Arbitrations CAS 2008/A/1585 Yücel Kop v. International Association of Athletics Federations (IAAF) & Turkish Athletics Federation (TAF) and CAS 2008/A/1586 Süreyya Ayhan Kop v. IAAF & TAF, award of 10 November 2009

Panel: Mr Quentin Byrne-Sutton (Switzerland), President; Mr Kismet Erkiner (Turkey); Prof. Christoph Vedder (Germany)

Athletics
Doping (multiple doping offences)
Interpretation of Article 13.2.1 of the WADA Code
Justification of a life ban for the second doping offence
CAS power to rule de novo and limitation through the parties' requests

1. **The purpose of article 13.2.1 of the WADA Code is not to exclude the possibility for anti-doping organizations to institute a review system below the CAS for decisions concerning international-level athletes but rather to ensure that CAS is the final body to which decisions concerning an international-level athletes may be appealed, thereby providing them with the same treatment under unified rules and practices that ultimately guarantee a more level playing field in international competitions, in the interest of fairness and equality of treatment.**

2. **An athlete who committed at least two standard sanctions, which under the applicable rules require an ineligibility sanction of between 8 years and a life ban, leaves no other option to a CAS panel than to find a life ban would apply under the 2009 IAAF Rules when both violations must be deemed very serious in nature, while at the same time no tangible elements of proof allow to consider that the athlete did not intentionally commit the violations in both instances. In this respect, there is no more need to establish whether the violations would formally qualify as being committed in aggravating circumstances under the 2009 IAAF Rules.**

3. **A CAS Panel has the authority to evaluate and decide the case *de novo*; and has therefore the power to vary a sanction in either direction provided that such variation has been duly requested by a party.**

CAS 2008/A/1585

Mr Yücel Kop (the Appellant, "Mr Kop", i.e. the husband of the athlete Mrs Süreyya Ayhan Kop) is of Turkish nationality and functioned as his wife's trainer for numerous years.

The International Association of Athletics Federations (the First Respondent, IAAF) is an international association comprising national federations as members. It promotes and governs different aspects of track and field athletics, road running, race walking and cross-country running. The IAAF has its seat in Monaco.

The Turkish Athletics Federation (TAF, i.e the Second Respondent) is affiliated to the IAAF. Its headquarters is in Ankara.

CAS 2008/A/1586

Mrs Süreyya Ayhan Kop (the Appellant, "Mrs Kop" or the "athlete") was born in 1978 and is of Turkish nationality. She is an international athlete, who competes in 800m and 1'500m track events. She has participated in and ranked highly in numerous top-level competitions and won a silver medal in the women's 1'500m event at the IAAF World Championships in Paris in 2003.

The International Association of Athletics Federations (the First Respondent, IAAF) is an international association comprising national federations as members. It promotes and governs different aspects of track and field athletics, road running, race walking and cross-country running. The IAAF has its seat in Monaco.

The Turkish Athletics Federation (TAF, i.e. the Second Respondent) is affiliated to the IAAF. Its headquarters is in Ankara

Facts concerning the Athlete

In 2004, Mrs Kop was charged for various anti-doping rule violations during out-of competition testing, under Rules 32.2 (b) (*the use or attempted use of a prohibited method*), 32.2 (c) (*the refusal to submit to doping control*) and 32.2 (e) (*tampering or attempting to tamper with the doping control process*).

By decision of 15 June 2005, the Central Disciplinary Commission of the Turkish General Directorate of Youth and Sport (CDC) sanctioned the athlete with a two-year suspension based on the charges. That decision resulted from the reconsideration of a previous decision of 14 March 2005 by the CDC, which was challenged by the IAAF, in which the same instance had sanctioned the athlete with a one-year suspension.

The athlete did not appeal the second CDC decision to the Court of Arbitration for Sport (CAS) and she effectively served her two-year ineligibility period, which expired in August 2006.

She did however submit to the IAAF that the starting date of the suspension was incorrect and threatened to appeal to CAS if it was not modified. In that relation, on 11 July 2005, her Turkish counsel wrote to the IAAF Anti-Doping Administrator stating that *"The purpose of this letter is not to make criticism about evidence, it is only for to be informed about your opinions in the matter of ineligibility period application to penalty"*.

In its response of 19 July 2005, the IAAF indicated that the athlete could have obtained an earlier start date to her eventual suspension if she has accepted a "voluntary suspension" as defined under IAAF Rules. This led to an exchange of correspondence between the IAAF and the athlete's counsel.

In a letter dated 16 August 2005, the athlete's counsel confirmed the athlete's acceptance of the 2-year ineligibility sanction under the condition it was deemed to run from 8 August 2004 to 7 August 2006 by stating: *"I would like to confirm that my client, Mrs. Kop-Ayhan, accepts that her two year suspension commenced on August 8, 2004, and consequently will end on August 7, 2006"*. On 19 September 2005, the IAAF informed the TAF of this settlement that had been reached regarding the start and end dates of the suspension period.

The athlete nevertheless formally challenged the second CDC decision in a parallel manner by appealing on 12 September 2005 to the Administrative Court in Ankara, invoking among others that by law the CDC was not entitled to and did not have jurisdiction to render a second decision in the same case. By a decision of 4 April 2007, the Administrative Court rejected the appeal and on 24 July 2007 that decision was appealed by the athlete to the Council of State, in front of which the case is still pending.

After the end of the ineligibility period, the athlete indicated her desire to prepare again for international competitions, which resulted in her being reintegrated in the IAAF Registered Testing Pool. She was notified of her inclusion in the IAAF Registered Testing Pool in July 2007, through the TAF, and submitted her whereabouts accordingly.

As a member of the IAAF Registered Testing Pool, she was subject to no-advance notice out-of-competition testing.

On 8 September 2007, based on the whereabouts information that was available to the IAAF, the athlete was subject to an out-of-competition test in Albuquerque (New Mexico, USA), where she was undergoing medical treatment for an injury.

The athlete submitted to the doping control in a cooperative manner without complaining, and signed the doping-control form. She provided two urine samples.

The analyses of both samples conducted at the WADA-accredited laboratory in Montreal (Canada) revealed the presence of stanozolol and methandienone metabolites.

On the athlete's request, a counter-analysis was conducted on sample B, which confirmed the presence of stanozolol and methandienone metabolites.

Under the IAAF Prohibited List 2007, stanozolol and methandienone (and their metabolites) are prohibited substances at all times. They are classified as exogenous anabolic androgenic steroids.
As a result, on 18 October 2007, IAAF charged the athlete with an anti-doping rule violation under IAAF Rule 32.2 (a) (*presence of prohibited substance in an athlete's sample*).

The case was brought to the TAF and submitted to its Disciplinary Commission.

On 25 January 2008, the TAF Disciplinary Commission reached a first decision whereby it found the athlete guilty of a doping offence under IAAF 32.2 (a) and imposed a life ban upon her for a second anti-doping rule violation under IAAF Ru1es.

The athlete referred the case to the Arbitral Tribunal of the General Directorate of Youth and Sport ("the Youth and Sport Arbitral Tribunal"), a national arbitration board specialised in sport-related disputes.

On 14 March 2008, the Youth and Sport Arbitral Tribunal decided to send the case back to the TAF Disciplinary Commission, asking it to reconsider its initial decision with respect to the applicable sanction.

On 2 April 2008, the TAF Disciplinary Commission reached a decision in which it maintained its previous position and confirmed a life ban against the athlete for a second anti-doping rule violation under IAAF Rules.

The athlete appealed this decision to the Youth and Sport Arbitral Tribunal.

On 30 May 2008 in a decision with reference numbers 2008/54 and 2008/9, the Youth and Sport Arbitral Tribunal reduced the sanction to four years of ineligibility.

The athlete decided to file the present appeal to CAS against the foregoing decision.

Facts Concerning Mr Kop

Mr Kop has been the athlete's trainer throughout her career as an international-level athlete. In that respect he functioned as *"athlete support personnel"* as defined by the IAAF Rules.

On 25 January 2005, Mr Kop was sanctioned with a two-year period of ineligibility by the TAF Disciplinary Commission in relation to the athlete's second anti-doping rule violation but on the principal basis that he had been negligent in his coaching duties.

Mr Kop appealed this decision to the Youth and Sport Arbitral Tribunal.

On 30 May 2008, in a decision with reference numbers 2008/55 and 2008/10, the Youth and Sport Arbitral Tribunal confirmed a two-year sanction.

Mr Kop decided to file the present appeal to CAS against the foregoing decision.

On 20 June 2008, the athlete filed a Statement of Appeal with CAS against the decision of 30 May 2008 with reference numbers 2008/54 and 2008/9 of the Youth and Sport Arbitral Tribunal.

On the same date, Mr Kop filed a Statement of Appeal with CAS against the decision of 30 May 2008 with reference numbers n° 2008/55 and 2008/10 of the Youth and Sport Arbitral Tribunal.

On 30 June 2008, the athlete filed an Appeal Brief containing the following prayers for relief:

> *"We would like to request:*
>
> *Our objection to be investigated with a trial.*
>
> *Taking our appeal justifications both on basis and merits, we are on belief that the Clientele is innocent in the event and we repeat our defense claiming that the Clientele cannot be judged in terms of procedural law and request for acceptance of our appeal for the punishment given to Süreyya Ayhan KOP, annulment of the decision of the Arbitration Board 30.5.2008 with principle number 2008/9 and decision number 2008/54 stating 4 years of banning from competitions.*
>
> *Charging the adverse party for judgment and representative expenses due to the Client has not any financial sources at this moment.*
>
> *Implementation of the clauses in favor in case of punishment and delay of a punishment in case of conclusion of a punishment".*

On the same date, Mr Kop filed an Appeal Brief containing the following prayers for relief:

> *"We would like to request:*
>
> *To combine the file of Mr Yücel Kop with Mrs Süreyya Ayhan Kop according to Article 50 of CAS Code as the case are derived from same object.*
>
> *Our objection to be investigated with a trial.*
>
> *Taking our appeal justifications both on basis and merits, we are on belief that the Client is innocent in the event and we repeat our defense claiming that the Client cannot be judged in terms of procedural law and request for acceptance of our appeal for the punishment given to Yücel Kop, the decision of the TAF Disciplinary Committee dated 25.01.2008 with principle number 2007/22 and decision number 2008/3 and approved by Arbitration Board 30.5.2008 with principle number 2008/10 and decision number 2008/55 stating 2 years of ban from competitions.*
>
> *Charging the adverse party for judgment and representative expenses due to the Client has not any financial sources at this moment.*
>
> *Implementation of the clauses in favor in case of punishment and delay of a punishment in case of conclusion of a punishment".*

On 29 August 2008, the IAAF filed its Answer Brief in CAS 2008/A/1585, containing the following prayers for relief:

> *"The IAAF respectfully submits that CAS rules as a preliminary issue that:*
>
> 1. *CAS lacks jurisdiction to entertain Mr Kop's appeal;*
> 2. *Consequently, Mr Kop's appeal against the decision of the Republic of Turkey Prime Ministry General Directorate of Youth and Sports Arbitration Board is rejected;*

3. The decision of the Turkish Athletics Federation dated 25.01.08 is declared final and binding under IAAF Rules".

On 28 August 2008, the IAAF filed its Answer Brief in CAS 2008/A/1586, containing the following prayers for relief:

"In conclusion, therefore, the IAAF respectfully submits that CAS rules that:

As a preliminary issue:

1. CAS lacks jurisdiction to entertain Mrs Ayhan-Kop's appeal;

2. Consequently, Mrs-Ayhan-Kop's appeal against the decision of the Republic of Turkey Prime Ministry General Directorate of Youth and Sports Arbitration Board is rejected;

3. The decision of the Turkish Athletics Federation is declared final and binding under IAAF Rules.

In the eventuality CAS retains jurisdiction over Mrs Ayhan-Kop's appeal:

4. Mrs Ayhan-Kop committed an anti-doping violation; and consequently;

5. Mrs Ayhan-Kop should be declared ineligible for life for a second serious doping offence under IAAF Rules;

6. The IAAF be granted a contribution towards its costs".

The hearing took place in front of the Panel on 2 April 2009 in Lausanne, Switzerland.

LAW

CAS Jurisdiction

1. According to art. R47 of the Code of Sports related Arbitration (the "Code"):

   "An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide … and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body".

2. Given the foregoing rule, the Panel must determine whether according to the applicable regulations of the TAF an appeal to the CAS is possible and, if so, whether the Appellants exhausted the legal remedies available.

3. Because the IAAF's objection to jurisdiction raises, *mutatis mutandis*, the same legal and basic factual questions with respect to the appeals of Mr Kop and of the athlete, the Panel's following reasoning and determination shall apply to both cases.

4. As shall be confirmed below, the rules applicable to the dispute in both cases are the IAAF Competition Rules (the "IAAF Rules") and the relevant TAF rules, notably the TAF Constitution and the TAF Disciplinary Regulation.

5. Article 53 of the TAF Disciplinary Regulation provides that any appeal against a decision of the TAF Disciplinary Commission must be filed with *"… the Arbitrary Tribunal"*.

6. Although in the English translation, the terms are not always translated in a uniform fashion – e.g. the "Arbitrary Tribunal" also being referred to as "Arbitrary Board" – there is no doubt from reading the provisions of the TAF Constitution and of the TAF Disciplinary Regulation as a whole, that the appeal body referenced in article 53 of the TAF Disciplinary Regulation is the Youth and Sport Arbitral Tribunal, as defined in article 4 (l) of the TAF Constitution.

7. Furthermore, article 18 of the TAF Constitution provides that the Youth and Sport Arbitral Tribunal *"… reviews and takes the final decision on the decisions of the Federation's … Disciplinary Commission"*, and article 54 of the Disciplinary Regulation unambiguously confirms the same.

8. Based on the foregoing provisions of the TAF Constitution and of the TAF Disciplinary Regulation, the Panel finds that by appealing to the Youth and Sport Arbitral Tribunal against the decisions of the TAF Disciplinary Commission, the Appellants clearly exhausted their remedies in accordance with the applicable rules, thus meeting the condition laid down in that respect by art. R47 of the Code.

9. The question remains whether the resulting decisions of the Youth and Sport Arbitral Tribunal that are qualified as final can be subject to an appeal to the CAS.

10. The TAF Constitution and the TAF Disciplinary Regulation do not provide a direct answer to the question since they do not contain an express reference to the CAS. However, article 18 of the TAF Constitution provides that the Youth and Sport Arbitral Tribunal must take its decisions in accordance with *"… the rules of the Federation and International Federation"*.

11. In this case the rules of the relevant international federation are those of the IAAF; and the IAAF Rules provide for an appeal to the CAS against certain decisions of its member federations.

12. Furthermore, in sports arbitration it is generally admitted that a global reference to a set of regulations containing a clause providing for appeals to the CAS is sufficient for it to have jurisdiction if the regulations are applicable to the parties, which is the case here; and in addition the IAAF is not contesting that disputes arising under the TAF Disciplinary Regulation can be subject to arbitration in front of the CAS, since the IAAF is arguing that it is the underlying decisions of the TAF Disciplinary Commission that should have been appealed to the CAS and which were not.

13. Consequently, the question is whether the right to appeal to CAS provided in the IAAF Rules covers the decisions of the TAF Disciplinary Commission or those of the Youth and Sport Arbitral Tribunal.

14. The Panel finds for a number of reasons that the IAAF Rules must be interpreted to mean that it is the decisions of the Youth and Sport Arbitral Tribunal that are subject to appeal under IAAF Rule 60.11.

15. In determining which body's decision is subject to appeal, IAAF Rule 60.11 is relatively generic since it refers to *"… the decision of the relevant body of the Member or the IAAF (as appropriate) may be appealed exclusively to CAS…"*.

16. The foregoing rule does not specify whether the relevant body is one of first or second instance, and does not directly address the question of whether the decision may be that of an independent body to which the Member has delegated the authority to act as an appeals body.

17. Various sub-paragraphs of IAAF Rule 60 envisage the situation where its member's regulations provide for an appeal to a national review body for national-level athletes and in such cases provides as follows that the remedies at national level must be exhausted before appealing to CAS: *"No decision may be appealed to CAS until the appeal procedure at national level has been exhausted in accordance with the rules of the Member"* (IAAF Rule 60.16).

18. The Panel finds that the absence of an IAAF Rule that expressly states the same principle with respect to the decisions of a review body for international-level athletes does not mean IAAF Rule 60.11 excludes the same approach. Indeed, IAAF Rule 60.11 does not exclude the possibility that a review body may exist at the national level for decisions concerning international-level athletes.

19. In its submissions to this Panel, the IAAF invokes the fact that IAAF Rule 60.11 *"… reflects art. 13.2.1 of the World Anti-Doping Code"*.

20. However, the purpose of article 13.2.1 of the World Anti-Doping Code (WADC) is not to exclude the possibility for anti-doping organizations to institute a review system below the CAS for decisions concerning international-level athletes. It is to ensure that CAS is the final body to which decisions concerning an international-level athletes may be appealed, thereby providing them with the same treatment under unified rules and practices that ultimately guarantee a more level playing field in international competitions, in the interest of fairness and equality of treatment.

21. The fact that article 13.2.2 of the WADC expressly provides the possibility for decisions relating to anti-doping violations by national-level athletes to be appealed to an independent and impartial body below CAS does not detract from the logic of article 13.2.1 of the WADC. Article 13.2.2 simply addresses the fact that notwithstanding the possibility that an appeal to the CAS may not exist for national-level athletes, they must at least be afforded recourse to an independent and impartial body to review decisions relating to anti-doping violations.

22. If anti-doping organizations may create review bodies below the CAS as an additional remedy for international athletes to exhaust before appealing to CAS, the question is whether the Youth and Sport Arbitral Tribunal can be deemed one such review body of the TAF.

23. The Panel considers for several reasons that the answer is yes.

24. According to article 53 of the TAF Disciplinary Regulation, the Youth and Sport Arbitral Tribunal is without any doubt the tribunal that is designated by the TAF as the appeal body for recourse against all the decisions of the TAF Disciplinary Commission, whether they concern a national-level or an international-level athlete. Although it would in theory have been possible for the TAF Disciplinary Regulation to distinguish between two types of appeal, as occurs within certain federations, e.g. by providing that the Youth and Sport Arbitral Tribunal is only competent for appeals against decisions relating to national-level athletes, article 53 of the TAF Disciplinary Regulation does not make that distinction.

25. Furthermore, the Youth and Sport Arbitral Tribunal is not a court of general jurisdiction and law. Under Turkish law it was instituted as a tribunal that would specifically handle appeals in sports-related disputes, among others between athletes and Turkish sports entities, in such manner as to provide an independent and impartial review of decisions of national sports entities; and, as confirmed by article 18 of the TAF Constitution, the Youth and Sport Arbitral Tribunal must render its decisions in conformity with the rules of the TAF and of the IAAF.

26. In choosing, under article 53 of its Disciplinary Regulation, to subject all decisions of its Disciplinary Commission to review by the Youth and Sport Arbitral Tribunal, the TAF therefore chose a review process for decisions affecting international athletes that fits the needs of a fair and adequate review - in terms of the independence and specialization of the body and the rules it must apply - without precluding or in any manner affecting the jurisdiction of CAS as the final body of appeal as envisaged by article 13.2.1 of the WADC.

27. If the TAF had wished to limit appeals to the Youth and Sport Arbitral Tribunal to appeals against decisions of the Disciplinary Commission concerning national-level athletes, it could and should have done so under article 53 of the Disciplinary Regulation. Because the TAF did not make that choice, in this case the *"decision of the relevant body of the Member"* under IAAF Rule 60.11 must be deemed the decisions of the Youth and Sport Arbitral Tribunal concerning the Appellants.

28. The Panel finds that, given the nature of the Youth and Sport Arbitral Tribunal, the fact that the authority to review the TAF Disciplinary Commission's decisions is not reserved by the TAF for an internal body but is delegated to an external body does not jeopardize the goals of resolving disputes concerning international athletes in an efficient and harmonized manner.

29. In that relation and by analogy it is noteworthy that with respect to the hearing of an athlete, IAAF Rule 60.5 specifically provides in the following terms that a national federation may chose to delegate that function to an external body, committee or tribunal:

"Where a Member delegates the conduct of a hearing to any body, committee or tribunal (whether within or outside the Member), or where for any other reason, any national body committee or tribunal outside of the Member is responsible for affording an athlete, athlete support personnel or other person his hearing under these Rules, the decision of that body, committee or tribunal shall be deemed, for the purposes of Rule 60.10 below, to be the decision of the Member and word "Member" in such Rule shall be so construed".

30. For the above reasons, the Panel deems that the Appellants properly exhausted the legal remedies available to them before appealing to the CAS and that the CAS has jurisdiction to review the decisions of the Youth and Sport Arbitral Tribunal that are the object of the appeals in this joint proceeding on the basis of article 60 and following of the IAAF Rules.

31. Since the appealed decisions were communicated to the Appellants on 2 June 2008 and they filed their appeals on 20 June 2008, both Statements of Appeal were filed in a timely manner within the legal deadline of 30 June 2008.

32. Considering the above, the Panel finds that the appeals filed by both Appellants are admissible.

33. Furthermore, the Panel notes that, according to the DHL report, the Appeal Briefs were notified on 22 July 2008 to the Counsel for the IAAF and that upon request for an extension of deadline filed by the IAAF to submit its Answer, the Deputy President of the CAS Arbitration Division granted an extension until 29 August 2008. Consequently, the IAAF's Answers filed on 29 August 2008, along with its subsidiary counterclaim contained therein, are also timely and admissible.

Applicable Law and Regulations

34. According to Article R58 of the Code:

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

35. In the present case, the TAF Constitution provides that the Youth and Sport Arbitral Tribunal shall make its decisions according to TAF and IAAF Rules, and the IAAF has based its submissions on the IAAF Rules.

36. Furthermore, with respect to the disputed second anti-doping rule violation, the Athlete signed the doping-control form on 8 September 2007, which contained the following acceptance language above her signature: *"I accept that all disputes however arising from this doping control shall be resolved in accordance with the doping control rules of the organization authorizing the test"*; the organization authorizing the test being stipulated as the IAAF on the top of the same form.

37. Consequently, in deciding this case in accordance with the applicable regulations as required by Article R58 of the Code, the Panel shall apply the relevant IAAF Rules to the merits of the appeal.

Merits of the Appeals

CAS 2008/A/1585

38. The Panel has neither heard nor seen any evidence that Mr Kop violated any anti-doping rule or any disciplinary rule connected with his duties as *athlete support personnel* in the meaning of the IAAF Rules.

39. Furthermore, the appealed decision of the Youth and Sport Arbitral Tribunal does not explain on what basis Mr Kop was sanctioned in that connection.

40. Consequently, the Panel finds that the foregoing decision was made in violation of the applicable rules and must be set aside, with the result that the corresponding sanction (2-year ineligibility of Mr Kop) must be cancelled.

CAS 2008/A/1586

41. On the merits, the athlete is arguing that the appealed decision of the Youth and Sport Arbitral Tribunal wrongly found that she should be subject to a four-year ban, whereas in its counterclaim the IAAF is submitting that the athlete committed a second anti-doping rule violation and must therefore be declared ineligible for life under the IAAF Rules. In her pleadings at the hearing and in her written submission thereafter, the athlete replied in substance that a life ban could not be applied because there had been no repeated anti-doping violation and that, in any event, a sanction beyond 4 years could not apply due to the prohibition of *"reformatio in peius"*.

42. The Panel shall therefore begin by examining the content of the provisions governing multiple violations and corresponding life bans under IAAF Rules, and shall continue by examining whether the conditions are fulfilled in the present case.

43. According to IAAF Rule 40.1 (a) the sanction in case of a second violation of Rule 32.2 (a) (presence of a prohibited substance) is ineligibility for life, and according to Rule 40.1 (b) the sanction in case of a second violation of Rule 32.2 (c) (refusal or failure to submit to doping control) or of Rule 32.2 (e) (tampering with doping control) is also ineligibility for life.

44. It stems logically from the foregoing rules that a first violation under Rule 32.2 (c) or 32.2 (e) followed by a second violation under Rule 32.2 (a) – as the IAAF is invoking the athlete committed in this case – would also result in a life ban, despite the first and second violations being of a different nature.

45. In the present case, because of the seriousness of having to decide upon a life ban, the Panel required the production of further documents relating to the first anti-doping rule violation the athlete was charged for.

46. The documents establish with certainty that the first violation, which was notified to the athlete in 2004, concerned charges for a violation of Rule 32.2 (c) (refusal or failure to submit to doping control) and of Rule 32.2 (e) (tampering with doping control), and that the athlete accepted the two-year ineligibility decided by the Central Disciplinary Committee and renounced appealing to the CAS in exchange for the IAAF accepting to modify the starting point of the sanction. Consequently, the Panel finds that the existence of a first anti-doping rule violation by the athlete and its proper notification to the athlete have been proven.

47. Concerning the athlete's second anti-doping rule violation, committed in 2007 and relating to charges for a violation of IAAF Rule 32.2 (a) (presence of a prohibited substance) subsequent to testing positive due to the presence of stanozolol and methandienone metabolites in her bodily fluids, neither the results of the A and B samples nor any aspect of the testing have been challenged. Consequently, the existence of the anti-doping violation according to IAAF Rule 32.2 (a) is established and the question which remains is whether, as stipulated by IAAF Rule 40.2, *"… there are exceptional circumstances in the case such that the athlete or other person bears no fault or negligence for the violation"* enabling the ineligibility sanction to be eliminated.

48. In accordance with IAAF Rule 40.2, in order to benefit from a finding of exceptional circumstances, *"… the athlete must establish how the prohibited substance entered his system …"*.

49. The Panel has considered the athlete's allegations regarding the fact that the prohibited substances may have entered her body due to the ingestion of contaminated meat or food supplements, but finds on the balance of probabilities that such occurrences are far from being established since the athlete offered no concrete proof in that respect. In other words, the athlete has not established how the prohibited substance entered her body.

50. As a result, the Panel deems the athlete to have committed an anti-doping rule violation under Rule 32.2 (a), which, in conjunction with the first violation in 2004, constitutes a second violation under IAAF Rule 40.1. Due to having occurred in 2007, the second violation was committed a substantial period of time after the athlete had received notice of the first violation in the year 2004, meaning that the conditions for admitting a multiple violation under IAAF Rule 40.6 are fulfilled.

51. Furthermore, the Panel finds that the athlete has not established any breach of due process relating to the procedure leading to the decision under appeal and that if there had been it would have been cured by the Panel's *de novo* examination of the dispute in accordance with art. R57 of the Code.

52. Remains the question of whether the athlete is entitled to benefit from a lower sanction based on the principle of *"lex mitior"*.

53. In that relation, the Panel finds that Rule 48.1-2 of the 2009 IAAF Competition Rules governs the question. It provides that the 2009 Rules come into effect on 1 January 2009 and are non-retroactive unless the principle of *"lex mitior"* applies. More specifically, Rules 48.2 provides that:

"With respect to any anti-doping rule violation case which is pending as of the Effective Date and any anti-doping rule violation case brought after the Effective Date based on an Anti-Doping Rule violation which occurred prior to the Effective Date, the case shall be governed by the substantive anti-doping rules in effect at the time the alleged anti-doping violation occurred unless the tribunal hearing the case determines the principle of lex mitior appropriately applies under the circumstances of the case".

54. The foregoing transitory rule requires the Panel to examine whether it finds a lower sanction (*"lex mitior"*) would apply to Mrs Kop under the new system of sanction introduced in Rule 40.7 of the 2009 IAAF Rules with respect to multiple violations.

55. Having examined the table of sanctions provided under Rule 40.7 and characterized Mrs Kop's 2004 and 2007 violations accordingly, the Panel finds that she, at the very least committed two standard sanctions, which under the rule require an ineligibility sanction of between 8 years and a life ban. Moreover, based on the evidence on record there is no doubt that both violations must be deemed very serious in nature while at the same time no tangible elements of proof allow to consider that Mrs Kop did not intentionally commit the violations in both instances. Consequently, the Panel has no other option than to find a life ban would apply under the 2009 IAAF Rules. For those reasons, the Panel need not address whether the violations would formally qualify as being committed in aggravating circumstances as defined under Rule 40.6 of the 2009 IAAF Rules.

56. To the extent they are admissible, the arguments raised by Mrs Kop in her additional submissions of 18 June and 2 July 2009 in reply to the IAAF submissions do not modify the Panel's above finding because under Article R57 of the CAS Code, the Panel has the authority to evaluate and decide the case *de novo*; it has therefore the power to vary a sanction in either direction provided that such variation has been duly requested by a party (CAS 2002/A/360). On such basis, the Panel has determined that it deems the existence of two violations to have been established (the first in 2004 and the second in 2007) and that such violations must be qualified as multiple violations in the meaning of the IAAF Rules.

57. For the foregoing reasons, the Panel considers that the principle *lex mitior* is of no assistance to the athlete in this case, i.e. an application of the 2009 IAAF Rules would not lead to a lower sanction than the one determined on the basis of the 2007 IAAF Rules.

58. The Panel therefore considers the Youth and Sport Arbitral Tribunal erred in deciding a four-year suspension, and that the Panel must apply a life ban under the applicable IAAF Rules as requested by the IAAF in its prayers for relief if the CAS accepted jurisdiction.

59. In determining the starting point of the ineligibility the Panel has given due consideration to the logic of Rule 40.9 of the 2007 IAAF Rules, which provides that *"any period of suspension shall be credited against the total period of ineligibility to be served"* while at the same time accounting for the

fact that in this case a life ban is applicable. Consequently, the life ban shall take effect from the date of this award.

The Court of Arbitration for Sport rules:

1. The decision with reference numbers 2008/55 and 2008/10 issued on 30 May 2008 by the Arbitral Tribunal of the Turkish General Directorate of Youth and Sport is set aside and the 2-year ineligibility period imposed on Mr Yücel Kop is lifted.

2. The decision with reference numbers 2008/54 and 2008/9 issued on 30 May 2008 by the Arbitral Tribunal of the Turkish General Directorate of Youth and Sport is set aside and a life-ban is imposed on Mrs Süreyya Ayhan Kop, commencing on the date of this award.

(…)

5. All other motions or prayers for relief are dismissed.