



**Arbitration CAS 2016/O/4853 International Association of International Federations (IAAF)  
v. All Russia Athletic Federation (ARAF) & Albina Mayorova, award of 21 April 2017**

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

*Athletics (marathon race)*

*Doping (testosterone)*

*CAS Jurisdiction under IAAF Rule 38.3*

*Distinction between one single first violation and a second violation*

*Determination of the applicable sanction*

1. Where a national federation is suspended by IAAF, no entity has jurisdiction in the relevant country to conduct a hearing in a doping case. Against this background, pursuant to the IAAF Anti-Doping Rules (ADR), 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 ADR, these proceedings are handled in accordance with CAS rules applicable to the appeal arbitration procedure without reference to any time limit for appeal.
2. Pursuant to the IAAF ADR, an anti-doping rule violation will be considered a second violation only if it can be established that the athlete committed the second anti-doping rule violation after he or she received notice or after reasonable efforts were made to give notice of the first anti-doping rule violation; if this cannot be established, the violations shall be considered together as one single first violation and the sanction imposed shall be based on the violation that carries the more severe sanction. In this respect, if the first adverse analytical finding (AAF) was notified to the athlete after the doping control which resulted in the second AAF, this second AAF cannot be considered as a separate, second anti-doping rule violation.
3. An athlete who has provided, by a balance of probability, no credible explanation for the first and the second AAF, therefore has failed to establish that the anti-doping rule violation was not intentional. As a result, the “standard” sanction, contemplated by the IAAF ADR, applies to the athlete for the infringement committed: the athlete is therefore to be declared ineligible for a period of four years.

## 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”) established by the World Anti-Doping Code (“WADA”).
2. The Russian Athletics Federation (RusAF) (the “Russian Federation” or the “First Respondent”) is a member, suspended on 13 November 2015, of the IAAF as the national athletics federation for Russia. The Russian Federation’s suspension was confirmed on 26 November 2015; its membership was not reinstated during the meeting of the IAAF Council on 17 June 2016. On 2 November 2015, the Russian Federation changed its name from ARAF into RusAF.
3. Ms Albina Mayorova (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 16 May 1977. The Athlete is a long distance runner who specializes in marathon competitions and represented Russia, *inter alia*, at the 2004 and the 2012 Olympic Games.

### 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 offered in the course of the proceedings. Additional facts may be set out, where relevant, in connection with the legal discussion which follows.
5. On 14 March 2016, the Athlete underwent an out-of-competition doping control in Cheboksary, Russia. The A sample provided by the Athlete was analysed by the WADA accredited Laboratory for Doping Analysis of the German Sports University of Cologne, Germany (the “Cologne Laboratory”).
6. On 29 May 2016, the Athlete underwent a second doping control in Cheboksary, Russia. The A sample provided by the Athlete on that occasion was analysed by the WADA accredited Doping Control Laboratory of the Karolinska University of Stockholm, Sweden (the “Stockholm Laboratory”).
7. On 21 June 2016, the Cologne Laboratory reported an adverse analytical finding for the presence of Testosterone in the sample it had analysed, consistent with an exogenous origin (the “First AAF”). Testosterone is an endogenous anabolic androgenic steroid prohibited under S1.b of the Prohibited List for 2016, when administered exogenously.
8. On 22 June 2016, the IAAF notified the Athlete of the First AAF by letter sent to the email

address *albina\_mayorova@inbox.ru*. In such letter the IAAF informed the Athlete (i) that the First AAF constituted a first anti-doping rule violation under Rule 32.2(a) and Rule 32.2(b) of the IAAF Anti-doping Rules, as contained in Chapter 3 of the IAAF Competition Rules 2016-2017, in force since 1 November 2015 (the “IAAF ADR”), (ii) of her right to request the analysis of the B sample, and (iii) of the possibility to accept a provisional suspension.

9. On 28 June 2016, by email sent from the address *albina\_mayorova@inbox.ru*, the Athlete transmitted to the IAAF:

i. a signed form dated 28 June 2016, containing the voluntary acceptance of the provisional suspension; and

ii. a declaration, which translated into English reads as follows:

*“On 14 March I made the probe No. 3070286 and according to its results in a month in ADAMS system the result was “negative”. Unfortunately, I failed to make images of the result page as I thought that the changes in the result were impossible. On 22 June 2016 I received an electronic mail about the failed test and in ADAMS system there is “no result”. After that I have a question: what have you diagnosed for the second time if after making the test A-probe is eliminated? What have you transferred to another laboratory? I haven’t given any consent to other examinations.*

*According to results of the test I would like to say that in the year of 2015 under the vital indications I underwent two operations: on 01.10.2015 and 21.12.2015. Copies of discharge records from medical books are attached. I don’t know what preparations were used during operations as I don’t have medical education. I don’t know why my probe contains forbidden preparations.*

*I am to add that probes I made on 27 March, 6 May and 29 May were also “negative”.*

*I have always observed honestly all demands of WADA and I have never purposefully complicated your job. I made all test at any time in competitive and non-competitive periods. I have never had claims from you”.*

10. The declaration transmitted by the Athlete on 28 June 2016 had attached some documents, dated October-December 2015, regarding medical treatment, which included surgery and medications, the Athlete had received in Russia for “*abnormal uterine bleeding in reproduction period*” and for “*hernia protrusion in epigastric region*”.

11. In a letter dated 8 September 2016, sent by email to *albina\_mayorova@inbox.ru*, the IAAF answered the Athlete’s declaration informing her:

i. “*regarding the testing procedure that led to your adverse finding*”, that “*following report of an Atypical Passport Finding to the IAAF’s Athlete’s Passport Management Unit, the ... sample underwent a confirmation procedure, including a GC-C-IRMS analysis, which revealed that it was consistent with the administration of exogenous anabolic steroids and resulted thereafter in the reporting of an Adverse Analytical Finding*”;

ii. “*having carefully reviewed reviewed your explanation*”, that “*it cannot be regarded as adequate under IAAF Rules. Indeed, none of the medication mentioned in the medical file in relation with the two operations which you underwent, contains the prohibited substance present in your sample ... You have therefore failed to establish the origin of the positive finding*”;

- iii. that she had the right to request a hearing in her case, to be held before the Court of Arbitration for Sport (“CAS”), as a result of the suspension of the Russian Federation.
12. On 14 September 2016, the Stockholm Laboratory reported an adverse analytical finding for the presence of Testosterone consistent with an exogenous origin (the “Second AAF”).
13. On 16 September 2016, the IAAF notified the Athlete of the Second AAF by letter sent to the email address *albina\_mayorova@inbox.ru*. In such letter the IAAF informed the Athlete that the Second AAF would not be considered as a separate infraction and that it would be treated together with the First AAF as a first anti-doping rule violation under Rule 32.2(a) and Rule 32.2(b) of the IAAF ADR, of her right to request the analysis of the B sample, of the possibility to submit explanations by 22 September 2016 and of the possibility to request a hearing before the CAS, following the suspension of the Russian Federation.
14. The Athlete did not respond to this letter.

## **2. THE ARBITRAL PROCEEDINGS**

### **2.1 The CAS Proceedings**

15. On 8 November 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.
16. 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.
17. On 15 November 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, with the invitation to forward them to the Second Respondent as soon as possible. In addition, both Respondents were invited to communicate the postal address of the Second Respondent at their earliest convenience. The cover letter accompanying the request of arbitration was also sent by email to the email address provided by IAAF for the Second Respondent (*albina\_mayorova@inbox.ru*).
18. By communication dated 9 December 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.
19. On 22 December 2016, the CAS Court Office requested from the First Respondent

confirmation that the CAS letter of 15 November 2016 had been delivered to the Second Respondent and any document confirming such delivery. At the same time, both Respondents were requested to communicate the postal address of the Second Respondent.

20. In a letter of 10 January 2017, the CAS Court Office noted that no answer had been provided by the Respondents to the letter of 22 December 2016. It therefore insisted that the Respondents provide the requested information, and invited the Claimant to try to obtain the same.
21. On 16 January 2017, the Claimant provided a postal address for the Second Respondent.
22. On 19 January 2017, 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, as provided by the Claimant.
23. In an email of 30 January 2017, the Claimant confirmed that it did not consider a hearing to be necessary in this case.
24. In a letter of 8 March 2017, the CAS Court Office noted that, according to a DHL report, the letter of 19 January 2017 had been delivered to the Second Respondent on 26 January 2017, but that no answer or any communication from the Second Respondent had been received. At the same time, the Parties were informed that the Sole Arbitrator had decided, in accordance with Articles R55 and R57 of the Code, to proceed with the arbitration and to deliver an award, solely based on the parties' written submissions, without the need to hold a hearing.
25. On 8 March 2017, 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 13 March 2017.

## **2.2 The Position of the Parties**

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

### **a) *The Position of the Claimant***

27. In its request for arbitration, 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) *The Athlete is found guilty of an anti-doping rule violation in accordance with Rule 32.2(a) or, in the alternative, Rule 32.2(b) of the IAAF Rules.*

- (iv) *A period of ineligibility of four years is imposed upon the Athlete, commencing on the date of the (final) CAS Award. Any period of provisional suspension imposed on, or voluntarily accepted, by the Athlete until the date of the (final) CAS Award shall be credited against the total period of ineligibility to be served.*
  - (v) *All competitive results obtained by the Athlete from 14 March 2016 through to the commencement of her provisional suspension on 28 June 2016 are disqualified, with all resulting consequences (including forfeiture of any titles, awards, medals, profits, prizes and appearance money).*
  - (vi) *The arbitration costs are borne entirely by the Respondents.*
  - (iv) *The IAAF is awarded a contribution to its legal costs”.*
28. In other words, in the Claimant’s opinion, the Athlete is responsible for the anti-doping rule violation contemplated by Rule 32.2(a) of the IAAF ADR [*“Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete’s Sample”*], and has to be sanctioned according to Rule 40.2(a)(i) of the IAAF ADR. The indication, mentioned as an *“alternative”* in the request for relief, that the Athlete be found responsible for a violation of Rule 32.2(b) [*“Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method”*] of the IAAF ADR is not further substantiated in the Claimant’s submissions.
29. With respect to the anti-doping rule violation under Rule 32.2(a) of the IAAF ADR, the Claimant notes that the First AAF was reported with respect to the doping control of 14 March 2016 and that the Second AAF was reported with respect to the doping control of 29 May 2016, and that in both occasions the Athlete did not request the analysis of the B sample: therefore, the violation for the *“Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete’s Sample”* is finally established in both cases. However, since the First AAF was notified to the Athlete on 22 June 2016, the Second AAF, concerning a test conducted before such notification, cannot be considered as a second violation: therefore, both the First AAF and the Second AAD have to be considered together as a first violation.
30. With respect to the period of ineligibility, the Claimant contends that the Athlete should be imposed a sanction of 4 years, since Testosterone is a non-specified substance and the Athlete, who bears the burden of evidence, did not establish that the commission of the anti-doping rule violation was not intentional. In fact, in order to satisfy such burden, the Athlete had first to establish how the prohibited substance had come to be present in her system, because in order to show that the violation was not intentional it is necessary to explain the conduct that led to the positive result.
31. In that respect, the IAAF underlines that the Athlete, when notified of the First AAF, alleged that the positive finding resulted from surgical interventions that she underwent on 1 October 2015 and 21 December 2015. In the IAAF’s opinion, however, the documents provided do not contain any indication that those interventions could have given rise to a positive finding for Testosterone. Therefore, the IAAF submits that there is no evidence that these interventions could be the source of the prohibited substance.
32. Finally, with respect to the disqualification of results, the Claimant notes that the sample for

which the First AAF was reported was collected on 14 March 2016. As a result, according to the IAAF, all the Athlete's results from such date through the commencement of her provisional suspension on 28 June 2016 should be disqualified.

**b) *The Position of the Respondents***

*ba) The Position of the First Respondent*

33. 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.

*bb) The Position of the Second Respondent*

34. The Athlete was notified of the request of arbitration, and invited to submit an answer. More specifically, the Athlete was notified by DHL at her postal address, as provided by the Claimant, and at the offices of the First Respondent (pursuant to Rule 30.7 of the IAAF ADR: "*Notice under these Anti-Doping Rules to an Athlete or other Person who is under the jurisdiction of a Member may be accomplished by delivery of the notice to the Member concerned. The Member shall be responsible for making immediate contact with the Athlete or other Person to whom the notice is applicable*"). In addition, the Athlete received by email to the address (*albina\_mayorova@inbox.ru*) she had used in her contacts with the IAAF all correspondence from the CAS Court Office intended for her.

35. Notwithstanding the above, the Athlete did not submit her position on the Claimant's claims in the course of this arbitration. Only in a statement transmitted to IAAF when notified of the First AAF did the Athlete express her position on the alleged anti-doping rule violation (§ 9(ii) above). In such statement the Athlete, in essence, referred to some surgery she had undergone and to the possibility that medications used during those operations be the cause of her positive results.

**3. LEGAL ANALYSIS**

**3.1 Jurisdiction**

36. CAS has jurisdiction to decide the present dispute between the parties.

37. 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. ...”.*

38. In the present case, in fact, the Russian Federation is currently suspended by IAAF, and the Russian Anti-Doping Agency (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 the letters of 8 September 2016 and of 16 September 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**

39. The request for arbitration to be considered as a combined statement of appeal and appeal brief 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**

40. 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 15 November 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**

41. 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”.*
42. Article 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 ...”.*



43. In the present case, therefore, the “*applicable regulations*” are the IAAF rules, and chiefly the IAAF ADR as in force, since 1 November 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

44. The case before this Sole Arbitrator concerns the commission by the Athlete of the anti-doping rule violation contemplated by Rule 32.2(a) 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 Respondents expressed no view on the Claimant’s claims. The Sole Arbitrator in fact notes that the “*alternative*” request for relief submitted by the Claimant, under which the Athlete should be found responsible also for a violation of Rule 32.2(b) [“*Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method*”] of the IAAF ADR, has not been substantiated in the Claimant’s submissions. As a result, it will no longer be considered.
45. 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.

#### **A. *Is the Athlete responsible of the anti-doping rule violation contemplated by Rule 32.2(a) of the IAAF ADR?***

46. The Athlete is charged with the violation of Rule 32.2(a) of the IAAF ADR.

47. Under Rule 32.2 of the IAAF ADR:

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

- (a) *Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete’s Sample.*
- (i) *it is each Athlete’s personal duty to ensure that no Prohibited Substance enters his body. Athletes are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples. 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 under Rule 32.2(a).*
- (ii) *sufficient proof of an anti-doping rule violation under Rule 32.2(a) is established by any of the following: presence of a Prohibited Substance or its Metabolites or Markers in the Athlete’s A Sample where the Athlete waives analysis of the B Sample and the B Sample is not analysed ...”.*

48. The presence of Testosterone in the samples provided by the Athlete on 14 March 2016 and on 29 May 2016, as reported respectively by the Cologne Laboratory and by the Stockholm Laboratory, is not challenged. Testosterone, an endogenous anabolic androgenic steroid, is, as already noted, a prohibited substance under S1.b of the Prohibited List for 2016, when administered exogenously. Consequently, the undisputed presence of Testosterone in the

samples provided by the Athlete constitutes sufficient proof of an anti-doping rule violation under Rule 32.2(a) of the IAAF Rules.

49. As a result, the Sole Arbitrator finds that the Athlete committed the anti-doping rule violation contemplated by Rule 32.2(a) of the IAAF ADR.

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

50. In light of the foregoing, it is for the Sole Arbitrator to determine the consequences to be imposed on the Athlete for the anti-doping rule violation which she committed.

51. In that regard, the Sole Arbitrator agrees with the Claimant that the First AAF and the Second AAF constitute together a single first anti-doping rule violation. In fact, pursuant to Rule 40.8(d)(i) of the IAAF ADR, an anti-doping rule violation will be considered a second violation only if it can be established that the athlete committed the second anti-doping rule violation after he or she received notice pursuant to Rule 37 or after reasonable efforts were made to give notice of the first anti-doping rule violation; if this cannot be established, the violations shall be considered together as one single first violation and the sanction imposed shall be based on the violation that carries the more severe sanction. In the Athlete's case, the First AAF was notified to the Athlete on 22 June 2016, *i.e.* after the doping control of 29 May 2016 which resulted in the Second AAF. Therefore, this Second AAF cannot be considered as a separate, second anti-doping rule violation.

52. Under Rule 40 of the IAAF ADR:

*"2. The period of Ineligibility imposed for a violation of Rules 32.2(a) (Presence of a Prohibited Substance or its Metabolites or Markers), ... shall be as follows, subject to potential reduction or suspension pursuant to Rules 40.5, 40.6 or 40.7:*

*(a) The period of Ineligibility shall be four years where:*

- (i) The anti-doping rule violation does not involve a Specified Substance, unless the Athlete or other Person can establish that the anti-doping rule violation was not intentional;*  
*(ii) The anti-doping rule violation involves a Specified Substance and it can be established that the violation was intentional.*

*(b) If Rule 40.2(a) does not apply, the period of Ineligibility shall be two years.*

*3. 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. ..."*

53. In other words, an athlete who tests positive for a non-specified substance prohibited in- and out-of-competition (violating Rule 32.2(a) of the IAAF ADR) is subject, for a first anti-doping rule violation, to:

- a "standard" sanction of 4 years' ineligibility (Rule 40.2(a)(i) of the IAAF ADR), or

- a “reduced” sanction of 2 years’ ineligibility (Rule 40.2(a)(i) of the IAAF ADR), 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 (Rule 40.3 of the IAAF ADR);
  - a “mitigated” sanction under Rule 40.6(b) of the IAAF ADR, if the athlete can establish not only that the violation is not intentional, but also that there is No Significant Fault or Negligence (as defined by the IAAF ADR);
  - no sanction under Rule 40.5 of the IAAF ADR, if the athlete can establish that there is No Fault or Negligence (as also defined by the IAAF ADR).
54. The main question before this Sole Arbitrator is therefore whether the Athlete established that her violation was not intentional. Pursuant to Rule 33.2 of the IAAF ADR, the Athlete has to establish such circumstance by a balance of probability.
55. The Sole Arbitrator notes that the Athlete indicated to IAAF on 28 June 2016 (§ 9(ii) above) some surgery she had undergone in October and December 2015, and the medications used during those operations, to be the possible reason for the adverse analytical findings reported by the Cologne Laboratory and the Stockholm Laboratory.
56. The Sole Arbitrator, however, remarks that:
- i. the medical records provided by the Athlete to IAAF on 28 June 2016 do not show the administration of any medication that could be the source of adverse analytical findings for Testosterone;
  - ii. the adverse analytical findings refer to doping controls that had taken place several months after surgery undergone by the Athlete;
  - iii. the Athlete provided no scientific evidence beyond her own words that she was administered a medication resulting (i) in the presence of Testosterone in her body (ii) several months after such administration.
57. As a result, the Sole Arbitrator finds that the Athlete has provided, by a balance of probability, no credible explanation for the First AAF and the Second AAF, and therefore has failed to establish that the anti-doping rule violation under Rule 32.2(a) of the IAAF ADR was not intentional.
58. As a result, the Sole Arbitrator comes to the conclusion that the “standard” sanction, contemplated by Rule 40.2(a)(i) of the IAAF ADR, applies to the Athlete for the infringement she has committed: the Athlete is therefore to be declared ineligible for a period of four years.
59. 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”.*

60. On the basis of such rules, the starting moment of the period of ineligibility to be imposed on the Athlete is 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. The Athlete accepted a provisional suspension on 28 June 2016. Therefore, the period of provisional suspension between 28 June 2016 and the date of this award should be credited against the period of ineligibility to be served by the Athlete. However, in order to avoid any possible misunderstanding and for practical reasons, the Sole Arbitrator holds that the period of ineligibility shall counted starting on 28 June 2016, the date of commencement of the provisional suspension, and not on the date of the award.

61. Pursuant to Rule 40.9 of the IAAF ADR:

*“In addition to the automatic Disqualification of the Athlete's individual results in the Competition which produced the positive sample under Rules 39 and 40, all other competitive results obtained by the Athlete from the date the positive Sample was Collected (whether In-Competition or Out-of-Competition) or other anti-doping rule violation occurred, through to the commencement of any Provisional Suspension or Ineligibility period shall, unless fairness requires otherwise, 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”.*

62. In light of such provision, and failing any indication that fairness otherwise provides, the Sole Arbitrator finds that all competitive results obtained by the Athlete from the date the sample leading to the First AAF was collected (*i.e.*, from 14 March 2016) through to the commencement of her provisional suspension (*i.e.*, 28 June 2016), are to 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.

### 3.6 Conclusion

63. In light of the foregoing, the Athlete is found responsible for the anti-doping rule violation contemplated by Rule 32.2(a) [*“Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample”*] of the IAAF ADR. The sanction of ineligibility for four (4) years starting from 28 June 2016 is imposed on the Athlete. All competitive results obtained by the Athlete from 14 March 2016 through to 28 June 2016 are disqualified with all of the resulting consequences for the Athlete, including the forfeiture of any titles, awards, medals, points and prize and appearance money.

64. All other requests for relief, including with respect to the violation of Rule 32.2(b) [*“Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method”*] of the IAAF ADR, are dismissed.

## ON THESE GROUNDS

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

1. Ms Albina Mayorova is responsible for the anti-doping rule violation contemplated by Article 32.2(a) [*“Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete’s Sample”*] of the IAAF Anti-Doping and Medical Rules.
2. A sanction of ineligibility for four (4) years starting from 28 June 2016 is imposed on Ms Albina Mayorova.
3. All competitive results obtained by Ms Albina Mayorova from 14 March 2016 through to 28 June 2016 are disqualified with all of the resulting consequences, including the forfeiture of any titles, awards, medals, points and prize and appearance money.
4. (...).
5. (...).
6. All other motions or prayers for relief are dismissed.