



Arbitration CAS 2016/O/4854 International Association of Athletics Federations (IAAF) v. Russian Athletic Federation (RUSAF) & Alexandr Khiutte, award of 21 April 2017

Panel: Prof. Jan Paulsson (France), Sole Arbitrator

Athletics (track and field)

Doping (etiocolanolone)

CAS jurisdiction and applicable law according to Rule 38.3 IAAF ADR

Presence of a prohibited substance

Evading doping control

Determination of the period of ineligibility

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 (IAAF Rules), 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 Rules, these proceedings are handled in accordance with CAS rules applicable to the appeal arbitration procedure without reference to any time limit for appeal.
2. Rule 32.2(a) of the IAAF Rules recognizes a doping violation where a prohibited substance is detected in an athlete's sample. Rules 32.2(a)(i) makes clear, that it is each athlete's personal duty to ensure that no Prohibited Substance enters his/her body. The rules impose a strict liability in the event that such substances are detected; accordingly, it is "not necessary" to establish any level of *mens rea*, such as intent, fault, negligence or knowing use. In light of the strict liability standard for the presence of prohibited substances imposed under the IAAF Rules, the athlete's arguments with regard to his/her ignorance of the nature of the substances used, or his/her suggestion that fault lies with his/her coach cannot constitute relevant defenses or mitigating factors.
3. Rule 32.2(c) of the IAAF Rules prohibits evading, refusing or failing to submit to sample collection. The rules does not cease to consider an attempted evasion of anti-doping controls as a doping violation merely because a sample is ultimately collected. For this reason, an attempted (or, successful) evasion does not cease to be one merely because the athlete returned to submit to testing hours after the fact. Such evasion, even if on the recommendation of a third party such as a coach, was committed

knowingly, and with specific intent and therefore constitutes a violation under Rule 32.2(c).

4. Where no violations should constitute “second violations” for the purposes of Rule 40.8(d)(i) of the IAAF Rules, any sanction to be imposed shall be based on the violation carrying the “more severe sanction”. If an athlete admitted of having intentionally evaded testing, pursuant to the operation of Rule 40.4(a) of the IAAF Rules, such a violation of Rule 32.2(c) will carry a period of ineligibility of four years.

I. BACKGROUND

A. The Parties

1. The International Association of Athletics Federation (“IAAF” or the “Claimant”) is the world governing body for track and field. Among its responsibilities is the regulation of international track and field. This includes the enforcement of anti-doping regulations as set forth by the World Anti-Doping Code (“WADC”).
2. The Russian Athletics Federation (RUSAF) (the “Russian Federation” or the “First Respondent”) is the national governing body for sport in Russia. It is the relevant Member Federation, currently suspended, of the IAAF for Russia.
3. Mr. Alexandr Khiutte (the “Athlete” or the “Second Respondent”, and collectively with the First Respondent the “Respondents”) is an international-level Russian track and field athlete, specializing in 200- and 400-meter races.

B. Background facts

4. The information detailed in this section is a summary of relevant facts as provided by the Claimant in its written pleadings, the factual exhibits attached thereto, and by the Second Respondent in his communications with the IAAF, as well as subsequent electronic correspondence. This section serves solely for the purpose of factual synopsis; additional facts are set out, to the extent they are relevant, in the legal discussion that follows. The present Award refers to such evidence and arguments only to the extent they are necessary to explain its reasoning; the Sole Arbitrator has, however, considered all facts, claims, and legal arguments before him.
5. On 22 May 2015, Ms Elena Gorodilova-Shamsutdinova, a Doping Control Officer (“DCO”) acting on behalf of the IAAF’s anti-doping service provider, International Doping Tests and Management (“IDTM”), visited the “Yunost Sports Complex” in Adler, Russia. The purpose of the visit was to conduct out-of-competition tests on a number of Russian athletes training at the complex. The DCO was accompanied by an assistant, Mr. Cyrille Gan. The DCO’s e-mail of 25 May 2012 indicates that Mr. Khiutte was notified of the control test, as required

under IAAF regulations, and records the Athlete's reaction to his notification in the following terms¹:

I received a phone call from the DCO saying that Hutte [Mr Khiutte] wants to talk to me. I introduced myself to Hutte and asked what the problem was. He said 'no problem.' I said that IAAF has authorized IDTM to test him today. He b[u]ng up the phone.

In the end, Hutte provided 6 samples. The athlete and coaches were on the phone with different people and we were afraid that they were calling the customs/DHL in order to stop the samples from being delivered so we decided to send 5 samples with DHL and the DCO took one sample (the last one) with her home. She flew to Paris (private trip) on the following Monday and will ship it to Cologne from there².

6. The DCO's report proceeds to describe, in detail, the DCO's version of events as they occurred on 22 May 2015. According to the report, following the arrival of the DCO and Mr. Gan at 7:00 a.m., and after spending at least 30 minutes attempting to persuade various hotel and athletics federation personnel to divulge the Athlete's room number, Ms. Gorodilova-Shamsutdinova proceeded to Room 338, where she encountered Mr. Khiutte (along with another athlete selected for testing that day):

[W]e went to notify Ivashko [a second athlete]. 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. We notified Ivashko. I was using the internet on my phone and discovered that the young man who opened the door looks like Hutte (Khiutte). 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 Zuehbra Vereschagina, who informed him that he will be tested. He said that we are already in a room. Ivashko was ready and we proceed with the testing.

After Hutte (Khiutte) received a phone call from the same coach. She informed him [] about something, he said too late, they are in a room. She said something e[]lse, 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 []³.

7. According to the DCO report, after the second athlete provided his sample, Mr. Khiutte informed the DCO that he "was not ready to provide the sample" and drank two glasses of water. The DCO accompanied the Athlete to the cafeteria for breakfast, after which Mr. Khiutte was asked to follow the DCO to submit to the doping control test. The report then describes the Athlete's reaction after appearing to receive a text message on his mobile phone:

Hutte (Khiutte) received the text message and started to run upstairs. I asked him to wait, and tried to e[x]plain that we need to go all together, because after the notification he must not be alone and must stay under the observation all the time, but he kept running. I was running as well, but Hutte is [a] sprinter, impossible

¹ The Sole Arbitrator notes that the IAAF has not submitted an independent Doping Control Form ("DCF") in connection with its Request for Arbitration. The following statement of facts therefore relies on the DCO's preliminary comments, submitted to Jasmina Glad Schreven, in two internal e-mails filed by the Claimant.

² DCO Report dated 25 May 2015. Although the original email does not contain paragraph breaks, the present Award introduces breaks into its quotations from the report to improve readability. Typos in the original report have been corrected, where necessary to improve comprehension.

³ DCO Report dated 25 May 2015.

to catch him. He r[a]n away up to the 4th floor. I followed him on my speed [...]. I arrived on the 4th floor, searched for the athlete everywhere⁴.

8. After checking several floors of the hotel and the Athlete's room, without success, the DCO testifies that she proceeded to conduct a test on another athlete and, in the meantime, attempted to persuade various hotel and ARAF personnel to convince Mr. Khiutte to reappear and submit to testing. According to the DCO, the Athlete returned to the hotel at 12:38 p.m.:

At 12h38 Hutte arrived. We went in his room. He was on [the] phone with someone. He asked to see my documents again. I showed them to him, he said to someone, that he saw my documents, my DCO card. I explained what is IDTM. He said that he would like to speak with representative from the agency. I said that I'm a DCO, he can speak to me, he said he would like to speak with someone from the agency. I asked Jasmina to call me and passed him my phone. [At] the same time he was on [the] phone with someone. He hold Jasmina's call. He said that he is not ready to provide the sample and started to drink.

I asked him not to drink very much and explained the situation with the diluted samples and SG. He was very nervous. Ivashko was in the room. When Ivashko left the room, Hutte asked to speak, he was very nervous, he said he [was] worried to provide the sample. [He worried [that] the sample will be positive. He asked what he can do in such [a] situation. I explai[n]ed that it is better to provide the sample, even if it will be a positive sample tha[n] to refuse. [...]

He said that the coach asked him to run away. ... He asked if he did not sign [] the form and r[a]n away, [if] he [would not] receive any sanctions. I said that it is not me who take[s] a de[c]ision[,] that it is IAAF. [...] He decided to provide the sample⁵.

9. The DCO has submitted that the Athlete provided a sample at 2:12 p.m., and ultimately provided six samples in total.
10. On 25 June 2015, the IAAF informed the Athlete that, based on the facts noted in the DCO's report, an investigation against him had been launched to determine whether Mr. Khiutte had violated Rules 32.2(c) and 32.2(e) of the 2016-2017 IAAF Competition Rules (the "IAAF Rules"), pertaining to evading sample collection and tampering with anti-doping controls.
11. On 30 June 2015, Mr. Khiutte submitted an "Explanation" via e-mail to the IAAF (the "First Explanation").⁶ In it, the Athlete explained that he had suffered heat-stroke the day prior to the testing, i.e., on 21 May 2015. He further explained:

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. ...

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

⁴ DCO Report dated 25 May 2015, p. 3

⁵ DCO Report dated 25 May 2015.

⁶ Khiutte Explanation dated 30 June 2015.

*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*⁷.

12. In response to the DCO's allegation that the Athlete had run away on the way back to his hotel room while being escorted by the DCO, Mr. Khiutte explained that he was "*ashamed to speak about*" his symptoms, that he "*felt giddiness and inclination to vomiting*" in the hotel lobby, and accordingly "*began to look for [a] toilet urgently*". The Athlete's First Explanation continues:
*I walked quicker to the toilet which I knew was nearby on the 4th floor near the stairs. I did not r[u]n away and did not refuse to provide a sample*⁸.
13. Mr. Khiutte concluded that "*the situation which has happened on the 22nd of May was Force majeure[e] and I could not foresee it*", and added that "*I do not consider m[yself] to be guilty*"⁹.
14. On 1 July 2015, the DCO submitted comments in response to the Athlete's Explanation, in which she contested the Athlete's account of events¹⁰. The DCO's comments were forwarded to the Athlete by the IAAF on 5 August 2015, along with a statement that the charges against him on the basis of Rules 32.2(c) and 32.2(e) of the IAAF Rules were "confirmed". The IAAF further requested that the Athlete indicate, by 12 August 2015, whether he wished to have a hearing in respect of the matter. The Athlete's provisional suspension took force from the same date.
15. On 6 August 2015, the Antidoping Laboratory in Cologne, Germany reported an adverse analytical finding for "Etiocholanolone", a prohibited substance¹¹, in the Athlete's blood sample provided by him to the DCO on 22 May 2015.
16. On 10 August 2015, the IAAF notified the Athlete, via his federation, of the adverse finding for Etiocholanolone; accordingly, the IAAF deemed Mr. Khiutte in violation of Rules 32.2(a) and 32.2(b) of the IAAF Rules, and informed the Russian Federation that the Athlete could provide an explanation for the laboratory findings by 17 August 2015 (as well as being entitled to certain other procedures, such as requesting an analysis of a B sample by the same date or requesting documentation relating to the samples).
17. On 22 September 2015, the IAAF reminded the Russian Federation of the deadline for the Athlete to request a hearing.
18. On 13 October 2015, the Athlete submitted a second statement (the "Second Explanation") to the IAAF. The Second Explanation contained a substantially different narrative relative to the First Explanation. Mr. Khiutte wrote:

⁷ Khiutte Explanation dated 30 June 2015.

⁸ Khiutte Explanation dated 30 June 2015.

⁹ Khiutte Explanation dated 30 June 2015.

¹⁰ The reasons given by the DCO for her disagreement with the Athlete's Explanation are not examined in detail in this Award, however, since the Athlete ultimately submitted a second, dramatically revised explanation in which he admitted, among other things, to having attempted to evade sample collection. *See* paras. 18-19, *infra*.

¹¹ The World Anti-Doping Code, "The 2015 Prohibited List – International Standard", p. 3 (entry into force 1 January 2015).

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 these substances were illegal. It was only later, after my tests came back positive for Epiandrosterone, 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 2015 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 fine¹².

19. The Athlete's Second Explanation offered the following conclusions:

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 Zuebra Vereschagina 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 punishment¹³.

20. On 3 November 2015, the Athlete requested a hearing.

II. THE ARBITRAL PROCEEDINGS

A. The CAS Proceedings

21. On 9 November 2016, the IAAF filed a request for arbitration against the Russian Federation and the Athlete with CAS, pursuant to the Code of Sports-related Arbitration (the "CAS Code").
22. 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

¹² Khiutte Explanation dated 13 October 2015.

¹³ Khiutte Explanation dated 13 October 2015.

indicated that its Request for Arbitration should be considered its Statement of Appeal and Appeal Brief for the purposes of the CAS Code.

23. On 15 November 2016, the CAS Court Office forwarded the Claimant's Request for Arbitration, including its exhibits, to the Respondents by DHL sent at the First Respondent's mailing address. The CAS Court Office specified that, as requested by the IAAF, the dispute had been submitted to the CAS Ordinary Arbitration Division, but would be dealt with in accordance with the rules of the CAS Appeals Arbitration Division. The cover letter accompanying the submission was also submitted to an e-mail address on file for the Athlete.
24. 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. Jan Paulsson, Sole Arbitrator.
25. On 10 January 2017, the Second Respondent submitted several e-mails to the CAS Court Office, which acknowledged receipt in a letter dated 12 January 2017. In that letter, the CAS Court Office additionally, and *inter alia*, invited the parties to indicate the personal mailing address of Mr. Khiutte.
26. On 13 January 2017, the Russian Federation forwarded the Athlete's personal mailing address to the CAS Court Office.
27. On 24 January 2017, the CAS Court Office (i) confirmed the mailing address of the Second Respondent, (ii) invited the parties to indicate whether they desired a hearing in this matter, and (iii) stated that, absent correspondence to the contrary being received from the Athlete within five days of receipt of the present letter (delivered by DHL directly to him on 25 January 2017), Mr. Khiutte would be deemed to have renounced his right to submit an Answer and to have received the CAS Court Office letter of 15 November 2016 (containing the Request for Arbitration and related exhibits), as of 17 November 2016.
28. The IAAF indicated, on 30 January 2017, that it preferred an award be rendered solely on the basis of the parties' written submissions. None of the Respondents expressed their view on this issue.
29. On 1 February 2017, the CAS Court Office deemed the Athlete to have received its letter of 15 November 2016 as of 17 November 2016. It additionally deemed Mr. Khiutte to have waived his right to submit an Answer.
30. The Order of Procedure was circulated on behalf of the Sole Arbitrator on 15 February 2017 (the "Order of Procedure"), and was accepted and signed by the IAAF on 21 February 2017. The Respondents were given the opportunity to sign the Order of Procedure by 2 March 2017, but failed to do so. The Order of Procedure confirmed that the Sole Arbitrator deemed himself sufficiently informed to issue an award on the basis of the case file to date.

B. Positions of the Parties

31. The following section is a summary of the parties' positions only and does not necessarily include every submission advanced by the Claimant, or by either Respondent, in their respective pleadings and/or correspondence to the Sole Arbitrator or to the IAAF. The Sole Arbitrator has considered all arguments available to him in deciding the present Award.

a) The Claimant's Position

32. The Claimant submits that the Sole Arbitrator has jurisdiction to hear the present dispute. It argues, in particular, that (i) all formal procedural and substantive requirements under the CAS Code and the IAAF Rules have been met; and (ii) in light of the Russian Federation's ongoing suspension from the IAAF, it is "*plainly not necessary*" to set or enforce a deadline for the Russian Federation to convene a hearing prior to submitting the dispute to CAS for resolution.

33. With regard to the merits, the Claimant alleges that the Athlete has violated Rules 32.2(a) and (b) of the IAAF Rules. Rules 32.2(a) and (b) provide, in relevant part:

(a) Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample

[...]

(b) Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method

34. In the Claimant's view, the presence of a prohibited substance, or its metabolites, in the Athlete's A sample is in and of itself sufficient to constitute an anti-doping violation under the IAAF Rules when the Athlete failed to request the analysis of the B sample within the prescribed deadline and thus waived his right to such analysis. The IAAF notes, in this regard, that the laboratory analysis of the sample concludes that the "*result for Etiobolanolone (Etio) and at least one of the Adioms (5aAdiol and/ or 5bAdiol) is consistent with an exogenous origin*".

35. Additionally, the Claimant alleges that the Athlete is in violation of Rules 32.2(c) and/or 32.2(e) of the IAAF Rules. These rules, for their part, state:

(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.*

[...]

(e) *Tampering or Attempted Tampering with any part of Doping Control: Conduct which subverts the Doping Control process but which would not otherwise be included in the definition of Prohibited Methods. Tampering shall include, without limitation, intentionally interfering or attempting to interfere with a Doping Control Official, providing fraudulent information to the IAAF, Member or an Anti-Doping Organization, or intimidating or attempting to intimidate a potential witness.*

36. The Claimant submits that, despite Mr. Khiutte's disappearance from, and ultimate return to, the Yunost Sports Complex in order to submit to the anti-doping control, "[t]he fact that the

Athlete ultimately underwent the doping test is not relevant". Rather, in its view, CAS case law demonstrates that "refusal" or "failure" in the context of Rule 32.2(c) is shown where "any delay in providing the sample" is occasioned following an athlete's notification of testing, where such delay is unauthorized and absent "*compelling justification*" to the contrary¹⁴.

37. In the view of the IAAF, no such compelling justification exists here. In particular, it submits that being instructed by one's coach to evade anti-doping controls cannot suffice as a "*compelling justification*", since the anti-doping system "*is predicated on the personal responsibility of individual athletes*"¹⁵. In any event, in the Claimant's view, the Athlete has confirmed facts which, taken together, amply meet the standard of "*comfortable satisfaction*" that a rules violation has occurred, as defined in Rule 33.1 of the IAAF Rules.
38. In view of the above, the IAAF's prayers for relief are these:
- (i) *CAS has jurisdiction to decide on the subject matter of this dispute;*
 - (ii) *The Request for Arbitration of the IAAF is admissible;*
 - (iii) *Alexandr Khiutte is found guilty of an anti-doping rule violation in accordance with Rule 32.2(a), 32.2(b), 32.2(c) and/or 32.2(e) of the IAAF Rules;*
 - (iv) *A period of ineligibility of four years is imposed upon Alexandr Khiutte, commencing on the date of the (final) CAS Award. Any period of provisional suspension imposed on, or voluntarily accepted by, Alexandr Khiutte until the date of the (final) CAS Award shall be credited against the total period of the ineligibility period to be served.*
 - (v) *All competitive results obtained by Alexandr Khiutte from and including 22 May 2015 are disqualified, with all resulting consequences (including forfeiture of medals, points and prizes).*
 - (vi) *Any arbitration costs are borne entirely by the Respondents.*
 - (vii) *The IAAF is awarded a significant contribution to its legal costs.*

b) *The Positions of the Respondents*

ba) *The Position of the First Respondent*

39. The Russian Federation was notified of the Claimant's Request for Arbitration, and was invited both by the IAAF and by CAS to submit an Answer in connection with the present proceedings. The First Respondent has not, however, submitted an Answer or provided any written submissions or correspondence contesting the merits of the present dispute. Accordingly, the First Respondent does not dispute the claims submitted.

¹⁴ The Claimant referred here to the case CAS 2008/A/1557, paras. 60, 61 (emphasis added).

¹⁵ The Claimant referred here to the case CAS 2012/A/2791, para. 8.1.6.

bb) The Position of the Second Respondent

40. The Athlete was deemed to have waived his right to submit an Answer following the expiration of the CAS Court Office's deadline, as enunciated in its letter of 24 January 2017 and whose lapse was confirmed by CAS on 1 February 2017.
41. Nevertheless, the Second Respondent has submitted his positions on the Claimant's claims on two occasions, the First Explanation and the Second Explanation, dated 30 June 2015 and 13 October 2015, respectively, via e-mail. The Sole Arbitrator takes these submissions into account, the Athlete's effective waiver of his right to submit a formal Answer notwithstanding.
42. The content of the Athlete's First and Second Explanations is described with the factual background of this case, *supra*. For present purposes, the Sole Arbitrator takes note of the Athlete's Second Explanation, which substantially revises the Athlete's comments submitted through his First Explanation. Indeed, this correspondence largely disavows the Athlete's original version of events, and largely confirms the allegations reflected in the DCO's report and her subsequent comments.
43. In summary, in the Second Explanation:
- (i) the Athlete does not contest the laboratory results indicating the presence of prohibited substances in a blood sample collected on 22 May 2015;
 - (ii) the Athlete alleges that he took such substances under pressure from his coach, and in any event was unaware that such substances were illegal; and
 - (iii) the Athlete notes that he has not been found in violation of the IAAF Rules on any previous occasion.
44. Accordingly, Mr. Khiutte does not contest the facts as alleged by the Claimant. The Second Respondent does, however, advance several arguments which he requests be taken into account as mitigating factors: principally ignorance of the nature of the substances given to him (in respect of the intake of prohibited substances) and having acted under duress (in respect of any evasion of anti-doping controls).

III. LEGAL ANALYSIS

A. Jurisdiction

45. Rule 38.3 of the IAAF Rules states, in relevant part:

If a hearing is requested by an Athlete, it shall be convened without delay and the hearing completed within two months of the date of the notification of the Athlete's request to the Member [...]. If the Member fails to complete a hearing within two months, or, if having completed a hearing, fails to render a decision within a reasonable time period thereafter, the IAAF may impose a deadline for such event. If in either case the deadline is not met, the IAAF may elect, if the Athlete is an International-Level Athlete, to have the case referred directly to a single arbitrator appointed by CAS. The case shall be handled in accordance with CAS rules

(those applicable to the appeal arbitration procedure without reference to any time limit for appeal). The hearing shall proceed at the responsibility and expense of the Member and the decision of the single arbitrator shall be subject to appeal to CAS in accordance with Rule 42.

46. The Russian Federation's suspension of membership from the IAAF was confirmed on 26 November 2015; its membership was not reinstated during the meeting of the IAAF Council on 17 June 2016¹⁶. The Russian Federation, unsurprisingly, did not complete a hearing within two months of the Athlete's Request of 3 November 2015 and was not in a position to do so. Indeed, no national entity within the Athlete's Member State has jurisdiction under the IAAF Rules to conduct a hearing in this case. The Sole Arbitrator accordingly accepts the Claimant's submission that it was "*plainly not necessary*" to impose a deadline on the Russian Federation for this purpose prior to referring the dispute to CAS.
47. The Athlete is an International-Level Athlete¹⁷, and is therefore eligible to have his case referred to a single arbitrator in accordance with Rule 38.3 of the IAAF Rules.
48. Accordingly, CAS has jurisdiction to decide the dispute between the parties.

B. Admissibility

49. The Claimant's Request for Arbitration complies with all procedural and substantive requirements of the CAS Code. Neither the First nor the Second Respondent dispute the admissibility of the IAAF's claims. Accordingly, the Sole Arbitrator deems the claims admissible.

C. Appeal Arbitration Procedure

50. Rule 38.3 of the IAAF Rules states that the procedure to be followed shall be governed by CAS Rules "*applicable to the appeal arbitration procedure without reference to any time limit for appeal*". Accordingly, Rules 47 et seq. of the CAS Code apply to these proceedings.

D. Applicable Law

51. The IAAF has cited to the 2016-2017 edition of the IAAF Rules (with an effective date of November 2015), noting that, in all events, the relevant provisions do not differ from the IAAF Rules that would have been in effect on the date of the sample collection of Mr. Khiutte, i.e., 22 May 2015. To the extent that the IAAF Rules do not speak to a relevant issue, the IAAF submits that Monegasque law shall apply to the question, in accordance with Rule 42.24 of the same.

¹⁶ See IAAF Press Release, "RUSAF has not met reinstatement conditions" – IAAF Council Meeting, Vienna", at <http://www.iaaf.org/news/press-release/iaaf-council-meeting-vienna> (last accessed 1 March 2017).

¹⁷ IAAF Registered Testing Pool.

52. The Russian Federation has not put forward any submissions with regard to applicable law. Likewise, the Athlete has been silent on this issue.
53. Article R58 of the CAS Code provides the following:
The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.
54. It is undisputed that the IAAF Rules, with Monegasque law on a subsidiary basis, govern the present dispute.
55. The Claimant has cited to the 2016-2017 IAAF Rules (including the IAAF Anti-Doping Rules in force as of 1 January 2015, i.e., at the time of the alleged violations). The Sole Arbitrator notes that the 2016-2017 IAAF Rules do not contain any material changes relative to the 2015 IAAF Rules in force on 22 May 2015, the date of the alleged violations; nevertheless, pursuant to the legal principle of *tempus regit actum*, the Sole Arbitrator considers that the regulations in force at the time of the alleged acts apply, i.e., the IAAF rules entering into force as of 1 January 2015.

E. Analysis of the Merits

56. The Athlete is charged by the Claimant with violations of Rules 32.2(a), 32.2(b), 32.2(c), and/or 32.2(e) of the IAAF Rules. The Claimant further requests that a period of ineligibility of four years be imposed on the Athlete, commencing on the date of this Award, any period of provisional suspension being credited against the total period of ineligibility to be served. The Second Respondent admitted to certain allegations of the DCO but denied knowledge or responsibility, while the First Respondent expressed no view on these claims.
57. The alleged doping rule violations can be categorized into two groups, relating to the presence or use of prohibited substances on the one hand (Rules 32.2(a) and (b)), and the evasion or tampering with doping controls on the other hand (Rules 32.2(c) and 32.2(e)). The Sole Arbitrator adopts this dichotomy in addressing each of these claims below¹⁸.
58. In respect of each of the claims, the Sole Arbitrator is mindful of Rule 33 of the IAAF Rules, which provides that the Claimant “*shall have the burden of establishing that an anti-doping rule violation has occurred*”. Rule 33 further states that such burden requires establishing an anti-doping violation “*to the comfortable satisfaction of the relevant hearing panel [...] greater than a mere balance of probability but less than proof beyond a reasonable doubt*”. The Claimant’s burden may be established through facts obtained “*by any reasonable means*”.

¹⁸ The Sole Arbitrator is mindful that the Claimant has addressed its arguments on the merits with regard to Rules 32.2(a) and 32.2(c) specifically—listing, however, Rules 32.2(b) and 32.2(e) alongside the former two rules in its request for relief.

a) Rules 32.2(a) and 32.2(b)

59. Rule 32.2(a) of the IAAF Rules recognizes a doping violation where a “*prohibited substance or its metabolites or markers*” are detected in an athlete’s sample. Its conceptual sibling, Rule 32.2(b), similarly prohibits “*use or attempted use*” of such prohibited substances.
60. The Sole Arbitrator notes that Rules 32.2(a)(i) and 32.2(b)(i) make clear, in identical terms, that it is “each Athlete’s personal duty to ensure that no Prohibited Substance enters his body”. The rules impose, in effect, a strict liability in the event that such substances are detected; accordingly, as the Rules make clear, it is “not necessary” to establish any level of *mens rea*, such as “*intent, [f]ault, negligence or knowing use*”.
61. In the present instance, the Athlete’s “A” blood sample of 22 May 2015 returned a positive result for the presence of Etiocholanolone, a “Prohibited Substance” under S1.1(b) of the World Anti-Doping Code “Prohibited List” (2015 edition).
62. The Athlete did not exercise his right to review the laboratory results or to request an analysis of the B Sample, nor has he disputed the results. Moreover, the Athlete’s Second Explanation, both implicitly and expressly, admits that Mr. Khiutte engaged in doping¹⁹. Accordingly, the Sole Arbitrator considers that the IAAF has discharged its burden of establishing a violation of Rules 32.2(a) and 32.2(b) of the IAAF Rules.
63. In light of the strict liability standard for the presence of prohibited substances imposed under the IAAF Rules, the Sole Arbitrator does not consider the Athlete’s arguments with regard to his ignorance of the nature of the substances used²⁰, nor his suggestion that fault lies with his coach (who allegedly pressured the Athlete into accepting the prohibited substance into his body), to constitute relevant defenses or mitigating factors in response to these claims.

b) Rule 32.2(c) and 32.2(e)

64. Rule 32.2(c) prohibits “*evading, refusing or failing to submit to sample collection*”. Rule 32.2(e), titled “*Tampering or Attempted Tampering with any part of Doping Control*”, encompasses conduct which “*subverts the Doping Control process*” but which would “*not otherwise be included in the definition of Prohibited Methods*”. This second rule, in the Sole Arbitrator’s view, acts as a “*catch-all provision*” in the IAAF Rules: its operation is such as to capture conduct which effectively undermines anti-doping regimes, but which would not be otherwise be encompassed by other rules relating to doping control in Chapter 3 of the same.
65. In light of the subsidiary role played by Rule 32.2(e), the Claimant’s implied presentation of its Rule 32.2(e) as an alternative basis for establishing guilt²¹, and Rule 40.8(d)(i) of the IAAF

¹⁹ Khiutte Explanation dated 13 October 2015 (“*The revealed substance had been given to me by my coach*”).

²⁰ *Id.* (“*The revealed substance had been given to me by my coach. I did not suspect that I was taking an illegal substance*”).

²¹ The Claimant’s request for relief asks that the Athlete be found guilty of anti-doping rule violations in accordance with “*Rule 32.2(a), 32.2(b), 32.2(c), and/or 32.2(e) of the IAAF Rules*” (emphasis added).

Rules²², the Sole Arbitrator first examines the merits of the Claimant's Rule 32.2(c) violation. As explained below, the Sole Arbitrator deems such a violation to have been established by the Claimant, and accordingly does not consider it necessary to consider Rule 32.2(e) separately.

66. As demonstrated by the Claimant's reference to CAS case law²³, Rule 32.2(c) of the IAAF Rules does not cease to consider an attempted evasion of anti-doping controls as a doping violation merely because a sample is ultimately collected. For this reason, an attempted (or, in this case, successful) evasion does not cease to be one merely because the Athlete returned to submit to testing hours after the fact. The Sole Arbitrator considers this approach justified by the policy logic of the IAAF Rules as well as by the plain meaning of the term "evasion", which does not admit of a temporal requirement and need not last indefinitely.
67. The Athlete's Second Explanation admits that Mr. Khiutte, on instructions from his coach, "*attempted to evade the [DCO] officers and was absent for several hours*". Indeed, the statement makes clear that such evasion, even if on the recommendation of a third party such as a coach, was committed knowingly, and with specific intent. The Second Explanation, in other words, effectively accepts the Claimant's claims relating to attempted evasion of anti-doping controls, as described by the DCO. Accordingly, the Sole Arbitrator is satisfied that the Claimant has met its burden, under the IAAF Rules, of establishing a violation of Rule 32.2(c), with no "*compelling justification*" meriting a contrary conclusion.
68. As recorded above, the Sole Arbitrator considers the Claimant to have established conduct intended to subvert the doping control process: namely Mr. Khiutte's attempt (successfully, prior to his voluntary return) to evade testing on 22 May 2015. Accordingly, the Sole Arbitrator does not consider it necessary to determine whether an independent violation under Rule 32.2(e) of the IAAF Rules was committed.

c) *Period of Ineligibility*

69. The Second Athlete having been found in violation of Rules 32.2(a), 32.2(b), and 32.2(c) of the IAAF Rules, the Sole Arbitrator now turns to the sanction to be imposed.
70. Rule 40.2(a) of the IAAF Rules imposes a period of ineligibility of four years for a violation of Rule 32.2(a), where the anti-doping rule violation "*does not involve a Specified Substance, unless the Athlete*" can show that the violation was "*not intentional*". Similarly, Rule 40.4(a) imposes a period of four years for violations of Rule 32.2(c), with an identical mitigating factor of non-intentionality applying to reduce such period to two years.

²² This rule considers that, where an Athlete did not commit a second violation after "*receiv[ing] notice*" or "*after reasonable efforts were made to give notice of the first anti-doping rule violation*", then multiple violations "*shall be considered together as one single violation and the sanction imposed shall be based on the violation that carries the more severe sanction*". IAAF Rules, Rule 40.8(d)(i).

²³ CAS 2008/A/1557.

71. Furthermore, Rule 40.8(d)(i) of the IAAF Rules provides the following with respect to the imposition of sanctions for multiple doping violations:
- For the purposes of imposing sanctions under Rule 40.8, an anti-doping rule violation will only be considered a second violation if it can be established that the Athlete or other Person committed the second anti-doping rule violation after the Athlete or other Person 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 violation and the sanction imposed shall be based on the violation that carries the more severe sanction.*
72. In the present case, the Claimant does not submit that any of the violations it has alleged should constitute “*second violations*” for the purposes of Rule 40.8(d)(i). Accordingly, and pursuant to this rule, any sanction to be imposed shall be based on the violation carrying the “*more severe sanction*”.
73. In the present case, the Athlete has admitted of having intentionally evaded the DCO on 22 May 2015. Accordingly, the Sole Arbitrator is satisfied that, pursuant to the operation of Rule 40.4(a) of the IAAF Rules, a violation of Rule 32.2(c) will carry a period of ineligibility of four years. The Sole Arbitrator therefore does not consider it necessary to consider whether the other violations of which the Second Respondent has been found guilty were done unintentionally, as a period of ineligibility of four years would apply in any event per Rule 40.8(d)(i).
74. The Sole Arbitrator finds that for practical reasons and in order to avoid any possible misunderstanding the period of ineligibility shall start on 5 August 2015, the date of commencement of the provisional suspension, and not on the date of the award.
75. Finally, Rule 40.1 of the IAAF Rules states that an anti-doping rule violation occurring “*during or in connection with a Competition*” shall lead to the disqualification of the Athlete’s individual results obtained in that Competition, “*with all resulting consequences*”, including the forfeiture of titles, awards, medals, points, and prize and appearance money. Rule 40.9 of the IAAF Rules extends such disqualification to all competitive results “*from the date the positive Sample was Collected*” through to the commencement of any provisional suspension.
76. Accordingly, and finding that no reasons exist to merit a contrary conclusion, the Sole Arbitrator considers that all competitive results of the Athlete from 22 May 2015 to 4 August 2015, inclusive, shall be disqualified.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. CAS has jurisdiction to hear this dispute and the claims submitted to it are admissible;
2. Mr. Alexandr Khiutte has violated Rules 32.2(a), 32.2(b), and 32.2(c) of the IAAF Rules;
3. A period of ineligibility of four (4) years is imposed on Mr. Alexandr Khiutte commencing from 5 August 2015;
4. All competitive results obtained by Mr. Alexandr Khiutte from 22 May 2015 through 4 August 2015, inclusive, are disqualified, with all attendant consequences (including forfeiture of medals, points and prizes);
5. (...);
6. (...);
7. All other motions or prayers for relief are dismissed.