Arbitrations CAS 2016/A/4417 Valentin Balakhnichev v. International Association of Athletics Federations (IAAF) & CAS 2016/A/4419 Alexei Melnikov v. IAAF & CAS 2016/A/4420 Papa Massata Diack v. IAAF & Ethics Commission of the IAAF, award of 21 August 2017

Panel: Mr Otto De Witt Wijnen (The Netherlands), President; Mr Olivier Carrard (Switzerland); The Hon. James Reid QC (United Kingdom)

Athletics
Disciplinary sanctions for violations of the IAAF Code of Ethics
Inadmissibility of new evidence
Definition of proof beyond reasonable doubt
Application of the IAAF Code of Ethics rationae temporis

1. **According to art. R57 para. 3 of the CAS Code, in the absence of proof by the requesting parties that the new evidence they request to be admitted on file could not reasonably have been discovered before the appealed decision was rendered, the admission of said new evidence would be abusive and the request must be rejected.**

2. **A charge is proved beyond a reasonable doubt if, after comparison and consideration all of the evidence, one has in his mind an abiding conviction, to a moral certainty, that the charge is true. A mechanical comparison of probabilities, no matter how strongly it indicates guilt, is not enough to justify such a finding. In the words of the Swiss Federal Tribunal, beyond reasonable doubt is reached if the judge/tribunal, based on objective considerations, is convinced by the correctness/accuracy of the presentation of facts. It is not necessary to reach the level of absolute certainty. It is rather sufficient if the judge/tribunal does not have any serious doubts (anymore) regarding the existence of the alleged facts, or if any remaining doubts appear to be minor.**

3. **The IAAF Code of Ethics that came into force on 1st January 2014 shall apply to all violations of the Code committed on or after its date of entry into force. With respect to any proceedings pending under the previous IAAF Code of Ethics as at its date of entry into force, or proceedings brought after its date of entry into force where the facts giving rise to them occurred prior to its date of entry into force, the proceedings shall be governed by the substantive provisions of the IAAF Code of Ethics and other applicable IAAF Rules and Regulations in effect at the time of the alleged facts, unless the IAAF Ethics Commission hearing the proceeding determines the principle of *"lex mitior"* applies under the circumstances of the proceeding.**

I. THE PARTIES

1. Mr Valentin Balakhnichev ("Mr Balakhnichev" or the "First Appellant"), born on 23 April 1949, is of Russian nationality and the former President of the All-Russia Athletic Federation (the "ARAF") and former Honorary Treasurer of the International Association of Athletics Federations (the "IAAF").

2. Mr Alexei Melnikov ("Mr Melnikov" or the "Second Appellant"), born on 19 February 1961, is of Russian nationality and the former ARAF chief coach for long distance runners and walkers.

3. Mr Papa Massata Diack ("Mr Diack" or the "Third Appellant"), born on 17 July 1965, is of Senegalese nationality and a former marketing consultant to the International Association of Athletics Federations. He is the son of Mr Lamine Diack, who was the President of the IAAF from 1999 to 2015.

4. The IAAF (the "First Respondent") is the international federation governing the sport of athletics world-wide. It has its registered seat in Monaco.

5. The Ethics Commission of the IAAF (the "IAAF Ethics Commission" or "Second Respondent") is an independent judicial body established in accordance with the IAAF Code of Ethics. It is not a Commission of the IAAF (Article 2 of the IAAF Constitution).

II. FACTUAL BACKGROUND

A. Introduction

6. The appeals are filed against a decision issued on 7 January 2016 by the Panel of the IAAF Ethics Commission (the "Appealed Decision"), which suspended Mr Balakhnichev, Mr Melnikov and Mr Diack *"for life from any further involvement in any way in the sport of track and field"* and imposed upon them fines from USD 15,000 (Mr Melnikov) to USD 25,000 (Mr Balakhnichev and Mr Diack).

7. In its decision, the Panel of the IAAF Ethics Commission also imposed upon Dr Gabriel Dollé (director of the medical and anti-doping department at the IAAF until his dismissal on 1 October 2014) ("Dr Dollé") a 5-year ban as *"his sins were those of omission, not commission"*. Dr Dollé did not appeal against this sanction.

8. The Panel of the IAAF Ethics Commission held that the Appellants conspired together to orchestrate a plan to extract money from the professional Russian marathon runner, Mrs Liliya Shobukhova ("Mrs Shobukhova"). In particular, it found that the Appellants took advantage of

their respective positions to obtain the payment of amounts totalling EUR 450,000 from the athlete, who, in return, was enabled to participate in the 2012 Summer Olympics in London and in the 2012 edition of the Chicago marathon, *i.e.* at a time when the IAAF had evidence of an abnormal blood profile for her.

9. Eventually, Mrs Shobukhova's abnormal blood profile, comprising 5 blood variable measurements between 9 October 2009 and 7 October 2011, was sanctioned in a decision issued on 9 April 2014 by the ARAF Anti-doping Commission. It is Mrs Shobukhova's case that, contrary to the promises made to her by her bribers, the disciplinary proceedings against her were merely delayed, not terminated; her problems were never really finally resolved. She alleged that, in exchange for her silence and signing the "Acceptance of Sanction" form presented to her, the Appellants returned EUR 300,000 of the monies corruptly paid by her earlier.

10. The Appellants denied having received any payment from Mrs Shobukhova and having put in place a system under which athletes with abnormal biological passport profile would be allowed to keep competing in exchange for cash. During the proceedings before the Panel of the IAAF Ethics Commission, Mr Balakhnichev and Mr Melnikov contended that the transfer of the EUR 300,000 *"was part of a scheme devised by [Mrs Shobukhova's] manager Mr Baranov (…) to discredit [them], who had resisted his attempts to procure prohibited substances for Russian athletes or to agree to protect his athletes with AABPPs from anti-doping bodies (…); it was [Mr Baranov] who slowed down the IAAF decision-making concerning [Mrs Shobukhova]; once the IAAF resumed activity into [Mrs Shobukhova's] AABPP, [Mr Baranov] decided to blacken the name of [Mr Balakhnichev and of Mr Melnikov] by persuading Mr Ianton Tan (…) of Black Tidings to enter their names into the bank transfer documents (…)"* (para. 21 of the Appealed Decision). Mr Diack denied any involvement in the circumstances of Mrs Shobukhova's participation to the 2012 London Olympic Marathon and the 2012 Chicago Marathon and claimed that he was not aware that both the ARAF and the IAAF were investigating the abnormal blood profile of the athlete in 2012.

11. The alleged violations of the IAAF Code of Ethics first came to light in February 2014, when Mrs Shobukhova's manager, Mr Andrey Baranov ("Mr Baranov"), made allegations against the Appellants to Mr Sean Wallace-Jones, who is the Senior Manager, Road Running of the IAAF. In April 2014, the latter filed a complaint before the IAAF Ethics Commission, which eventually asked the Right Honourable Sir Anthony Hooper ("Sir Anthony"), a former Lord Justice of the Court of Appeal of England and Wales, to investigate the Appellants as well as Mrs Shobukhova and Dr Dollé. On 5 August 2015, Sir Anthony submitted the result of his investigations to the IAAF Ethics Commission ("Sir Anthony's Report").

12. On 3 December 2014, the German television channel ARD aired the documentary *"Top Secret Doping: How Russia makes its Winners"*, alleging the existence of a sophisticated and well-established system of state-sponsored doping within the ARAF. Witness statements and other

evidence allegedly exposed high levels of collusion among athletes, coaches, doctors, regulatory officials, and sports agencies to systematically provide Russian athletes with performance enhancing drugs. In response to the serious allegations made in the ARD documentary, the World Anti-Doping Agency (WADA) formed an independent commission comprised of Mr Richard W. Pound, Q.C., former President of the WADA, Professor Richard H. McLaren, law professor and longstanding CAS arbitrator, and Mr Gunter Younger, Head of Department Cybercrime with Bavarian Landeskriminalamt. On 9 November 2015 and 14 January 2016, WADA's independent commission issued its reports ("WADA IC Report 1" and "WADA IC Report 2").

13. One of the specificities of the present matter lies in the entirely incompatible versions of the facts offered by the various actors involved and the contradictory witness statements. In this context, it seems fit to start with the delays observed in the results management process and disciplinary proceedings related to Mrs Shobukhova's unusual blood values, followed by the events surrounding the alleged payments of EUR 450,000 by the athlete and the alleged repayment of EUR 300,000, considered as the *"pivotal event in this saga"* by the Panel of the IAAF Ethics Commission.

B. Background Facts

14. Below is a summary of the relevant facts and allegations based on the Parties' written and oral submissions and evidence adduced in these proceedings. References to additional facts and allegations found in the Parties' written and oral submissions and evidence will be made, where relevant, in connection with the legal analysis that follows. While the Panel has considered all the facts, allegations, legal arguments, and evidence submitted by the Parties in the present proceedings, it refers in its award only to the submissions and evidence it deems necessary to explain its reasoning.

C. The result management process and sanction of Mrs Shobukhova's abnormal biological profile

i. Mrs Shobukhova's Biological Passport (ABP)

15. Mrs Shobukhova, born on 13 November 1977, began competitive running at a young age. At first, she was an elite middle and long distance runner, competing in the 2004 and 2008 Olympics and setting the European record in the 5000 meters and the indoor world record in the 3000 meters in February 2006. In 2008, she decided to switch to marathons and in 2009 she chose to be trained exclusively by her husband, Mr Igor Shobukhov ("Mr Shobukhov").

16. In an interview conducted between 11 and 12 August 2014 by Mr Jack Robertson, WADA Chief Investigative Officer, and by Mr Ross Wenzel, WADA Counsel, in the presence of Mr Shobukhov, Mr Baranov and Mr Mike Morgan, her then lawyer, Mrs Shobukhova:

- denied ever using performance-enhancing substances prior to 2009, *i.e.* the year when she participated in her first marathon, the 2009 London Marathon;

- claimed that, while she was preparing for this race, she had been approached by Mr Melnikov, who referred her to the national team doctor, Dr Sergey Nikolaevich Portugalov ("Dr Portugalov"), who designed and supplied a regimen of supplements and performance enhancing drugs ("PEDs") in preparation for her competitions;

- explained that the PEDs included EPO, human growth hormone and pills contained in unlabelled bottles that she believed were most likely steroids;

- affirmed that in compensation for their efforts, she had to pay 5% of her annual winnings to Mr Melnikov and Dr Portugalov;

- admitted that in preparation for the 2009 London Marathon, she ingested on several occasions PEDs; she came 3rd in this sporting event;

- confessed that, from then on, she regularly used prohibited substances or methods, including blood transfusion;

- reported that Mr Melnikov would personally notify her at least a day in advance of an upcoming anti-doping test or would give her and her teammates an advance notification when the doping control officers were travelling to their training camps;

- stated that Dr Portugalov was careful to conclude the doping regimen three weeks prior to her competitions.

17. At the hearing before the Court of Arbitration for Sport (CAS),

- Mrs Shobukhova: confirmed that she would have weekly telephone discussions with Mr Melnikov in order to keep him updated on her training and preparation. She would annually hand him 5% of her yearly earnings in an envelope, usually on the occasion of a sporting event. She explained that such payments were common practice in the Russian world of athletics. She also pointed out that another 5% of her earnings would go to her doctor, 15% to her manager and 15% to her coach. She claimed that she had never intentionally and knowingly taken PEDs. She accepted that she would take unlabelled pills and inject unidentified substances that were handed by the doctor to her husband. In hindsight, she

had recently come to understand that the substances ingested might have been prohibited. She also repeated that it was Mr Melnikov, who referred her to Dr Portugalov.

- Mr Shobukhov: also confirmed that a percentage of his wife's earnings would be paid to Mr Melnikov (5%), her doctor (5%), her agent (15%) and her coach (15%). He admitted that Dr Portugalov supplied unlabelled pills to ingest and substances to inject, but claimed that they were merely vitamins. He categorically contested that Mrs Shobukhova had ever used PEDs.

- Mr Melnikov: denied having referred Mrs Shobukhova to Dr Portugalov, having assisted her in taking PEDs and having ever received any money from the athlete. He refuted the existence of a practice whereby athletes would pay him 5% of their annual earnings. He denied being aware of any alleged state-sponsored doping within the ARAF and observed that no athlete had ever suggested otherwise. In a recent hearing before the CAS involving the Russian athlete Yulia Stepanova, his name came out clean of any accusation of being at the heart of some doping scheme. He claimed that he had always fought against doping and was certainly not in a position to manipulate the proper conduct of anti-doping controls or to help athletes cheat such tests in any manner.

18. In 2011, Mrs Shobukhova's biological profile was flagged as atypical by the IAAF's adaptive model and, in accordance with the established practice in the area, was referred to a panel of three independent experts for review (the "Expert Panel"). At the time, the athlete's profile consisted of five tests performed between October 2009 and October 2011.

19. In late November and early December 2011, the three experts unanimously opined that it was highly likely, absent a satisfactory explanation from Mrs Shobukhova, that her profile was the result of the use of a prohibited substance or a prohibited method.

20. Upon receipt of the Expert Panel's reports, the procedure, which would otherwise have led to the ratification of a world record set by Mrs Shobukhova in the 2011 Chicago Marathon (the first 30 kilometres), was halted.

21. In November 2011, 22 other Russian athletes with atypical blood profiles were identified.

ii. Dr Dollé

22. Dr Dollé was born on 30 July 1941 and joined the IAAF in February 1994. From 2004 until 1 October 2014, he was the director of the medical and anti-doping department at the IAAF.

23. During the investigations carried out on behalf of the IAAF Ethics Commission, Dr Dollé answered to the questions put to him by Sir Anthony.

24. In a witness statement dated 31 July 2016 and admitted into the record in these proceedings ("Dr Dollé's Witness Statement of July 2016"), Dr Dollé confessed that, during Sir Anthony's investigations, he did not tell the whole truth about his own role or the roles played by others, including Mr Balakhnichev, Mr Lamine Diack and Mr Habib Cissé. In his new statement, Dr Dollé declared that Mr Cissé, who was Mr Lamine Diack's legal advisor, provided his assistance in preparing his written answers to Sir Anthony's questions: *"[Mr Habib Cissé] therefore helped me draft my responses which were restrictive and incomplete compared with reality"*.

25. This new witness statement is the result of a cooperation agreement that Dr Dollé agreed to sign with Sir Anthony on 4 April 2016 whereby he undertook to provide complete and accurate information on a) the delays observed in the disciplinary proceedings initiated between 2011 and 2014; b) the possible agreements entered into in this respect; c) the roles played by himself, Mr Diack, Mr Lamine Diack, Mr Khalil Diack, Mr Cissé, Mr Balakhnichev, Mr Ianton Tan and others.

26. Until 31 July 2016, it was Dr Dollé's position that a) Mr Cissé was not personally supervising the abnormal biological profiles of Russian athletes ("Russian ABP Cases"), his role being merely limited to offer his legal expertise, when required; b) it was doubtful that Mr Cissé had forwarded to the ARAF confidential information related to the abnormal biological profile of Mrs Shobukhova and of other Russian athletes; c) he was not aware of the communication to the ARAF of such confidential information before 12 June 2012; d) the delays by the IAAF and by the ARAF in the result management of these Russian athletes' and of Mrs Shobukhova's abnormal blood profile could be explained by the fact that the IAAF had only recently started its ABP program; e) he had never discussed with Mr Balakhnichev Mrs Shobukhova's participation to the 2012 Olympic Games; f) he could not believe that there was an agreement between the IAAF and the ARAF to not bring up the Russian ABP Cases in order to avoid a negative impact upon the World Championships which were to be held in Moscow during the 2013 summer. According to Dr Dollé's Witness Statement of July 2016 (the quoted excerpts were translated from French into English by the Respondents):

- in 2011, the IAAF had been in a delicate financial situation for a couple of years.

- In November 2011, 23 Russian athletes with atypical blood profiles were identified. Among them was Mrs Shobukhova. At the hearing before the CAS, Dr Dollé specified that he had brought all those cases to the attention of Mr Balakhnichev, who was the Honorary Treasurer of the IAAF. The latter informed him that he would discuss the matter with Mr Lamine Diack.

- Shortly after, Mr Lamine Diack *"explained to me that IAAF was negotiating with a Russian bank for a sponsorship deal which would be of considerable help to the financial situation of the IAAF. He*

clarified to me that there was a risk of a scandal if so many Russian athletes were publicly sanctioned at the beginning of the Olympic year and that the scandal could compromise the chances of obtaining the sponsorship. He asked me what I could do to delay the process of sanctioning the Russian athletes with suspicious ABP profiles and to diminish the risk of a scandal from the adverse publicity that would follow from the publication of numerous sanctions in the Olympic year. I told [Mr Lamine Diack] that I was very reticent to do this because I had never done this before. He told me that it was in the higher interests of the IAAF to delay the process. I therefore made it clear to [Mr Lamine Diack] that the process of sanctioning the athletes would only be delayed, that cases would not be stopped and that any disqualifications would be published after they had been processed and following the Games. I also made it clear that the […] athletes identified (…) as having abnormal ABP profiles must be withdrawn from competing in the Olympic Games or in other competitions. I said they must be suspended from competition even if the suspension was not immediately publicised. He said that he accepted these conditions. [Mr Lamine Diack] made it clear to me that he had involved [Mr Habib Cissé] in this arrangement. There was no suggestion at this time or later of a monetary award for me".

- Dr Dollé told Mr Thomas Capdevielle (IAAF senior anti-doping manager) and Dr Pierre-Yves Garnier (IAAF Medical and ABP Manager) what he had agreed to and they both assisted him *"in the process of delaying the management of the Russian athletes at this time, in drafting an extended provisional planning for the cases' management"*.

- In a press release dated 12 March 2012, the IAAF announced a four-year extension to its worldwide partnership with the Russian bank VTB.

- *"In July 2013, shortly before the Moscow World Championships, [Mr Diack] gave me €50,000 in cash in an envelope at the Hotel Fairmont in Monaco. I had not discussed this with him, I had not asked for any money and I was wrong to have accepted it. He told me that it was to mark the success of the negotiations with [the Russian bank VTB]. [Mr Diack] was alone"*, said Mr. Dollé.

- Mr Dollé further stated: *"I realised afterwards that the money was given to me in connection with the delay in the management of the Russian ABP cases (so as not to compromise the negotiations with VTB in 2012). In actual fact, I did not ask myself where the money came from. But in any event that had no bearing on my determination to close all the cases. Moreover, I went straight to Lamine Diack once I had discovered [Mr Balakhnichev's] attempt to have some suspended Russian athletes take part in the World Championships. These athletes did not participate in the World Championships"*.

- It is only in 2014, during the investigation into Mrs Shobukhova's case, that Dr Dollé heard about the fact that the athlete actually had paid money to be able to compete.

- On 8 September 2014, Mr Lamine Diack informed Dr Dollé that he was being dismissed with effect from the end of the same month. When the latter told Mr Lamine Diack that he would sue the IAAF, it was agreed that he would receive EUR 100,000 in damages for

being dismissed as well as a bonus of EUR 40,000 for his *"good and loyal services to the IAAF for more than 20 years"*.

- *"[Mr Lamine Diack] gave me, on two occasions, an envelope containing on one occasion €50,000 and on one occasion €40,000. I no longer remember the exact dates; it was between January and March 2015. Three or four months later, perhaps in April/May I received a third payment of €50,000 at Nice Airport from a man who I believe was Senegalese and whom I did not know. [Mr Lamine Diack] told me that I should meet him on his behalf at the Airport. I did not ask any questions as to the source of this money because I was awaiting this transfer"*. Dr Dollé claimed that he declared all these amounts to the competent tax authorities.

27. The existence of the agreement between the IAAF and the ARAF to delay the process of sanctioning the Russian athletes with suspicious biological profiles has been the subject of an article published in the newspaper *Le Monde* on 19 December 2015. According to this document, Mr Lamine Diack confessed during custodial interrogation that, at the end of 2011, he and Mr Balakhnichev orally agreed to slow the Russian athletes' suspension procedure in order to avoid a scandal on the eve of the World Championships, which were to be held in Russia. *Le Monde* claimed that in exchange for his help, Mr Lamine Diack received USD 1,5 million, intended to fund a political campaign during the presidential election in Senegal in 2012. The author of the *Le Monde* article affirmed that Mr Lamine Diack had declared *"We made a deal, Russia financed. Balakhnichev organised all of it. Papa Massata (…) took care of the financing with Balakhnichev"*.

28. At the hearing before the CAS:

- Dr Dollé confirmed the content of his Witness Statement of 26 July 2016. He explained that when they heard about the high number of Russian athletes with abnormal blood profiles, Mr Lamine Diack and Mr Balakhnichev asked him to find a solution in order to avoid a scandal. In the need to protect the superior interests of the IAAF, he agreed to delay the publication of the result management of the Russian athletes but not their sanctioning. He agreed to be involved in this scheme provided that the concerned athletes would be informally ("*officieusement*") suspended, would not take part in the Olympic Games or other sporting events. Mr Balakhnichev gave him his word that he would respect his conditions. Dr Dollé also confirmed that Mr Diack had no access to his department and no possibility of monitoring or impacting his work.

- Mr Balakhnichev claimed that he was aware of Mrs Shobukhova's abnormal blood profile only after the 2012 London Olympic Games. He confirmed that he had asked Mr Lamine Diack to delay the suspension procedure but exclusively for Mrs Shobukhova. He wanted to avoid the proper course of her pregnancy being negatively affected by a disciplinary proceeding initiated against her[1]. He asserted that the content of the article published in *Le*

[1] It is undisputed that Mrs Shobukhova gave birth to a daughter on 7 September 2013.

Monde was false and affirmed that he wrote a letter to the newspaper to complain about it, but did not obtain any answer. He accepted the fact that he had received an unofficial document identifying 23 Russian athletes with atypical blood profiles. However, he could not remember seeing Mrs Shobukhova's name on this list.

- Mr Diack denied that the IAAF was in a difficult financial situation between 2010 and 2011. As a matter of fact and during this period of time, he entered into several lucrative sponsorship deals in the name of the IAAF, keeping it away from any financial worries. With regard to the article published in *Le Monde*, Mr Diack argued that its content had been illegally obtained by the journalist and stemmed from a criminal investigation, which was to remain confidential and to which he had no access. Under these circumstances, he claimed that he could not comment on this publication. Nevertheless, he contested the veracity of the allegations contained in the article, in particular the fact that he provided his assistance in the transfer of USD 1,5 million and that his father was somehow involved in the Senegalese presidential elections. He claimed that he was exclusively interested in marketing deals and was absolutely not concerned with anti-doping issues. In 2011 and 2012, he was unaware of the fact that 23 Russian athletes with atypical blood profiles had been identified in the end of 2011 and that there was a possible agreement between the ARAF and the IAAF to delay the sanctioning procedure of these athletes. Mr Diack denied having ever given EUR 50,000 in cash to Dr Dollé.

- Mr Thomas Capdevielle categorically refuted Dr Dollé's statement according to which:

  - Dr Dollé had told him about what he had agreed to with Mr Lamine Diack and Mr Balakhnichev;

  - he agreed to assist Dr Dollé *"in the process of delaying the management of the Russian athletes at this time, in drafting an extended provisional planning for the cases' management"*.

iii. Mr Habib Cissé

29. Mr Habib Cissé was Mr Lamine Diack's legal advisor during the last 12 years of his IAAF Presidency. He was an external lawyer in a private practice in Paris, who had acted on behalf of the IAAF from time to time.

30. On or around November 2011, Mr Cissé was assigned by Mr Lamine Diack to specifically manage the Russian ABP Cases within the IAAF.

31. This is confirmed by:

- Dr Dollé's Witness Statement of July 2016, according to which he was instructed by Mr Lamine Diack to inform Mr Capdevielle that Mr Cissé would be personally supervising the management of the Russian ABP Cases. Mr Cissé *"became the intermediary between my Department and [Mr Balakhnichev] on behalf of the Russian Federation. Although [Mr Cissé] had been involved for a long time in anti-doping issues, this was the first time anyone outside the Department, had supervised the management of anti-doping cases. [Mr Lamine Diack] and I agreed in late 2011 or early 2012 that correspondence about the Russian athletes at [Mr Balakhnichev's] request would be handed personally by [Mr Habib Cissé] to [Mr Balakhnichev]"*.

- Mr Capdevielle's witness statement dated 2 February whereby Mr Capdevielle confirmed that Dr Dollé had informed him that, from then on, Mr Cissé would be personally supervising the management of the ABP cases involving Russian athletes. Mr Capdevielle further explained that *"Shortly before on 3 November 2011, [he] had been asked by Gabriel Dollé, to prepare and send a note to Habib Cissé summarizing the status of the numerous ABP Russian cases, then under proceedings or under investigations"*.

- An e-mail sent on 14 November 2011 by Mr Capdevielle to Mr Huw Roberts (IAAF Legal Counsel) and Mr Pierre-Yves Garnier (IAAF Medical and ABP Manager) informing them that *"Habib is now officially involved in the management/follow-up of the Russian ABP cases"*.

- An e-mail sent on 18 November 2011 by Mr Capdevielle to Mr Cissé, entitled *"RUS ABP cases"*. Attached to this message were the requested documents linked to the ABP cases involving Russian Athletes (*"Tu trouveras ci-joints les documents demandés relatifs aux cas de passeport biologique en cours impliquant des athletes russes"*).

- Mr Roberts' witness statement, by which he confirmed having received Mr Capdevielle's e-mail of 14 November 2011 and having been told by Dr Dollé that *"Maître Cissé had been given a specific mandate in relation to the Russian ABP cases, by which [Mr Roberts] understood that he was to be in charge of the management and follow up of the cases. This was the first time to [Mr Roberts'] knowledge that Maître Cissé had been actively involved in the management and follow up of doping cases at national level"*.

32. In December 2011, Mr Baranov allegedly received a phone call from Mr Melnikov informing him that the ARAF had received from the IAAF a list of Russian athletes with suspicious biological profiles. Among them was Mrs Shobukhova.

33. According to Mrs Shobukhova, Mr Melnikov also contacted her at the end of December 2011 to tell her about the list and to offer her to have her name removed from it against the payment of EUR 150,000 in cash.

34. In Sir Anthony's Report, there are speculations that this list is the one referred to in Mr Capdevielle's e-mail of 18 November 2011 and that this document was handed to the ARAF by Mr Cissé as there is evidence that he was in Moscow at the IAAF expense from 20 to 24 November 2011.

35. However, Mr Capdevielle explained that several people had access to such lists and that Mr Melnikov could have obtained this information through a different route.

iv. Delays by the IAAF and by the ARAF in processing the reports of the Expert Panel

36. It is undisputed that after the review of her abnormal blood profile by the Expert Panel at the end of 2011, Mrs Shobukhova should have been provisionally suspended and prevented from competing in any further sporting events. Yet, she participated in the 2012 London Olympic Marathon on 5 August 2012 and in the 2012 Chicago Marathon on 7 October 2012.

37. No appropriate steps of any kind were taken against Mrs Shobukhova until 12 June 2012.

38. During Sir Anthony's investigations, Mr Capdevielle's explanation for the delays was that a) the IAAF had only recently started its ABP program, b) this new method of doping detection created a significant work overload and c) Mrs Shobukhova's abnormal blood profile was the first of the ABP cases pursued so far by the IAAF, involving a high-profile athlete. In anticipation of the legal challenge that the athlete would certainly initiate against any sanction imposed upon her, Mr Capdevielle agreed to consolidate evidence of Mrs Shobukhova's doping offence with *"one or two further tests"*.

39. It is undisputed that Mrs Shobukhova was not subject to any blood test in 2012 (in spite of her participation to the 2012 London Olympic Marathon and to the 2012 Chicago Marathon). This seemed odd even to the athlete.

40. The first notification letter formally opening the investigations into a potential anti-doping rule violation was finally issued on 12 June 2012 (the "12 June 2012 Letter").

41. Mr Cissé delivered this letter by hand to Mr Balakhnichev. This is confirmed by:

- Mr Thomas Capdevielle's witness statement dated 2 February 2015 whereby it is stated that, *"Habib Cissé delivered the signed letter back to Gabriel Dollé who, in turn, showed it to [Mr Capdevielle] before filing it. This was not in accordance with the normal practice. Written notices to athletes/Federations are usually sent by fax or by e-mail, except at World Championships where, exceptionally, notices are hand delivered because immediate action is required"*.

- Dr Dollé who explained that it was opportune to hand-deliver the notification directly to Mr Balakhnichev in order to ensure that the ARAF acknowledged its receipt in a confidential manner (*"Il était opportun de remettre cette lettre à Valentin Balakhnichev (VB) en main propre, car il s'agissait ici, comme parfois pour d'autres cas, de s'assurer que l'ARAF en accuse effectivement réception et de manière confidentielle"*). He maintained this version of the facts in his Witness Statement of July 2016.

  At the hearing before the CAS, Dr Dollé testified that the decision to hand deliver the 12 June 2012 Letter to Mr Balakhnichev was the result of an agreement between the latter and Mr Lamine Diack. This approach was meant to keep the Russian ABP Cases as confidential as possible.

- WADA IC Report 2 which indicates that Mr Cissé *"personally delivered the paperwork to ARAF, a procedure outside of the standard IAAF protocol. The standard departmental practice would have been for Dollé to send the notification to the member federation, in this case ARAF, as the next step in the results management process"*.

- The IAAF expense records, according to which Mr Cissé was in Moscow between 10 to 13 June 2012.

42. The 12 June 2012 Letter was signed by Dr Dollé and addressed to Mr Balakhnichev in his capacity as President of the ARAF. It bears the ARAF stamp acknowledging receipt on 13 June 2012. This document summarises the investigations, which were carried out as a consequence of Mrs Shobukhova's abnormal blood profile as well as the conclusions of the Expert Panel. It further provides so far as material as follows:

> *"In light of the above, the IAAF is considering bringing charges against Ms Shobukhova for an anti-doping rule violation under IAAF Rule 32.2 (b) (use or attempted use of a prohibited substance or a prohibited method) and, in doing so, could be seeking a 4-year sanction on the grounds of aggravating circumstances (IAAF Rule 40.6).*
>
> *Ms Shobukhova can avoid a 4-year ban by promptly admitting by no later than Tuesday 19 June 2012 an anti-doping rule violation under IAAF Rule 32.2 (b) and by accepting effective 2-year ineligibility as from the date of her acceptance (see IAAF acceptance of sanction form attached).*
>
> *Before formal charges are brought against the athlete, she has an opportunity under the IAAF Anti-Doping Regulations (paragraph 6.13), to provide an explanation for her abnormal profile. The athlete's explanation, if any, must be provided to me in writing, in English, no later than Tuesday 26 June 2012.*
>
> *You will receive shortly by courier, a complete file constituting Ms Shobukhova's Biological Passport including, for each of the 5 blood tests indicated above:*

- *the doping control form*
- *the chain of custody form*
- *the details of the blood sample's analysis (laboratory documentation package).*

Upon receipt of Ms Shobukhova's explanation, the matter shall be referred back to the Expert Panel for further review (paragraph 6.15 of the IAAF Anti-Doping Regulations). If, following such review, the Expert Panel concludes that there is no known reasonable explanation for the abnormal profile other than the use of a prohibited substance or method, alternatively, if no explanation is forthcoming from Ms Shobukhova by the above deadline, your Federation will be required to proceed with the case as an asserted anti-doping rule violation in accordance with the disciplinary procedures set out under IAAF Rule 38 and following.

Finally, I would bring your particular attention to the fact that, in accordance with IAAF Rules, this matter must be treated by all persons concerned within your Federation with the utmost confidentiality. The IAAF will ensure that confidentiality is strictly maintained until expiration of the confidentiality period under IAAF Rules, and cannot be held responsible or any premature breach of confidentiality by a third party (…)".

43. At or around this time, Mr Balakhnichev received Mrs Shobukhova's complete file. He had never replied in writing to the 12 June 2012 Letter. Dr Dollé confirmed that he did not inform his superiors about the absence of reaction of the ARAF to the notification letter.

44. There are contradictory versions of events regarding the actions taken by the parties concerned in relation to the 12 June 2012 Letter:

- Mr Balakhnichev claimed that it was the first time that he had ever heard of Mrs Shobukhova's abnormal blood profile. Upon receipt of the notification letter, he took the following steps: a) He instructed Mr Melnikov to inform Mrs Shobukhova of the contents of the 12 June 2012 Letter and was convinced that his directives were carried out; b) He discussed the content of the 12 June 2012 Letter *"and the question of the athlete's participation in the forthcoming Olympic Games with Dr Dollé and with Habib Cissé on behalf of the IAAF. Their opinion was that, in view of the imminence of the Olympic Games and the fact that formal charges had not yet been brought against the athlete, she would be allowed to participate in the Olympic Games. It was a matter for the IAAF whether to impose a provisional suspension and it did not do so. Having discussed the matter with Dr Dollé, I did not also reply in writing to his letters"*; and c) He confirmed that Mrs Shobukhova did not give any explanations for her abnormal blood profile.

  At the hearing before the CAS, Mr Balakhnichev declared that he was aware of Mrs Shobukhova's abnormal blood profile only after the 2012 London Olympic Games, which took place in London from 27 July to August 2012.

When his attention was drawn to the fact that, in his defence brief filed during the Disciplinary Proceedings before the Panel of the IAAF Ethics Commission, he accepted that, on 13 June 2012, he had received from the IAAF a notification letter formally opening the investigations into a potential anti-doping rule violation against Mrs Shobukhova.

- Mr Melnikov stated that *"[he had] never received a copy of this letter. [He] was told that the IAAF had sent a letter concerning Ms Shobukhova and was asked as a senior coach of the national team (endurance events) to contact her and to advise her that the doping accusations had been brought against her. [He] was not aware that no action was taken on the letter".*

- Mrs Shobukhova claimed that, until 2014, she had never heard about the 12 June 2012 Letter (or any later letter) and had never been asked to provide an explanation for her abnormal profile. It is only in 2014 that she learned about the exchanges between the IAAF and the ARAF.

- Mr Thomas Capdevielle stated that, to his knowledge, the IAAF had never received any explanation from Mrs Shobukhova.

45. Between the notification of the 12 June 2012 Letter and the beginning of the 2012 London Olympic Games, Mr Capdevielle contended that he had asked Dr Dollé why Mrs Shobukhova had not been officially charged or provisionally suspended. According to Mr Capdevielle, Dr Dollé answered that Mr Balakhnichev told him (i) that the athlete had been duly informed (ii) that she had withdrawn from competition on a voluntary basis and (iii) that she would sign an acceptance of sanction.

46. During his investigations, Sir Anthony expressly asked Dr Dollé about the account given by Mr Capdevielle but did not receive any answer. However, in his Witness Statement of July 2016, Dr Dollé insisted on the fact that he had agreed to help delaying the suspension procedure of the Russian athletes with abnormal blood profile only on the condition that they would not take part in the Olympic Games or other competitions.

47. On 5 August 2012, Mrs Shobukhova ran in the 2012 London Olympics Marathon but did not finish the course. Her participation in the 2012 Summer Olympics triggered the following reaction from Mr Capdevielle:

"I was sincerely shocked when I saw (while on holidays) Ms Shobukhova live on TV participating at the female marathon race of the Olympic Games in London in August 2012. I [remembered] calling Gabriel Dollé who told me that he was also shocked and that he would call the ARAF President immediately. His reaction seemed genuine on the phone, and later when I saw him at the office. (…) I never had any convincing explanation from Gabriel Dollé as to why she competed at the Olympic Games, although she did not finish

the race. I personally asked him several times after the Olympic Games to suspend her provisionally, as he was entitled to do, in his position as IAAF Anti-Doping Administrator. He never did".

48. In his Witness Statement of July 2016, Dr Dollé stated that he was *"shocked when [he] learnt that [Mrs Shobukhova] and the other athletes had run in the 2012 Olympic Games. [He] felt betrayed and a prisoner. In the best interests of the IAAF, [he] had agreed to help on condition that the athletes on the list did not run and yet they had run. [He] spoke to [Mr Lamine Diack and Mr Cissé] about the fact that they had run and [he] told them that it was contrary to the agreement"*. He could not remember what their answer was.

49. At the hearing before the CAS:

- Dr Dollé confirmed that he was present at the 2012 Olympic Games site as a medical delegate and claimed that, in this capacity, it was not for him to check who was competing or not. Hence, he was not aware that Mrs Shobukhova would take part in the Olympic marathon. When he found out about her participation, he was upset and expressed his anger to Mr Balakhnichev and to Mr Lamine Diack. In spite of this and of the fact that the situation left him in dismay ("*dans l'embarras*"), Dr Dollé still felt that he was bound by the decision of delaying the suspension procedure of the Russian athletes with abnormal blood profile and decided not to take immediate action against Mrs Shobukhova.

- Mr Capdevielle declared that, after the 2012 Olympic Games, he asked Dr Dollé several times to suspend Mrs Shobukhova without delay as it was in his power to do so.

50. At the hearing before the CAS, Dr Dollé also testified that, on the eve of the 2012 Chicago Marathon, he heard about Mrs Shobukhova's intention to participate in this sporting event. He immediately called on Mr Lamine Diack to contact Mr Balakhnichev to do his utmost to prevent the athlete from competing.

51. On 7 October 2012, Mrs Shobukhova ran in the 2012 Chicago Marathon and ranked fourth. In this respect, Mr Capdevielle made the following statement: *"We (with other colleagues in the Department) were even more shocked when we found out that she competed at the Chicago Marathon in October 2012. Gabriel Dollé was not able to give us any valid explanation as to why she competed in Chicago. There were "tensions" at this time within the IAAF Medical & Anti-Doping department surrounding the case of Liliya Shobukhova. I remember asking Gabriel Dollé insistently to suspend her provisionally. In this period, I prepared a draft letter of provisional suspension, which was never sent or delivered (…). On Gabriel Dollé's request, a reminder letter was sent on 3 December 2012, granting the athlete a further opportunity to accept a 2-year sanction, to bring her case to a conclusion (see file) and asking ARAF to pursue her case as an anti-doping rule violation should she decide not to accept a 2-year sanction".*

52. Dr Dollé confirmed that reminders were issued both orally and in writing to the ARAF. Whereas there is no evidence on record of any phone calls or discussions between the IAAF and the ARAF, Dr Dollé sent the following letters to Mr Balakhnichev:

- a letter dated 3 December 2012, which bears an ARAF stamp and a date of receipt of 7 December 2012. It was hand delivered by Mr Cissé. This document reads as follows:

"I write to follow-up on the notification letter handed to you on 13 June 2012 in relation to the above referenced case (see copy attached).

We have not heard from you or the athlete since then.

I would now kindly ask you to ensure that this letter is immediately notified to Ms Shobukhova and to inform her of the following new deadlines:

*(i) she has until **Monday 10 December 2012** to sign and return the IAAF acceptance of sanction attached;*

*(ii) If she does not wish to sign the IAAF acceptance of sanction form, she has until Monday **17 December 2012** to provide a written explanation for her abnormal Athlete Biological Profile. Her explanation will be referred to the IAAF Expert Panel for review, as per IAAF Anti-Doping Regulations.*

If we do not hear from her by the above deadline, your Federation will be required to proceed with the case as an asserted anti-doping rule violation in accordance with the disciplinary procedures set out under IAAF rule 38 and following".

- A letter dated 15 February 2013, asking Mr Balakhnichev for an update on Mrs Shobukhova's case.

53. No action was taken by either Dr Dollé or by Mr Balakhnichev following these letters.

54. Mr Melnikov stated that he had *"never received copy of these [two] letters but [he] knew that the IAAF had sent some letters concerning Ms Shobukhova".*

55. Mrs Shobukhova claimed that, as she was attending the training camp in Kislovodsk, Russia, between 1 and 20 December 2012, she received a phone call from Mr Melnikov, who advised her that she would not be eligible to compete in 2013.

56. Between December 2012 and January 2013, Mrs Shobukhova found out that she was pregnant and gave birth to a daughter on 7 September 2013. She did not therefore compete in 2013.

57. In this regard, Mr Balakhnichev declared that *"The delay in the finding of an anti-doping violation came about because of the athlete's withdrawal from athletics. I accept that the potential anti-doping violation ought to have been pursued more promptly than it was. The athlete, who was no longer competing, did not ask for any delay. The IAAF was well aware that the alleged violation had not been pursued and did not raise any objection to her participation in the Olympic Games or 2012 Chicago Marathon"*.

v. Mr Huw Roberts

58. Mr Huw Roberts served as legal counsel to the IAAF between January 2001 and April 2014. In the context of Sir Anthony's investigation, Mr Roberts made a statement, which can be summarized as follows:

- he became aware of a problem in the management of the Russian ABP Cases in the fourth quarter of 2012.

- In early January 2013, he met with Mr Lamine Diack of the IAAF and expressed his concerns. He told the president that he had no option but to resign from his position with the IAAF. This was refused and the president assured him that he should not be concerned about the matter because the Russian ABP Cases would all be dealt with in accordance with the IAAF Rules in due time and that none of the athletes would compete in the sport in the meantime.

- In the course of 2013, it turned out that this assurance was an empty one, that no action was taken and that the Russian athletes could continue to compete. Several times, Mr Roberts offered his resignation again but, as at the first occasion, he did not pursue it in the light of new assurances given.

- Eventually, as no action was taken, he resigned on 6 January 2014 and left on 11 April 2014.

vi. Mr Sean Wallace-Jones

59. Mr Sean Wallace-Jones has been employed by the IAAF since 1996 and is the person responsible for road running matters in the IAAF competition department. In the context of Sir Anthony's investigation, Mr Wallace-Jones filed a statement, countersigned by Mr Baranov, which can be summarized as follows:

- He attended the Tokyo Marathon in February 2014 and met Mr Baranov there. Mr Baranov told him that an athlete under his management had paid half a million dollars to the Russian Federation and *"a black man who comes very often to Moscow for the IAAF"*.

- He immediately called Dr Dollé about this. Dr Dollé was hesitant and said that they should discuss the matter.

- After his return to Monaco, he reported his conversation with Mr Baranov to IAAF-deputy general secretary Nick Davis and to Mr Roberts. He also discussed the matter with Dr Dollé and Cheikh Thiaré.

- In March 2014, he met Mr Baranov again. Mr Baranov then said that Mrs Shobukhova had been contacted by the ARAF and had been asked to sign a paper accepting a suspension. At that occasion, she had been told that the Federation would pay her back 300,000 (currency not specified). Mr Wallace-Jones then said that he had to report the matter to the Ethics Commission. Mr Baranov said that he would provide a statement and that Mrs Shobukhova would do the same.

- At a subsequent meeting with Mr Lamine Diack, the president said that the accusations were untrue. Mr Wallace Jones replied that he believed that there was considerable circumstantial evidence and that investigation was certainly called for.

vii. Mrs Shobukhova's suspension

60. Between December 2012 and January 2013, Mrs Shobukhova found out that she was pregnant and gave birth to a daughter on 7 September 2013. She did not therefore compete in 2013.

61. On 3 March 2014, *i.e.* a few days following his conversation with Mr Wallace-Jones, Dr Dollé sent the following letter to Mr Balakhnichev:

> *"I write to follow-up on our previous exchanges with respect to the above referenced file [i.e. Mrs Shobukhova's], which, as I understand, has been delayed due to the athlete's pregnancy.*
>
> *I would now ask you to conclude the case as a matter of urgency and to confirm in return a sanction in accordance with IAAF rules, namely:*
>
> (i) *a 2-year ineligibility commencing on 1st February 2013 which corresponds to the period the athlete effectively withdrew from competition until 31 January 2015;*
>
> (ii) *disqualification of all her individual results as from 9 October 2009 (which corresponds to the date of the first infraction evidenced through her ABP profile according to the IAAF Expert Panel)".*

62. On 7 March 2014, Mr Capdevielle sent to Mr Balakhnichev and to his assistant and Secretary of the ARAF Anti-Doping Commission, Mr Sergey Petrovich Sinelobov, an unsigned "Acceptance of Sanction" form in relation to Mrs Shobukhova.

63. There are contradictory versions of events regarding what happened following Dr Dollé last mail to Mr Balakhnichev:

- Mrs Shobukhova claimed that, between mid-November and early December 2013, she contacted Mr Melnikov to inform him of her intention to return to competition in 2014. According to her, the latter welcomed the news. Subsequently, before the end of December 2013, Mr Melnikov *"notified [her] that she would have trouble competing in 2014"*. On 24 January 2014, she flew with her husband to Moscow to meet Mr Melnikov, who told them that she was *"banned from athletics due to problem with her ABP"*. Mr Melnikov then asked Mrs Shobukhova to sign the "Acceptance of Sanction" form that he placed before her, which she refused to do as she could not understand its content and did not trust Mr Melnikov. Upon return to her hometown, she called Mr Baranov to inform him of her discussion with Mr Melnikov.

  On 11 March 2014, Mrs Shobukhova was summoned by Mr Melnikov to come to the ARAF in Moscow, which she did the following day. There, she met with Mr Melnikov, who tried to make her sign the "Acceptance of Sanction" form again. As she refused to comply, she was brought to Mr Balakhnichev, who pressured her to sign the said document, failing which she would be suspended for four years instead of two. In spite of Mr Balakhnichev's insistence, Mrs Shobukhova did not change her mind.

  Following this meeting, Mr Melnikov kept pressuring the athlete to sign the "Acceptance of Sanction" form, which she continually declined.

  On 29 April 2014, Mrs Shobukhova had learned through the media that the ARAF had banned her for two years. It came as a surprise to her as she was expecting a) to be at least summoned to a hearing, b) to receive documents or a copy of the decision.

- Mr Melnikov claimed that he was not aware of the conversation, which allegedly took place on 13 March 2014 in the ARAF Offices in the presence of the athlete and of Mr Balakhnichev.

- Mr Balakhnichev contested the fact that Mrs Shobukhova did not know about the ARAF hearing and that she did not sign the "Acceptance of Sanction" form. He also strongly disputed the version of events provided by Mrs Shobukhova and denied having been present *"at any meeting at which [she] was put under pressure to sign an Acceptance of Sanction"*.

At the hearing before the CAS, Mr Balakhnichev confirmed that he met Mrs Shobukhova for the first time at the ARAF premises in Moscow, when she was invited to sign the "Acceptance of Sanction" form. He testified that the athlete entered into a heated argument with her husband over Mr Balakhnichev's request.

- Statement of 12 March 2014 signed by Mr Alexei Anatolievich Ageev (manager of the Russian National Athletics Team), Mrs Natalya Mikhaloivna Lavshuk (senior coach of the Russian National Athletics Team), Mr Nikolay Nikolaevich Lukashkin (senior coach of the Russian National Athletics Team) and Mr Sergey Petrovich Sinelobov (secretary of the ARAF Anti-doping Commission).

  This document was filed by Mr Balakhnichev during the proceedings before the Panel of the IAAF Ethics Commission. Unlike the Russian version, the translation was not signed and reads as follows:

  "We, undersigned, confirm that on 12 March 2014 (…) Ms Liliya Shobukhova being in the headquarters of the All-Russian Athletics Federation (…) refused to, receive the documents related to her anti-doping rule violation.

  Also we confirm that the Secretary of the ARAF Anti-Doping Commission Sinelobov S. P. notified Ms Lilia Shobukhova about the alleged anti-doping rule violation, about her right to request an oral hearing and about possible sanctions foreseen by the IAAF Anti-doping rules".

  Mrs Shobukhova contested having met any of the signatories of this document and having received any documents from Mr Sergey Petrovich Sinelobov, who she did not know.

- Mr Nikolay Nikolaevich Lukashkin, at the hearing before the CAS, testified that he was in the ARAF premises when Mrs Shobukhova and her husband met with Mr Balakhnichev. He was able to hear the couple talk in a very loud manner but ignored it was because they were arguing. It is only when Mrs Shobukhova and her husband left, that Mr Balakhnichev came into his office and asked him to sign the statement of 12 March 2012. He confirmed that he was not present when the athlete "*refused to, receive the documents related to her anti-doping rule violation [and when] Sinelobov S. P. notified [her] about the alleged anti-doping rule violation, about her right to request an oral hearing and about possible sanctions foreseen by the IAAF Anti-doping rules".*

64. Through an e-mail dated 8 April 2014, Mr Capdevielle informed Mr Balakhnichev and Mr Sinelobov that the IAAF was in receipt of the "Acceptance of Sanction" form, duly signed by Mrs Shobukhova. He asked them to ratify the content of such document *"through an ARAF decision"*.

65. Mrs Shobukhova denied having ever signed this document. Eventually, it appeared that the "Acceptance of Sanction" form was a forged document.

66. On 9 April 2014, the ARAF Anti-Doping Commission decided that Mrs Shobukhova was guilty of an anti-doping rule violation as a result of her abnormal blood profile and, *inter alia*, held her ineligible to compete for 2 years as of 24 January 2013, *i.e.* when she voluntarily withdrew from competition.

67. The IAAF was informed of the ARAF Anti-Doping Commission decision in a letter from Mr Sinelobov dated 10 April 2014. According to this letter, Mrs Shobukhova waived *"any and all rights to appeal this decision which will be published accordingly"*.

68. The decision of the ARAF Anti-Doping Commission was forwarded to the IAAF on 3 June 2014. According to this document, the ARAF Anti-doping Commission decided:

> *"1) To declare that Ms LILIYA SHOBUKHOVA committed an anti-doping rule violation (art. 31.2 (b) of the IAAF Anti-Doping Rules);*
>
> *2) To determine 2-year period of ineligibility for Ms LILIYA SHOBUKHOVA as applicable sanction in this matter commencing from 24 January 2013;*
>
> *3) To disqualify all results achieved by Ms LILIYA SHOBUKHOVA as from 9 October 2009 – the date of anti-doping rule violation"*.

69. On 22 May 2014, Mrs Shobukhova's then legal counsel, Mr Mike Morgan of Morgan Sports Law, wrote to Dr Dollé a letter complaining of the lack of information about what had been reported in the media. He claimed that his client had never seen any document relating to an alleged anti-doping rule violation and had never been invited to a hearing related to this matter. He required the IAAF to explain whether she was to be considered as a *"sanctioned athlete"* and if so, what anti-doping rule violation was she accused of having committed, based on what evidence.

70. The IAAF appealed to the CAS against the decision of the ARAF, seeking a period of ineligibility of up to four years. The arbitration proceedings resulted in a settlement agreement on 30 June 2015 between the IAAF, the ARAF, the WADA and Mrs Shobukhova. The settlement provided for a period of ineligibility of three years and two months (from 24 January 2013 to 23 March 2016) for the athlete. The WADA had agreed to a seven-month reduction in the athlete's sanction, in light of the substantial assistance that she provided in line with the provisions of the World Anti-Doping Code.

D. The alleged payments made by Mrs Shobukhova to ARAF officials in order to compete at a time when the IAAF had evidence of an abnormal blood profile for her

i. The first payment request made to Mrs Shobukhova

71. According to Mr Shobukhov, Mrs Shobukhova's husband, whose witness statements she fully endorsed[2]:

> *"22. In mid-December 2011, Liliya received a call from [Andrey Baranov who] informed us that Melnikov had called him earlier that month on 1 December 2011. Melnikov had informed [Andrey Baranov] that ARAF had apparently received a list of names from the IAAF of Russian athletes who were under investigation as the result of suspect Athlete Biological Passports (…) and apparently, Liliya was on the list.*
>
> *(…)*
>
> *24. At the end of December, Melnikov called Liliya and told her about the List. He informed us that we needed to pay €150,000 in cash to have Liliya's name removed from the List. Melnikov did not tell us who the money was going to, or to which organisation, only that the payment would allow Liliya to compete in the London 2012 Olympic Games ("London 2012"). Melnikov urged us to make the payment quickly and prior to Liliya's departure for the forthcoming National Team training camp in January 2012. When we told him that we only had cash in USD, he agreed to accept USD at the current exchange rate.*
>
> *25. Before he ended the call, Melnikov warned us not to tell Andrey about the payment. We told Andrey nothing of our call with Melnikov and the money he had requested from us, and proceeded to prepare the cash for Melnikov.*
>
> *26. Liliya was very worried at the prospect of not being able to compete at London 2012 as it had been a goal for many years. We had never seen the List and did not know whether it even existed. However, what you must understand is that ARAF had dictated Liliya's life, and mine by association, for a long time and we knew we had no choice but to do what Melnikov instructed.*

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2 Mr Igor Shobukov provided a first witness statement (signed on 11 March 2015), which was endorsed by his wife. He filed an amended version (signed on 16 July 2015), which his wife accepted by countersigning it during the hearing before the Panel of the IAAF Ethics Commission. The second document contained date-related edits (concerning the couple's trips to Moscow in order to make the cash payments). In this second witness statement, the names of the persons who received the second and third cash payments were rectified. Both witness statements were prepared in London, with the help of Mrs Shobukhova's prior lawyer, Mr Mike Morgan and a translator. At the hearing before the CAS, it was unclear whether other persons were present while Mr Shobukhov was giving his evidence. Mrs Shobukhova explained that the dates and names given while preparing the first witness statement were based on her (and her husband's) recollection of the facts. Once she returned home, she came across boarding passes, which allowed her get the dates and names right.

27. Using the exchange rate at the time, I calculated the monies owed to amount to a USD equivalent of $190,000. Just a month beforehand, I had withdrawn $211,000 USD cash from our bank account on 3 November 2011 in the usual manner on receiving Liliya's competition monies, and placed it in our safe deposit box. However, as it was the holidays, we did not have immediate access to safe deposit box at the local bank and so on 27 December 2011, we ordered a further $100,000 USD from Liliya's bank account: (…). The remaining $90,000 comprised of USD we had stored in our property".

72. Mr Melnikov denied the allegations made against him by the athlete and her husband.

73. Mr Balakhnichev denied knowing about any payment made by Mrs Shobukhova and disputed the content of the WADA Letter. With regard to this document, he claimed that he had never discussed with Mr Yuri Nagornyh *"any question of blackmail by the IAAF or the covering up of anti-doping rule violations by the IAAF. [He assumed] that there must have been a misunderstanding on the part of WADA"*. He further declared that he had *"not been able to obtain from Mr Nagornyh that he did not make the statements attributed to him in the WADA document. If he did make those statements, there were incorrect and may have been put forward as a way of deflecting criticism of the Russian authorities"*. At the hearing before the CAS, Mr Balakhnichev confirmed that he could not explain why Mr Yuri Nagornyh would misrepresent the facts.

74. Mr Diack also rejected the accusations made against him in the WADA Letter, which he considered as part of a *"major conspiracy against the IAAF"*. He denied any knowledge and involvement in a system under which athletes with abnormal blood profile would be allowed to keep competing against payment in cash and contended that he had never met *"any ARAF official or coach, Mr. Andrey Baranov, Mr. Igor Shobukhov or Mrs. Liliya Shobukhova to discuss any such arrangement"*.

75. At the hearing before the CAS:

- Mrs Shobukhova confirmed that, following Mr Melnikov's phone call, she immediately informed Mr Baranov about the deal made to her as well as of the fact that she was on some kind of list, the nature of which was unclear to her. In particular, she did not understand that the list was related to the fact that she had an abnormal blood profile. She could not exactly remember the details of her conversation with Mr Baranov, save the fact that he advised her to clarify the situation. She thought that her participation to the 2012 London Olympic Games was dependant on the payment of an amount of money to the persons with the authority to select the athletes authorised to compete in this event under the Russian flag. Mrs Shobukhova confirmed that she had no written evidence (email, text messages) of her contacts with Mr Melnikov. She had never considered reporting to the police until 2014, when Mr Melnikov asked her to make further payments in order for her to return to competition, after her pregnancy.

- Mr Shobukhov also testified that, following Mr Melnikov's phone call, Mrs Shobukhova sought advice from Mr Baranov. He denied that his wife had ever used PEDs and could not explain why she was suddenly facing a possible withdrawal from the 2012 London Olympic Games. Mr Shobukhov assumed that, in his capacity as ARAF chief coach for long distance runners and walkers, Mr Melnikov had the discretion to decide whether his wife would be selected for the 2012 London Olympic Games Marathon. Under these circumstances, bearing in mind that they were simple people living far away from Moscow and left to themselves, he and his wife thought that they had no other choice but pay the requested amount. He explained that they were too scared to go the police and, in any event, had no evidence to lodge a complaint with the authorities.

- Mr Baranov declared that it was only in 2014 that he found out for the first time that Mrs Shobukhova was being bribed. He presumed that she did not talk about it to him earlier because he was merely her agent and not involved in her training.

- Mr Balakhnichev and Mr Melnikov maintained the position they had expressed during Sir Anthony's investigations.

- Mr Diack insisted on the fact that the charges contained in the WADA Letter lacked credibility as they were brought by the Deputy Minister of Sport, Mr Yuri Nagornyh, and a lawyer from the Ministry, Miss Natalia Zhelanova, *i.e.* two persons obviously involved in the unprecedented Russian state-sponsored doping. He also declared that he intended to initiate proceedings against these two persons as well as against WADA's representatives.

ii. The first payment made by Mrs Shobukhova

76. Mr Shobukhov made the following statement in his amended witness statement:

> *"28. On 12 January 2012, I travelled to Moscow with Liliya on her way to her National Team Training camp. We had packed the $190,000 USD cash in our luggage. On the same day, Liliya and I made a stop at the Melnikov's offices located at the Olympic Committee Building which is also ARAF's headquarters. We handed the cash to Melnikov and he placed it within a safe in his office. Then Melnikov told us not to worry anymore and confirmed that we could proceed to the training camp in Portugal. Melnikov assured us that he would speak with the IAAF and that there would be no doubt about Liliya's participation at London 2012. After our discussion with Melnikov and his many assurances, we both considered the matter to be closed.*
>
> *29. Following the meeting, we went to the British Consulat in Moscow where Liliya provided finger prints for her VISA application. The next day, on 13 January 2012, we proceeded to the National Team training camp in Portugal, where we remained for two months".*

77. Mr Melnikov contended that he had never a) asked any money from Mrs Shobukhova, b) made any reference about a lawyer, c) had any dealings with Mr Cissé or any other lawyer in connection with the athlete and argued that, on 12 January 2012, he was not in Moscow, but in Sochi. In order to establish his presence in Sochi, Mr Melnikov filed alibi statements from two Russian walking coaches, Mr Serguei Nikitin and Mr Konstantin Nacharkin (whose witness statements were admitted into these proceedings) as well as a document in Russian, apparently issued by the *"Ministry of Sports of the Russian Federation, Federal State Budget Foundation "South Federal Center of Sports Preparation (FGBU "Sports South")""*. According to the unsigned translation of this document, Mr Melnikov *"stayed at hotel complex of the FGBU "Sports South", within the following periods: 11 – 14 January 2012 (…) City of Sochi, hotel "PARUS""*.

78. Mr Melnikov was unable to provide air tickets from Moscow to Sochi as he claimed that he drove there. In Sir Anthony's Report, it is observed that the distance between Moscow and Sochi is 1,622 kilometres.

79. At the hearing before the CAS:

- Mr Serguei Nikitin testified that, on 11 January 2012, he and Mr Konstantin Nacharkin flew from Saransk to Moscow and from Moscow to Sochi, where they landed around noon (which is the usual arrival time for the flights from Moscow). A taxi took them to the sport facilities, the base "Yug-Sport", where a training camp had been planned for the period between 12 and 31 January 2012. The same day, in the late afternoon, Mr Melnikov arrived by car (a black Mazda, *"jeep like style"*), which was not surprising as it was common practise for Mr Melnikov to drive to sporting camps, in particular when he needed to bring some equipment, which was the case. Mr Serguei Nikitin could affirm that Mr Melnikov arrived in Sochi on 11 January 2012 (*i.e.* one day before the arrival of the athletes) as he, Mr Konstantin Nacharkin and Mr Melnikov would systematically and routinely come one day in advance to ensure that everything would be ready for the start of camp. He could not exactly remember whether Mr Melnikov left the following day or on 13 January 2012. In any event, he knew that Mr Melnikov was visiting another camp, in Adler, where he drove with his car. Questioned by the legal counsel of the IAAF, Mr Serguei Nikitin confirmed that he was required to transcribe the facts which occurred on 11 January 2011 in a written statement filed during the hearing before the Panel of the IAAF Ethics Commission, which took place in December 2015. Nevertheless, he could not remember who asked him to draft such a statement but affirmed that it was not Mr Melnikov. He also could not recall how this request was made but affirmed that he wrote his statement by himself, in a separate room, after having discussed about it with Mr Nacharkin. At that time, they both were in Saransk.

- Mr Konstantin Nacharkin's oral evidence was similar to Mr Nikitin's. He could recall that someone from the ARAF asked him to write his statement, but could not remember exactly who. He also forgot to whom he handed the document.

  The Parties agreed to compare the Russian language versions of Mr Nikitin's and Mr Nacharkin's written witness statements. It appeared that these statements were to a great extent identically worded.

- Mrs Shobukhova confirmed that she travelled to Moscow with the cash in a backpack, which she would hand to Mr Melnikov. She saw the latter place the cash in a dark safe, located under his desk in his office at the ARAF premises. During this transaction, nobody else was in Mr Melnikov's office.

- Mr Melnikov claimed that there has never been a safe in his office. He maintained that he drove to Sochi on 11 January 2012 and that it was not unusual for him to proceed this way. It was cost-effective (it was cheaper to bring equipment to camps than to ship it) and provided him a much-needed freedom of movement. In the morning of 13 January 2012, he left the base "Yug-Sport" to drive to another camp in Adler (25 km form Sochi). He came back to Sochi, late at night on 13 January 2012 and slept at his hotel. He assumed that Mr Nikitin and Mr Nacharkin did not see him come back that night.

iii. The second payment made by Mrs Shobukhova

80. Mr Shobukhov made the following statement in his amended witness statement:

> "*30. In early June 2012, Liliya received a call from Melnikov who, to our surprise, told us that the previous payment of €150,000 ($190,000 USD) had proved insufficient to have her name removed from the List. Melnikov explained that Liliya would now not be allowed to compete at London 2012 unless she made a further payment of €300,000.*
>
> *31. (…) Melnikov once again assured us that with the payment of €300,000, Liliya's case would be considered closed and she could then compete at London 2012 and future marathons without any difficulty. Melnikov concluded the call by telling us to gather the money together and that he would call us back in a few days with instructions for the payment, which needed to be made before London 2012.*
>
> *32. We were stunned; we were now certain that ARAF was trying to extort us and that the List had been fabricated all along. (…) At the same time, however, we felt we had no choice but to comply. Melnikov was responsible for selecting the team that would compete at London 2012 – he could therefore exclude Liliya if he wanted to. London 2012 was more important to Liliya than any other competition she had ever competed in. In fact, her entire marathon career had been leading up to London 2012 so we felt we had no choice but to comply with ARAF.*

33. After the call, I ordered an additional $100,000 USD from our bank account, to place in our safe deposit box: (…)

The cash took about one week to arrive.

34. On or about 14 June 2012, Liliya received a follow-up call from Melnikov who instructed us that he wanted the €300,000 in two separate payments of €150,000 in cash. The initial €150,000 payment was to be delivered to him on 17 June in Moscow. Melnikov wanted the final €150,000 payment no later than 17 July, because the Lawyer was to come to Moscow on that date. Melnikov confirmed he would accept the cash payments in equivalent USD.

35. Within a couple of days of this conversation, I withdrew $200,000 USD from our safe deposit box to cover the first 150,000 Euro payment. I have tried to retrieve the records of the dates I accessed the safe deposit box, but unfortunately Sberbank Russia bank does not have that information. I calculated the EUR-USD conversion rate myself, and worked the first payment amount out to be $192,000 USD. I also ordered an additional $120,000 USD from our bank account as our cash funds in the safety deposit box were running low: (…)

36. In the lead up to the meeting, Melnikov called us to change the day that we were due to meet him in Moscow several times, as an IAAF representative was due to arrive in Moscow, and Melnikov was waiting to be informed of his exact date of arrival. In the end, on 18 June 2012, Liliya and I travelled to Moscow. We packed the $192,000 USD cash in our luggage and boarded the SU Flight 1235 from UFA to Moscow at 6:05am.

37. On arrival at the Russian Federation Olympic building complex, we presented our passports for a single entry permit into the building as we had left our sports ID at home. Our visit was recorded in the log book, detailing that we were meeting with Melnikov and the exact time of the visit. We met Melnikov and I handed the $187,000 USD, comprised of $100 bills, to him, who placed it in his safe.

38. During the meeting, Melnikov told Liliya and I that he had met with an IAAF representative the previous day, who had arrived in Moscow on 17 June 2012. Melnikov mentioned that he had slept in his car the night before. I assumed that the meeting had gone on until the early hours of the morning, and so Melnikov spent the night in his car in order to meet us early in the morning so that he could pass on our payment to the IAAF representative visiting Moscow. I also assumed that the IAAF representative Melnikov met with the day before was the Lawyer although Melnikov did not specify his identity.

39. Melnikov then confirmed to us that Liliya was free to compete at London 2012. He informed us that he was going to meet with the Lawyer and Valentin Balakhnichev, ARAF President and IAAF Treasurer, in a hotel regarding this matter. I am not sure whether he meant that he would be meeting them that day or sometime after; he did not specify.

40. Before we left, Melnikov reminded us that we would need to make the final payment before 17 July 2012, and accordingly we arranged to meet on 11 July as Liliya was already due to attend a Nike presentation in Moscow that day. We returned to Beloretsk at 5.45pm the same evening. (…)".

81. In the Appealed Decision, it is observed that *"As to his whereabouts on the date of the second payment, [Mr Melnikov] has produced to the Panel two documents which are said to confirm that he was in Cheboksary from 17-21 June 2012 at the Russian Junior Championships as a member of the Jury of Appeals (he had originally told Sir Anthony that he could have been, subject to checking documents, at the Russian National Youth Athletics Championships or in Moscow at that time (AHR 31)). The schedule for the Junior Competition (which the Panel is prepared to assume to be what [Mr Melnikov] intended to refer to) actually shows its dates as being 19-21 June 2012 so that there would have been no requirement for [Mr Melnikov] to be there on 18 June 2012. The hotel invoice shows on its face that a booking was made from 17-21 June 2012, i.e. 4 nights, but payment made inexplicably for 5. [Mr Melnikov] responded in oral evidence that Russian hotels charge for 24 hour periods of stay".*

82. At the hearing before the CAS:

- Mr Melnikov contested in full Mr Shobukhov's version of the facts. In particular he claimed that it was absurd to contend that he spent the night in his car as he lived in Moscow. He declared that, on 17 June 2012, he paid a visit to his old father who was living alone on the way to Cheboksary, where he drove the following day to ensure that the sporting venues were ready to welcome the Russian National Youth Athletics Championships. In view of the importance of such a sporting event (which took place from 19 to 21 June 2012), it was absolutely normal for him to be on spot the day before the beginning of the competitions. When questioned about the fact that the bill he produced showed that he had paid for 5 nights, Mr Melnikov answered that it was ordinary in Russia to pay in advance for the nights reserved, regardless of the nights effectively spent.

- Mrs Shobukhova confirmed her husband's version of the facts. She was convinced that, with the payment of the extra EUR 300,000, all her problems would be solved. She had never inquired about the possible consequences of a payment failure as she was too focused on the Olympic Games.

iv. The third payment made by Mrs Shobukhova

83. Mr Shobukhov made the following statement in his amended witness statement:

"42. On 11 July, Liliya and I returned to Moscow with our daughter, Anna, to make the final €150,000 payment. I had calculated the exchange rate conversion to amount to $187,000 USD. A few days prior to our departure, I returned to our safe deposit box and withdrew the necessary cash funds, which I wrapped in transparent plastic bags.

43. We were met at the airport by a driver who introduced himself as Lukashkin but he did not give us his first name. Lukashkin, who also holds a position within ARAF, was sent by Melnikov to collect the money from us. We gave the $192,000 USD to Lukashkin, which he subsequently provided to Melnikov. Lukashkin then transported us to the nearest subway station, where we went on to join the Russian National Team at Hyatt Moscow on Nelinnaya Street, to present the official Olympic kit at a Nike organised presentation".

84. In support of his statement, Mr Shobukhov provided a copy of the plane tickets to Moscow.

85. Mr Melnikov refuted the allegation of having asked Mr Lukashkin to collect the money and claimed that he was in Kislovodsk from 10 to 14 July 2012.

86. At the hearing before the CAS, Mr Lukashkin denied having received money or anything else from Mrs Shobukhova or her husband and affirmed that the only time he saw the athlete in 2012 was during the Olympic Games in London.

v. The meeting of 4 December 2012

87. Mr Baranov declared to Sir Anthony that on 26 September 2012 he received a phone call from Mr Melnikov requiring his attendance at a meeting to be held on 4 December 2012 in Moscow in the presence of Mr Balakhnichev. On the due date, Mr Baranov met and sat with Mr Melnikov in the Baltschug Kempinski Hotel lobby. From where he was, he could see Mr Balakhnichev discussing with *"an IAAF Legal Advisor (who [he] found out was Habib Cissé) and a chubby man appearing to be of African descent who was not very tall (who [he] now [believes] to be Papa Massata Diack, the son of IAAF President Lamine Diack)"*. While waiting to meet with Mr Balakhnichev, Mr Baranov was asked by Mr Melnikov whether he was prepared to travel frequently if requested and whether he was willing to use his bank account to conduct wire transfers. Eventually, Mr Balakhnichev concluded his meeting with his two interlocutors and joined Mr Baranov to advise him that his presence was no longer required. Mr Baranov shared a ride back to his hotel with Mr Cissé, with whom he briefly talked. He left Moscow the following day and never received an explanation as to the purpose of the proposed meeting or why he had been invited.

88. Mr Cissé was in Moscow at the IAAF expense from 3 to 6 December 2012.

89. Mr Diack denied having been in Moscow on 4 December 2012 as he had a meeting in Monaco on that date. Nevertheless, he accepted that he travelled to Moscow on 5 December 2012 (which he established with air tickets, entry stamps in his passports and hotel reservation) and met with Mr Cissé and Mr Balakhnichev at the Baltschug Kempinski Hotel on 6 December 2012 for a marketing deal.

90. Mr Balakhnichev confirmed that the meeting was held on 4 December 2012, lasted about an hour and was attended by himself, Mr Cissé and Mr Diack. The meeting was *"arranged for the purpose of discussing a possible sponsorship deal between VTB and the IAAF. [Mr Baranov] was not invited to that meeting, as far as [he is] aware. [He] did not tell [Mr Baranov] that it was no longer necessary to meet with him although [he] may have made clear to [Mr Baranov], who had turned up at the hotel where the meeting was taking place, that he had no role to play in the meeting"*.

E. The alleged partial repayment of the amounts paid by Mrs Shobukhova

91. According to Mr Shobukhov's amended witness statement:

- Mrs Shobukhova did not compete in 2013 as she was expecting her second child, who was born on 7 September 2013. At the end of 2013, shortly after he learned that the athlete wanted to get back to training, Mr Melnikov *"notified [her] that she would have trouble competing in 2014"*.

- On 24 January 2014, Mrs Shobukhova and her husband flew to Moscow to meet Mr Melnikov, who advised them that the athlete was *"banned from athletics due to problem with her ABP"*. Both Mrs Shobukhova and her husband were very upset and confronted Mr Melnikov about the three payments which totalled EUR 450,000 and about the purpose the payments had served.

- Mr Melnikov then asked Mrs Shobukhova to sign the "Acceptance of Sanction" form, which she refused to do.

- Upon return to her hometown, Mrs Shobukhova called Mr Baranov to inform him of her discussion with Mr Melnikov. Mr Baranov advised her not to sign any document, to claim her money back from Mr Melnikov and to persuade him to return the money by bank transfer rather than cash in order to be able to prove her account of the facts.

- On 11 March 2014, Mrs Shobukhova was summoned by Mr Melnikov to come to the ARAF in Moscow, which she did the following day, accompanied by her husband. There, she met with Mr Melnikov, who tried to make her sign the "Acceptance of Sanction" form again. As she refused to comply, she was brought to Mr Balakhnichev, who pressured her to sign the said document. In spite of Mr Balakhnichev's insistence, Mrs Shobukhova did not change her mind. At that moment her husband asked the two ARAF officials to return the EUR 450,000. *"On hearing [this] request, President Balakhnichev turned to Melnikov, and told him to return €300,000 to us. (…) President Balakhnichev explained that €150,000 had gone to the Lawyer and could not be returned […]. We were not told who the Lawyer is and we were too nervous to ask. I told President Balakhnichev that we wanted our money back from the Lawyer before Liliya would*

even consider signing any document. (…) President Balakhnichev then explained that if we requested the money back from the Lawyer, he would likely sue us. Conversely, if we did not ask for our money back, the Lawyer would help us. I did not believe that any of this was true and sarcastically asked President Balakhnichev what help the Lawyer could give. President Balakhnichev explained that the Lawyer could ensure that Liliya would receive a two-year sanction (instead of four years) and her return to competition would be smoother. (…) Melnikov continued to pressure Liliya to sign the document for a further ten to fifteen minutes after the end of the meeting. Again, we refused and we left the meeting without a copy of the Acceptance of Sanction Form".

92. Both Mr Melnikov and Mr Balakhnichev denied the account of facts given by the athlete and her husband.

93. Mr Shobukhov continued his account of the facts as follows in his amended witness statement:

"63. The very next day after our return home from Moscow, Liliya and I began to receive daily calls from Melnikov, who wanted Liliya to sign the Acceptance of Sanction Form. Both Liliya and I repeatedly told him that we would only discuss signing the Acceptance of Sanction Form once our €450,000 was fully reimbursed.

64. A couple of days after the meeting in Moscow, Melnikov asked us to open a new bank account, specifically in Euros rather than USD, in order to receive the reimbursed monies. I did as instructed and opened a separate account with Sberbank Russia on 15 March 2014 and then emailed the information to Melnikov. 65. On or around 27 March, Melnikov called me to check whether I had received ARAF's payment. I enquired with the bank but the monies had not arrived. The bank informed me that the transfer would take two to three days to appear in our account. That evening, at around eight or nine o'clock, and repeatedly over the course of the next few days, Melnikov called me to ask whether I had received the monies. Melnikov insisted that the payment had been transmitted, so I requested he email us a confirmation of the transfer. Melnikov agreed and on 31 March 2014, he forwarded Liliya an email from his amelnikov-at@mail.ru address. The email was sent to Melnikov by President Balakhnichev through his valentin1949@gmail.com address on 28 March 2014".

94. It is undisputed that a transfer of EUR 300,000 was made from Black Tidings in Singapore via Standard Chartered Bank in Singapore to an account opened under the name of Mr Shobukhova. Black Tidings was in the sole proprietorship of Mr Ianton Tan. On 28 March 2014, Mr Balakhnichev received notification of the bank transfer from Mr Jean-Pierre Bonnot and forwarded it by email to Mr Melnikov, who then passed the confirmation to Mrs Shobukhova.

95. In his report, Sir Anthony indicated that in spite of his effort, he was unable to identify and, therefore, contact Mr Jean-Pierre Bonnot.

96. With regard to the bank transfer of EUR 300,000, the following positions were adopted:

- Mr Balakhnichev: an unknown individual, who named himself Mr Jean-Pierre Bonnot, contacted him by e-mail with a request for Mrs Shobukhova's bank details. According to him, it was usual for the ARAF to receive such requests and to act as a liaison between athletes of the national team and third parties. The fact that Mr Jean-Pierre Bonnot directly contacted him did not come as a surprise to him as his various email addresses were well known to people active in the athletics world. *"I asked Mr Melnikov to contact Mrs Shobukhova in order to obtain her permission to provide Mr Bonnot with her bank details. Mr Melnikov contacted Mrs Shobukhova and she gave her consent and sent him bank details for Mr Bonnot. Mr Melnikov sent these bank details to me and I then forwarded them to Mr Bonnot. The same e-mail chain took place (in reverse) with the payment confirmation from Mr Bonnot". "I forwarded the request to Mr Melnikov rather than to Mrs Shobukhova directly because Mr Melnikov was my usual point of liaison with Mrs Shobukhova. There was no particular need for me to delegate this matter to my staff. I considered that it was a straightforward administrative matter which would not take much time for me to deal with".* For the rest, he claimed that he did not know who paid this sum, what the payment related to, about the existence of Black Tidings or Mr Ianton Tan. As the transfer of money did not concern the ARAF, he felt that he was under no obligation to make enquiries about it. Furthermore, he was unable to provide a copy of the email chain between him, Mr Melnikov, Mrs Shobukhova and Mr Bonnot as he routinely deleted his incoming and outgoing emails, when their content was of no significance, which he considered to be the case.

- Mr Melnikov: At the request of Mr Balakhnichev, he contacted Mrs Shobukhova to ask her whether she would agree to provide her bank details *"to the foreign company whose representative had requested this information"*. Since she gave her consent, he forwarded the bank information to Mr Balakhnichev. He was also unable to provide a copy of the email chain related to the bank transfer as *"All outgoing e-mails were automatically deleted due to respective settings in [his] e-mail box. Regarding incoming e-mail letters [he] cannot find them and [he suggests] that they were also deleted after some time since they were not important for [him] and [he] did not see any reason to keep them"*.

  At the hearing before the CAS, Mr Melnikov confirmed that it was common practice for the ARAF to be required by third parties to provide athletes' banking details. For instance, organizers of sporting events would regularly contact the ARAF to obtain the necessary information to complete the transfer of prize monies to the winners' respective bank accounts. Mr Melnikov explained that he was not surprised that EUR 300,000 were to be paid to Mrs Shobukhova as she was not only a famous and successful athlete but also one of the few to have won World Marathon Majors. The fact that she did not compete in 2013 did not seem incompatible with the payment of an amount of EUR 300,000 as she was about to return to competition. For Mr Melnikov, such as sum could very well have been

an advance payment for her participation to some championship or for the renewal of a sponsorship contract.

- Mr Ianton Tan: He confirmed that the transfer of money was made at the end of March 2014 from Black Tidings at the request of Mr Bonnot, who claimed to be a) managing trust funds for top track and field athletes in their country, b) acquainted with Mr Balakhnichev and Mr Diack. *"[He] subsequently received an anonymous phone call whom [he] thought was Mr Diack in person, verifying that Mr Bonnot was indeed his friend. On that basis, he offered an opportunity to facilitate a transfer to a Russian bank account by the name of Mr. Igor Shobukhov and the promise of further opportunities to work together in the investment of trust funds in the sports marketing industry in Asia Pacific region. [He] proceed with that transfer request and [it was not] until April 2014 that [he] realized something was wrong when [he] confirmed with Mr Diack that he did not know any Mr Bonnot nor [had] he made a phone call to [him] confirming the existence of such a person"*. It was the first and only time Black Tidings made a bank transfer at the request and on behalf of Mr Bonnot. As things turned out, Mr Bonnot could not be identified and the e-mail sent to him remained unanswered. Since he went missing, Black Tidings was unable to be refunded and was closed down *"to avoid further complications"*. As for Mr Diack, *"[he is] his personal friend since 2008 where [they] worked together for the Beijing Olympics 2008 and since then [they] have worked together on ad hoc projects like the sponsorship servicing of Official IAAF Partner, SINOPEC which is based in Beijing. The only time that [he] can recall helping PMD Consulting, was to help register a website domain for the company as a personal favor since [he] was more IT savvy"*.

- Mr Diack: answered in the following terms the questions put to him by Sir Anthony in the context of his investigation:

  "1. I had no knowledge of or involvement in the circumstances of Ms Shobukhova's participation to the 2012 London Olympic Marathon and the 2012 Chicago Marathon. I was not aware that both ARAF and IAAF were investigating the abnormal blood profile of Ms Liliya Shobukhova in 2012, as it is not in my prerogatives to deal with Medical & Anti-Doping issues within the IAAF.

  2. I have never been aware of a payment of 450.000 euros paid by Liliya Shobukhova to have her abnormal blood profile suppressed.

  3. I totally reject your allegation of linking my company PMD Consulting to Black Tidings.

  4. PMD Consulting does not use the same address as Black Tidings. PMD Consulting is only registered in Senegal since 2004 (…) and is not registered in Singapore, as can be checked from the Singapore Companies Registry. However, I sought the computer engineering expertise of Mr Tong Han Tan for the registration of a pmdconsulting.org domain name and dedicated email address. Mr Tan, as the main contact person, registered the domain name under his own address at 28, Dakota Crescent in Singapore for convenience of renewal and maintenance. (…) I confirm knowing Mr Tong Han Tan as marketing

consultant who is advising us in our sales and sponsor servicing in the People's Republic of China. We are using his services as consultant to service our marketing relationship with Chinese sponsors, broadcasters and the Local Organizing Committee of the Beijing 2015 World Championships.

5. I have no knowledge of the payment of $150,000, which was allegedly made to a lawyer. Therefore, I will not be in a position to help you about this transaction".

In a subsequent statement sent to Sir Anthony, Mr Diack insisted on the fact that *"Mr. Ianton Tan is neither [his] employee nor [his] business partner, but a consultant for the servicing of our contract with our Official IAAF Partner, SINOPEC for the IAAF World Championships Beijing 2015 which [he has] a professional obligation to deliver for the next 4 months. [He] met [Mr Ianton Tan] for the first time since this "scandal" came out in Beijing in April 2015 and [Mr Tan] stated clearly to [him] that he did not appreciate his name or company being mentioned in media allegations concerning the IAAF".*

97. At the hearing before the CAS, Mr Diack confirmed that Mr Ianton Tan was a close friend of his, who even gave his name to his son, Massata. He stated that Mr Tan was a marketing consultant, specialised in emerging markets. He was not the official consultant of the IAAF but, since he was involved in the world of sport, he knew many people from this federation. If he were in Mr Tan's shoes, he would not have transferred the EUR 300,000 without having received the funds beforehand to this effect. In this respect, the Respondents' counsel suggested that Mr Diack's company, Pamodzi Consulting SARL, transferred an amount of equivalent value to Black Tidings, which then forwarded it to Mr Shobukhov's account. Mr Diack claimed that such a suggestion was new to him and he was not prepared to comment on it.

98. Mr Shobukhov claimed that, after he received the email dated 28 March 2014 notifying the bank transfer, Mr Melnikov kept calling him several times a day until he confirmed, on or around 1 April 2014, to the latter that the EUR 300,000 had indeed been credited to his account. Then, during one and last subsequent phone call, Mr Melnikov allegedly tried again to persuade Mrs Shobukhova to sign the "Acceptance of Sanction" form, which she refused to consider until the full payment of the remaining EUR 150,000. Thereafter and according to Mr Shobukhov's statement, Mr Melnikov's secretary would keep harassing the athlete about the form with phone calls, e-mails and text messages, none of which were filed in these proceedings.

99. The Appealed Decision notes: *"In a transcript of [Mr Melnikov's] interview with the WADA interviewer of 2 July 2012, the interpreter present translated [Mr Melnikov] as saying, "I contacted [Mrs Shobukhova] and her husband and [Mr Shobukhov] sent his bank details and I hand over this bank account to [Mr Balakhnichev]. In some period of time, he asked to send the proof of transaction: the one they showed in the film. It was almost nothing to do with me and I didn't ask questions. I sent this document of payment and several times I telephoned to ask whether the monies arrived. When they told me everything was fine we stopped contacting each other as there was nothing to talk about"".* However, The Panel of the IAAF Ethics Commission

pointed out that, in his oral evidence, Mr Melnikov claimed that his statement was misinterpreted as he could not remember having contacted Mr Balakhnichev about the outcome of the transaction and that he only called the athlete to ensure that she had received the request for her bank details.

F. The email sent on 29 July 2013 by Mr Diack to Mr Lamine Diack

100. During the CAS proceedings, the Parties admitted into the record the translation of an e-mail sent on 29 July 2013 by Mr Diack to his father, Mr Lamine Diack. The source of this document is the author of the articles published in the French newspaper *Le Monde* on 18 and 21 December 2015.

G. The Disciplinary Proceedings before the Panel of the IAAF Ethics Commission

101. On 1 July 2014 and following a complaint filed in April 2014 by Mr Sean Wallace-Jones, the Chairman of the IAAF Ethics Commission, the Honourable Michael J Beloff QC appointed Sir Anthony to investigate the allegations made against the Appellants and Dr Dollé.

102. On 5 August 2015, Sir Anthony submitted his investigations report, which led the Chairman of the IAAF Ethics Commission to initiate adjudicatory proceedings and to appoint a Panel consisting of himself, Mr Akira Kawamura and Mr Thomas Murray.

103. From 16-18 December 2015, a hearing took place in London. Mr Balakhnichev, Mr Melnikov and Dr Dollé appeared by video link. Mr Diack was not present at the hearing but represented by his legal counsel.

104. The Panel of the IAAF Ethics Commission found that the version of facts presented by Mrs Shobukhova and her husband was coherent and consistent with the evidence provided. In particular it held that the likelihood of their scenario was reinforced by the following facts:

- The withdrawals of sums of money by the couple closely preceded its visits to Moscow.

- The transfer of the EUR 300,000 was made precisely at the time when the ARAF was compelled to take belated action against the athlete.

- The close coincidence in time between the forged signature of the "Acceptance of Sanction" form, the repayment of EUR 300,000 and the e-mails sent by Mr Jean-Pierre Bonnot.

- The unnecessary details given by Mrs Shobukhova and her husband if their aim was to take revenge on Mr Balakhnichev and Mr Melnikov (Why would they make reference in their story to a lawyer as the person said to be the recipient of the sum of the monies paid over?).

- The lawyer did indeed exist and was in Moscow at the IAAF expense when the payments were made to either Mr Melnikov or to Mr Nikolay Nikolaevich Lukashkin.

- *"There is no reason to believe that [Mrs Shobukhova and her husband] would have known that [Mr Habib Cissé] was coming to Moscow at that time apart from being told so by [Mr Melnikov]"* (para. 26).

- In his witness statement, Mr Sean Wallace-Jones declared that, on 28 March 2014, Mr Baranov told him that the *"athlete has been contacted by the Russian Federation and asked to sign a paper accepting a suspension; she had been told that the Federation would pay her back 300,000"*. The same day, the transfer of EUR 300,000 actually occurred and confirmation arrived to Mrs Shobukhova on 30 March 2014. For IAAF Ethics Commission Panel, Mr Sean Wallace-Jones *"had no conceivable reason to be wrong in what he there said deliberately or otherwise"* and *"the date (28 March 2014) again fits precisely the overall [version of Mrs Shobukhova and of her husband]. It is not stated by [Mr Sean Wallace-Jones] that [Mr Baranov] sought to inculpate [Mr Balakhnichev and Mr Melnikov] by name either then or on an earlier occasion when he first told [Mr Sean Wallace-Jones] about the payments made by [the athlete] which would be very odd if they were indeed his prime targets for his (on [Mr Balakhnichev's and Mr Melnikov's] case) contrived and malicious fictions"*.

105. The IAAF Ethics Commission Panel found unconvincing Mr Melnikov's claim that he was not in Moscow when the first two payments were allegedly made to him in person by Mrs Shobukhova and her husband. It held that the documentary evidence provided by Mr Melnikov to support his argument was not conclusive and/or sufficient to reject the athlete's account of facts.

106. As to the repayment of EUR 300,000 to Mrs Shobukhova, the IAAF Ethics Commission Panel was not convinced by Mr Balakhnichev's and Mr Melnikov's version that they merely acted as a liaison between the athlete and a third party willing to transfer money to the latter. It found highly unlikely that it was common for the ARAF to receive requests for an athlete's bank details by an unknown individual and that such requests passed from Mr Balakhnichev to Mr Melnikov, who in turn obtained the banking details from the athlete before forwarding them back to Mr Balakhnichev, who would finally communicate them to the unknown individual. In the eyes of the IAAF Ethics Commission Panel, this version of the facts left too many questions unanswered to be credible namely: why did Mr Balakhnichev not at least enquire as to who wanted to pay the athlete and required as sensitive information as her bank details - and why? Why, once the athlete had been informed of the request, would she not have contacted Mr Jean-Pierre Bonnot directly to provide her bank details (if she wished to provide them) upon

receipt of his email forwarded to her by Mr Melnikov? What need was there for Mr Balakhnichev and Mr Melnikov to remain links in the chain of e-mail between Mr Jean-Pierre Bonnot and the athlete? Why should Mr Balakhnichev be interested in whether the payment was made? Similarly why should Mr Melnikov be inquiring of Mrs Shobukhova several times whether the payment had been made, and abstain from further calls once told that it had been?

107. The IAAF Ethics Commission Panel held that Mr Melnikov's line of defence lacked credibility. First he claimed that Mr Baranov, Mrs Shobukhova and her husband wanted to discredit him because he had resisted Mr Baranov's attempts to procure prohibited substances for Russian athletes or to protect his athletes with abnormal blood profiles from anti-doping bodies. Then, once confronted with clear evidence that he was involved in doping by Russian athletes, Mr Melnikov abandoned his initial explanation and tried to argue that Mr Baranov and Mrs Shobukhova resented him for trying to make the athlete participate in championships for the national team instead of taking part in profit-making sporting events. The IAAF Ethics Commission found that (para. 32, lit. e; page 16) *"The problem with this account, apart from its inconsistency with the original one, is that [Mrs Shobukhova] did in fact exploit her commercial opportunities in the years in question. [Mr Melnikov] may have wished to inhibit her participation but did not succeed in so doing. What reason was there then for revenge?"*

108. The IAAF Ethics Commission Panel considered as unreasonable Mr Melnikov's and Mr Balakhnichev's suggestion that the EUR 300,000 could in fact be fees or sponsorship paid to the athlete as a runner. As a matter of fact, the money was paid in 2014, two years after 2012, which was a "*poor year*" by Mrs Shobukhova's own standards, and after 2013, during which she did not compete at all.

109. The IAAF Ethics Commission Panel *"accepts as compelling two paragraphs of Sir Anthony's Report. At AHR 242 he says "There are a number of serious improbabilities in the accounts of [Mr Balakhnichev] and [Mr Melnikov]: (1) All the emails [of Mr Balakhnichev] and emails [of Mr Melnikov] relating to the proposed transfer and the transfer have been deleted, both ingoing and outgoing; (2) Bonnot was able to contact [Mr Balakhnichev] out of the blue on his gmail address rather than the ARAF address; and (3) The fact that, on [Mr Balakhnichev's] account, [Mrs Shobukhova] was owed a large sum of money even though she had not competed since the Chicago Marathon and was owed the large sum by someone who did not know how to contact her and instead had to, and was able to, contact [Mr Balakhnichev] directly for her details". At AHR 245, Sir Anthony says:*

> *"245. If the account given by [Mr Balakhnichev] and [Mr Melnikov] of the transfer were true, it would follow that [Mrs Shobukhova], [her husband] and Andrey Baranov were setting up [Mr Balakhnichev] and [Mr Melnikov] by doing the following:*
>
> > *1. finding a Jean Pierre Bonnot (now untraceable) and arranging for him to contact [Mr Balakhnichev] at the email address valentin1949@gmail.com (and not his official address with the IAAF) with a*

request to help in the transfer of money to [Mrs Shobukhova] in the hope that [Mr Balakhnichev] would then ask [Mrs Shobukhova] for the details of an account into which the transfer could be made and in the further hope that [Mr Balakhnichev] would remain involved in the transfer;

2. sending [Mr Melnikov] on 15 March 2014 the details of the new bank account [opened under Mr Shobukhov's name];

3. arranging for Bonnot to contact Ianton Tan in Singapore, about whose existence they would not have known and who happens to be a business associate of [Mr Diack] who Andrey Baranov, [Mrs Shobukhova and her husband] also did not know;

4. by arranging for Bonnot to pretend to Ianton Tan that he knew [Mr Balakhnichev] and [Mr Diack] when making contact with him and by making an anonymous call to Ianton Tan pretending to be [Mr Diack] in the hope that Ianton Tan would not contact [Mr Diack] directly and find out the alleged "truth", namely that [Mr Diack] did not know Bonnot;

5. by arranging for Ianton Tan to make a transfer from Black Tidings to [Mr Shobukhov] of €300,000 without putting Black Tidings in funds either before or after the transfer and taking the risk that Ianton Tan might not make the transfer until the €300,000 money had been transferred to him, with the result that Black Tidings and Ianton Tan were defrauded of €300,000;

6. by arranging for Bonnot to email [Mr Balakhnichev] with the confirmation of the transfer in the hope that [Mr Balakhnichev] would forward his email and the accompanying bank confirmation to [Mr Melnikov] who would forward it to [Mrs Shobukhova]".

110. With regard to Mr Diack, the IAAF Ethics Commission Panel was satisfied that he was the link between Black Tidings and Mr Balakhnichev, as there is no evidence that the latter knew Mr Ianton Tan, who was Mr Diack's personal friend since 2008. In the eyes of the Panel's members, Mr Diack was clearly involved in the repayment of the EUR 300,000. It held the letter dated 7 November 2014, sent to the IAAF Ethics Commission and signed by Sir Craig Reedie, WADA's President, and Mr Olivier Niggli, WADA General Counsel as incriminating evidence against Mr Diack and Mr Balakhnichev.

111. The IAAF Ethics Commission Panel concluded that *"In summary, the version of events [Mrs Shobukhova and of her husband] has the ring of truth entirely consistent as it is with the undisputed facts and the key documentation. The version [of Mr Balakhnichev and of Mr Melnikov] does not cohere with those facts but is rather riddled with implausibilities, inconsistencies, transparent lies and dubious documents. [Mr Diack's] version is also lacking in any plausibility and is further undermined by his refusal to expose himself to any meaningful questioning".*

112. As a result, on 7 January 2016, the IAAF Ethics Commission Panel decided the following:

"The Panel considers in the light of its findings that [Mr Balakhnichev, Mr Melnikov and Mr Diack] should be banned for life from any further involvement in any way in the sport of track and field; any lesser sanction would not meet the gravity of their offences. (…). The Panel hereby imposes these bans with effect from the date of this decision.

The Panel considers that it would be appropriate also to mark the gravity of their offences by imposing fines as follows:

a) [Mr Balakhnichev]: US$25,000.

b)[Mr Diack]: US$25,000.

c) [Mr Melnikov], whose role seems, given his lower place in the ARAF hierarchy compared to that of [Mr Balakhnichev] to have been mainly, if not merely, ministerial: US$15,000. (…)

Costs

(…) The total procedural costs incurred by the EC in connection with this matter amount to US$170,372.

(…) The Panel considers pursuant to Rule 16(2) that each Defendant [including Dr Dollé] should pay 25% of those costs, amounting to US$42,593 each.

(…) The fines and costs set out above should be paid within 28 days of the date of this decision".

113. On 7 January 2016, the Appellants were notified of the above decision (the "Appealed Decision").

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

114. On 26 January 2016, Mr Balakhnichev and Mr Melnikov filed separate statements of appeal with the CAS against the Appealed Decision in accordance with Article R47 *et seq.* of the Code of Sports-related Arbitration (the "CAS Code"). The procedures initiated by them were recorded under *CAS 2016/A/4417* and *CAS 2016/A/4419,* respectively. The Appellants in both procedures nominated Mr Efraim Barak as arbitrator and requested a 20-day extension of time to file their appeal brief, which was eventually granted, following either the consent of the IAAF.

115. On the same day, 26 January 2016, Mr Diack filed a statement of appeal with the CAS against the Appealed Decision and nominated Mr Olivier Carrard as arbitrator. The procedure was

recorded under *CAS 2016/A/4420*. His request for an extension of five days to file his Appeal Brief was granted in accordance with Article R32 of the CAS Code.

116. Mr Balakhnichev and Mr Melnikov filed their appeals against the IAAF as the sole Respondent. Mr Diack's appeal, however, has been filed against the IAAF and the IAAF Ethics Commission. As the IAAF Ethics Commission contested its involvement before the CAS, Mr Diack was invited by the CAS Court Office to state whether he wished to continue his claim against the Second Respondent. On 15 February 2016, Mr Diack confirmed to the CAS Court Office that he did not agree to the dismissal of the IAAF Ethics Commission from the procedure. On 16 February 2016, the CAS Court Office confirmed that the IAAF Ethics Commission would remain a party to these proceedings.

117. On 10 February 2016, the Respondents informed the CAS Court Office that they were nominating Mr David Rivkin as arbitrator. Ultimately, the latter declined appointment, whereupon the Respondents nominated His Honour James Reid QC instead on 26 February 2016.

118. On 12 February 2016, Mr Diack filed his appeal brief in accordance with Article R51 of the CAS Code.

119. On 24 and 25 February 2016, Mr Balakhnichev and Mr Melnikov filed their appeal briefs, respectively.

120. On 1 March 2016, the CAS Court Office acknowledged receipt of Mr Balakhnichev's and Mr Melnikov's appeal briefs and advised the Parties that *"Copies of such appeal briefs will be sent to the Respondents in due course, as explained as follows: On 24 February 2016, the Appellants in both cases were invited to state whether they would agree to a suspension of the Respondent's deadline to file its answers in these cases until such time as a decision on consolidation/joinder was made, thereby aligning its deadlines in these cases with their deadline in case CAS 2016/ A/4420. As the Appellants did not object to such request, and such silence being deemed acceptance, the deadline for the Respondent's answers will be set once the issue of consolidation/joinder is resolved. At such time, the Respondent will be provided with a copy of the Appellants' appeal briefs"*.

121. On 7 March 2016, the CAS Court Office invited the Parties to comment by 10 March 2016 on whether they agreed to consolidate the three procedures and, if so, to provide their position with regard to the possibility to submit the three proceedings to a Panel composed of Mr Olivier Carrard (to act as the jointly-nominated arbitrator on behalf of the Appellants) and of His Honour James Reid QC (to act as the jointly-nominated arbitrator on behalf of the Respondents) and of a President designated in accordance with Article R54 of the CAS Code. The CAS Court Office advised the Parties that their *"silence with respect to the above will be deemed express confirmation of such proposal and the Panel will be constituted accordingly"*.

122. On 11 March 2016, the CAS Court Office took note that no objection was raised to its letter of 7 March 2016. It informed the Parties that the President of the Appeal Arbitration Division, or her Deputy would a) appoint the President of the Panel in accordance with Article R54 of the CAS Code and b) take a decision on consolidation in accordance with Article R52 of the CAS Code unless an objection was raised on or before 15 March 2016. The CAS Court Office advised the Parties that their *"silence will be considered express confirmation of his/its agreement to consolidate these cases"*.

123. On 21 March 2016, the CAS Court Office informed the Parties that the President of the Appeals Arbitration Division had decided to consolidate the three procedures and that the three cases would be referred to the same Panel. In light of such consolidation and as exposed in its letter of 1 March 2016, the CAS Court Office confirmed that the deadlines in all three cases would run simultaneously. It forwarded:

- copies of Mr Balakhnichev's and Mr Melnikov's appeal briefs to the Respondents and to Mr Diack, whose appeal brief had been previously served on the Respondents on 16 February 2016;

- a copy of Mr Diack's appeal brief to the other Appellants.

124. On 25 March 2016, Mr Diack filed a petition to challenge the appointment of His Honour James Reid QC to the Arbitration Panel. On 21 April 2016, the Board of the International Counsel of Arbitration for Sport rejected the petition.

125. On 30 March 2016, the Respondents requested a 40-day extension of their deadline to file their answer. The following day, the CAS Court Office invited the Appellants to comment on this request until 4 April 2016.

126. On 1 and 4 April 2016, Mr Balakhnichev and Mr Diack objected to the Respondents' request for a 40-day extension of time to file their answers but nevertheless agreed to a 20-day extension.

127. On 7 April 2016, the CAS Court Office informed the Parties that the President of the Appeal Arbitration Division granted the Respondents a 15-day extension of time to file their answers.

128. On 13 April 2016, the Respondents requested reconsideration of their application for additional time to file their answers, to which the Appellants objected. Eventually, the Respondents were granted *"an exceptional extension of an additional five (5) days to file their answer"*.

129. On 3 May 2016, the Respondents filed their answers in accordance with Article R55 of the CAS Code.

130. On 9 May 2016, the CAS Court Office informed the Parties that the Panel to hear the case had been constituted as follows: Mr Otto De Witt Wijnen, President of the Panel, Mr Olivier Carrard and His Honour James Reid QC, arbitrators. It also invited the Parties to state their preference on the necessity for a hearing.

131. In the Respondents' answer to Mr Diack's appeal brief, the Respondents raised factual allegations supported by witness statements, which had not been dealt with by the IAAF Ethics Commission Panel ("New Evidence"). The Appellants were invited to comment on the admissibility of the New Evidence as well as on each other's respective position in this regard. The Respondents were of the view that the New Evidence should be admitted, whereas Mr Diack submitted that it should be denied. On 22 June 2016, the CAS Office informed the Parties that the CAS Panel had concluded *"that the Respondents have not demonstrated that the New Evidence could not reasonably have been discovered before the [Appealed Decision] was rendered (…) [and that] admitting the New Evidence would be abusive"*. Consequently, the Panel decided, in its discretion, to deny the Respondents' request to admit the New Evidence.

132. Mr Balakhnichev and Mr Melnikov (on 12 May 2016), the Respondents (on 17 May 2016) and Mr Diack (on 23 May 2016) expressed their preference for a hearing to be held, which, after much discussion, was scheduled for 14 – 17 November 2016, with the agreement of all the Parties to the present proceedings.

133. On 9 June 2016 and on behalf of the Panel, the CAS Court Office invited the Parties to seek to agree the position on witnesses to be heard. On 27 June 2016, the Parties informed the CAS Court Office of their common position as regards witnesses. The Parties could not agree on Mr Thomas Capdevielle's testimony: Mr Balakhnichev and Mr Melnikov wanted him to give evidence at the hearing, whereas the Respondents and Mr Diack deemed his testimony unnecessary.

134. On 14 July 2016, the CAS Court Office sent the following letter to the Parties:

> *"(…) the following is a list of proposed witnesses with a designation from the Panel concerning the necessity of their testimony in accordance with Article R44.3 of the Code of Sports-related Arbitration:*
>
> ***I. WITNESSES REQUIRED BY THE PANEL TO PROVIDE ORAL TESTIMONY***
>
> *1. Baranov*
> *2. Shobukhova, Liliya*
> *3. Shobukhova, Igor*
> *4. Zhelanova*

5. Lukashkin
6. Nacharkin
7. Nitikin
8. Balakhichev
8. Melnikov
10. Diack (by video)
11. Capdevielle

II. WITNESSES WHOSE WITNESS STATEMENTS THE PANEL ACCEPTS IN LIEU OF ORAL TESTIMONY

1. Roberts
2. Wallace-Jones
3. Ageev
4. Laushuk
5. Reedie
6. Niggli
7. Handy

III. WITNESSES REQUIRED BY THE PANEL TO PROVIDE ORAL TESTIMONY DESPITE NOT FILING A WITNESS STATEMENT

1. Coe
2. Diack Sr.
3. Dollé".

135. On 21 September 2016 and acting upon the Respondents' request for disclosure, the CAS Court Office directed Mr Diack to provide the two emails dated 29 July 2013 (mentioned in articles published in the French newspaper *Le Monde* on 18 and 21 December 2015) as well as a copy of his passport. On 28 September 2016, Mr Diack's legal counsel confirmed that their client did not have either of the two requested emails and that his passport was available for inspection at their offices in Paris, France.

136. On 7 October 2016, the CAS Court Office asked the Parties to provide the CAS Panel *"with a jointly-proposed hearing schedule. In this respect, the parties shall note that the Panel intends to treat the parties' witness statements as evidence-in-chief and limit any direct examination to introductory remarks/confirmation of witness statement (5 minutes). For those witnesses identified in my letter dated 14 July 2016 who did not file a witness statement, brief direct examination will be permitted".*

137. On 21 October 2016, the Respondents' legal counsel recalled that Dr Dollé had been called as a witness by Mr Balakhnichev and Mr Melnikov and informed the CAS Court Office that

"although Mr Dollé [was] no longer employed by the IAAF, the Respondents [had] been in touch with him to secure his attendance at the hearing (…) and to seek to obtain a written witness statement from him in advance of his testimony to assist in the fair and expeditious conduct of the appeals. (…) Since then, the IAAF Ethics Board's investigator, Sir Anthony, has been in touch with Mr Dollé. He has, pursuant to the terms of a cooperation agreement (…), agreed to provide a witness statement and to assist the Ethic Board by providing full details of all facts known to him which relate to potential breaches of the IAAF's Code of Ethics". Copies of the original version in French of Dr Dollé's witness statement, dated 31 July 2016 and of its translation in English were filed (Dr Dollé's Witness Statement of July 2016).

138. On 31 October 2016, the Respondents filed a new witness statement signed by Mr Thomas Capdevielle on 31 October 2016 (Mr Capdevielle's Second Witness Statement). Allegedly, this document was provided in advance *"so that the Appellants have a fair opportunity to understand the additional relevant evidence which [Mr Thomas Capdevielle] now has to give".*

139. On 3 November 2016 and based on the information received, the CAS Court Office sent to the Parties a hearing schedule. It also invited the Parties calling witnesses who did not have a witness statement to provide *"a brief, bullet print outline of their expected testimony"* by 8 November 2016. This request was left unanswered by any of the Appellants.

140. On 7 November 2016, the Respondents' counsel put forward the reasons why, in their opinion, Dr Dollé's Witness Statement of July 2016 and Mr Capdevielle's Second Witness Statement should be admitted in these proceedings.

141. On 9 November 2016 and on behalf of the CAS Panel, the CAS Court Office informed the Parties that Mr Thomas Capdevielle's Second Witness Statement was deemed inadmissible, whereas Dr Dollé's Witness Statement of July 2016 was admitted into record.

142. On 9 November 2016, Mr Diack submitted that Mr Capdevielle's Second Witness Statement was filed in an illegal manner. *"[The Respondents'] improper submission of Mr. Capdevielle Second Statement without requesting prior authorization to do so, has created irreparable harm. Indeed, even though the inadmissibility of the Second Statement has been recognized, the fact that the Panel has already reviewed it or become acquainted to its content through Respondent's 7 November 2016 letter, which describes in details the parts of this statement that are relevant to Mr. Diack's case, raises in itself reasonable doubts that this Tribunal will be able to rule on his case with impartiality. These documents which are described by the IAAF as highly incriminating, and against which Mr. Diack cannot defend himself lacking an access to the investigation file and due to the incompleteness of the criminal investigation, will inevitably taint the Tribunal's mind in rendering any further decision with respect to Mr. Diack.(…) Mr Diack believes that this Tribunal is no longer in a position to fairly adjudicate his appeal".*

143. On 10 November 2016, the CAS Court Office acknowledged receipt of Mr Diack's letter and announced that the Panel would address the issues raised by him as necessary. It forwarded the letter to all the Parties.

144. On 10 November 2016, the Respondents filed a written statement, dated 9 November 2016, provided by Lord Sebastian Coe, the current President of the IAAF, who was called to give evidence by Mr Balakhnichev.

145. On 11 November 2016, the Respondents spontaneously filed their observations to the challenge made by Mr Diack to the members of the Panel to determine the three appeals brought in the present proceedings. They requested that *"the ICAS Board reject [Mr Diack's] petition as a delaying tactic and manifestly ill-founded challenge to the impartiality of the three arbitrators, members of the Panel in these appeals"*.

146. Between 8 and 10 November 2016, the Parties signed and returned the Order of Procedure in these proceedings. A Hearing Schedule was agreed upon, with time indications for opening and closing statements and for the examination and cross examination of the witnesses. That schedule provided *inter alia* that all (written) witness statements would stand as evidence in relief, with direct examination limited to five minutes. Ten minutes would be allowed for direct examination for the other witnesses.

147. On 13 November 2016, the Board of the International Council of Arbitration for Sport dismissed Mr Diack's petition for challenge of Mr Otto De Witt Wijnen, Mr Olivier Carrard and His Honour James Reid QC. The reasoned order was issued on 20 February 2017.

148. The hearing was held on 14, 15, 16 and 17 November 2016 at the CAS premises in Lausanne. The Panel members were present and assisted by Mr Brent Nowicki, Managing Counsel to the CAS, and Mr Patrick Grandjean, acting as *ad hoc* Clerk.

149. The following persons attended the hearing:

- Both Mr Balakhnichev and Mr Melnikov were not present but were represented by their mutual legal counsel, Mr Artem Patsev;

- Mr Diack was not present but represented by his legal counsel, Mr Jean-Yves Garaud and Mrs Chloé Saynac of Cleary Gottlieb Steen & Hamilton LLP, Paris;

- the Respondents were represented by Mr Jonathan Laidlaw QC, Mr James Eighteen, Mr Tom Mountford and Mr Oliver Harland, who were assisted by Mrs Dominique Baz and Mrs Alexandra Volkova, interpreters;

- Sir Anthony Hooper (observer).

150. The Panel heard the following persons, who were examined and cross-examined by the Parties, as well as questioned by the Panel:

- Dr Dollé (in person);
- Mr Thomas Capdevielle (in person);
- Mr Serguei Nikitin (via Skype);
- Mr Konstantin Nacharkin (via Skype);
- Mrs Shobukhova (via Skype);
- Mr Baranov (via Skype);
- Mr Shobukhov (via Skype);
- Mr Nikolay Nikolaevich Lukashkin (via telephone);
- Lord Sebastian Coe (via telephone);
- Mr Balakhnichev (via Skype);
- Mr Melnikov (via Skype);
- Mr Diack (via Skype).

151. The Respondents called Mrs Natalia Zhelanova as a witness but were unable to contact her in order for her to be heard either in person or via tele- or video-conference.

152. After the Parties' final arguments, the Panel closed the hearing and announced that its award would be rendered in due course. The Parties confirmed that their right to be heard and to be treated equally in the present proceedings before the Panel had been fully respected. Counsel for Mr Balakhnichev and Mr Melnikov added that he sometimes felt curtailed in his questioning of the witnesses. This is to be rejected. As stated above, a time frame had been set up for the examination in chief and the cross examination of the witnesses. It was notably counsel for the said two Appellants who often exceeded the time thus allotted to him. This was, sometimes over protest of the Respondents, to a great extent accepted by the Panel. However, at certain points in time, when the total agreed time schedule for the Hearing of the witnesses was thus

threatened to be jeopardized, the Chairman only allowed limited extra time for further questioning.

153. During the hearing, it was agreed that Mr Diack would provide a written response to two submissions filed on 17 November 2016 by the IAAF representatives in relation to his argument on Article 7 ECHR. They filed their submissions on 28 November 2016. During the hearing it had also been agreed that the IAAF would then have another 7 days to reply, which it did on 5 December 2016.

154. On 23 January 2017 and on behalf of the Panel, the CAS Court Office informed the Parties that *"in his appeal brief and post-hearing submission, Mr Diack referred to certain IAAF Rules and Regulations in force prior to 1 January 2014. However, the texts of such Rules and Regulations were not supplied in either the Respondents' Bundle D (file 2 of 4) or, in so far as the Panel could ascertain, anywhere else in the file exhibits. Consequently, Mr Diack is directed to provide the Panel with (1) a listing of the relevant IAAF Rules and Regulations in force between 2011 and 1 January 2014, along with any relevant exhibits/addendums (if any), as well as (2) the full texts thereof. Such submission should be filed* ***by Thursday 26 January 2017***".

155. On 26 January 2017, Mr Diack filed the Code of Ethics in force from 2003 to 30 April 2012 and the Code of Ethics in force from 1 May 2012 until 8 August 2013.

156. On 27 January 2017, the CAS Court Office invited Mr Balakhnichev, Mr Melnikov and the IAAF to confirm whether *"the information now given is correct and complete (e.g. that there are no appendices to any of these two Codes)"*. Only the IAAF answered in the prescribed deadline and confirmed that the Code of Ethics filed by Mr Diack were correct.

157. On 24 February 2017 and on behalf of the Panel, the CAS Court Office informed the Parties of the following:

- It enumerated the various Code of Ethics which were in force in the years relevant to the present arbitral proceedings.

- *"The Panel considers that the question as to which of those Codes are applicable to the alleged violations by the Appellants was not argued by the parties during the present appeal proceedings, let alone thoroughly discussed. There is no reference to this question in any of the parties' submissions. During the course of the hearing, the question was raised whether the fines imposed by the Ethics Committee were warranted by one of the Codes submitted during the proceedings, i.e. the 2014 Code (more precisely, art. 12 of Appendix 2 to that Code). At that occasion, and in the parties' post-hearing submissions, there was a further debate on this question. But not on the (primary) question as to which Code is applicable to the various allegations against each of the Appellants, as found proven by the Ethics Committee".*

- It listed the various breaches of the Code of Ethics as alleged against each Appellant in the Notification of Charges (NoC) provided by the IAAF Ethics Commission.

- *"The sanctions for all three Appellants for those alleged violations were set out at (D) 10 of the NoC, referring to Section D l7 of the Statutes of the Ethics Committee, and in paragraph 58 of the Decision. It is noted that the texts quoted are not fully identical".*

- *"It is also noted that the Appellants did not debate the specific legal aspects of the allegations as thus set out in the NoC, and implied in the Decision. Such as:*

  a. Are the references to the respective Code(s), as being considered applicable in the NoC and in the Decision to the said charges, correct?

  b. If so, what does this entail for the jurisdiction to impose sanctions on each of the Appellants, and the sanctions imposed or to be imposed if, as the Ethics Committee found, that "(…) all the charges (which are set out in the NoC appended to this Decision as Appendix A), are made out on the basis of the facts as found in this Decision"?

  c. If not, what are the consequences?"

- *"In consideration of the foregoing, and in accordance with Article R44.3 of the Code of Sports related Arbitration, the parties are requested to:*

  a. Answer the questions posed by the Panel in para. 6 above;

  b. Address any other legal aspects (not facts) that they may consider to be relevant in connection with the above observations; and

  c. When dealing with the above questions, the parties are invited to state whether the concept of continuing offence applies and if so, what consequences this would have".

- *"The parties' submissions should be simultaneously filed within 14 days of this letter".*

158. On 13 March 2017, the CAS Court Office acknowledged receipt of the Appellants' and the IAAF's submissions filed on 10, respectively 13 March 2017. The Parties' responses to the Panel's 24 February 2017 letter were distributed to all.[3]

159. On 22 March 2017, the CAS Court Office informed the Parties that the Panel deemed itself sufficiently informed to proceed with a decision, which would be rendered in due course.

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3 This delay was accepted by the Panel.

IV. SUBMISSIONS OF THE PARTIES

A. The appeals

i. Mr Balakhnichev

160. Mr Balakhnichev submitted the following requests for relief:

> *"[Mr Balakhnichev] hereby respectfully requests CAS to rule that:*
>
> *i. The appeal of Mr. Valentin Balakhnichev is admissible.*
>
> *ii. The appeal of Mr. Valentin Balakhnichev is upheld.*
>
> *iii. The decision rendered by the IAAF Ethics Commission on 07 January 2016 is set aside, with respect to the case of Mr. Valentin Balakhnichev.*
>
> *iv. The IAAF shall bear the entirety of the arbitration costs.*
>
> *v. Mr. Valentin Balakhnichev is granted an award in respect of all his legal costs and other expenses, including the CHF 1,000.- court office fee paid to the CAS".*

161. Mr Balakhnichev's submission, in essence, may be summarized as follows:

- According to the applicable Procedural Rules of the IAAF Ethics Commission (the IAAF Procedural Rules) and as rightly assessed by the Panel of the IAAF Ethics Commission itself, the charges against Mr Balakhnichev must be established beyond reasonable doubt. In the present case, this standard of evidence has not been respected as the IAAF Ethics Commission Panel based a large part of its ruling on hearsay evidence, not supported by any reliable facts or documents. In particular, it accepted as true the statements of Mrs Shobukhova, her husband and Mr Baranov, *"well-known cheaters and dopers"*, eager to blame someone else *"for their own deliberate and intentional violations"*. In this regard, their testimony is even less credible as their version of the facts was *"seriously amended within the period of investigation process"* with the help of their lawyer, in an obvious attempt to match the developments of Sir Anthony's findings.

- The only direct evidence against Mr Balakhnichev is the testimony of Mrs Shobukhova and her husband, which is not reliable as those two persons have been lying for years, even during the hearing before the CAS, where, for instance, Mr Igor Shobukov maintained that his wife had never taken any PEDs.

- This case boils down to a matter of Mr Balakhnichev's word against Mrs Shobukhova and her husband, which is not sufficient for the purpose of meeting the standard of proof applicable in the present proceedings.

- The IAAF Ethics Commission Panel held that the witness statements of Mrs Shobukhova, her husband and Mr Baranov were consistent *"with the undisputed facts and the key documentation"*. However, during the first instance proceeding, Mr Balakhnichev *"has steadily been disputing some presumptions which were surprisingly considered later as 'undisputed facts' by the Commission Panel"*. In particular, the facts set out under para. 20 (f), (g), (i), (w) and (x) of the Appealed Decision are incomplete, misleading, false and/or disputed.

- The IAAF Ethic Commission Panel focused its attention on the repayment of the EUR 300,000 to Mrs Shobukhova and absolutely failed to establish the facts relating to the actual payment of the bribes and the link between the amounts paid by the athlete and repaid to her. *"Stating that there was a long (more than two years) chain of events investigated concerning an alleged blackmail, the Ethics Commission somehow missed the thorough analysis of the events of 2011-2013 (the period when some blackmail actions were allegedly committed), and turned back to the transaction of €300,000, which was evidently not a bribe, but supposedly a 'repayment' of a bribe. (…) But it is still absolutely unknown how an analysis of a payment made in favor of Liliya Shobukhova in March 2014 may influence the outcomes of the charges against [Mr Balakhnichev] of blackmail allegedly committed in 2012. It is also absolutely unlikely that any bribe-taker would pay any money back and, what is even more important, if the bribe-giver has really obtained the looked-for result"*. As a matter of fact, the athlete allegedly accepted to pay a bribe in order to be enabled to participate to the 2012 London Olympic Marathon and the 2012 Chicago Marathon. The desired outcome was achieved and hence it remained unexplained by the Panel of the IAAF Ethics Commission why, under these circumstances, the alleged briber accepted to repay money to the athlete.

- With reference to the alleged payments made by Mrs Shobukhova, both her witness statement and that of her husband suffer from "*dramatic inconsistencies*" with regard to the withdrawal of the monies at the bank and are not supported by any objective evidence. In particular, the couple has not been able to establish how it was able to travel with such large amounts of cash from their home town to Moscow on January, June and July 2012, without meeting the requirements of *"the Russian laws and domestic air carriage regulations, [according to which] the carriage of such sums by individuals must be compulsory fixed (regardless of the carrying person's wish) and reflected on the documents prepared by airline officers, airline security officers and policemen of the transport police. <u>It seems extremely unlikely</u> that, under the conditions established in Russia for many years and with measures implemented for strict inspection of passengers and their luggage (first of all – for the purposes of preventing acts of terrorism in relation to civil aviation), someone could <u>three times</u> running carry such huge sums of US dollars (or Euros) in cash unnoticed, using various airports (airports of Magnitogorsk, of Ufa) and different airlines (Aeroflot, S7 Airlines). The most surprising is the carriage of cash from the airport in Ufa on June 18, 2012, as in relation to the passengers arriving*

from Ufa the Domodedovo International Airport (DME, Moscow) conducts a post-flight inspection as well".

- Mrs Shobukhova and her husband did not act as victims of blackmail: *"It is absolutely unlikely that a reasonable person being extorted and blackmailed for such a long period wouldn't visit a police and wouldn't report a crime, or at least wouldn't try to record his phone conversations with the persons asking money, using just his own smartphone, which is absolutely free, very easy and quietly".*

- The documentary evidence on which relied the IAAF Ethics Commission Panel relied is not sufficient for the purpose of meeting the standard of proof applicable in the present proceedings:

  - Mrs Shobukhova's banking statements are absolutely not conclusive. They evidence the fact that sums were indeed withdrawn shortly before the athlete's alleged travels to Moscow but they also establish that other sums of similar size were withdrawn or credited from/to her account on other dates.

  - The air tickets of Mrs Shobukhova and her husband only prove that the two of them travelled to Moscow at three separate times for specific reasons, which had nothing to do with the alleged payment of a bribe: *"Their trip to Moscow on 12 January 2012 was a transit flight, since they had to gather in Moscow along with other members of Russian national athletics team and fly further to Portugal to attend the training camp there, until the end of February 2012. (..) The trip to Moscow on 18 June 2012 was also a part of the preparation program for the Russian National Olympic team members. (..) Their trip to Moscow on 11 July 2012 was scheduled by the Russian Olympic Committee and Ms Liliya Shobukhova was to join the Russian National Team at Hyatt Moscow Hotel on Neglinnaya Street (Moscow), to present the official Olympic kit at a Nike-organised presentation (…). So the air tickets presented by the Shobukhovs may never confirm by themselves that any huge sums of cash flew with the Shobukhovs on those dates".*

  - With reference to the German documentary aired on ARD, *"Top Secret Doping: How Russia makes its Winners"*, the Moscow court has ruled in December 2015 that the allegations contained therein were false. *"By the way, during the hearing in Moscow court the duly authorized counsel for Hajo Seppelt [the TV reporter] and for the ARD company has admitted for the record that the aired allegations were NOT consistent with the reality".*

  - It has been successfully established that some of the allegations contained in the WADA IC Report 1 were false and/or amounted to a lie. *"**Given the aforesaid [Mr Balakhnichev] has serious doubts if any of the "quotes" and other "evidence" in the WADA IC Report #1 are true**".*

- Mr Balakhnichev did not know Mrs Shobukhova until she started to run marathons. Likewise, he heard from Mr Baranov for the first time in September 2012, when the latter attacked a doping control officer, who was about to conduct a doping test on Mrs Alevtina Biktimirova, an athlete, whose interests he was managing.

- Mr Balakhnichev *"has never knew of any Liliya Shobukhova's and/or Igor Shobukhov's financial deals as well as of her commercial marathons, advertising contracts, sponsorship deals, etc., and has never been involved in any types of 'blackmailing' her in order to let her compete while her blood passport data was suspicious. So called "repayment" was just part of a scheme devised by Liliya Shobukhova's manager Mr. Andrey Baranov to discredit Mr. Melnikov and the Appellant, who were resisting his attempts to procure prohibited substances for Russian athletes or to agree to protect his athletes with suspicious blood passports' data from anti-doping IAAF and/or ARAF bodies; more than likely it was Mr. Baranov who slowed down the IAAF decision-making process concerning Liliya Shobukhova; once the IAAF resumed activity into Liliya Shobukhova's case Mr. baranov understood perfectly well that soon she would be disqualified by the ARAF and huge amounts of money would be asked to return, so he has decided to save his and his athlete's (Liliya Shobukhova) money from turning back by simulation of a "substantial assistance" (Rule 40.7 of the IAAF Anti-Doping and Medical Rules); so he has decided to blacken the names of Mr. Melnikov and the Appellant developing and orchestrating a simple scheme requiring some calls and fake email addresses only, then spun his story to Sean Wallace-Jones in which he was a 'victim' who became a whistle blower".*

- Mr Baranov's desire for revenge can be explained by the disciplinary measures taken against him after Mr Balakhnichev found out:

    - That Mr Baranov convinced the athletes (under his management) to use the resource base of the Russian national team but to focus all their efforts towards lucrative sports events. Under his management, Mrs Shobukhova either avoided participating in official competitions for the national team or dropped out under various pretexts, while simultaneously and successfully competing in commercial marathons. Mr Baranov's management stirred up a great deal of animosity with the coaches of the national team.

    - That Mr Baranov provided "his" athletes with prohibited substance in order for them to achieve better results and, consequently, to increase his commission on their earnings. *"Mr. Baranov is a manager of the female athletes, nearly two dozen of whom were disqualified for using prohibited substances. There are six Russian citizens among them (Shobukhova, Abitova, Syrieva, Ishova, Golovkina, Grechishnikova), in addition, there are also many disqualified athletes from Ukraine. There were also two Russian athletes among the athletes of Mr. Baranov who are under suspicion of using the doping".*

- The IAAF Proceedings were conducted in an unfair manner and in breach of the IAAF Code of Ethics as well as of the basic principles set forth under the Universal Declaration of Human Rights and European Convention for the Human Rights (ECHR). In particular the IAAF Ethics Commission ignored the principles of equality and impartiality. This is namely illustrated by the fact that its Chairman, the Honourable Michael J Beloff QC a) intervened at several stages of the disciplinary proceedings, b) decided to hold a hearing in London, without consulting the Parties, c) accepted late-filed evidence submitted by Dr Dollé.

ii. Mr Melnikov

162. Mr Melnikov submitted the following requests for relief:

> *"[Mr Melnikov] hereby respectfully requests CAS to rule that:*
>
> *i. The appeal of Mr. Alexei Melnikov is admissible.*
>
> *ii. The appeal of Mr. Alexei Melnikov is upheld.*
>
> *iii. The decision rendered by the IAAF Ethics Commission on 07 January 2016 is annulled, with respect to the case of Mr. Alexei Melnikov.*
>
> *iv. The IAAF shall bear the entirety of the arbitration costs.*
>
> *v. Mr. Alexei Melnikov is granted an award in respect of all his legal costs and other expenses, including the CHF 1,000.- court office fee paid to the CAS".*

163. Mr Melnikov mainly relied on arguments similar to those of Mr Balakhnichev. His additional submission may be summarized as follows:

- He has never been Mrs Shobukhova's coach and has never taken part in her training process. Under these circumstances, he has never received any money or remuneration from her. He would enter into contact with her, her coach (her husband) or her agent (Mr Baranov) exclusively on matters related to her participation in official competitions as an athlete of the Russian national team and her participation in training sessions of the Russian national track and field team.

- He has never asked for money from the athlete to guarantee her participation in the 2012 London Olympic Marathon in spite of her abnormal blood profile. In this respect, he insists on the fact that he did not have the final word over the selection of athletes who would be entitled to compete in this event under the Russian flag.

- He has never offered Mrs Shobukhova the opportunity to remove her from the list of athletes with suspicious blood profile in exchange for the payment of money. As the senior coach of the Russian national track and field team, he was not in the position to be involved in the Russian athletes' doping and its concealment. As a matter of fact, he *"has never been a member of the ARAF Anti-Doping Commission, never been responsible for the result management of sample collection and blood testing, never contacted with the employees of the IAAF Anti-Doping Department on these matters, not acquainted with them, and has never even been to the IAAF headquarters, as [he] speaks neither English nor French and is not able to negotiate with them or make any 'agreements' in any other way"*.

- He has never approached Mrs Shobukhova with demands to pay any sums, in particular in favour of a certain lawyer. Contrary to what the athlete claims, he could not have collected the bribe on 12 January and 18 June 2012, as he was not in Moscow on these dates. He did not even have an office in the ARAF premises in Moscow but just a *"worktable in one of the ARAF cabinets (in which two more people were constantly working and converting visitors, so that it was absolutely impossible to ensure any privacy"*. With regard to the alleged payment made on 11 July 2012, it is undisputed that he was not in Moscow. Mrs Shobukhova stated that she handed the money over to Mr Nikolay Nikolaevich Lukashkin, to whom Mr Melnikov has never given any instruction. The contrary has not been proven.

- He knew Mrs Shobukhova since 2009 and Mr Baranov since 2010.

- As soon as Mrs Shobukhova started working with Mr Baranov, she focused her efforts on commercial marathons. She would be using the Russian National team training camp's resources on a free-of-charge basis but *"under various pretences repeatedly evaded the participation in official competitions for the Russian National team, at the same time registering with and successfully performing at commercial marathons. In this regard in 2010 [Mr Melnikov] and Mr. Maslakov gave Liliya Shobukhova and her manager (Mr. Baranov) a sharp warning: either Liliya Shobukhova performed for the Russian National team at official competitions, or the Centre for athletic training of Russian national teams would stop providing Liliya Shobukhova with the opportunity to train for competitions at the resource training camp on a free-of-charge basis. Liliya Shobukhova agreed to participate in official competitions and was listed (as an athlete of the Russian National team) for the 2010 European Athletics Championships (Barcelona), in 10 thousand meters distance, however, in the course of the championship she fell out of the race, pretending that she felt bad and had an injury. But a month and a half later Liliya Shobukhova performed at the Chicago marathon and won at it"*. Mr Melnikov gave her another warning.

- As the senior coach of the National team, Mr Melnikov was approached by athletes, who informed him that Mr Baranov offered them to enter into a management agreement with them, to give up competing for the Russian national team and to exclusively participate in

commercial competitions. *"Besides, to the best of [Mr Melnikov's] knowledge and belief at that time, Mr. Baranov many times offered [these athletes] to import prohibited substances manufactured in the US in order to use them in the course of training, adding that he could procure the recent developments in pharmacology, not included in the WADA Prohibited List; [Mr Melnikov] was also told that Mr. Baranov has already imported such substances from the US to Russia".*

- *"After that [Mr Melnikov] again and again talked to Mr. Baranov, and in harsh terms as well, requested him to stop these destructive activities. In his replies Mr. Baranov repeatedly required that the management of the Centre for athletic training should protect the athletes from anti-doping bodies. [Mr Melnikov] always gave negative replies to such 'offers'. [He] believes that after that very moment Ms. Liliya Shobukhova and Mr. Andrey Baranov desired to take revenge on [him] for his strict moral position as the senior coach of the Russian National team".*

iii. Mr Diack

164. Mr Diack submitted the following requests for relief:

"The relief sought by Mr Diack is as follows:

- Annulment of the 7 January 2016 decision rendered by the IAAF Ethics Commission;

- Finding that there has been no violation by Mr Diack of the Code of Ethics and therefore acquit him of all the charges brought against him".

165. Mr Diack's submission, in essence, may be summarized as follows:

- The IAAF disciplinary proceedings are irregular and, therefore should be annulled:

  - Under Article 13 of the IAAF Procedural Rules, disciplinary proceedings can be initiated only if a complaint is filed in writing. In spite of his requests during Sir Anthony's investigations, Mr Diack has never received a copy of the said complaint. The existence of such a document has never been established.

  - The Panel members of the IAAF Ethics Commission were not independent or impartial. In particular, the Chairman of the IAAF Ethics Commission, the Honourable Michael J Beloff QC, is of the same nationality as Sir Anthony. The fact that the investigator and the chairman of the judging body are from the same country does not respect the principle of impartiality as set forth in the ECHR. The same can be said about the fact that the Honourable Michael J Beloff QC intervened at each stage of the disciplinary proceedings. He a) decided that the case was fit for investigation, b) appointed Sir Anthony, c) following the recommendations of Mr

Kevan Gosper, a member of the IAAF Ethics Commission who reviewed Sir Anthony's Report, concluded that adjudicatory proceedings be commenced, d) appointed the members of the Panel of the IAAF Ethics Commission and decided to include himself, e) acted as the Chairman of the said Panel and f) signed the Appealed Decision.

- According to the IAAF Procedural Rules, the charges against Mr Diack must be established beyond reasonable doubt. Sir Anthony as well as the Panel of the IAAF Ethics Commission expressly accepted that this standard of evidence had to be met. In the present case, this standard of evidence has not been respected:

  - Mr Diack has never met Mrs Shobukhova or her husband and the contrary has not been established.

  - The Panel of the IAAF Ethics Commission considered as particularly incriminating the fact that Mr Diack participated in a meeting a) which took place in Moscow on 4 December 2012, b) which was attended by Mr Cissé and Mr Balakhnichev and c) which was part of the scheme to extort money from Russian athletes. However, Mr Diack established with compelling evidence the fact that he was not in Moscow at that date. In addition, the fact that exaction of money was one of the themes of the discussion is highly speculative and has not been proven in any manner.

  - The link between Mr Ianton Tan and Mr Diack does not prove that the latter took part in the alleged extortion scheme. It is shocking for the Panel of the IAAF Ethics Commission to conclude that Mr Diack was *"guilty of having participated - "beyond a reasonable doubt" - in very serious breaches of the Code of Ethics and [must be] banned for life from track and field, merely on the basis that he was acquainted to Mr Tan, who made the Alleged Repayment through its company Black Tidings, and the Panel could not identify "another candidate" who also knew Mr Tan and could therefore have asked him to make the Alleged Repayment"*. Mr Ianton Tan frequently worked with the IAAF and many persons employed by this federation knew him. *"The only reason why the Investigator or the Panel did not identify "another candidate" was because they made no effort to look for one"*.

  - The Panel of the IAAF Ethics Commission gave a lot of weight to the WADA Letter, signed by Sir Craig Reedie and Mr Olivier Niggli. The information contained therein must be entirely disregarded as the authors of this document are merely quoting other persons (Mr Yuri Nagornyh, the Russian Deputy Minister of Sport and Mrs Natalia Zhelanova), who, in turn, heard the allegations from someone else; *i.e.* from Mr Balakhnichev. Such hearsay evidence is unreliable by nature and by the fact that Mr Balakhnichev himself denied ever making such allegations. In addition, the probative value of this document is all the more insignificant as neither Mr Yuri Nagornyh nor

Mrs Natalia Zhelanova testified during the hearing before the CAS, making their cross-examination impossible.

- It has not been proven beyond reasonable doubt that Mr Diack a) took part in an agreement with the other Appellants to extort money from Mrs Shobukhova, b) had knowledge that she handed cash to Mr Melnikov or c) was involved in an attempt to cover up what had happened, including trying to obtain the silence of Mrs Shobukhova and her husband by the repayment to her of EUR 300,000.

- The Panel of the IAAF Ethics Commission disregarded Mr Diack's right to the presumption of innocence.

- The IAAF Code of Ethics is in breach of the principles set forth under Article 7 of the ECHR, as the Articles contained therein and relied upon to sanction Mr Diack are *"far from clear [and] do not enable a person to know which specific acts or omission would make him liable. Only general and vague concepts are invoked such as: "act in a manner likely to tarnish the reputation of the IAAF [or] to bring the sport into disrepute", "fair play", "corrupt conduct". Nonetheless, those conducts are never clearly and precisely defined within the Code of Ethics. Such vague articles may therefore not be the basis for sanctions of a criminal nature, as is the case of the life ban and a $25,000 fine imposed on Mr Diack and their application amounts to an infringement of Mr Diack's fundamental rights"*.

B. The answers

i. The answer to Mr Balakhnichev's appeal

166. The Respondents filed a joint answer with the following requests for relief:

"The IAAF accordingly respectfully submits that:

105.1 the appeal be dismissed;

105.2 [Mr Balakhnichev] pay the IAAF's costs of CAS; and

105.3 [Mr Balakhnichev] makes a contribution to the legal fees and expenses of the IAAF in an appropriate sum, taking account of the factors listed in Article R64.5 of the Code".

167. The submissions of the Respondents, in essence, may be summarized as follows:

- Mr Balakhnichev raised a number of irregularities, which allegedly occurred during the proceedings before the IAAF Ethics Commission. The Panel does not need to address

them as, should such procedural flaws exist (which is contested), they would be cured by the present arbitration proceedings. In particular:

- The fact that the Honourable Michael J Beloff QC intervened at several stages of the disciplinary proceedings does not put into question his fairness. In this respect, it must be observed that the Appellant did not challenge the composition of the IAAF Ethics Commission Panel.

- Among the Appellants, only Mr Balakhnichev objected to the hearing to be held in London. His objections were deemed insufficiently persuasive to override countervailing considerations of economy and convenience. In addition, he was duly represented at the hearing and was able to give evidence by video link.

- Finally, regarding the late-filed evidence submitted by Dr Dollé, Mr Balakhnichev had the opportunity to comment on it and, hence, to exercise his right to be heard.

- The IAAF Ethics Commission Panel considered a certain number of facts as undisputed. Mr Balakhnichev did not present any valid reason to depart from this analysis. With regard to these facts, the standard of evidence beyond reasonable doubt has been met.

- The Respondents endorse the contents of the Appealed Decision, in particular its reasoning that the version of Mrs Shobukhova and of her husband related to the transfer of EUR 300,000 should take preference over Mr Balakhnichev's explanations.

- The WADA Letter signed by Sir Craig Reedie and Mr Olivier Niggli recounts what they heard from the Deputy Minister of Sport, Mr Yuri Nagornyh and a lawyer from the Ministry, Mrs Natalia Zhelanova. These two Russian officials informed the WADA representatives that they met Mr Balakhnichev at an earlier meeting, during which the latter confirmed that the son of IAAF President and his lawyer, Mr. Cissé, were taking cash payments from athletes with an abnormal blood profile so that they would be allowed to keep competing. *"It is accepted that what the Minister of Sport told Sir Craig Reedie and Mr Niggli about what [Mr Balakhnichev] told him is hearsay"*, but this evidence must be given some weight, in particular since the content of the WADA Letter was ratified by Mrs Zhelanova, who heard Mr Balakhnichev's declarations in person.

- *"The purpose and content of the 4 December Meeting will be for CAS to determine. IAAF will invite CAS to accept [Mr Baranov's] account and to infer, given the undisputed presence of [Mr Balakhnichev, Mr Melnikov and Mr Habib Cissé], that it was connected with the subsequent demand for additional money from [Mrs Shobukhova]"*.

ii. The answer to Mr Melnikov's appeal

168. The Respondents filed a joint answer with the following requests for relief:

> *"The IAAF accordingly respectfully submits that:*
>
> *27.1 the appeal be dismissed;*
>
> *27.2 [Mr Melnikov] pay the IAAF's costs of CAS; and*
>
> *27.3 [Mr Melnikov] makes a contribution to the legal fees and expenses of the IAAF in an appropriate sum, taking account of the factors listed in Article R64.5 of the Code".*

169. The Respondents' submissions, in essence, may be summarized as follows:
- The submissions put forward by the Respondents in their answer to Mr Balakhnichev's appeal apply analogously to Mr Melnikov's as both Appellants made similar arguments.

- The Respondents endorse the position of the IAAF Ethics Commission Panel, which found unconvincing Mr Melnikov's claim and evidence that he was not in Moscow when the first two payments were allegedly made to him in person by Mrs Shobukhova and her husband.

- *"[Mr Melnikov] purports to point out inconsistences in [Mr Shobukhov's] evidence between the sums allegedly demanded and the sums allegedly paid. This will be a matter for evidence, but on its face it seems that there has been an accidental transposition of figures. In any event any such inconsistency is no basis for disbelieving [Mr Shobukhov's] account of the two payments".*

- The version of events from Mrs Shobukova and her husband is more reliable than Mr Melnikov's version.

iii. The answer to Mr Diack's appeal

170. The Respondents filed a joint answer with the following requests for relief:

> *"The IAAF accordingly respectfully submits that:*
>
> *107.1 the appeal be dismissed;*
>
> *107.2 [Mr Diack] pay the IAAF's costs of CAS; and*

107.3 [Mr Diack] makes a contribution to the legal fees and expenses of the IAAF in an appropriate sum, taking account of the factors listed in Article R64.5 of the Code".

171. The submissions of the Respondents, in essence, may be summarized as follows:

- The procedural issues raised by Mr Diack are without substance and must be disregarded. In addition, the *de novo* hearing before the CAS can cure any procedural defects or flaws, if any, which is contested.

  - The disciplinary proceedings before the IAAF competent body was indeed initiated following the written complaint filed by Mr Sean Wallace-Jones. The latter emailed the Honourable Michael J Beloff QC on 7 April 2014, attaching a written report, which unquestionably constitutes a written complaint as set under the terms of Rule 13 of the IAAF Procedural Rules. There is no requirement for the complaint to be communicated to any of the Appellants.

  - The fact that the Honourable Michael J Beloff QC shares the same nationality as Sir Anthony is not in breach of the applicable IAAF Procedural Rules and does not question his impartiality.

  - The fact that the Honourable Michael J Beloff QC intervened at several stages of the disciplinary proceedings was not in breach of the applicable IAAF Procedural Rules. In addition, there is no evidence of personal or objective bias that unfair consideration was given to arguments advanced by Mr Diack. It must be observed that the latter did not challenge the composition of the Panel of the IAAF Ethics Commission in accordance with the applicable regulations.

- Mr Diack did not challenge the facts considered as undisputed by the Panel of the IAAF Ethics Commission and set out in the Appealed Decision.

- The fact that Mr Diack has never met Mrs Shobukhova or her husband is absolutely not relevant for the substance of the case against him.

- Mr Diack denied being present at the 4 December 2012. By doing so, he tried to divert attention away from the fact that a) he undisputedly participated to another meeting, which was held two days later and was attended by Mr Balakhnichev and Mr Cissé and b) from the inference that can be legitimately drawn *"that the subject matter of the meeting was the making of further payments by [Mrs Shobukhova] given (i) the identity of the attendees and (ii) the timing of the meeting which fits with a call [Mrs Shobukhova] received whilst at a training camp in December 2012 during which she was told by [Mr Melnikov] that she would need to pay more money to compete".*

- For the reasons exposed in the answers to the other Appellants' appeals, the content of the WADA Letter signed by Sir Craig Reedie and Mr Olivier Niggli is reliable and particular weight must be given to it.

- The Respondents endorse the findings of the Panel of the IAAF Ethics Commission, according to which *"the link between [Mr Balakhnichev] and Black Tidings must be [Mr Diack]". "[Mr Diack] fails to do justice to the entirety of the [reasoning of the Panel of the IAAF Ethics Commission]. In particular, it does not grapple with the fact that [Mr Ianton Tan] initially assumed that the request for Black Tidings to transfer monies to [Mr Shobukhov's]account came from [Mr Diack] and no-one else. Nor is there any explanation as to why [Mr Ianton Tan] should cause Black Tidings to pay out such as large sum without some form of indemnity, which could only have come from someone with whom he had such a long standing business and personal relationship such as he enjoyed with [Mr Diack], but not [Mr Balakhnichev]".*

- Contrary to what he claimed, Mr Diack did not cooperate with the investigator.

- Mr Diack refused to cooperate during the disciplinary investigations and to attend the hearing before the Panel of the IAAF Ethics Commission, even by video link. He adopted this tactic to avoid answering relevant questions or to being cross-examined. Under these circumstances, the IAAF Ethics Commission Panel was entitled to draw adverse interference.

- Mr Diack cannot derive any right from the alleged lack of clarity of the IAAF Procedural Rules or of the Appealed Decision as he *"cannot conscientiously aver that, if the charges are proven, he would have been unaware that he was acting in breach of the various provisions of the Code relied on in support of those charges".*

V. THE STANDING OF THE ETHICS COMMISSION OF THE IAAF

172. Mr Diack's appeal has been instituted against the IAAF as well as against the IAAF Ethics Commission.

173. At the hearing before the CAS and before the Parties' closing arguments, Mr Diack agreed to withdraw the claim against the Second Respondent provided that the IAAF would not contest the admissibility of his claim against it and/or of his challenge of the Appealed Decision.

174. The IAAF expressly accepted as admissible the appeal filed on behalf of Mr Diack against the Appealed Decision and directed against it.

175. Under these circumstances, the IAAF Ethics Commission is dismissed from these proceedings, without further consideration.

VI. NEW EVIDENCE AND DOCUMENTS REQUEST FILED BY THE PARTIES

A. The new evidence

176. Article R56 para. 1 of the CAS Code provides as follows:

> *"Unless the parties agree otherwise or the President of the Panel orders otherwise on the basis of exceptional circumstances, the parties shall not be authorized to supplement or amend their requests or their argument, to produce new exhibits, or to specify further evidence on which they intend to rely after the submission of the appeal brief and of the answer".*

177. During the hearing, the Parties agreed on the production of the following documents:

- The written witness statements of Mr Serguei Nikitin and Mr Konstantin Nacharkin, filed during the Disciplinary Proceedings before the Panel of the IAAF Ethics Commission, their respective translation from Russian into English as well as a document entitled *"Agreed Position on the comparison of the Russian language versions of Mr Nikitin's and Mr Nacharkin's witness statements".*

- The translation of an e-mail sent on 29 July 2013 by Mr Diack to his father, Mr Lamine Diack. The source of this document is the author of the articles published in the French newspaper *Le Monde* on 18 and 21 December 2015.

- The copies of the front and the back of two envelops sent by HM Revenue & Customs, the British tax and customs authority to *"L. Shobukhova, All Russian Ath Fed, Luzhnetskaya Nab 8, 119871 Moscow, Russia".*

- Two notes filed on 17 November 2016 by the IAAF representatives in relation to Mr Diack's argument on Article 7 ECHR. During the hearing, it was agreed that Mr Diack's counsels would provide a written response to these notes, which they did on 28 November 2016. It has also been agreed that the IAAF would then have another 7 days to reply, which it did on 5 December 2016.

B. The document request

178. Pursuant to Article R44.3 para. 1 of the Code, *"A party may request the Panel to order the other party to produce documents in its custody or under its control. The party seeking such production shall demonstrate that such documents are likely to exist and to be relevant".*

a) Bank data requested by the Respondents

179. On 11 November 2016, the Respondents moved the CAS to compel Mr Diack to *"disclose the bank records for all bank accounts that his company, Pamodzi Consulting SARL, had with Société General for the month of March 2014"*.

180. This petition was made on the basis of information contained in Mr Capdevielle's Second Witness Statement and was reasoned by reference to the arguments advanced earlier by the Respondents for the admissibility of that statement.

181. At the hearing before the CAS, Mr Diack objected to the Respondents' request.

182. It is recalled that, on 9 November 2016, the Panel held that Mr Capdevielle's Second Witness Statement was inadmissible. On 11 November 2011 and following the Respondents' request for full written reasons setting out the Panel's findings, the CAS Court Office advised the Parties that *"the decisive reason for the Panel refusing Mr. Capdevielle's second statement is the late submission thereof, together with the fact that a number of documents referred to therein were not produced. Thus, the persons concerned, notably Mr. Diack, in the view of the Panel, did not have a proper opportunity to properly respond in time before the hearing to the matters raised in this statement. It is not disputed that Mr. Diack had no access to the said documents or relevant files himself, as a matter of fact. The time to establish whether or not he can reasonably invoke this because he could or might have gained access to those documents/files is, once more, too short. It may be that this alleged evidence was not available to the Respondents earlier. That does not alter the fact that it was produced at too late a stage for the person(s) concerned to properly respond. That fact is not changed either by the fact that Mr. Capdevielle is already a witness. His first statement related to (totally) different matters. That his second statement is limited in scope - which is debatable - does not change this. It cannot be excluded that the alleged evidence is relevant and material. But also that does not change the fact that the person(s) concerned should be in a position to properly comment thereon. The same is true for the contention that (all of) the facts referred to are within Mr. Diack's own knowledge. At this stage of the proceedings, the Panel is not minded to adjourn the hearing either"*.

183. With reference to the bank data requested on 11 November 2016 by the Respondents, the Panel holds that this petition was filed late and was too closely linked to Mr Capdevielle's Second Witness Statement, which was not admitted into record. Hence, and for the same reasons as exposed in the above paragraph, the Panel dismisses the request of the IAAF related to the bank records of Pamodzi Consulting SARL.

b) The IAAF's request for coloured copies of Mr Diack's passport

184. On 22 November 2016, the IAAF requested the Panel to order Mr Diack to produce a colour copy of every page of his passport, which had been issued on 1 August 2008 and had expired on 1 July 2013.

185. On 28 November 2016, Mr Diack opposed this request, alleging that a) such petition had never been filed during the lengthy proceedings before the IAAF Ethics Commission Panel, b) the passport had been made available to the representatives of the IAAF as well as to the members of the Panel during the hearing, c) *"in this context, Respondent's request could be an attempt to secure evidence in connection with issues or proceedings completely independent from the current arbitration"*.

186. On 15 December 2016 and on behalf of the Panel, the CAS Court Office informed the Parties that the Respondent's request for coloured copies of Mr Diack's passport was granted.

187. On 20 December 2016, Mr Diack handed over to the CAS a coloured copy of his passport.

VII. JURISDICTION

188. Article R47 of the Code provides as follows:

> *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 or as the parties have concluded a specific arbitration agreement 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.*

189. The jurisdiction of the CAS, which is not disputed, derives from Paragraph A4 and Paragraph F of the applicable IAAF Code of Ethics as well as Article R47 of the CAS Code. It is further confirmed by the order of procedure duly signed by the Parties.

VIII. ADMISSIBILITY

190. Article R49 of the Code provides as follows:

> *In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late.*

191. The appeals are admissible as the Appellants submitted them within the deadline provided by Article R49 of the CAS Code. They comply with all the other requirements set forth by article R48 of the CAS Code.

IX. APPLICABLE LAW

192. The applicable law in the present arbitration is identified by the Panel in accordance with Article R58 of the CAS Code, which provides as follows:

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

193. In the present case, the relevant facts took place over a period of several years. The alleged bribes paid by Mrs Shobukhova occurred between January and July 2012. The amount of EUR 300,000 was transferred from Black Tidings to the account opened under the name of Mr Shobukhova in March 2014. During this time frame, the applicable regulations were the following:

- The IAAF Code of Ethics adopted in November 2003, in force until 30 April 2012 (the "2003 Code").

- The IAAF Code of Ethics adopted in March 2012, in force as from 1 May 2012 until 31 December 2013 (the "2012 Code").

- The IAAF Code of Ethics in force as from 1 January 2014 until 31 December 2014 (the "2014 Code").

194. A new IAAF Code came into force as from 1 January 2015 (the "2015 Code"). This Code was revised as per 26 November 2015, however only for its Appendices 6 and 7. Those amended Appendices entered into force on 26 November 2015. The Code itself, as published on that date, maintains as its entry date 1 January 2015.

195. In accordance with the principle of non-retroactivity, each violation, if proven, should be assessed according to the regulations in force at the time of its commission. This general principle is embodied in the IAAF Codes of Ethics in force since 1 January 2014. Hence Paragraphs A5 and A6 of the 2014 Code of Ethics state the following:

> *"5. The Code shall come into force on 1st January 2014 ("Commencement Date") and apply to all violations of the Code committed on or after the Commencement Date.*
>
> *6. With respect to any proceeding pending as at the Commencement Date under the previous IAAF Code of Ethics, or proceedings brought after the Commencement Date where the facts giving rise to them occurred prior to the Commencement Date, the proceedings shall be governed by the substantive provisions of the*

IAAF Code of Ethics and other applicable IAAF Rules and Regulations in effect at the time of the alleged facts, unless the IAAF Ethics Commission hearing the proceeding determines the principle of "lex mitior" applies under the circumstances of the Proceeding. All such Proceedings shall be conducted in accordance with the Procedural Rules under the Code".

196. Pursuant to Article 16 of the applicable IAAF Constitution, *"The governing law of the IAAF shall be the law of Monaco".*

197. As a result and in light of the foregoing, subject to the primacy of the applicable IAAF regulations, Monegasque Law shall apply complementarily.

198. At the time of the relevant facts, Mr Balakhnichev was the President of the ARAF and the Honorary Treasurer of the IAAF, Mr Melnikov was ARAF chief coach for long distance runners and walkers and Mr Diack was a marketing consultant to the IAAF. In their respective capacity, the Appellants accepted to submit themselves to the Constitution and regulations of the IAAF. Indeed, they have never challenged the application of the various IAAF rules in these appeal proceedings.

X. POWER OF REVIEW OF THE CAS

199. Under Article R57 of the CAS Code (*"The Panel has full power to review the facts and the law"*), the Panel shall hear the case *de novo*. According to the long-standing jurisprudence of the CAS, *"it is the duty of a CAS panel in an appeals arbitration procedure to make its independent determination of whether the Appellant's and Respondent's contentions are correct on the merits, not limiting itself to assessing the correctness of the previous procedure and decision"* (CAS 2008/A/1880-1881, para. 146; CAS 2008/A/1545, para. 80; CAS 2011/A/2425, para. 52; CAS 2011/A/2426, para. 46).

200. The Panel has taken note of the Appellants' allegation that the Appealed Decision was not rendered by an impartial disciplinary body, that the IAAF Proceedings had been conducted in an unfair manner and in breach of the basic principles set forth under the Universal Declaration of Human Rights and ECHR and that the IAAF Ethics Commission ignored the principles of equality and impartiality.

201. However, under the established jurisprudence of the CAS, any procedural defect of the previous disciplinary process is cured by virtue of the *de novo* character of the CAS arbitration proceedings and the procedural rights granted therein. *"[T]he appeal arbitration procedure cures any infringement of the right to be heard or to be fairly treated committed by a sanctioning sports organization during its internal disciplinary proceedings. Indeed, a CAS appeal arbitration procedure allows a full de novo hearing of a case with all due process guarantees, granting the parties every opportunity not only to submit written briefs and any kind of evidence, but also to be extensively heard and to examine and cross-examine witnesses or experts during a hearing"* (CAS 2011/A/2425, para. 53; CAS 2011/A/2426, para. 47).

202. The full judicial review of the CAS based on Article R57 of the CAS Code does not only apply to the violation of the right to be heard but to other procedural violations, such as the lack of independence or impartiality of the first instance hearing body (Decision of the Swiss Federal Tribunal, 4A_530/2011, 3 October 2011, consid. 3.3.2).

203. Since the availability of a full-fledged appeal to CAS has the effect of remedying prior procedural flaws, the Panel will, in its further analysis, refrain from extensively dealing with the Appellants' arguments alleging violations of due process by the IAAF Ethics Commission. In this regard, it must be observed that, in the present CAS proceedings, the Appellants were given ample latitude to fully plead their respective case, produce any evidence they deemed fit and relevant. In other words, the Appellants have been able to submit their case to an arbitral tribunal exercising full judicial review both as to the facts and the law.

204. In conclusion, given that the Appellants' right to be heard has been respected in these arbitration proceedings, the Panel deems that any possible procedural deficiency or violation that might have affected the IAAF disciplinary proceedings has been cured, with no need to address the procedural grievances raised by the Appellants with respect to these IAAF proceedings.

XI. MERITS

A. Standard of proof to be applied

205. In its Decision, the Ethics Commission considered the following.

> *In order to determine whether the charges are made out the Panel must direct itself in accordance with the Rules which are themselves governed by and to be construed in accordance with Monegasque law (Procedural Rule 17(5)). They establish the following relevant principles:*
>
> *(i) The burden of proof lies upon the EC;*
>
> *(ii) The standard proof is set out in Rule 11(7) which provides that, "The standard of proof in all cases shall be determined on a sliding scale from, at minimum, a mere balance of probability (for the least serious violation) up to proof beyond a reasonable doubt (for the most serious violation). The Panel shall determine the applicable standard of proof in each case";*
>
> *(iii) The approach to evidence is that set out in Rule 11 which provides, so far as material:*
>
> *"Types of evidence*

(1) The Ethics Commission shall not be bound by rules governing the admissibility of evidence. Facts relating to a violation of the Code may be established by any means deemed by the "Panel" hearing the case (the Panel) to be reliable.

(2) Types of evidence shall include: the investigator's report and other forms of evidence such as admissions, documents, oral evidence, video or audio evidence, evidence based on electronic media in any form and any such other form of proof as the Panel may deem to be reliable.

Inadmissible evidence

(3) Evidence that obviously does not serve to establish relevant facts shall be rejected.

Evaluation of evidence

(4) The Panel shall have the sole discretion regarding evaluation of the evidence.

(5) […]

(6) The Panel may draw an inference adverse to the party if the party, after a reasonable request to attend a hearing, answer specific questions or otherwise provide evidence, refuses to do so".

In application of those principles in their legal context, the Panel determines as follows:

(i) The charges against VB, AM and PMD are of the most serious kind involving as they do a form of blackmail. They must therefore under the present rules be proved beyond reasonable doubt, albeit the conventional standard for sports disciplinary proceedings is that of "comfortable satisfaction" which in the context of sports law, has its origin in CAS OG 003-4, 1966 (see discussion, in BELOFF *M et al. on Sports Law, 2nd edition ("*BELOFF*") para. 7.89-7.96.*

*(ii) The charge against GD is of a lesser degree of seriousness. It must therefore be proved to the standard of comfortable satisfaction, which is lower that the criminal but higher than the civil standard of proof. (*BELOFF*, cit sup.; see also World Anti-Doping Code ("WADC") Article 3.1).*

(iii) Although the burden of proof in point of law lies upon the EC, the evidential burden may shift if the Investigator's report (or other admissible and reliable evidence) establishes a case for a Defendant to answer.

(iv) An unjustified refusal by a Defendant to attend a hearing may give rise to the Panel drawing an adverse inference against him. The importance of that provision is that it partly compensates for the circumstance that, unlike criminal courts, the Commission's investigators have no powers to compel documents or cooperation and a Panel of the Commission has no power to compel a defendant to

> *appear before it. Such provision is not incompatible with the European Convention on Human Rights ("ECHR"), which was ratified by Monaco on 30 November 2005 and came into effect in the Principality on the same date. There is a consistent line of jurisprudence from the European Court of Human Rights ("ECtHR") that the right of silence or the privilege against self-incrimination, in so far as either applies to disciplinary proceeding (See BELOFF, cit sup., para. 8.44), does not prevent a court or tribunal from drawing inferences from the failure of a defendant to provide an explanation for strong circumstantial evidence against him* (*See 22 EHRR 29, 1966; 31 EHRR 2001; ECHR 357, 2015). Nor is the presumption of innocence in criminal proceedings enshrined in Article 180 of the Criminal Procedure Code of Monaco infringed by the drawing of such inference.*

206. No party in the appeal proceedings has disputed these considerations and conclusions. But (very) little attention has been paid by the parties to the interpretation of the standard *"beyond reasonable doubt"*. In their Appeal Briefs, Messrs. Balakhnichev and Melnikov have made an effort thereto. As a preliminary observation they submit:

> *"The Appellant has serious doubts if the mere concept of different standards of proof (such as "beyond reasonable doubt", "balance of probabilities", "clear and convincing evidence", etc.) is recognized by the Monegasque law, since the legal system of Monaco is based on the continental type of law, but the different standards of proof in civil and criminal proceedings have their origin in Anglo-Saxon legal system. That is why the Appellant does not understand how such a standard of proof like "beyond reasonable doubt" may be used by any panel acting in accordance with the Monegasque law or with the IAAF Code of Ethics as well. The Article 180 of the Criminal Procedure Code of Monaco states that only "presumption of innocence" principle may be applied in a criminal proceedings, and no weaker standards of proof are recognized by the Monegasque law".*

207. This overlooks the fact that, in the light of R58 of the CAS Code, it is not the applicable law that is predominant, but the applicable regulations (other than CAS 2013/A/3256). In this case: Rule 11(7) of the Procedural Rules of the Ethics Commission; and, consequently, in the light of the IAAF Ethics Commission Panel's conclusion with regard to the range as set out in Rule 11(7): (the interpretation of) the standard of *"reasonable doubt"*.

208. In the Decision, the standard of *"beyond a reasonable doubt"* has not been clearly defined.

209. When the said Appellants make their effort to construe the meaning of this standard, the authority quoted by them is common law authority, not civil law authority.

210. This Panel agrees that Anglo-Saxon authority is helpful in this regard. Apart from the question whether there is civil law authority at all – in any event: apparently not found by the parties – the wording used in the said standard is English and, as it appears, there is native authority thereon. Besides, the civil law systems, including, in all likelihood, Monegasque law, have

notions such as *'reasonableness'* as one of their principles, if not, leading principles. There is no reason to assume that a civil law interpretation of such notion would be essentially different from the common law one. And this has not been argued by any party.

211. It follows from the authority quoted in Messrs. Balakhnichev's and Melnikov's Appeal Briefs, that proof beyond a reasonable doubt can be regarded as proof which should convince a reasonable fact finder, after considering all the relevant evidence, that the accused is guilty of the offence with which he is charged. This proof must be based on evidence and not merely on intuition or belief. It relates to the cumulative effect of all the evidence adduced in the case and constitutes the basis on which a verdict of guilty may be grounded if the evidence as a whole complies with the standard (STONE M., Proof of Fact in Criminal Trials (1984, 354-355). It is stated in terms of belief and not in probabilistic terms. Proof beyond a reasonable doubt transcends the mere acceptance of probability by the fact finder and requires that the fact finder be actually convinced of guilt. A consideration of probabilities is a mere stage in the reasoning process. A mechanical comparison of probabilities, no matter how strongly it indicates guilt is not enough to justify such a finding. STONE says: *"A mere mechanical comparison of probabilities, however strongly this might point to guilt, would not be enough. The criterion is human, not mathematical. It is a judgement that facts are established"* (STONE, 354).

212. Theses Appellants quote an instruction to a jury in the U.S.A.:

> *"(…) What is proof beyond a reasonable doubt? The term is often used and probably pretty well understood, though it is not easily defined. Proof beyond a reasonable doubt does not mean proof beyond all possible doubt, for everything in the lives of human beings is open to some possible or imaginary doubt. A charge is proved beyond a reasonable doubt if, after you have compared and considered all of the evidence, you have in your minds an abiding conviction, to a moral certainty, that the charge is true. When we refer to moral certainty, we mean the highest degree of certainty possible in matters relating to human affairs - - based solely on the evidence that has been put before you in this case. (…) every person is presumed to be innocent until he or she is proved guilty, and that the burden of proof is on the prosecutor. If you evaluate all the evidence and you still have a reasonable doubt remaining, the defendant is entitled to the benefit of that doubt and must be acquitted".*

213. They conclude with what they call the most famous attempt in English law to define the standard of proof beyond a reasonable doubt, made in a civil case by Lord Denning. According to him, proof beyond a reasonable doubt *"(…) need not reach certainty, but it must carry a high degree of probability. Proof beyond a reasonable doubt does not mean proof beyond a shadow of doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence 'of course it is possible, but not in the least probable', the case is proved beyond a reasonable doubt, but nothing short of that will suffice"* (M v. M 2, All ER 372-373, 1947).

214. In the words of the Swiss Federal Tribunal, beyond reasonable doubt means probability that comes close to the level of certainty. Beyond reasonable doubt is reached if the judge/tribunal, based on objective considerations, is convinced by the correctness/accuracy of the presentation of facts (*see* SFT 130 III 321 E. 3.2.; SFT 132 III 715 E. 3.1.). It is not necessary to reach the level of absolute certainty. It is rather sufficient if the judge/tribunal does not have any serious doubts (anymore) regarding the existence of the alleged facts, or if any remaining doubts appear to be minor. (BK-ZP GUYAN 2013, Art. 157 para. 8).

215. Mr Diack, in his Appeal Brief, does not proffer an extensive interpretation or construction of this standard. He denies that the evidence found against him meets the requisite standard. He submits that the reliance on this standard of proof implies that violations of the Code of Ethics may not be found unless the acts and omissions relied upon in support of the charges are proven to the extent that there could be no *"reasonable doubt"*, in the mind of a *"reasonable person"*, that the defendant is guilty. If the judge – the Panel, and now the Arbitral Tribunal – considers that doubt could affect a *"reasonable person's"* belief that the defendant is guilty, the judge should not consider itself satisfied *"beyond reasonable doubt"*.

216. The Respondents have not tried to give an interpretation of this standard either. In the Answer Briefs, the IAAF accepts that, under the applicable rules, the nature of the charge requires a standard of beyond reasonable doubt.

217. This Panel notes that is sometimes suggested that this standard can be expressed in a certain percentage. This is to be rejected. As quoted above: *"a mechanical comparison of probabilities, no matter how strongly it indicates guilt is not enough to justify such a finding"*. This Panel agrees to the other approach quoted above: *"A charge is proved beyond a reasonable doubt if, after you have compared and considered all of the evidence, you have in your minds an abiding conviction, to a moral certainty, that the charge is true"*. The key words in the authority quoted above are *'belief'* and *'conviction'*. Those are human criteria and not, indeed, mathematical. It entails that human beings, judges, arbitrators can come to different conclusions based on the same facts.

218. The normal standard used for the evaluation of evidence in CAS cases is not *"beyond reasonable doubt"* but *"comfortable satisfaction"*. It has been said, in more than one case, that this standard is a flexible one, *i.e.* greater that a mere balance of probabilities but less than proved beyond a reasonable doubt (see CAS 2013/A/3256 para. 277; see also CAS 2010/A/2172 para. 70, where the two criteria were more or less interwoven). The interpretation and application of *"beyond reasonable doubt"* should not be considered as fixed either. Be that as it may, this Panel accepts, as the parties did, that "beyond reasonable doubt" is the standard to be applied in these cases.

219. It is equally common ground that the burden of proof is on the Respondents.

B. Charges

220. The IAAF Ethics Commission Panel concluded that the charges against the three Appellants were made out on the basis of the facts as found in its Decision. It did not reiterate those charges in the Decision, but referred thereto in Appendix A (the Notifications of 14 September 2015, *i.e.* the "Notifications"). In these Notifications, the charges were set out as follows:

For Mr Balakhnichev:

(i) Breaches of Articles C7 and H17 read together with Article C4 of the Code of Ethics in force during the period from 2003 to 30 April 2012 and committed during that period.

Those Articles provide as follows:

"C7 All persons subject to this Code shall use due care and diligence in fulfilling their roles for, or on behalf of, the IAAF. Such persons must not act in a manner likely to tarnish the reputation of the IAAF or Athletics generally, nor act in a manner to bring the sport into disrepute".

"H17 It is the duty of all persons under this Code to see to it that IAAF Rules and the present Code are applied".

"C4 Fair play is the basic guiding principle in the sport of Athletics".

(ii) Breach of Articles C8 and H18 read together with C4 of the Code of Ethics in force during the period 1 May 2012 until 8 August 2013 and committed during that period.

Those Articles provide as follows:

"C8 All IAAF Officials shall use due care and diligence in fulfilling their roles for, or on behalf of, the IAAF. Such persons must not act in a manner likely to tarnish the reputation of the IAAF or Athletics generally, nor act in a manner to bring the sport into disrepute".

"H18 It is the duty of all persons under this Code to see to it that IAAF Rules and the present Code are applied".

"C4 Fair play is the basic guiding principle in the sport of Athletics".

(iii) Breach of Articles C1(11), (12) and (14) and D1(24) of the Code of Ethics in force from 1 January 2014 to 30 April 2015 and committed during that period.

Those Articles provide as follows:

"C1(11) Persons subject to the Code shall not act in a manner likely to affect adversely the reputation of the IAAF, or the sport of athletics generally, nor shall they act in a manner likely to bring the sport into disrepute".

"C1(12) "Persons subject to this Code shall act with utmost integrity, honesty and responsibility in fulfilling their respective roles in the sport of Athletics".

"C1(14) Persons subject to the Code shall not (…) engage in (…) corrupt conduct in accordance with the Rules against Betting, Manipulations of Results and Corruption (Appendix 2)". Rule 10(b) of those Rules provides that the following is a violation under the Rules: *"Knowingly (…) covering up (…) any acts (…) of the type described in these Rules".* Under Rule 7, this includes Bribery as therein described.

"D1(24) IAAF Officials shall use due care and diligence in fulfilling their roles for and on behalf of the IAAF".

For Mr Melnikov:

(i) Breaches of Articles C6 read together with C4 and H18 of the Code of Ethics in force during the period from 2003 to 30 April 2012 and committed during that period and a breach of Rule 9(7) of the Rules against Betting and other Anti-Corruption Violations.

Those Articles provide as follows:

"C6 corrupt practices relating to the sport of Athletics by (…) Participants, including improperly influencing the outcomes and results of an event or competition are prohibited" and "in particular (…) corrupt practices by Participants under Rule 9 of the IAAF Competition Rules are prohibited". Rule 9.7 prohibits bribery, which is defined as: *"Accepting (…) any bribe (…) to influence improperly the result, progress, outcome, conduct or any other aspect of an Event or Competition".*

"C4 Fair play is the basic guiding principle in the sport of Athletics".

"H18 It is the duty of all persons under this Code of Ethics to see to it that IAAF Rules and this Code of Ethics are applied".

(ii) Rule 9.7 of the Rules against Betting and other Anti-Corruption Violations prohibits bribery, which is defined as *"Accepting (…) any bribe (…) to influence improperly the result, progress, outcome, conduct or any other aspect of an Event or Competition".*

(iii) Breach of Articles B8, C1(11), C1(12) and C1(14) of the Code of Ethics in force during the period 1 January 2014 until 30 April 2015 and committed during that period.

Those Articles provide as follows:

"B8 Persons subject to the Code shall immediately report any breached of the Code to the Chairperson of the IAAF Ethics Commission".

"C1(11) Persons subject to the Code shall not act in a manner likely to affect adversely the reputation of the IAAF, or the sport of athletics generally, nor shall they act in a manner likely to bring the sport into disrepute".

"C1(12) Persons subject to this Code shall act with utmost integrity, honesty and responsibility in fulfilling their respective roles in the sport of Athletics".

"C1(14) Persons subject to the Code shall not (…) engage in (…) corrupt conduct in accordance with the Rules against Betting, Manipulations of Results and Corruption (Appendix 2)". Rule 10(b) of those Rules provides that the following is a violation under the Rules: *"Knowingly (…) covering up (…) any acts (…) of the type described in these Rules".* Under Rule 7, this includes Bribery as therein described.

For Mr Diack:

(i) Breaches of Articles C7 and H17 read together with Article C4 of the Code of Ethics in force during the period from 2003 to 30 April 2012 and committed during that period.

Those Articles provide as follows:

"C7 All persons subject to this Code shall use due care and diligence in fulfilling their roles for, or on behalf of, the IAAF. Such persons must not act in a manner likely to tarnish the reputation of the IAAF or Athletics generally, nor act in a manner to bring the sport into disrepute".

"H17 It is the duty of all persons under this Code to see to it that IAAF Rules and the present Code are applied".

"C4 Fair play is the basic guiding principle in the sport of Athletics".

(ii) Breach of Articles C8 and H18 read together with C4 of the Code of Ethics in force during the period 1 May 2012 until 8 August 2013 and committed during that period.

Those Articles provide as follows:

"C8 All persons subject to this Code shall use due care and diligence in fulfilling their roles for, or on behalf of, the IAAF. Such persons must not act in a manner likely to tarnish the reputation of the IAAF or Athletics generally, or act in a manner to bring the sport into disrepute".

"H18 It is the duty of all persons under this Code to see to it that IAAF Rules and the present Code are applied".

"C4 Fair play is the basic guiding principle in the sport of Athletics".

(iii) Breach of Articles C1(11), (12) and (14) of the Code of Ethics in force from 1 January 2014 to 30 April 2015 and committed during that period.

Those Articles provide as follows:

"C1(11) Persons subject to the Code shall not act in a manner likely to affect adversely the reputation of the IAAF, or the sport of athletics generally, nor shall they act in a manner likely to bring the sport into disrepute".
"C1(12) Persons subject to this Code shall act with utmost integrity, honesty and responsibility in fulfilling their respective roles in the sport of Athletics".

"C1(14) Persons subject to the Code shall not (…) engage in .(…) corrupt conduct in accordance with the Rules against Betting, Manipulations of Results and Corruption (Appendix 2)". Rule 10(b) of those Rules provides that the following is a violation under the Rules: *"Knowingly (…) covering up (…) any acts (…) of the type described in these Rules".* Under Rule 7, this includes Bribery as therein described.

221. In their letter of 13 March 2017, the Respondents have submitted that the reference to the 2003 Code in the Notification for Mr Melnikov, at 8.a, is a typographical error, which should be read as a reference to the 2012 Code. Mr Balakhnichev and Mr Melnikov, in their letter of 10 March 2017, have submitted that the notification on this point should be considered invalid because this reference was misleading, and not clear enough so as to understand the accusation against them; it was also submitted that Mr Melnikov was not subject to the 2003 Code.

222. This is rejected. The Panel accepts that there must have been a typographical error as mentioned. The text quoted is clearly from the 2012 Code, not from the 2003 Code. Mr Melnikov never objected to this before and it is plain from his defence that he knew exactly what the charges against him were.

C. The Ethics Commission's factual conclusions

223. The Ethics Commission was content to conclude that all the charges as set out in the Notifications were made out on the basis of the facts as found in the Decision.

224. The Ethics Commission thus found that the head of a national federation, the senior coach of a major national team and a marketing consultant for the IAAF conspired together to conceal for more than three years anti-doping violations by an athlete at what appeared to be the highest pinnacle of her sport. As to Mr Balakhnichev and Mr Melnikov, their actions were the antithesis of what was appropriate. Far from – as they should have – supporting the anti-doping regime, they subverted it and, in so doing, allowed Mrs Shobukhova to compete in two marathons when she should not have done so, to the detriment of her rivals in those races and the integrity of the competition. Mr Diack had no functional responsibilities in the anti-doping regime but equally no justification at all for subverting it. All three compounded the vice of what they did by conspiring to extort what were in substance bribes from Mrs Shobukhova by actual blackmail. They acted dishonestly and corruptly and did unprecedented damage to the sport of track & field which, by their actions, they have brought into serious disrepute.

225. The charges – specific violations of the various articles of the Codes as quoted – were, in summary, the following:

<u>For Mr Balakhnichev:</u>

- That he participated in an agreement with Mr Melnikov, Mr Diack and other persons that disciplinary action would not be taken against Mrs Shobukhova upon the payment by her of money.

- That he failed to report to the IAAF that Mrs Shobukhova had paid money to Mr Melnikov to enable her to compete.

- That he decided that the various actions required of him and ARAF in the letters of 12 June 2012, 3 December 2012 and 15 February 2013 would not be carried out.

- That he failed to take the required measures to ensure that any necessary disciplinary procedures be instituted promptly against Mrs Shobukhova in the light of the letter of 12 June 2012 and of the accompanying documents.

- That he failed to take the necessary steps to prevent Mrs Shobukhova from competing in the 2012 London Olympic Marathon on 5 August 2012 and in the 2012 Chicago Marathon on 7 October 2012.

- That, in the knowledge that payments had been made by Mrs Shobukhova to Mr Melnikov, he was involved in an attempt to cover up what had happened including by:

  - trying to obtain the silence of Mrs Shobukhova and Mr Shobukhov by the repayment to her via Singapore of EUR 300,000 in March 2014;

  - trying to persuade Mrs Shobukhova to sign an acceptance of sanction and then being involved in, or knowing about, the production of a forged signed acceptance of sanction;

  - giving Mrs Shobukhova no notice of the 9 April 2014 ARAF Anti-Doping Commission hearing before the CAS.

For Mr Melnikov:

- That he took from Mrs Shobukhova the equivalent of EUR 300,000 to enable her to compete notwithstanding her atypical Athletic Biological Passport profile, which taking constituted:

  - a corrupt practice; and

  - the acceptance of a bribe to influence improperly the result, progress, outcome, conduct or any other aspect of the London Olympic Marathon 2012 and/or the Chicago Marathon 2012.

- That he participated in an agreement with Mr Balakhnichev, Mr Diack and other persons that disciplinary action would not be taken against Mrs Shobukhova upon the payment by her of money.

- That he was involved in an attempt to cover up what had happened in respect of the money obtained from Mrs Shobukhova and the lack of disciplinary action against her in:

  - trying to obtain the silence of Mrs Shobukhova and Mr Shobukhov by the repayment to her via Singapore of EUR 300,000 in March 2014;

  - trying to persuade Mrs Shobukhova to sign an acceptance of sanction and then being involved in, or knowing about, the production of a forged signed acceptance of sanction against Mr Balakhnichev/Mr Melnikov and Mr Diack.

For Mr Diack:

- that he participated in an agreement with Mr Balakhnichev, Mr Melnikov and other persons that disciplinary action would not be taken against Mrs Shobukhova upon the payment by her of money;

- that he knew that payments had been made by Mrs Shobukhova to Mr Melnikov to enable her to compete; and

- that he was involved in an attempt to cover up what had happened, including trying to obtain the silence of Mrs Shobukhova and Mr Shobukhov by the repayment to her via Singapore of EUR 300,000 in March 2014.

226. In its analyses, the IAAF Ethics Commission Panel notably relied upon, in summary:

- certain undisputed facts;

- its analyses of respectively the repayment of EUR 300,000 in March 2014 and the earlier payments, in the light of the evidence before it, notably the witness statements;

- its conclusion that the version of those events given by Mrs Shobukhova and Mr Shobukhov were more credible than those of the three Appellants.

227. On the basis of its conclusion that (all) the charges were proven, the Ethics Commission then came to the sanctions: a life ban for all three Defendants and fines of US$ 25,000 for Mr Balakhnichev and Mr Diack and US$ 15,000 for Mr Melnikov.

D. The CAS Appeals

228. The Appellants have based their CAS Appeals on formal, legal defences and on a denial of the facts as found against them by the IAAF Ethics Commission Panel. As noted above, at the hearing before the CAS a question was raised whether the sanctions applied corresponded with the applicable IAAF Codes. That entailed a number of post-hearing submissions and ultimately the question from this Panel of 24 February 2017, and the Parties' responses thereto.

E. Formal defences

229. The following formal defences raised by Mr Balakhnichev and Mr Melnikov in their Appeal Briefs were identical, to a great extent:

(A) the role of the Respondents;

(B) the Ethics Commission, wrongly, sat in London;

(C) deviation from the time schedule with regard to evidence;

(D) undue publication of the Decision;

(E) lack of fairness.

230. Mr Diack raised, in his Appeal Brief and post-hearing submission, the following formal defences:

(A) violation of Article 7 ECHR;

(B) the absence of any analyses by the Ethics Commission in its Decision of the provisions which it applied; it was not possible to know what particular provision would have been breached by Mr Diack and in what way, as required by Article 7 ECHR;

(C) article C1 (14) of the Code could not, as was argued by the Respondents, be the basis for the sanctions imposed by the Decision since neither the ban nor the fine imposed complied with the limitation on sanctions applicable to the alleged cover-up under that Article.

All this, it was submitted, constituted a violation of Article 7 ECHR.

231. With regard to all formal defences: as said, these complaints are to be dismissed in the light of the Panel deciding the cases *'de novo'*. Besides, the Panel cannot see that the proceedings were unfair.

232. In his appeal brief, Mr Diack argued that the IAAF Code of Ethics was in breach of the principles set forth under Article 7 of the ECHR, as the Articles contained therein and relied upon to sanction him were *"far from clear [and] do not enable a person to know which specific acts or omission would make him liable. Only general and vague concepts are invoked such as: "act in a manner likely to tarnish the reputation of the IAAF [or] to bring the sport into disrepute", "fair play", "corrupt conduct". Nonetheless, those conducts are never clearly and precisely defined within the Code of Ethics. Such vague articles may therefore not be the basis for sanctions of a criminal nature, as is the case of the life ban and a $25,000 fine imposed on Mr Diack and their application amounts to an infringement of Mr Diack's fundamental rights"*.

233. According to the Notifications sent to Mr Diack, three series of breaches of the Code of Ethics were alleged against him. Those breaches were based on the following provisions, in their successive versions:

- *"Fair play is the basic guiding principle in the sport of Athletics"* (Article C.4 of the 2003 Code of Ethics - Article C.4 of the 2012 Code of Ethics is of similar content).

- *"All persons subject to this Code shall use due care and diligence in fulfilling their roles for, or on behalf of, the IAAF. Such persons must not act in a manner likely to tarnish the reputation of the IAAF or Athletics generally, nor act in a manner likely to bring the sport into disrepute"* (Article C.7 of the 2003 Code of Ethics – Article C.8 of the 2012 Code of Ethics is of similar content).

- *"It is the duty of all persons under this Code to see to it that IAAF Rules and the present Code are applied"* (Article H.17 of the 2003 Code of Ethics - Article H.18 of the 2012 Code of Ethics is of similar content).

- *"Persons subject to the Code shall not act in a manner likely to affect adversely the reputation of the IAAF, or the sport of athletics generally, nor shall they act in a manner likely to bring the sport into disrepute"* (Article C1 (11) of the 2014 Code of Ethics).

- *"Persons subject to the Code shall act with the utmost integrity, honesty and responsibility in fulfilling their respective roles in the sport of Athletics"* (Article C1.12 of the 2014 Code of Ethics).

- *"Persons subject to the Code shall not participate in betting on Athletics, nor manipulate the results of competitions nor engage in other corrupt conduct in accordance with the Rules against Betting, Manipulation of Results and Corruption (Appendix 2)"* (Article C1.14 of the 2014 Code of Ethics).

234. These provisions of the IAAF Code of Ethics set general norms. However, the Panel holds that such general norms are quite normal in all sorts of formal and material legislation. Whether or not there is a violation of such general norms is to be judged on the basis of facts, in a given situation. In its Appealed Decision, the IAAF Ethics Commission Panel established such facts, in the light of which it considered proven that Mr Diack, together with the other Appellants, conspired to conceal for more than three years anti-doping violations by Mrs Shobukhova. The IAAF Ethics Commission Panel then qualified these acts as dishonesty and corruption, and found that they did (unprecedented) damage to Athletics, which the Appellants have brought into disrepute by their actions.

235. In this regard, Mr Diack cannot reasonably claim that, if proven, the extortion of money, the purported aim of preventing or at least delaying and concealing doping charges against Mrs Shobukhova for a considerable period of time, cannot be regarded as likely to tarnish, and affect adversely, the reputation of the IAAF or Athletics in general, and to bring the sport into disrepute. If established, all these acts and omissions unquestionably constitute a breach of the applicable Code of Ethics and are in breach of the duty to act with (utmost) integrity, honesty and responsibility in fulfilling a role in the sport of Athletics and fair play.

236. The Panel finds that there can be no misunderstanding about the facts that the IAAF Ethics Commission Panel considered proven. Hence, it dismisses Mr Diack's argument that their articulation was too vague. The fact that Mr Diack is of the view that the evidence on which the IAAF Ethics Commission Panel relied is not sufficient for the purpose of meeting the standard of proof applicable in the present proceedings, is a different matter.

237. The Panel agrees with the IAAF Ethics Commission Panel's qualification of those facts in the Appealed Decision. The extortion of money and the purported aim of preventing or at least delaying and concealing doping charges against the athlete for a considerable period of time can only be regarded as likely to tarnish, and affect adversely, the reputation of the IAAF or athletics in general, and to bring the sport into disrepute, as a breach of the IAAF Rules and the Code, contrary to acting with (utmost) integrity, honesty and responsibility in fulfilling a role in the sport of Athletics and fair play. It also amounted to engagement in corrupt conduct.

238. In conclusion, the Panel rejects all formal defences raised by the Appellants.

F. The Appellants' denial of the facts

239. In the Appealed Decision, the IAAF Ethics Commission Panel listed a number of facts as, in its view, undisputed.

240. In their Appeal Briefs, the Appellants dealt with these "undisputed facts", whereby they distinguished – as the IAAF Ethics Commission Panel did in the Appealed Decision – between the facts regarding the payment of the EUR 300,000, and other facts.

241. With regard to these other facts, Mr Balakhnichev and Mr Melnikov asserted that:

> *"(…) No appropriate steps of any kind, however, were taken against Mrs Shobukhova in consequence until 12 June 2012.*
>
> *Cash was withdrawn from the bank account of Mrs Shobukhova and Mr Shobukhov as follows, $100,000 on 27 December 2011 and $100,000 on 5 June 2012.*
>
> *No such admission or explanation was given by Mrs Shobukhova. In such circumstances, under IAAF anti-doping rule 38 and following, ARAF should have initiated disciplinary proceedings but did not do so.*
>
> *Mrs Shobukhova competed in the London Olympics 2012 on 5 August 2012 and in the Chicago marathon in the same year on 7 October; she dropped out of the former race and came fourth only in the latter. She was not subjected to any blood tests during that year".*

242. With regard to the payment of the EUR 300,000 Mr Balakhnichev and Mr Melnikov further stated:

> "***One essential (and indisputable) is missed in the event's chain listed***".
>
> *"So it is clear that the following assertion represented as "undisputable fact"* ***is absolutely false and it not a fact at all****: the banking documents show that Mr Balakhnichev, via Mr Melnikov, confirmed transfer of the sum to Mrs Shobukhova. Confirmation arrived to Mrs Shobukhova/Mr Shobukhov on 30 March 2014".*
>
> *"The same is with the next passage also represented as "undisputable fact": Both Mr Balakhnichev and Mr Melnikov accept that the transfer was made and that they were aware of it.* ***This is not a fact at all***".

243. It is noted that Mr Balakhnichev and Mr Melnikov do not specifically deny certain other facts identified in the Appealed Decision as undisputed. This is relevant because it confirms:

- that Mrs Shobukhova's atypical ABP was established in 2011;
- that, in November 2011, Mr Cissé, the legal advisor of the President of the IAAF, took over personal supervision of the Russian ABP cases;
- that no appropriate action was taken against Mrs Shobukhova, either by the IAAF or by ARAF, before March 2014 when she was eventually sanctioned (it is debatable whether the letter of 12 June 2013 can be considered as an appropriate action against Mrs Shobukhova);
- that Mrs Shobukhova could and did, meanwhile, participate in two major events in 2012;
- that, on 9 April 2014, ARAF decided that already in 2011 Mrs Shobukhova was guilty of an anti-doping violation on the basis of evidence established.

244. It follows from other evidence on the record that Mr Balakhnichev and Mr Melnikov were aware of Mrs Shobukhova's abnormal blood profile in any event in June 2012. For example, in Mr Balakhnichev's email to Sir Anthony of 3 October 2014 he accepted that the anti-doping violation should have been pursued more vigorously.

245. The Panel does not accept the Appellants' assertions above.

The fact that the IAAF also, in its own right, failed to take appropriate steps is beside the point. Even if the IAAF could (and should) have taken appropriate steps earlier, and if the case management by the IAAF was far from appropriate, this does not relieve or exculpate ARAF and its officers from taking such steps. Insofar as it is argued that, if Mrs Shobukhova bribed

Mr Balakhnichev and Mr Melnikov, the latter delivered what they had promised, this is equally beside the point: if there was bribery, there was a violation of the IAAF Ethical Codes, regardless as to whether the bribers delivered or not.

246. Further, Mr Balakhnichev and Mr Melnikov contest the evidence that was presented to the Ethics Commission. They identify that evidence as follows:

(A) the written statements of Mrs Shobukhova, her husband/coach Mr Shobukhov and her manager Mr Baranov, all of them seriously amended within the period of investigation process.

(B) The bank account statement for Mr Shobukhov's account in Sberbank Russia, confirming that he has been withdrawing some sums of cash on a regular basis, and depositing some sums of cash back.

(C) Copies of the air tickets for Mrs Shobukhova and Mr Shobukhov, confirming that they travelled to Moscow at least in January, June and July 2012.

(D) Some references to ARD documentary aired on 3 December 2014, which was the trigger for WADA to create the Independent Commission and ask it to investigate such allegation.

(E) The WADA Independent Commission Report #1, dated 09 November 2015.

247. The Panel's view in response is as follows:

<u>As to point (A):</u>

The comments made by these two Appellants in these paragraphs are to a great extent descriptive and argumentative of the process that was followed. They further criticise the fact that these statements were prepared in English and drafted in consultation with other persons. Certain inconsistencies were noted.

The fact that these witness statements were drafted in consultation with other persons, and/or that they are identical, is not *per se* a reason to doubt their credibility. It is noted that also the Appellants produced witness statements – such as those of Messrs. Nachazkin and Nikitin – of which the language is identical and which also, in all likelihood as appeared at the hearing before the CAS, were prepared in consultation with other persons. Also the fact that a witness amends its statement is not *per se* a reason to doubt its credibility. The same is true for the fact that the statements were ultimately produced in English; it is not argued – let alone proven – that the Shobukhovs did not understand the English version.

The Panel does not find the said inconsistences decisive. The Panel accepts the Shobukhov's reluctance to go to the police for the reasons given by them.

As to point (B):

This is mainly, if not entirely, argument. The withdrawal of these (large) amounts of cash as such is not contested. The purposes to which the money was withdrawn is a question of credibility.

As to point (C):

This too is mainly, if not entirely, argument. Whether the Shobukhovs made their trips for more than one purpose is not decisive for the question whether or not they made the alleged payments at the same time. Neither is the fact - if true - who booked or scheduled their trips. That there were regulations on cash transports does not mean that a person could not, as a matter of fact, carry cash, even in large sums, with him or her in person.

As to points (D) and (E):

This is irrelevant for the Panel, as it does not rely on these sources (or the article in *Le Monde*) as evidence for its conclusions.

248. To the above arguments, Mr Melnikov adds that he has never accepted or received money from Mrs Shobukhova and/or Mr Shobukhov. The Panel will revert to the credibility of this statement hereafter. His other submissions in this respect are argumentative. Whether or not he has ever taken over Mrs Shobukhova's coaching is not decisive.

249. Mr Melnikov equally denies that he was present in Moscow on the dates that payments were allegedly made to him (directly or indirectly), and a number of details pertaining thereto. The Panel will revert to the credibility of this denial hereafter as well.

250. Mr Diack's assertions are also to a great extent argument. His submission covers the facts, as held against him in the Appealed Decision. Those facts were, in summary:

(A) Mr Diack's participation in the meeting in Moscow in early December 2012;

(B) his role in the payment of the EUR 300,000;

(C) the WADA document should be disregarded;

(D) His failure to answer the case against him other than by outright denial.

251. With regard to these factual assertions, the Panel is divided. A majority is of the view that, in his case there is also evidence, beyond reasonable doubt, to warrant a confirmation of the Appealed Decision. A minority disagrees on this point. This will be reflected hereafter.

252. It is noted that while Mr Diack denies that he participated in a meeting as alleged on 4 December 2012, he does not deny that he participated in a meeting on 6 December 2012. This means, in the view of the majority, that there was such a meeting. Mr Balakhnichev and Mr Melnikov also confirmed that a meeting was held on 4 December 2012. Indeed, Mr Baranov also confirms this. And the majority agrees with the Appealed Decision that it is irrelevant whether this meeting occurred on the 4th or on the 6th of December. It is equally irrelevant whether Mr Diack saw Mr Balakhnichev or not.

253. Mr Diack does not dispute what was discussed at that meeting as mentioned in the Appealed Decision. The latter can be considered as a confirmation of the suspicion that Mr Diack, as well as Mr Balakhnichev (and Mr Cissé, for that matter), were involved in the extortion scheme. In this context, it is noteworthy that Mr Diack did not provide testimony in his favour on what was discussed in the meeting, *e.g.* by cross examining Mr Balakhnichev at the hearing before the CAS and/or by calling Mr Cissé as a witness - and thus, cure the misunderstanding that, according to his statement, might have occurred on the part of the WADA representatives. This is, in any event, the view of the majority of the Panel.

254. Hereafter, the Panel will revert to points (B) and (C).

G. First conclusion on the Appellants' denial of the facts

255. The Appellants' arguments dealt with above are thus all rejected by the Panel (with regard to Mr Diack: by the majority).

256. In that light, the Panel is minded to accept the challenged Appealed Decision and it concludes that the Appealed Decision should be upheld in the light of the other evidence on record (with regards to Mr Diack, by majority):

- First, the report by Sir Craig Reedie and Mr Olivier Niggli on their meeting with a delegation of the Russian Ministry of Sport on 19 September 2014 (the "Reedie/Niggli-Report").

- Second, the payment of the EUR 300,000.

- Third, Mr Diack's email of 29 July 2013.

H. The Reedie/Niggli-Report

257. The Reedie/Niggli-Report reads as follows:

> *"November 7, 2014*
>
> *Statement from Sir Craig Reedie, WADA President and Olivier Niggli, WADA General Counsel to the IAAF Ethics Commission.*
>
> *This is an official statement from the World Anti-Doping Agency President, Sir Craig Reedie, and the World Anti-Doping Agency General Counsel, Mr Olivier Niggli, to the attention of the IAAF Ethics Commission.*
>
> *On 27 August, Sir Craig Reedie received an email from the Russian Ministry of Sport indicating that they wanted to meet with him because they had important information about* "incorrect interaction (abuse of authority) between the IAAF and the ARAF (Russian Athletic Federation)".
>
> *On 19 September, Sir Craig Reedie and Mr Olivier Niggli met with a delegation of the Russian Ministry of Sport composed of the Deputy Minister of Sport, Yuri Nagornyh, and a lawyer from the Ministry, Miss Natalia Zhelanova (Miss Zhelanova is known to WADA as she is a member of the WADA Finance Commission).*
>
> *During this meeting we were informed by the Deputy Minister that he had a discussion with Mr Valentin Balakhnichev, President of the All Russia Athletic Federation (ARAF) who is also the Treasurer of the IAAF.*
>
> *The Deputy Sport Minister, Mr Nagornyh, informed us that he was willing to share with us the information he had received from Mr Balakhnichev.*
>
> *This information can be summarized as follows:*
>
> *Since 2001 ARAF has been blackmailed by IAAF.*
>
> *A system was put into place at the IAAF level under which athletes with an abnormal blood passport profile would be allowed to keep competing at high level in exchange of cash payments made to the IAAF.*
>
> *In Russia, this would concern at least six athletes identified as follows:*
>
> - *Liliya Shobukova*
> - *Valeriy Borchin*

- *Olga Kaniskina*
- *Sergey Kirdyabkin*
- *Yevgeniya Zolotova*
- *Vladimir Kanayakin*

For these six athletes, despite abnormal profiles having been identified for each by IAAF, no result management of follow up took place by IAAF.

According to Mr Balakhnichev the system was introduced and orchestrated by the son of the IAAF President and his lawyer, Mr Habib Cissé, with the help of some people within the IAAF anti-doping department.

The system was in place not only in Russia, but potentially, in other countries such as Morocco and Turkey.

The money was apparently paid by the athletes' agents to ARAF and then given to IAAF.

We have since tried to obtain some collaboration from Mr Balakhnichev with no success. We have suggested to him that he should be talking to the IAAF Ethics Commission, but he has not indicated to us any willingness to cooperate.

We have however heard from other sources, that we cannot reveal at this stage for confidentiality reasons, further evidence which corroborates some of what we were told by the Russian Deputy Minister of Sport.

Furthermore, the facts, and the delay in the result management process identified in the Liliya Shobukhova case, that we have shared with your commission previously, also tends to corroborate, at least to some extent, the above-described scenario.

We thought it was our duty to inform the commission of the facts we have been made aware of. We obviously have not been able to corroborate all these facts with hard evidence such as email communications or bank transfer records and we do not see that we have any investigation power that will allow us to do so. However it is clear to us that a number of possible cases have not been dealt with appropriately and timely by IAAF and we have not received any indication from IAAF as to why this has happened. It is to be noted that the adaptive model (ABP) was introduced into ADAMS only in September 2012 and therefor that WADA was not able to monitor all these passports profiles until 2013. Therefore the timing of the facts places responsibility firmly on the IAAF, the only organization overseeing these athletes' passports.

We hope that you will find this statement helpful for your inquiry.

Yours sincerely,

(signed by: Craig Reedie, President and Olivier Niggli, General Counsel)".

258. This report is clear. What is reported in para. 5 confirms the findings of the Ethics Commission. It confirms that a system was in place, organised by ARAF and the IAAF, to conceal doping by certain Russian athletes against payment of money. This system was introduced and/or orchestrated by the son of the IAAF President – which can have been no one else, in this matter, than Mr Diack - and by his lawyer, Mr Cissé, with the help of some people within the IAAF anti-doping department. Clearly Mr Balakhnichev, as President of ARAF, must have been involved in this system. Mr Melnikov is not mentioned specifically. But his involvement in the system is clear from the other evidence.

259. The Panel agrees that hearsay evidence should be considered with care. But the Panel accepts this report – in the essence – as written.

First, the evidence is corroborated by other evidence, such as the payment of the EUR 300,000 which the Panel will discuss hereafter.

Second, no effort has been made by any of the Appellants to proffer counter evidence to this report. Mr Diack, in his Appeal Brief, relied on Mr Balakhnichev's denial of his discussion with the Russian deputy minister. When questioned about this point at the hearing before the CAS, Mr Diack gave no clear answer as to whether Mr Balakhnichev would – as reported – have spoken against Mr Diack at this meeting. It is noted that in his statement to Sir Anthony of 11 May 2015, Mr Diack states that he reserved his right to challenge Mr Balakhnichev personally in court for such defamation if it is proven that he made such a statement to Mr Nagornyh. There is no evidence that this ever occurred. He did not cross examine Mr Balakhnichev either, and the Panel questions why did he not call any of the other persons present at this meeting as a witness. It was argued by all Appellants that Ms Zhelanova's written statement should be disregarded, as she did not appear as a witness while she was called to do so. But why did the Appellants not require Messrs Reedie and/or Niggli for cross examination? Or seek to call the deputy minister? In his email to Sir Anthony of 19 December 2014, Mr Balaknichev expressed his belief that Mr Nagovkhy would confirm Mr Balakhnichev's denial of the report. It is noted that Mr Balakhnichev was not able to obtain a confirmation from Mr Nagornyh that he did not make the statements attributed to him in the WADA document.

260. This is not to say that the Appellants had an obligation - formally - to call those (possible) witnesses and/or that the burden of proof should be reversed. But if a person, who does not have the burden of proof, makes certain assertions in his defence, it is not unreasonable to

expect of that person that he makes some effort to try and substantiate such assertion. That may not be a (formal) obligation. But it has an effect in the overall consideration and weighing of the evidence.

261. This is not against the principle either that a defendant is under no obligation to cooperate towards his (possible) conviction and has the right to remain silent. First of all, that principle is not absolute either, as rightly set out in Mr Diack's Appeal Brief. Second, it follows from the case law quoted by the IAAF Ethics Commission Panel that, if an accused person is in a position to give an explanation which might be relevant, an inference may be drawn if he doesn't, apart from the fact that such an effort could be in his interest.

262. In CAS 2013/A/3256, the Panel noted that Swiss law is not blind vis-à-vis difficulties of proof ("Beweisnotstand"). Swiss law knows a number of tools in order to ease the – sometimes difficult – burden put on a party to prove certain facts. These tools range from a duty of the other party to cooperate in the process of fact finding, to a shifting of the burden of proof or to a reduction of the applicable standard of proof. The latter is the case, if – from an objective standpoint – a party has no access to direct evidence (but only to circumstantial evidence) in order to prove specific fact (SFT 132 III 715, E. 3.1; BK-ZPO/BRÖNNIMANN, 2012, Art. 157 no. 41; BSK-ZPO/GUYAN, 2nd ed. 2013, art. 157 no 11.).

263. And in at least two CAS doping cases the burden of proof was reversed. When manipulation of certain evidence was considered likely by the tribunal, it ruled that it was up to the athlete to give some explanation or plausible hypothesis that he/she was not involved (RIGOZZI: "L'arbitrage international en matière de sport", 2005, para. 1096, footnote 3034). And the international arbitration community has since long accepted that, under certain circumstances, the party that is in a better situation to adduce evidence has a certain obligation to do so (cf. the IBA Rules on the Taking of Evidence in International Arbitration, *e.g.* on the production of documents, Art. 3).

264. Thus, the Panel's initial conclusion on the facts in this case is corroborated by the Reedie/Niggli-Report (with regard to Mr Diack, by the majority).

265. The observations entailing this conclusion are based on the events before the payment of EUR 300,000 in March 2014. That is the chronological order. However, the Panel agrees that (also) this payment is highly relevant, if not - as the IAAF Ethics Commission Panel considers - pivotal in the chain of events (with regard to Mr Diack, by the majority).

266. One reason is that if the conclusion were, on the basis of the available evidence, that the payment of the EUR 300,000 was indeed a repayment of earlier extortion money, the evidence which is thus found convincing could shed a helpful light on the preceding phase – both with regard to the facts and with regard to the credibility of the earlier witness statements delivered

by the Appellants and others. And vice versa, if the evidence were not considered to be convincing.

I. The payment of EUR 300,000

267. The core question in this respect before the Panel is the basis/background for this EUR 300,000 payment, and whether Mr Balakhnichev, Mr Melnikov and Mr Diack were involved in this payment.

268. In the Appealed Decision, the following relevant facts were mentioned as undisputed on this point:

> *"t) On 28 March 2014, EUR 300,000 was transferred out of an account of a company called Black Tidings in Singapore via Standard Chartered Bank in Singapore to Mr Shobukhov. On the same date, a bank confirmation of this transfer was emailed from an email address (bonnot1963@gmail.com) which is associated with the name Jean Pierre Bonnot, to Mr Balakhnichev and Mr Balakhnichev forwarded this to Mr Melnikov, who subsequently forwarded is to Mrs Shobukhova".*
>
> *"w) The banking documents show that Mr Balakhnichev, via Mr Melnikov, confirmed transfer of the sum to Mrs Shobukhova (AHR 148-150). Confirmation arrived to Mrs Shobukhova/Mr Shobukhov on 30 March 2014 (AHR 205)".*
>
> *"x) Both Mr Balakhnichev and Mr Melnikov accept that the transfer was made and that they were aware of it (AHR 146)".*

269. In their Appeal Briefs, Mr Balakhnichev and Mr Melnikov state:

> *"**One essential (and indisputable) is missed in the event's chain listed**".*
>
> *"So it is clear that the following assertion represented as "undisputable fact" **is absolutely false and it not a fact at all**: the banking documents show that Mr Balakhnichev, via Mr Melnikov, confirmed transfer of the sum to Mrs Shobukhova. Confirmation arrived to Mrs Shobukhova/Mr Shobukhov on 30 March 2014".*
>
> *"The same is with the next passage also represented as "undisputable fact": Both Mr Balakhnichev and Mr Melnikov accept that the transfer was made and that they were aware of it. **This is not a fact at all**".*

270. What they mean by the first observation is not quite clear. But the conclusion from what they argue in these subparagraphs can only be that the transfer was indeed made, and that they were involved in and aware of it. It is said:

"In a few days an email headed "Bank Confirmation" was received by the Appellant from the same email address (bonnot1963@gmail.com) with an attached file (confirmation of money transfer generated on 28 march 2014 from the Standard Charter Bank in Singapore".

271. That confirms the transfer. And the following statement:

"This email message was again forwarded the same way – first by the Appellant to Mr Alexei Melnikov to Liliya Shobukhova on 31 March 2014".

confirms both Appellants' involvement in this event, contrary to the Appellants' observations as quoted above.

272. What these two Appellants deny on this point is, in the Panel's view, not only beating about the bush, in the light of the facts that they cannot really deny; it is also an incorrect denial of the specific findings in Sir Anthony's Investigation Report (*e.g.*, it is interesting to note that Mr Melnikov does not specifically deny Mr Shobukhov's statement that a) he asked the Shobukhovs to open a new bank account, specifically in Euros rather than US Dollars, in order to receive the reimbursed moneys and that b) he called them repeatedly to check whether the money was received).

273. Mr Diack accepts as a fact that, in March 2014, a transfer of EUR 300,000 was made from an account in the name of Black Tidings in Singapore, into an account of Mr Shobukhov, and that Black Tidings was owned by Mr. Ianton Tan, who is a close personal friend of his. He disputes however that his relation with Mr Tan is sufficient evidence that he was behind Mr Tan's transfer of the EUR 300,000 through Black Tidings.

274. Mr Diack's main points are a) that the mere fact that he knows Mr Tan is wrongly considered sufficient, b) that Mr Tan worked with the IAAF as a consultant and that a very large number of persons involved in Athletics, and in particular many persons at the IAAF may have known him, c) that the Ethics Commission and/or Sir Anthony made no effort to look for any other person who might have been behind Mr Tan's action.

275. The majority's view on this is that Mr Diack has not asserted, let alone proven that any other person in the Athletics world at large, or within the IAAF in particular, had such close personal ties with Mr Tan as Mr Diack himself (for example, he did not suggest that, at the least, Mr Balakhnichev knew Mr Tan). Further, Mr Diack has not asserted, let alone proven whether any such other person would have been willing and/or able – and for what reason – to fund Mr Tan. In that context, it is noted that Mr Diack denies having funded Mr Tan, but accepted at the hearing that he, as *'a prudent business man'* would not transfer such a large amount without funding – without giving the impression that he considered Mr Tan to be an imprudent business man.

276. Also in this context it is relevant that Mr Diack did not call any witness to support his view, notably not Mr Tan. Mr Tan's testimony to Sir Anthony included *i.e.* a statement that he received an anonymous phone call from a person whom he thought was Mr Diack, verifying that Mr Bonnot, who had ordered the transfer, was indeed his friend. Why did Mr Diack not call Mr Tan as a witness in order to deny this statement and/or to allow cross examination? (*e.g.* on Mr Diack's later telephone conversation with him, where apparently Mr Diack denied that he had made such a phone call?) Mr Tan was his friend, and he confirmed in his email to Sir Anthony of 13 June 2015 that he would be more than happy to assist in further investigations of this matter, (notably) with regard to the strong allegations against Mr Diack which he felt unjust.

277. In the view of the majority, there is no - reasonable - alternative explanation to the fact that it must have been Mr Diack who indeed made this call.

278. As said, Mr Tan believed that the telephone call which persuaded him to cause Black Tidings to make the payment of EUR 300,000 was made by Mr Diack. It was because of this belief that he procured his company to make the payment. He later asserted that he was himself a victim of fraud and neither before nor subsequently was Black Tidings put in funds for the payment (as to the accuracy of which last assertion the Panel is unable to make any finding on the evidence before it). If the telephone call was not, as Mr Tan believed at the time (and, on his account, continued to believe until April 2014), made by Mr Diack then the following must be the position: (i) The fraudster "M. Bonnot" when deciding to perpetrate his fraud decided to pick on Mr Tan's company, rather than any other company or business man; (ii) He must then have picked the figure of precisely EUR 300,000 – the amount which was shortly thereafter transferred – as being the amount of which he wished to defraud Mr Tan's company; (iii) The fraudster must, for some unexplained reason, have worked his fraud so as to enable the EUR 300,000 to be paid not to himself but to Mr Shubukov; (iv) To carry out his fraud he must have been sufficiently au fait with Mr Tan and his relationship with Mr Diack to have believed that Mr Tan would disburse this large sum of money simply on the basis of email communication from Mr Bonnot of whom Mr Tan knew nothing and a confirmatory telephone call from someone posing as Mr Diack; (v) He must have had sufficient knowledge of Mr Diack and his relationship with Mr Tan to be able to carry off the deceptive telephone call; (vi) He, or the accomplice he used to make the call, must have been able to mimic Mr Diack's voice with such accuracy that Mr Tan, who knew Mr Diack so well that he had named his son after him, failed to realise that it was not Mr Diack who was calling him to encourage him to make this unusual payment. This combination of complete implausibilities lead to only one possible realistic conclusion: it was Mr Diack who called Mr Tan to persuade him to make the transfer of funds to Mr Shubukov.

279. It follows from these considerations that the Majority is satisfied that all three Appellants were involved in the transfer of the EUR 300,000.

280. Moreover, the Panel considers what other background can there have been for this payment than, as testified by Mr Shobukhov and Mrs Shobukhova, a (partial) repayment of the money paid by them? That seems more than likely, under the circumstances; and no convincing alternative background or reason was proffered by the Appellants.

281. Mr Balakhnichev and Mr Melnikov have argued that there was no reason for them to repay the money. One possible reason could have been that, after such repayment, Mrs Shobukhova might be willing to sign an Acceptance of Sanction form. In so far as they argued that the money could have been prize money due to Mrs Shobukhova, this is not credible. It is undisputed that Mrs Shobukhova did not participate in any events in the preceding year, 2013, so as to warrant such a considerable sum. Further, with such background, it cannot be explained why Mr Melnikov took such a keen interest in whether Mrs Shobukhova had received the money. One might also assume that Mr Baranov, who was in charge of finding sponsorships would have known about such substantial transfer, notably as he apparently was in regular contact with Mrs Shobukhova during that period.

282. In that light, and apart from other evidence referred to, the Majority of the Panel cannot but conclude that the payment of the EUR 300,000 to Mrs Shobukhova confirms the earlier extortion of money from her, as part of the agreement and the system put in place by the three Appellants (the "extortion scheme") and that all Appellants where involved in it.

283. As said above, such a conclusion also sheds light on the preceding phase both with regards to the facts and the credibility of the Appellants' witness statements and others on the earlier events. The Appellants' denial of the facts concerning this payment makes their statements on the events in the preceding phase less credible – and other statements, notably those of Mr Shobukhov and Mrs Shobukhova, more credible. Indeed, the statements of Mrs Shobukhova and Mr Shobukhov are more consistent with the extortion scheme than the statements made by the three Appellants. In the same vein, the Panel finds the Shobukhovs's witness statements more credible than those of Messrs Nikitin and Nacharkin.

284. In addition, Mr Shobukov and Mrs Shobukhova's version is further supported by Mr Baranov's testimony, notably:

- that he got a call from Mr Melnikov, late 2011, that Mrs Shobukhova was on the list of Russian athletes with suspect biological passport data;

- Mr Melnikov's question in December 2012, whether he, Mr Baranov, would be willing to use his bank account to conduct wire transfers;

- Mrs Shobukhova's call to him on 24 January 2014;

- his account on the meeting with Mr Melnikov on 10 July 2014. Mr Melnikov has not specifically denied that this meeting took place – and/or what was discussed there; and he gave no explanation for the email sent to Mr Baranov later that day by Mr Petrov, apparently being a draft letter to be sent by Mr Baranov to the IAAF with a withdrawal of his earlier statements and allegations; this statement was never signed or dispatched by Mr Baranov;

- the action taken against him shortly after that meeting. Apparently, the action mentioned in Mr Balakhnichev's email of 28 April 2014 was never followed up;

- reports by other athletes on Mr Melnikov's threats concerning Mr Baranov.

285. Thus, the Panel accepts that three payments were made by Mrs Shobukhova to Mr Melnikov as testified by Mrs Shobukhova. The error in the persons to which these payments were delivered is, in the Panel's view, not decisive.

286. It is also noted that Mr Melnikov confirmed that he was told, apparently at the time of the letter of 12 June 2012, that the IAAF had sent such a letter, concerning Mrs Shobukhova and that he was asked as a senior coach of the national team to contact her and to advise her that the doping accusations had been brought against her. It is coincidental, if not *highly* coincidental that the second and third payment by Mrs Shobukhova were made on 18 June and 11 July 2012, shortly after the said letter and shortly before the Olympics in which Mrs Shobukhova was expected to compete in the marathon. Also, the letter of 3 December 2012 coincided with Mr Melnikov's call to Mrs Shobukhova, to which she testifies.

287. Consequently, this Panel does not accept the Appellants' version of the events and their further denial of facts, such as the events around Mrs Shobukhova's suspension in March/April 2014, besides the payment of the EUR 300,000; and such as her discussions with Mr Balakhnichev, Mr Melnikov and others about the acceptance of sanction form and her eventual ban by ARAF, and whether or not Mr Melnikov had a safe in his office.

288. Like the IAAF Ethics Commission Panel, this Panel does not believe that Mr Shobukhov, Mrs Shobukhova and Mr Baranov would have set up the (re)payment of the EUR 300,000 by doing what is described in the Investigation Report. And there are no facts on the record which even give the slightest evidence thereof.

289. The Panel is also inclined to believe that Mrs Shobukhova paid Mr Melnikov and other persons certain amounts annually. That, however, is not relevant for the Panel's decision as, for Mr Melnikov, the extortion scheme and his further neglect suffice for his sanctions; and other persons than he and the other Appellants are not the subject of these proceedings.

J. Mr Diack's email of 29 July 2013

290. All evidence dealt with above is, in the view of the Majority, corroborated by the email of 29 July 2013. This email reads as follows (English translation provided by the Appellants):

[Papa Massata Diack mailto:pamassata@gmail.com *to Lamine Diack, 05:30 (29 July 2013)]*

"Papa,

Following our meeting with G. Dollé and VVB in Monaco, the following actions were agreed:

ARAF undertook to sanction L. Shobukhova and I. Erokhin; these proceedings are to be brought after the WCH in Moscow;

VVB personally undertook to sign the initial information letters regarding sanctions imposed on the five athletes and to return them to me in Moscow;

VVB asked me to take internal action vis-à-vis the IAAF staff, who had been hostile towards him in the context of the procedure for managing this case since September 2012 and for this purpose, lobbying and explanation work was carried out vis-à-vis C. Thiaré (50K), N Davies (UK press lobbying, 30K and calming Jane Boulter); G Dollé (50K) and PY Garnier (Champagnolle 10K assistance; managed by Cheikh who undertook to talk to them all in order to report back to me on Monday 29th July);
G Dollé advised us to speak to Thomas Capdevielle, who is in his opinion the main objector to any concession to be made to ARAF for championships; since he was on holiday, I was not able to see him until Friday 26 July at 14:40 at the Fairmont;

In two hours, we crushed all misunderstandings arising from the exclusive management of this case which Habib had caused and he was given a clear explanation of the role played by Russia in your political struggles in Senegal between November 2011 and July 2012 (presidential and legislative); he seemed to be frustrated about the fact that he and Pierre Yves Garnier who carry out the operational work in the department are not involved by the Dollé/Habib team in the discussions with you and the sensitive decisions already made/ or to be made in the future; I also learned that it was Dr Garnier who opened up to Cheikh Thiaré about this issue and that in order to annoy Dr Dollé, they made a joint decision on this SENSITIVE CASE in order to speed up his retirement; this was confirmed to me by Cheikh with whom I had a two hour meeting at the Fairmont and who undertook to deal with Huw Roberts to make sure that he does not leave IAAF and maybe lure him with the promise of a position as a Director consolidating ETHICS, MEDICAL & ANTIDOPING, FRAUD AND BETTING FRAUD; I will be informed of his financial aims later.

Thomas does not have any financial aim and he is trying to position himself on the departure of Dollé for the future, and he must however be loyal to him because it was him who brought him to the IAAF. He assured me that he will not do anything to harm the interests of the IAAF and the President's image.

He thinks that the problem may be limited to a sanction on the Walk/Russian walkers would be the ideal situation [sic], particularly in view of the fact that they have a lot of training;

I visited the department in order to collect the official initial information letters (two original copies), and in the presence of Dollé and Capdevielle I mentioned the possibility of letting two or three athletes participate (especially the London Olympic champions) – more specifically Kyrdyapkine and Zaripova (they did not even return Zaripova's letter to me);

I was in Moscow where I had a meeting during the whole of Saturday morning with VV Balakhnichev and his team; after three hours of discussions (unreadable).

I have a telephone conference with Cheikh Thiaré at midday and this afternoon with Nick Davies in order to make my point clear".

291. At the hearing before the CAS, Mr Diack did not contest the accuracy of the above transcript and accepted that he sent the e-mail of 29 July 2013 to his father. He insisted that this message was sent in Summer 2013, *i.e.* well after the events, which occurred between 2011 and 2012. Until Summer 2013, he was not aware of any doping matters or delays in the suspension procedure of Russian athletes with abnormal blood profile, as he was exclusively involved in marketing and television deals. He explained that the message of 29 July 2013 a) was just one of a series of emails; b) did not give a complete picture of the situation; and c) was taken out of its context. Mr Diack asserted that his father requested his assistance relating to attacks by journalists. With reference to the affirmation contained in the mail that *"VVB asked me to take internal action vis-a-vis the IAAF staff"*, Mr Diack affirmed that he was just reporting to his father what Mr Balakhnichev had requested him to do, but he refused to follow up on these demands. He refuted that he gave EUR 50,000 to Dr Dollé and explained that his intervention was only meant to remedy the fact that Mr Balakhnichev failed to properly manage the disciplinary proceedings against the Russian athletes with abnormal blood profile.

292. On cross examination, Mr Diack gave no clear answer with regard to his involvement in what this email suggests: an action for *"lobbying and explanation work"* vis-à-vis certain IAAF employees clearly relating to paying them a certain amount of money. He mentioned that this did not happen. It was also argued that this email was obtained in violation of French law. That argument was not pursued in depth. In any event, in the Majority's view that does not mean that it cannot be used as evidence in the present proceedings, once it is admitted to this record.

293. That this email was sent at a certain time after the events of 2011/2012 may be true, the crucial points in this email do not concern the events of 2011/2012 but a meeting in Monaco which, so it seems, took place not long before the email was sent. Further, the Majority of the Panel considers that the contents of this email fit into the total picture of an extortion scheme as follows from the Reedie/Niggli Report and other evidence:

- Mr Balakhnichev *"managing this phase"*;

- the sanctioning of Mrs Shobukhova, and another athlete, after September 2012;

- the role of Mr Cissé, *i.e.* the IAAF in *"the exclusive management of this – sensitive – case"*;

- the relevance of *"financial aims"* of persons involved at the IAAF and the character of *"lobbying and explanation work"* vis-à-vis certain persons relevant for this case at the IAAF (*i.e.* payment of (considerable) amounts of money).

294. It is not denied that a meeting took place between Mr Diack, Dr Dollé and Mr Balakhnichev as mentioned in the first paragraph of this letter. Further, also in this context, it is relevant that neither Mr Balakhnichev nor Mr Diack proffered evidence contradicting such important elements in this letter as the proposed payment to a number of persons. In this context – as well as for the evidence regarding other events referred to above – Dr Dollé's testimony is relevant.

295. As mentioned above, Dr Dollé testified before the IAAF Ethics Commission Panel and Sir Anthony. He did not challenge the sanction imposed on him in the Appealed Decision in the light of the evidence found proven by the IAAF Ethics Commission Panel.

296. On 31 July 2016, Dr Dollé supplied a further witness statement. He then testified that, in his earlier statement, he had not told the full story and truth. Essential elements in this new statement were:

- his confirmation that he had participated in the delay of the case-management of the Russian athletes;

- Habib Cissé taking over this case-management and becoming the intermediary between the IAAF and ARAF (Mr Balakhnichev);

- the wish of certain persons that he leaves the IAAF;

- reference to possible corruption involving the President;

- Mr Diack handing him EUR 50,000 in cash in July 2013 – spontaneously. At the hearing before the CAS he was not cross examined on this.

297. The conclusion of the foregoing is that all charges, as set out in the Notice of Charges, are indeed made out on the basis of the facts as they follow from the evidence on record.

K. The Sanctions

298. On the sanctions, the Appealed Decision refers to *"Paragraph D17 of the statutes of the EC"*. It is not specified which version of the various statutes and codes of the IAAF is quoted. In the Appealed Decision, it is said that the case comes before the Panel in a manner prescribed by the statutes and procedural rules of May 2015 of the Ethics Commission, revised on 26 November 2015.

299. After the hearing before the CAS, a debate followed on the IAAF's Ethical Codes which could be applicable. It follows from the parties' correspondence that those are the Codes on the following list:

- Code adopted in November 2003, in force November 2003/1 May 2012 (the "2003 Code");

- Code adopted March 2012, in force 1 May 2012/1 January 2014 (the "2012 Code");

- Code in force 1 January 2014/1 January 2015 (the "2014 Code");

- Code in force 1 January 2015/26 November 2015 (the "2015 Code"). The latter Code was revised as per 26 November 2015, however only for its Appendices 6 and 7. Those amended Appendices entered into force on 26 November 2015. The Code itself, as published on that date, maintains as its entry date 1 January 2015.

300. Not all those Codes had been exhibited during the proceedings. The 2003 and the 2012 Codes were produced later, with the post-hearing submissions.

301. In the light hereof, the Panel concludes that the text of the Appealed Decision refers to the text of the 2015 Code as revised on 26 November 2015. This corresponds with the approach of the IAAF Ethics Commission Panel as expressed in the Appealed Decision.

302. However, in their letter of 13 March 2017, the Respondents state the following:

> *"The reason for charges being brought against Mr Balakhnichev and Mr Diack under the 2003 Code and the 2012 Code, but against Mr Melnikov only under the 2012 Code alone, in respect of the allegation of participation in an agreement that disciplinary action would not be taken against Lilya Shobukhova upon the payment by her of money, is because Mr Melnikov was not subject to the 2003 Code. The third paragraph of the 2003 Code provides that the Code applies to IAAF-officials and analogous persons. Paragraph 2 of the Application section of the 2012 Code extended the reach of that version of the Code beyond IAAF-officials to "Participants" in the sport".*

303. The letter then continues as follows:

"The sanctions relied upon by the Respondents in respect of the allegation of breach of the relevant Code provisions for participation in an agreement that disciplinary action would not be taken against Liliya Shobukhova upon the payment to [sic] *her of money, are the sanctions provided by article 1(25) of the 2012 Code".*

304. This is puzzling and, in this light also, it is difficult to understand why the 2003 and specially the 2012 Code were not exhibited by the Respondents during the proceedings.

305. However that may be, in the Panel's view, for the sanctions to be applied, those Codes are relevant that were in force at the time of the alleged violations. That is a general rule and is confirmed by the 2014 and the 2015 Code. The application of the 2012 Code on acts perpetrated during the time covered by this Code is accepted by Mr Diack's letter of 10 March 2017.

306. The charges which the Panel considers proven have two general aspects:

- incidental events such as, notably, the three payments by Mrs Shobukhova in 2012 and the repayment of EUR 300,000 in 2014;

- the general system of the agreement between the Appellants that no disciplinary action would be taken against Mrs Shobukhova upon payment by her of money, *i.e.* the extortion scheme.

307. The payments by Mrs Shobukhova took place in three tranches, on 11 January 2012, on 18 June 2012 and on 11 July 2012. The first payment would thus be covered by the 2003 Code, the second and third payment by the 2012 Code.

308. These payments confirm to the Majority of the Panel that, at those points in time, the Appellants' extortion system and their agreement thereto were in place. The Panel has no difficulty in concluding that, thus, for those points in time, also that system is covered by the said Codes (regardless as to whether, at the same time, one could qualify the said agreement/system as a continuing offence). The repayment of the EUR 300,000 would be covered by the 2014 Code.

309. After the repayment, no further payments took place. Mrs Shobukhova was sanctioned and the Appellants' system was no longer in place.

310. The Panel has difficulty in accepting that, for the alleged violations, the 2015 Code would apply, as the IAAF Ethics Commission Panel suggests. In accordance to the general legal principle, also the 2015 Code fixes a certain entry date, and indicates that there is no retroactive effect.

311. The Panel also does not agree with the Respondents' letter of 13 March 2017 that only the 2012 Code is relevant. The 2014 Code is equally relevant. The mere fact that the Appellants did not object earlier that (only) the 2012 Code should apply – although this indeed can be argued – does not mean that that Code should indeed be applied. In the first place, as the Panel understands it, the 2015 Code was applied by the IAAF Ethics Commission Panel in Appealed Decision, not the 2012 Code. In the second place, until the Respondents' said letter it was not quite clear which Code or Codes would specifically apply but, in any event, the Codes referred to in Notices of Charge were not only the 2012 Code. Finally, it would be against legal principles to apply a certain Code to a violation at the time of which such Code would not be in force, and/or to apply any Code with retroactive effect.

312. That Mr Melnikov was not subject to the 2003 Code, as the Appellants now argue – which in itself is correct - is in the Panel's view no reason not to apply that Code to violations at the time when this Code was in force. But indeed, he then could not be subject to a sanction under that Code.

313. The Respondents also argue that these new issues cannot be discussed at this late stage of the proceedings. Although the Panel understands this approach, this cannot be followed. In the first place, which sanctions are to be applied, in the light of the applicable Codes, is a legal question. The Panel has to apply the rules and regulations that it considers applicable. Further, although indeed at a very late stage and only in the margin, the issue of the sanctions was raised at the hearing before the CAS. That triggered the post-hearing submissions, the production of some more Codes and the recent correspondence thereon. That cannot be ignored.

314. In Mr Balakhnichev's/Mr Melnikov's letter of 10 March 2017, it is argued that the relevant articles of the Codes are too vague. The Panel rejects this.

315. As said, the identified individual violations occurred on 11 January 2012, 18 June 2012 and 11 July 2012, and in March 2014. The first was thus governed by the 2003 Code, the second and the third by the 2012 Code and the last one by the 2014 Code.

316. Equally as said, these Codes are different in the sanctions they provide. The sanction provided in the 2003 Code was:

- *"In the case of a breach of this Code, the IAAF organ which has elected or appointed the person concerned may, after a hearing before the CAS, give a serious warning to him/her or, in the case of repeated breach or gross misconduct, dismiss him/her from his/her position of trust or remove his/her tasks, either in whole or in part. If, on the other hand, the person concerned has been elected by the Congress, the matter as a whole has to be submitted for a final decision by the Congress. The IAAF Ethical Commission may at its own initiative propose these sanctions once the person concerned has been given the opportunity to be heard on the matter in question".*

The persons covered by the 2003 Code were:

- *"In furtherance of this aim, the IAAF Council has accepted the following IAAF Code of Ethics to be observed by all persons acting in positions of trust within the IAAF and by any other person who is otherwise entitled to act for, or on behalf, the IAAF".*

  (COMMENTS: There are two groups of persons subject to this Code: those who are in a position of trust within the IAAF, such as the members of the Council, Commissions and Commissions, and those who are otherwise entitled to act for, or on behalf, the IAAF, such as IAAF officials, as well as the IAAF consultants, agents etc. when acting for, on of behalf, the IAAF.)

317. The sanctions provided in the 2012 Code were the following:

- *"(…)*

- *a caution or censure;*

- *a suspension for a fixed period of up to 4 years from holding office or other position held by an IAAF Official and/or until a specified set of conditions have been met to the IAAF Ethical Commission's satisfaction;*

- *a fine up to a maximum of fifty thousand United Sates dollars (US$ 50,000);*

- *the return of any IAAF award;*

- *a ban for a fixed period of up to a lifetime from taking part in any Athletics-related activity;*

- *a recommendation to the IAAF Council that it impose any or more of the sanctions on a Member Federation under Article 14.7 of the IAAF Constitution".*

The persons covered by the 2012 Code were the following.

- *"IAAF Officials - those who are in a position of trust within the IAAF, such as the members of the Council, Commissions and Commissions, and those who are otherwise entitled to act for, or on behalf, the IAAF, such as IAAF officials and staff, as well as the IAAF consultants, agents etc. when acting for, or on behalf, the IAAF.*

- *Participants – those Athletes, Athlete Support Personnel, competition officials, managers or other members of any delegation, referees, jury members and any other persons accredited to attend or participate in an International Competition".*

318. The 2014 Code, for sanctions, refers to the IAAF Ethics Commission, established pursuant to Article 5.7 of the IAAF Constitution and its Statutes and Procedural Rules.

The persons covered are, in so far as relevant:

- *"IAAF Officials" meaning all members of the IAAF Council, IAAF Commissions and IAAF Commissions and any person who acts or its entitled to act for or on behalf of the IAAF, including without limitation IAAF staff, consultants, agents and advisors";*

319. The Statutes charge the IAAF Ethics Commission Panel to adjudicate whether violations of the Code have been committed (other than violations of the Anti-Doping Rules) and imposing sanctions. The sanctions are:

"(…)

to caution or censure;

to issue fines;

to provisionally suspend a person (with or without conditions);

to suspend a person (with or without conditions) or expel the person from office;

to suspend or ban the person from taking part in any Athletics-related activity, including Events and Competitions;

to remove any award or other honour bestowed on the person by the IAAF;

to impose any sanctions as may be set out in specific Rules; and

to impose any other sanction that it may deem to be appropriate.

(…)".

320. The sanctions applied by the IAAF Ethics Commission Panel were:

- a life ban for all 3 Appellants from any further involvement in any way in the sport of Track & Field;

- fines of US$ 25,000 for Mr Balakhnichev and Mr Diack, and US$ 15,000 for Mr Melnikov.

321. These sanctions could have been imposed under the 2012 Code (Article I.25 b and e) and under the 2014 Code (Article D,17 (ii) and (v)).

322. The three Appellants belong to the category of persons identified by those Codes. This has never been contested. At a very late stage – by letter of 10 March 2017 – it was argued that Mr Melnikov did not fall within the classes of persons covered by the 2003 Code. That may be true, it is irrelevant for the application to his violations of the 2012 and 2014 Codes.

323. It is noted, finally, that violations of the 2012 and 2014 Codes occurred even if there had not been extortion. It follows from the facts that, in any event, (a) Mr Balakhnichev and Mr Melnikov were aware of (the contents of) the IAAF's letter of 12 June 2012 and (b) that they did nothing to prevent Mrs Shobukhova from competing in the Olympic Marathon and the Chicago Marathon in 2012 and took no appropriate action until March 2014. Even if this was not the result of their extortion scheme, they in any event thus failed to take appropriate action against this athlete with, for some time, an atypical ABP. This in itself would warrant a sanction under the then applicable codes: the 2012 Code and the 2014 Code.

L. Conclusion

324. In the light of the foregoing, the Panel – in majority with regard to Mr Diack - concludes that on the evidence adduced, the charges against all three Appellants have been established beyond a reasonable doubt, that the sanctions imposed for breach of the said Codes in respectively June and July 2012 and March 2014 should be upheld, and that the Appeals should be dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The respective appeals filed by Mr Valentin Balakhnichev, Mr Alexei Melnikov, and Mr Papa Massata Diack on 26 January 2016 against the decision of the IAAF Ethics Commission dated 7 January 2016 are dismissed.

2. The decision of the IAAF Ethics Commission dated 7 January 2016 is confirmed.

3. (…).

4. (…).

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