the Russian Federation had not received any information about contacts between the Athlete and the participants in the training camp.

2. THE ARBITRAL PROCEEDINGS

2.1 The CAS Proceedings

23. On 8 July 2016, IAAF filed a request of arbitration with the CAS pursuant to the Code of Sports-related Arbitration (the “Code”) against the Russian Federation and the Athlete.
24. In its request for arbitration, IAAF requested that the matter be heard by a sole arbitrator acting as a first instance body, and that, pursuant to Rule 38.3 of the IAAF ADR, the CAS procedure would be governed by the CAS appeal arbitration rules. In that regard, IAAF indicated that its request for arbitration should be considered its statement of appeal and appeal brief for the purposes of the Code.
25. On 14 July 2016, the CAS Court Office transmitted the request of arbitration to the Respondents 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. With respect to the Second Respondent, more specifically, the request of arbitration and its exhibits were sent by DHL to the address of the First Respondent. The cover letter accompanying the request of arbitration was also sent by email to the email address (*maximka4318@mail.ru*) provided by IAAF for the Second Respondent.
26. On 19 August 2016, the CAS Court Office sought from the Respondents confirmation that the CAS letter of 14 July 2016 had been delivered to the Second Respondent and requested the First Respondent to provide any document confirming such delivery.
27. By communication dated 23 August 2016, the CAS Court Office informed the parties, on behalf of the President of the CAS Ordinary Arbitration Division, that the Panel had been constituted as follows: Prof. Luigi Fumagalli, Sole Arbitrator.
28. On 5 September 2016, the First Respondent replied to the request of the CAS Court Office dated 19 August 2016 and transmitted some documents in Russian.
29. On 9 September 2016, the CAS Court Office invited, on behalf of the Sole Arbitrator, the First Respondent to confirm that the documents it had transmitted evidenced receipt by the Second Respondent of the transmitted correspondence and to provide “*an English translation of the extract of the exhibits attached to its e-mail of 5 September 2016, which establish such date of receipt*”. In the absence of an answer, such request was reiterated on 22 September 2016.
30. On 5 October, the CAS Court Office, noting that the First Respondent had failed to provide the requested information and translation, invited the Claimant to submit an English translation of the documents sent by the First Respondent on 5 September 2016.
31. On 6 October 2016, IAAF provided a translation of such documents.
32. On 11 October 2016, the CAS Court Office informed the parties that the Sole Arbitrator had decided to send the request of arbitration, and its exhibits, by DHL to the personal address of

the Second Respondent.

33. On 16 October 2016, writing from the email address “*maximka4318@mail.ru*”, the Athlete transmitted a declaration together with 4 documents.
34. In a letter of 18 October 2016, the CAS Court Office acknowledged receipts of the message, noting that the declaration was understood to be the Second Respondent’s answer. In addition, and *inter alia*, the parties were invited to inform the CAS Court Office whether they wished a hearing to be held in this matter.
35. In an email of 20 October 2016, the Claimant confirmed that it did not consider a hearing to be necessary in this case.
36. On 21 October 2016, the Second Respondent, in an email sent to the CAS Court Office, stated the following:

“Dear ask the court to once again draw attention to the fact that I submitted all my proof of innocence. I am sincerely sorry that the plaintiff still does not want to accept this reality and acknowledge that I was right in the discovery. I want to remind the esteemed court about the presumption of innocence. I hope for your objectivity, fairness and common sense in judgement of my case. Also want to note that already a responsibility in the form of a suspension in 2015 and will be reflected in vyneseny sentence. I don’t mind if the meeting will take place by written explanation and evidence without the presence of the parties [sic]”.
37. On 24 October 2016, the Claimant sent by email some observations regarding the Second Respondent’s declaration of 16 October 2016.
38. In a letter of 26 October 2016, the CAS Court Office, on behalf of the Sole Arbitrator informed the parties that the Second Respondent’s declaration of 16 October 2016 and the Claimant’s observations of 24 October 2016 had been admitted to the file. In addition, the Respondents were granted a deadline to submit their response to the Claimant’s observations.
39. In a letter dated 8 November 2016, the CAS Court Office noted that the Respondents had not submitted any response to the Claimant’s observations.
40. On 10 November 2016, the CAS Court Office issued on behalf of the Sole Arbitrator an order of procedure (the “Order of Procedure”), which was accepted and signed by IAAF on 11 November 2016. In the Order of Procedure the parties were advised that the Sole Arbitrator, deeming himself sufficiently informed, had decided to issue an award on the preliminary objections without a hearing.

2.2 The Position of the Parties

41. The following outline of the parties’ positions is illustrative only and does not necessarily comprise every submission advanced by the Claimant and the Respondent. The Sole Arbitrator has nonetheless carefully considered all the submissions made by the parties, whether or not there is specific reference to them in the following summary.

a. The Position of the Claimant

42. In its request for arbitration of appeal, IAAF requested the CAS to rule as follows:
- (i) CAS has jurisdiction to decide on the subject matter of this dispute;*
 - (ii) The Request for Arbitration of the IAAF is admissible.*
 - (iii) Maksim Dyldin is found guilty of an anti-doping rule violation in accordance with Rule 32.2(c) of the IAAF Rules.*
 - (iv) A period of ineligibility of four years is imposed upon Maksim Dyldin, commencing on the date of the (final) CAS Award.*
 - (v) Any arbitration costs are borne entirely by the Respondents.*
 - (vi) The IAAF is awarded a significant contribution to its legal costs”.*
43. In other words, in the Claimant’s opinion, the Athlete is responsible for the anti-doping rule violation contemplated by Rule 32.2(c) of the IAAF ADR [*“Evading, Refusing or Failing to Submit to Sample Collection”*], and had to be sanctioned according to Rule 40.4(a) of the IAAF ADR.
44. With respect to the anti-doping rule violation, the Claimant notes that, as clearly indicated by the DCO reports and all the available evidence, the DCO notified the Athlete in person, but the Athlete ignored the DCO, did not comply with her instructions and refused to submit to sample collection and eventually evaded it. As a result, the breach of the anti-doping rules is clearly established.
45. The submissions of the Athlete, who suggests that the DCO made some mistakes, are *“entirely unconvincing”*. The Athlete, in fact, is experienced in anti-doping matters, having undergone, according to his own words, a large number of tests. Therefore, he cannot claim to be ignorant of the anti-doping system and of the related duties. As a result, having understood that he was facing the DCO, he had to collaborate and follow the instructions of the DCO: instead, of doing this, he gave a false name to the DCO, refused to sign the notification form and ran away, blatantly violating the anti-doping rules.
46. In the same way, also the explanation offered by the Athlete, that he was leaving the Complex in the morning of 22 May 2015 to get to the Adler’s airport are *“unconvincing, inconsistent and unsubstantiated”*. In fact,
- i. the Athlete initially mentioned that he was flying to Volgograd to participate in a competition scheduled for some days later; then, he mentioned a travel to Krasnodar before reaching Volgograd;
 - ii. the Athlete provided no evidence of such travel (to Volgograd or to Krasnodar); and
 - iii. the photos taken by the DCO show that the Athlete was carrying no luggage while leaving the Complex on 22 May 2015.
47. With respect to the period of ineligibility, the Claimant contends that the Athlete should be imposed a sanction of 4 years, since the Athlete, who deliberately evaded sample collection, cannot establish that the commission of the anti-doping rule violation was not intentional.

48. In that regard, the Claimant notes that, in accordance with Rule 40.11 of the IAAF ADR, the period of ineligibility should commence on the date of CAS award, with credit given for any period of “*Provisional Suspension ... imposed and respected*” (Rule 40.11(c) of the IAAF ADR). Therefore, such credit can be given only if the athlete effectively respects the prohibition of “*participating in any Competition or activity*”, where “*activity*” includes “*participating in any capacity, including as an Athlete, coach or other Athlete Support Personnel, in a training camp, exhibition or practice*” (Rule 40.12(a) of the IAAF ADR). If such obligation is not respected, the athlete cannot receive any credit for the provisional suspension: the obligation to respect a provisional suspension in order to receive credit for the period of ineligibility applies to the provisional suspension as a whole and not merely to a portion of it (CAS 2014/A/3820, § 111).
49. In light of the foregoing, IAAF submits that the Athlete, provisionally suspended on 5 August 2015, is not entitled to receive any credit against his ineligibility period, because he violated his provisional suspension by participating in a six-week training camp at the Alfamar Hotel in Albufeira (Portugal) with the Russian team in November and December 2015 (the “Training Camp”). In that regard, the Claimant notes that:
- i. Khiutte advised IAAF that the Athlete had participated in the Training Camp “*as if nothing ever happened*”;
 - ii. following a request for information of IAAF, the Russian Federation forwarded a statement of the Athlete, dated 21 April 2016, in which he claimed that he was on vacation at the Alfamar Hotel in Albufeira (Portugal) from 10 November 2015 until 24 December 2015;
 - iii. the Russian Federation confirmed that:
 - it had organized the Training Camp,
 - the base of the Training Camp was indeed the Alfamar Hotel,
 - the Athlete was present at the Alfamar Hotel during the exact period of the Training Camp, arriving on the first day (10 November 2015) and leaving on the last day (24 December 2015),
 - the coach of the Athlete was present at the Training Camp until the end of November 2015.
50. As a result, in the Claimant’s opinion, it is simply not credible that the Athlete was present – by coincidence – at the same hotel for the entire six week period of the Training Camp without participating in any activities related to that camp, despite the fact that his Coach was also present for the first half of the Training Camp: the proposition is so absurd that it can be dismissed based on inference alone.

b. *The Position of the Respondents*

b.1 The Position of the First Respondent

51. The Russian Federation was notified of the request of arbitration, and invited to submit an answer. Despite the foregoing, the Russian Federation did not lodge any answer and expressed

no position on the claims submitted by IAAF.

b.2 The Position of the Second Respondent

52. The Athlete submitted his position on the Claimant's claims in a declaration sent by email on 16 October 2016. Such statement was understood to constitute the Second Respondent's answer. Even though the Athlete, in his statement, did not specify any express request for relief, the submissions made indicate his opposition to the Claimant's petitions.

53. In such statement the Athlete:

i. refers to his career and reputation as a clean athlete as follows:

"... In the national team of Russian in Athletics I since 2006. During all this time, I won a silver medal at the European Junior Championships in 2006 in Beijing, a Silver medal at the European Junior Championship in 2007 in Hungary, the Bronze medal of the Olympic games 2008 in Beijing, and in 2010 I won the European Championship gold in Barcelona, a Bronze medal at the World Championships in Moscow in 2013, Gold medal at the world Universiade in 2013 in Kazan, 2014 in Zurich won a Silver medal at the European Championship. Repeatedly won the team Championships (2010; 2011; 2014) for 10 years I am the leader of the Russian national team run on 400 metres. Throughout my sports career, I was passed the doping control more than 70 times and have never violated the rules of the world anti-doping service. I will observe and respect all rules of this organization. In the city I am an example for many, visiting schools, orphanages, sports clubs. At these meetings we are talking about a healthy lifestyle, the benefits of sport. Many people try to be like me";

ii. describes the events of 22 May 2015 in the following terms:

"22 may 2015 at the sports complex "Youth" in Adler, where I passed the training camp with me the incident occurred. It was the first time in my entire career, and the sport I am more than 10 years. At 18.00 21 may 2015, I ordered a taxi at 6.00, 22 may 2015 to go to Krasnodar city for his wife to deal with family issues. Later on may 21, 2015 I suffered a taxi from 6.00 am to 8.30 am and forgot to tell his coach Vereshchagin C G that moved the taxi for 8:30 am 2015. Also forgot to warn the hotel administration and senior trainers the team of Rogues NM and Maslakov V.M. So they only told the officers of the WADA I'm not at a hotel now because I was sure I had already left.

Early on the morning of may 22, 2015, I headed to the taxi that was waiting for me. On the road I was approached by an unknown woman and without appearing, without showing any documents demanded that I went to pass a dope test. What I asked her to provide documents, she ignored my request and insisted. In turn, I repeated my request, then told her that if she will continue to behave, I'll call the police. After these words, she turned and walked away. I continued to move towards the cab that went to Krasnodar, may 28, 2015 I moved from the city of Krasnodar to the city of Volgograd. In the same report that 29.05.2015 year I participated in competitions in Volgograd and showed the result 46.93 proof of this is the official results on the website of the athletics Federation of Russia. I leave with a collection for only one reason, in the beginning of 2015, I cheated on my wife about what she found out and our family was on the verge of collapse. The last months prior to the incident I was very depressed, and very strong psychological stress, about it no one knew except my coach X.G. Vereshchagin due to the fact that my wife wanted to file for divorce and to take my two children forever. I could easily skip the workout, didn't followed coaching instructions often was in a scattered condition, could easily be rude

unfamiliar person because of his condition. I think that all these factors could affect the incident occurred with the officer, WADA may 22, 2015. I have not refused to undergo a doping test because I was not sure and was not aware of officer WADA documented. I do not think the officer WADA is to blame and personally apologize for his actions. My behavior does not justify my actions. As my wife Dildine E. confirmed member of the OCD in writing about what happened of our family. On the basis of this incident I have a record in the IAAF (International Association of Athletics Federations) and WADA. The proceedings in my case lasted for 1 year and 6 months. In April 2016, to my house came a member of the interim Commission of the ROC, which made me and my spouse a written explanation of that applied to my case and was sent to the IAAF. But despite all this, the IAAF Commission still insists on the suspension. For example, the case 26 of the Italian athletes who in December 2015, was charged under the same article as me. In April 2016, they were fully justified and did not receive any suspension. Their cases were solved in 4 months. My case lasted over a year, I made a list of suspended athletes, I am not allowed to train and go on training camps with the Russian team. I am completely stripped of all salaries, I have never receive money through sports evidence are the queries in my laaf athletics Federation where it is documented. I have more than a year of sitting at home waiting for the decision in his case”;

- iii. submits, with respect to the actual serving of the provisional suspension, that:

“After being suspended athlete I did not break rules of suspension. I respect and not violate the rules of suspensions. From 10 Nov 2015 to 26 Dec 2015 I was in Portugal and lived in the hotel, Alfamar, at their own expense. I went to Portugal to relax in training not participated in any training activities. I provided all the evidence (documents) including travel tickets and pay for hotel accommodation at their own expense. The hotel is Alfamar and especially Portugal is not a public case of Russia, I could not break the rules suspension. Evidence is the documents that I submitted a document from the hotel, Alfamar in which I lived. I paid for the trip completely at their own expense I also have proof I provided document. I give all the facts and evidence that do not violate the rules of suspension. All requests of the laaf in my case was previously sent to the coordinator of the national team of Russia Ikonnikova Elena. I know I’ve not behaved correctly in relation to the doping officer service and once again would like to apologize for what he did”.

3. LEGAL ANALYSIS

3.1 Jurisdiction

54. CAS has jurisdiction to decide the present dispute between the parties.
55. In fact, the jurisdiction of CAS to hear as a first instance hearing body the dispute concerning the commission by the Athlete of an anti-doping rule violation is not disputed by the Respondents and is contemplated by Rule 38.3 of the IAAF ADR, which provides materially as follows:

“... If the Member fails to complete a hearing within 2 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. ...”.

56. In the present case, in fact, the Russian Federation is currently suspended by IAAF, and RUSADA is suspended by WADA. As a result, no entity has jurisdiction in Russia to conduct a hearing in the Athlete’s case and IAAF took over the responsibility for coordinating the relevant disciplinary proceedings. In a letter of 18 January 2016, in that regard, IAAF informed the Respondents that the case of the Athlete would be referred to the CAS for a hearing. Therefore, the conditions for the CAS jurisdiction under Rule 38.3 of the IAAF ADR are met.

3.2 Admissibility

57. The request for arbitration complies with the formal requirement set by the Code. The admissibility of the request for arbitration is not challenged by the Respondents. Accordingly, the request for arbitration is admissible.

3.3 Ordinary Proceedings

58. As these proceedings are based on a request for arbitration for the conduct of a first instance hearing and do not involve an appeal against a decision rendered by a sports-related body, they are considered as ordinary arbitration proceedings, within the meaning, and for the purposes, of the Code. However, in accordance with Rule 38.3 of the IAAF ADR and as announced in the CAS Court Office letter of 14 July 2016, these proceedings are *“handled in accordance with CAS rules ... applicable to the appeal arbitration procedure without reference to any time limit for appeal”*.

3.4 Applicable Law

59. Pursuant to Article R58 of the Code, this Sole Arbitrator is required to 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”.

60. Rule 42 of the IAAF ADR provides that:

“23. In all CAS appeals involving the IAAF, CAS and the CAS Panel shall be bound by the IAAF Constitution, Rules and Regulations (including the Anti-Doping Regulations). In the case of any conflict between the CAS rules currently in force and the IAAF Constitution, Rules and Regulations, the IAAF Constitution, Rules and Regulations shall take precedence.

24. In all CAS appeals involving the IAAF, the governing law shall be Monegasque law ...”.

61. In the present case, therefore, the *“applicable regulations”* are the IAAF rules, and chiefly the IAAF

ADR as in force, since 1 January 2015, at the time the alleged violation was committed, under the “*tempus regit actum principle*”. Monegasque law, then, applies subsidiarily to the merits of the dispute.

3.5 The Dispute

62. The case before this Sole Arbitrator concerns the commission by the Athlete of the anti-doping rule violation contemplated by Rule 32.2(c) of the IAAF ADR and, in the event such violation is found, the determination of the consequences thereof: the Claimant requests that the Sole Arbitrator sanctions the Athlete, found responsible of that anti-doping rule violation, with a period of ineligibility of 4 years; the Second Respondent denies any responsibility, while the First Respondent expressed no view on the Claimant’s claims.

63. The Sole Arbitrator shall examine separately the issues of the commission by the Athlete of an anti-doping rule violation and, if the case, of the consequences thereof.

i. Is the Athlete responsible of the anti-doping rule violation contemplated by Rule 32.2(c) of the IAAF ADR?

64. The Athlete is charged with the violation of Rule 32.2(c) of the IAAF ADR.

65. Under Rule 32.2 of the IAAF ADR

“The following constitute anti-doping rule violations: ...

(c) Evading, Refusing or Failing to Submit to Sample Collection: Evading Sample collection, or without compelling justification, refusing or failing to submit to Sample collection after notification as authorized in the Anti-Doping Regulations or other applicable anti-doping rules”.

66. Such provision corresponds *verbatim* to Article 2.3 of the WADC 2015. A comment contained in a footnote to Article 2.3 of the WADC 2015 specifies that:

“For example, it would be an anti-doping rule violation of “evading Sample collection” if it were established that an Athlete was deliberately avoiding a doping control official to evade notification or Testing”.

67. Pursuant to Rule 48.3 of the IAAF ADR:

“Comments annotating various provisions of the Code shall be used to interpret these Anti-Doping Rules”.

68. In the Claimant’s submissions, the Athlete evaded, refused or failed to submit to sample collection on the occasion of an out-of-competition test planned to take place on 22 May 2015 at the Complex (the Yunost Sports Complex) in Adler (Russia), when:

- i. he was identified by the DCO, on the basis of the indications of another athlete (Khiutte), while he was having breakfast at the restaurant of the Complex;
- ii. he pretended not to hear the DCO who was introducing herself and verbally notifying him of the doping control;

- iii. he quickly left the restaurant while the DCO was preparing the documents relating to the doping control notification, without paying attention to the DCO;
 - iv. he disregarded the requests to stop of the DCO, who had followed him and was insisting in introducing herself as an officer in charge of a doping control the Athlete had to undergo, and refused to talk to her;
 - v. he made for the exit of the Complex and once outside threatened the DCO to call the police if she insisted, gave a false name, denying he was the Athlete, and eventually ran away, disappearing.
69. The Sole Arbitrator notes that in accordance with Rule 33 of the IAAF ADR:
- “1. *The IAAF, 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, 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. ...*
 3. *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, experts reports, documentary evidence, conclusions drawn from longitudinal profiling such as the Athlete Biological Passport and other analytical information”.*
70. In other words, IAAF has the burden to establish “*to the comfortable satisfaction of the relevant hearing panel*” that the Athlete is responsible for the violation contemplated by Article 32.2(c) of the IAAF ADR.
71. In the Sole Arbitrator’s opinion, IAAF discharged such burden. The Sole Arbitrator, in fact, notes that the IAAF’s indications:
- i. are based on:
 - a. the convincing statements of the DCO, which are consistent, detailed and supported by photographs; and
 - b. the declarations of Khiutte (email following notification of an adverse analytical finding – § 16 above; deposition of 4 December 2015 – § 18 above), who:
 - confirmed that the person identified by the DCO at the restaurant of the Complex and who then ran away was the Athlete;
 - explained that he [Khiutte] had received the suggestion to avoid the doping control;
 - indicated that he met the Athlete at the Complex after the Athlete had escaped from the DCO;
 - stated that the Athlete explained that he had refused to acknowledge in writing the notification of the control in order to avoid testing positive;

- ii. are not refuted by the declarations of the Athlete, contradictory and unsupported by any evidence. In fact:
 - a. in an email to IAAF of 1 July 2015 (§ 12(ii) above), he made reference to his departure from the Complex to Volgograd, while in a statement to this Sole Arbitrator, he mentioned a travel to Krasnodar before reaching Volgograd;
 - b. he referred to a taxi waiting for him outside the Complex, which does not appear in the photos submitted by the DCO;
 - c. he left the Complex without any luggage, an unusual circumstance if he was about to travel for a number of days;
 - d. he admitted that the person who approached him described herself as a WADA officer and requested him to undergo a doping control.

72. In other words, such evidence establishes that the Athlete deliberately tried to avoid the DCO to evade notification and testing. No “*compelling justification*” is found to exist to excuse the Athlete’s actions.

73. In light of the foregoing, the Sole Arbitrator finds that the Athlete committed the anti-doping rule violation contemplated by Rule 32.2(c) of the IAAF ADR.

ii. *What are the consequences to be imposed on the Athlete?*

74. As a result, it is for the Sole Arbitrator to determine the consequences to be imposed on the Athlete for the anti-doping rule violation which he committed.

75. Under Rule 40.4 of the IAAF ADR:

“The period of Ineligibility for anti-doping rule violations other than as provided in Rule 40.2 shall be as follows, unless Rules 40.6 or 40.7 are applicable:

(a) For violations of Rule 32.2(c) (Evading, Refusing or Failing to Submit to Sample Collection) ..., the period of Ineligibility shall be four years unless, in the case of failing to submit to Sample collection, the Athlete can establish that the commission of the anti-doping rule violation was not intentional (as defined in Rule 40.3), in which case the period of Ineligibility shall be two years”.

76. According to Rule 40.3 of the IAAF ADR:

“As used in Rules 40.2 and 40.4, the term “intentional” is meant to identify those Athletes who cheat. The term therefore requires that the Athlete or other Person engaged in conduct which he knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk. ...”.

77. In other words, an athlete who evades sample collection (violating Article 32.2(c) of the IAAF ADR) is subject to:

- a “standard” sanction of 4 years’ ineligibility, or

- a “reduced” sanction of 2 years’ ineligibility if the athlete can establish that the violation was not intentional (a) because he did not know that his behaviour constituted an anti-doping rule violation or (b) because (i) he did not know that there was a significant risk that the conduct in question might constitute or result in an anti-doping rule violation and (ii) did not manifestly disregard that risk.
78. The question before this Sole Arbitrator is therefore whether the Athlete established that his violation was not intentional.
79. The Sole Arbitrator denies this for a number of reasons:
- i. the Athlete had no reason to run away, when verbally notified of the doping control;
 - ii. Khiutte indicated that he was suggested to escape the control and in any case not to sign anything, therefore making it likely that also the Athlete had received the same suggestion. Such circumstance is confirmed by the conversation between Khiutte and the Athlete after the failed doping control, as reported by Khiutte;
 - iii. the Athlete gave the DCO a false name, denying to be the person sought for doping control;
 - iv. the Athlete is an expert of doping related matters, having undergone several tests in his career.
80. As a result, the Sole Arbitrator comes to the conclusion that the “standard” sanction for the infringement contemplated by Rule 32.2(c) of the IAAF ADR applies: the Athlete is therefore to be declared ineligible for a period of four years.
81. The rule indicating the starting moment of the period of ineligibility is set by Rule 40.11 of the IAAF ADR, according to which:
- “Except as provided below, the period of Ineligibility shall start on the date of the final hearing decision providing for Ineligibility or, if the hearing is waived or there is no hearing, on the date the Ineligibility is accepted or otherwise imposed. ...*
- (c) *Credit for Provisional Suspension or Period of Ineligibility Served: If a Provisional Suspension is imposed and respected by the Athlete or other Person, then the Athlete or other Person shall receive a credit for such period of Provisional Suspension against any period of Ineligibility which may ultimately be imposed. If a period of Ineligibility is served pursuant to a decision that is subsequently appealed, then the Athlete or other Person shall receive a credit for such period of Ineligibility served against any period of Ineligibility which may ultimately imposed on appeal”.*
82. On the basis of such rules, the starting moment of the period of ineligibility to be imposed on the Athlete would be the date of this award, which is “the final hearing decision providing for Ineligibility”, with credit given for the period of provisional suspension served by the Athlete.
83. IAAF, however, submits that the Athlete should receive no credit for the period of provisional suspension imposed on him on 5 August 2015, because he did not respect it, having attended the Training Camp in Portugal in November and December 2015. This circumstance is denied

by the Athlete, who admitted his presence in the same hotel as the Russian team, but submits that he was there at his own expenses “*to relax*”.

84. The Sole Arbitrator is comfortably satisfied that the Athlete breached the obligation, deriving from the provisional suspension, not to participate in any sporting activity, which includes participation in a training camp or practice (Rule 40.12(a) of the IAAF ADR). Such conclusion is supported by the admission of the Athlete, the implausibility of the Athlete’s explanation (who only “by chance” would have chosen the same hotel, in the same foreign location, for exactly the same period as the national team and his trainer), the confirmation of the Russian Federation and the declarations of Khiutte, who in December 2015 informed IAAF that the Athlete was in Portugal at a training camp where also the Russian team was staying. The fact that the Athlete may have paid for such participation is in that context irrelevant.
85. As a result, the Sole Arbitrator concludes that no credit should be given to the Athlete for any period of provisional suspension served.

3.6 Conclusion

86. In light of the foregoing, the Athlete is found responsible for the anti-doping rule violation contemplated by Rule 32.2(c) [*“Evading, Refusing or Failing to Submit to Sample Collection”*] of the IAAF ADR. The sanction of ineligibility for four (4) years starting from the date of this award is imposed on the Athlete.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. Mr Maksim Dyldin is responsible for the anti-doping rule violation contemplated by Article 32.2(c) [*“Evading, Refusing or Failing to Submit to Sample Collection”*] of the IAAF Anti-Doping and Medical Rules.
2. Mr Maksim Dyldin is imposed the sanction of ineligibility for four (4) years starting from the date of this award.
3. (...).
4. (...).
5. All other motions or prayers for relief are dismissed.