



Arbitration CAS 2016/O/4504 International Association of Athletics Federations (IAAF) v. All Russia Athletics Federation (ARAF) & Vladimir Mokhnev, award of 23 December 2016

Panel: Mr Hans Nater (Switzerland), Sole Arbitrator

Athletics

Doping offences committed by a coach

CAS jurisdiction upon coaches based on Rule 38.3 IAAF Competition Rules

Law applicable to procedural and to substantive matters respectively

Admissibility of a witness statement and of a recording as means of evidence

Multiple violations by a coach: possession, trafficking, administration

Determination of the applicable sanction based on aggravating circumstances

1. Rule 38.3 of the IAAF Rules determines that the IAAF may elect to refer a matter to CAS if a federation member fails to complete a hearing within two months and if the athlete is an International-Level Athlete. A coach falls under this definition, as, pursuant to Rule 37.2 of the IAAF Rules, “athlete” shall be understood as referring also to athlete support personnel. Coaches are listed in the definition of “athlete support personnel” in the IAAF Rules. Furthermore, a coach who trained international-level athletes clearly acted on an international level. Since the membership of the national federation from the IAAF has been suspended, the federation is prevented from conducting a hearing within the deadline set by Rule 38.3 of the IAAF Rules. Therefore, the IAAF was permitted to refer the matter directly to the CAS, subject to an appeal to CAS in accordance with Rule 42 of the IAAF Rules.
2. Pursuant to the legal principle of *tempus regit actum*, procedural matters are governed by the regulations in force at the time of the procedural act in question, whereas the substantive issues are governed by the IAAF Rules in force at the time of the alleged violations.
3. According to Swiss scholars, Article 184(1) PILS provides arbitral tribunals in international arbitration proceedings seated in Switzerland with ample latitude in the taking of evidence. According to the CAS case law, it follows from Article 184 (1) PILS (as well as the CAS Code) that a CAS panel disposes of a certain discretion to determine the admissibility or inadmissibility of evidence. Furthermore, the discretion to admit evidence under Rule 33(3) IAAF Rules is fairly wide as it determines that anti-doping rule violations may be established by “any reliable means”. Whereas an athlete’s witness statement is undoubtedly admissible, particularly because witness statements are explicitly listed as a means of evidence in Rule 33(3) of the IAAF Rules, the admissibility of recordings which objectively fall under the category “any reliable means” provided for in Rule 33(3) of the IAAF Rules, require a more detailed analysis as they have been made covertly by an athlete acting as a whistle blower to accuse

widespread doping in a national sport. According to the Swiss Code of Civil procedure and to the Swiss Federal Tribunal, if a mean of evidence is illegally obtained, it is only admissible, if the interest to find the truth prevails over the private interest (balancing test). In general, the fight against doping is not only of a private interest, but indeed also of a public interest. In a special situation where it is notorious that doping in a particular country is widespread and has been systematically supported by coaches, clubs and government-affiliated organisations, the interest in finding the truth must prevail over a possible reliance of a coach on the principle of good faith as a defence against gathering illegally obtained evidence.

4. Based on an athlete's witness statement, on recordings and on transcript of such recordings, a panel can be comfortably satisfied that a coach committed several violations i.e. possession of prohibited substances in breach of Rule 32.2 (f)(ii) of the IAAAF Rules, trafficking in breach of Rule 32.2(g) of the IAAF Rules for having provided prohibited substances to his athletes on multiple occasions and administration of prohibited substances to his athletes in breach of Rule 32.2(h) IAAF Rules.
5. Pursuant to Rule 40.7(d)(i) of the IAAF Rules, if it has not been established that the coach committed a second and a third doping violation after having been notified of the first anti-doping rule violation, all violations shall be considered together as one single first violation and the sanction imposed shall be based on the violation that carries the more severe sanction. "Trafficking" and "Administration" of prohibited substances carry the more severe sanction with an ineligibility period of four years up to lifetime. If the coach acted intentionally, the period of ineligibility shall not be shorter than four years. According to the IAAF Rules the quantum of the sanction shall depend on the seriousness of the violation. In this regard, although the regime of aggravating circumstances of Rule 40.6 of the IAAF Rules is not directly applicable in the context of Trafficking and Administration, they can and must be taken into account in determining the sanction for these specific violations based on the commentary in the World Anti-Doping Code and if the violations have been severe. Furthermore athlete support personnel in general bears an even higher responsibility than athletes themselves in respect of doping considering the influence they usually exert on their athletes. As a matter of principle, a lifetime period of ineligibility could be considered both justifiable and proportionate in doping cases even if the ban is imposed for a first violation. However, according to CAS jurisprudence, the imposition of a lifetime ban is only justified where the seriousness of the offence is most extraordinary.

I. PARTIES

1. The International Association of Athletics Federations (the “Claimant” or the “IAAF”) is the world governing body for the sport of Athletics, established for an indefinite period with legal status as an association under the laws of Monaco. The IAAF has its registered seat in Monaco.
2. The All Russia Athletics Federations (the “First Respondent” or the “ARAF”) is the national governing body for the sport of Athletics in the Russian Federation, with its registered seat in Moscow, Russian Federation. The ARAF is a member federation of the IAAF, currently suspended from membership.
3. Mr Vladimir Mokhnev (the “Second Respondent” or the “Coach”) is a Russian athletics coach, who was in charge of a number of track athletes including Ms Yuliya Stepanova and Ms Yekaterina Kupina, both International-Level athletes for the purposes of the IAAF Competition Rules (the “IAAF Rules”).

II. FACTUAL BACKGROUND

4. Below is a summary of the main relevant facts, as established on the basis of the parties’ written submissions and the evidence examined in the course of the present arbitration proceedings. This background is set out for the sole purpose of providing a synopsis of the matter in dispute. Additional facts may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, he refers in his Award only to the submissions and evidence he considers necessary to explain his reasoning.
5. The Coach has been charged with violating:
 - *Rule 32.2(e), “Tampering or Attempted Tampering with any part of Doping Control”;*
 - *Rule 32.2(f)(ii), “Possession by an Athlete support Personnel In-Competition of any Prohibited Method or Prohibited Substance or Possession by an Athlete Support Personnel Out-of-Competition of any Prohibited Method or Prohibited Substance which is prohibited Out-of-Competition in connection with an Athlete, Competition or training, unless the Athlete Support Personnel establishes that the Possession is pursuant to a TUE granted to an Athlete in accordance with Rule 34.9 (Therapeutic Use) or other acceptable justification”;*
 - *Rule 32.2(g), “Trafficking or Attempted Trafficking in any Prohibited Substance or Prohibited Method”;* and
 - *Rule 32.2(h) of the IAAF Competition Rules, “Administration or Attempted administration to any Athlete In-Competition of any Prohibited Method or Prohibited Substance, or administration or Attempted administration to any Athlete Out-of-Competition of any Prohibited Method or Prohibited Substance that is prohibited Out-of-Competition or assisting, encouraging, aiding, abetting, covering up or any other type of complicity involving an anti-doping rule violation or any Attempted anti-doping rule violation”.*

6. The evidence of the Coach's alleged anti-doping rule violations is based primarily on a witness statement of Ms Yuliya Stepanova (before her marriage Ms Yuliya Rusanova), an elite Russian athlete who was sanctioned in February 2013 with a two year period of ineligibility in connection with abnormalities in her Athlete Biological Passport (the "ABP"). Ms Stepanova was trained by the Coach from 2003 to 2012.
7. In the period from 2013 to 2014, Ms Stepanova recorded a number of conversations she had with Russian athletes and athlete support personnel, including the Coach.
8. With a view to exposing the widespread doping practices within Russian athletics, Ms Stepanova made the recordings available to a German journalist, who used extracts from the recordings to produce a documentary alleging widespread doping in Russian athletics. This documentary was broadcasted on the German television channel ARD on 3 December 2014. Further documentaries of the German journalist were aired on ARD on 1 August 2015 and 6 March 2016 respectively.
9. In the wake of the first documentary, the World Anti-Doping Agency ("WADA") announced the establishment of an independent commission (the "WADA IC"), comprised of Mr Dick Pound QC (Chairman), Prof. Richard McLaren and Mr Günter Younger.
10. On 8 August 2015, the IAAF asserted in a letter to the ARAF that there was sufficient evidence that the Coach had, over the course of years, been involved in procuring and providing prohibited substances to athletes training under him and lodged the above-mentioned charges against him.
11. On 24 August 2015, the IAAF informed the ARAF that the Coach was provisionally suspended with immediate effect pending resolution of the case in accordance with Rule 38.2 of the IAAF Rules.
12. On 11 September 2015, the Russian Anti-Doping Agency ("RUSADA") provided a summary of an explanatory note of the Coach, wherein the Coach denied the charges and requested for a hearing.
13. On 9 November 2015, the WADA IC issued its first report (the "WADA IC First Report") in which it concluded in general that "[t]he investigation has confirmed the existence of widespread cheating through the use of doping substances and methods to ensure, or enhance the likelihood of, victory for athletes and teams" and specifically in respect of the Coach that "[t]hrough Stepanova's statements and secret recordings, the IC investigation uncovered evidence implicating coach Mokhnev in violations of the Code, specifically sections 2.8 and 2.9".
14. On 26 November 2015, the ARAF's membership with the IAAF was suspended pursuant to a decision of the IAAF Council.
15. On 13 January 2016, the IAAF informed the Coach that ARAF's membership had been suspended, that it took over the responsibility for coordinating the disciplinary proceedings

and that his case would be referred to the Court of Arbitration for Sport (“CAS”). The Coach was offered to choose between the following two procedures:

- “(1) before a sole CAS arbitrator sitting as a first instance hearing panel pursuant to IAAF Rule 38.3. The case will be prosecuted by the IAAF and the decision will be subject to an appeal to CAS in accordance with Rule 42; or*
- (2) before a CAS Panel as a single hearing, with the agreement of WADA and any other anti-doping organisation with a right of appeal, in accordance with Rule 38.19. The decision rendered will not be subject to an appeal”.*

16. On 25 January 2016, the Coach sent an email in Russian to the IAAF.
17. Also on 25 January 2016, upon the IAAF’s request, RUSADA provided a summarised translation of the Coach’s email, pursuant to which the Coach allegedly informed the IAAF that he wished his case to be heard in Russia, but that if this was not possible, that he chose the “1st procedure – before a sole CAS arbitrator”.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

18. On 17 March 2016, the IAAF lodged a Request for Arbitration with CAS in accordance with Article R38 of the CAS Code of Sports-related Arbitration (2016 edition) (the “CAS Code”). The IAAF informed CAS that its Request for Arbitration was to be considered as its Statement of Appeal and Appeal Brief and requested the matter to be submitted to a sole arbitrator. This document contained a statement of the facts and legal arguments and included the following requests for relief:
 - “(i) CAS has jurisdiction to decide on the subject matter of this dispute;*
 - (ii) The Request for Arbitration of the IAAF is admissible.*
 - (iii) Vladimir Mokhnev is found guilty of an anti-doping rule violation in accordance with Rule 32.2(e), Rule (f)(ii), Rule 32.2(g) and/ or Rule 32.2(h) of the IAAF Rules.*
 - (iv) A period of ineligibility from four years to lifetime ineligibility is imposed upon Vladimir Mokhnev, commencing on the date of the (final) CAS Award.*
 - (v) Any arbitration costs are borne entirely by the Respondents.*
 - (vi) The IAAF is awarded a significant contribution to its legal costs”.*
19. On 21 March 2016, the CAS Court Office initiated the present arbitration and specified that, as requested by the Claimant, it had been assigned to the CAS Ordinary Arbitration Division but would be dealt with according to the Appeals Arbitration Division rules.
20. On 22 March 2016, the Respondents were invited to submit their Answer within 30 days.

21. On 19 April 2016, in accordance with Article R54 of the CAS Code, and on behalf of the President of the CAS Ordinary Arbitration Division, the CAS Court Office informed the parties that the arbitral tribunal appointed to decide the present matter was constituted by:

Dr. Hans Nater, Attorney-at-Law, Zurich, Switzerland
22. Also on 19 April 2016, the parties were further informed that Mr Dennis Koolaard would act as *Ad hoc* Clerk.
23. Although duly invited by the CAS Court Office, the ARAF and the Coach did not file an Answer.
24. On 2 May 2016, the IAAF informed the CAS Court Office that, should it be confirmed that neither of the respondents filed an Answer, it did not deem it necessary for a hearing to be held.
25. On 1 June 2016, the CAS Court Office issued an Order of Procedure and informed the parties that the Sole Arbitrator, in accordance with Article R55 para. 2 of the CAS Code, had decided that despite the fact that no Answers were submitted by the Respondents, he would nevertheless proceed with the arbitration and deliver an award on the basis of the written submissions.
26. On 6 June 2016, the IAAF returned a duly signed copy of the Order of Procedure to the CAS Court Office.
27. On 8 June 2016, following a request from the Sole Arbitrator, the IAAF provided the CAS Court Office with a full translation of the Coach's 5-page "explanatory note" that was submitted on 25 January 2016, since only a summary had been provided.
28. On 18 June 2016, the ARAF provided the CAS Court Office with a two-page handwritten letter from the Coach, outlining his position in these proceedings.
29. On 30 June 2016, upon being invited to express its opinion by the CAS Court Office in this respect, the IAAF informed the CAS Court Office that it did not oppose the Coach's observations being admitted to the file.
30. Also on 30 June 2016, the ARAF returned a duly signed copy of the Order of Procedure to the CAS Court Office. The Coach failed to do so.
31. On 8 July 2016, in view of the fact that the Coach neither signed the Order of Procedure nor proceeded on the merits without making any reservation regarding the jurisdiction of the CAS, the parties were invited to submit written observations on CAS jurisdiction.
32. On 19 July 2016, the IAAF filed its written observations on CAS jurisdiction, whereas the Respondents omitted to do so.

33. On 1 September 2016, the parties were informed by the CAS Court Office that none of the parties requested the holding of a hearing and that it was therefore understood that they all accepted that the IAAF's witnesses be exempted from appearing at the hearing. The parties were invited to inform CAS if such understanding was not correct.
34. On 14 September 2016, in the absence of any answers received, the CAS Court Office confirmed that all parties had agreed to the exemption of the IAAF's witnesses from appearing at the hearing.
35. The Sole Arbitrator confirms that he carefully took into account in his decision all of the submissions, evidence, and arguments presented by the parties, even if they have not been specifically summarised or referred to in the present arbitral award.

IV. SUBMISSIONS OF THE PARTIES

36. The IAAF's submissions, in essence, may be summarised as follows:
 - The IAAF submits that anti-doping rule violations may be proved by any reliable means and that the witness statement of Ms Stepanova, including the transcripts of the recordings, constitute reliable evidence that the Coach committed anti-doping rule violations.
 - The IAAF maintains that the evidence is clear that the Coach provided his athletes, including Ms Stepanova and Ms Kupina, with prohibited substances, such as testosterone, EPO, dehydrochlormethyltestosterone (Oral Turinabol), oxandrolone, trenbolone (Parabolan) and peptides. The Coach directly admitted to giving peptides to Ms Kupina and emphasised that they were more expensive than steroids. He also said that he prepared another one of his athletes on peptides and steroids. During a meeting with Ms Stepanova on 12 July 2014, he admitted that he was transporting testosterone-boosting peptides made by a Russian institute ("*our institute*").
 - In addition, the IAAF argues that the Coach provided advice to his athletes as to how to use the prohibited substances. The Coach and Ms Stepanova also discussed the period of time during which certain prohibited substances, such as oxandrolone or trenbolone (Parabolan), would remain in the body.
 - The IAAF submits that the Coach was part of a doping programme organised for Ms Stepanova by Dr. Portugalov.
 - Furthermore, the IAAF maintains that the Coach contacted the director of the Moscow laboratory, Dr. Rodchenkov, and organised with him that, if Ms Stepanova paid him 30'000 Russian Roubles ("RUB" – approximately EUR 1'000), he would not report the positive test. The Coach also admitted to paying "*about 50 grand*" for Ms Kristina Ugarova to get away with a positive test and "*7,000*" for Ms Kupina to get through a doping control 15 days after taking Parabolan.
 - The IAAF submits that the Coach organised Ms Stepanova's doping regimen, providing the prohibited substances and related advice directly to her. After Ms Stepanova was

referred to Dr. Portugalov, the Coach continued to be actively involved in her doping programme; this involvement included paying for and, on occasion, providing the prohibited substances to Ms Stepanova as well as implementing the instructions of Dr. Portugalov. Finally, there is evidence that the Coach manipulated doping control processes by paying money, in particular to the director of the Moscow laboratory.

- As to the period of ineligibility, the IAAF accepts that the violations committed by the Coach do not constitute multiple violations. Pursuant to Rule 40.7(d)(i) of the IAAF Rules, the violations should be considered as one single first violation and that the sanction imposed shall be based on the violation that carries the more severe sanction. The sanctions for violating Rule 32.2(g) and Rule 32.2(h) of the IAAF Rules provide a minimum period of ineligibility of four years up to a lifetime. The IAAF submits that there are no reasons to reduce this standard sanction, in accordance with Rule 40.4 or 40.5 of the IAAF Rules.
- In determining the period of ineligibility to be imposed from the spectrum of four years to a lifetime ineligibility period, the IAAF submits that the seriousness of the violation should be taken into account and that aggravating circumstances also have an impact, in particular that multiple violations were committed and that the Coach belongs to the category of athlete support personnel, from whom a higher duty to the integrity of the anti-doping system can be expected. In view of this, the IAAF concludes that a lifetime ineligibility period is the only appropriate sanction.
- Finally, the IAAF submits that, on 6 March 2016, ARD broadcasted a documentary from which it appears that the Coach continued to train athletes, notwithstanding his provisional suspension as of 24 August 2015. The IAAF therefore submits that the provisional suspension of the Coach should not start on the date of the (final) CAS Award and not on 24 August 2015, when the provisional suspension became effective.

37. Although duly invited, the ARAF failed to submit any position on the merits of the present proceedings.

38. The Coach's submissions, in essence, may be summarised as follows (as translated from Russian to English by the IAAF):

- The Coach maintains that all accusations brought against him by Ms Stepanova are false and cooked up out of revenge.
- The Coach submits that Ms Stepanova grew up in a dysfunctional family and suffered from tuberculosis. The Coach did not give up on her and tried to get her back into sports. However, Ms Stepanova was allegedly known for her "*cranky and envious personality*". She could easily malign and scheme against people she did not like; she wanted the Coach to dedicate all his time to her.
- The Coach states that he "*was always a proponent of hard training and of achieving recovery with the help of generally accepted drugs and traditional methods: herbs, the roots of medicine plants, bee pollen, honeybee drone milk, etc. Many substances that [Ms Stepanova] mentions are altogether unfamiliar to me*".

- According to the Coach, when Ms Stepanova met Mr Vitaly Stepanov, Ms Stepanova's current husband, problems started to creep into his life. Mr Stepanov studied in the United States of America for two years and worked with RUSADA, the Russian anti-doping agency. After the couple Stepanova had met, Ms Stepanova began *"to force upon me the drugs, substances and blood values that I knew nothing of and believed unnecessary"*.
- The Coach also mentions that Ms Stepanova threatened to leave him for another coach if he refused to marry her.
- The Coach submits that Ms Stepanova *"always believed that one had to take advantage, as she used to put it, of all modern-day means to achieve the best possible results, and she would often throw it in my face that my methods were outdated, because I would not accept growth hormones and was dim when it came to the effects of steroids enhancing the performance"*.
- As to Ms Stepanova's allegations regarding covering up positive doping tests, the Coach maintains that he *"did not know Rodchenkov and never talked to him on the phone. I have only heard about him from [Mr Stepanov]. What bribe are they talking about, really?"*
- As to Ms Stepanova's allegations regarding Dr. Portugalov, the Coach submits that he *"met him on several occasions, at seminars where he lectured. There has been no personal acquaintance to speak of. How could I possibly give money to a totally unfamiliar person? And would he have taken it from me? My salary was more than modest in those days. I never charged [Ms Stepanova] for training. During the time I worked with Kristina Khaleyeva, E. Kumina and other athletes, prohibited drugs and substances were never used, and there were never any doping allegations in respect of those athletes. Anything that has taken place after that is no concern of mine"*.
- The Coach reiterates that *"all accusations brought against me by [Ms Stepanova] are false and were fabricated by her and her husband [Mr Stepanov] on the grounds of revenge, both of them also seeking to slander Russia's leading coaches and athletes, in exchange for some benefits for themselves, to be able to reside and be naturalized abroad, and probably some money into the bargain. [Ms Stepanova] is unable to present a single witness who would corroborate her claims. My arguments can, on the contrary, be corroborated by both the athletes whom I trained and my colleagues, the coaches I have worked with"*.
- As to the recordings corroborating Ms Stepanova's witness statement, the Coach argues that he *"was not given an opportunity to hear the recorded telephone conversations with [Ms Stepanova]. But what with modern-day technologies, it must be fairly easy to tamper with just any telephone conversation by simulating someone's voice"*.

39. The Coach later supplemented his Answer, to which the IAAF did not object. This handwritten statement in English reads as follows:

- *"I am writing this letter to you in relation above matter [sic]. I would like to express my disagreement with your decision to judge me in CAS. I don't admit guilt. I think Mrs Stepanova's indictments are unfounded and it deals with personal animosity. Moreover, I call into question the disqualification of Mrs Stepanova. According to ADAMS her haemoglobin is normal and she has low coefficient of stimulation the same as low reticulocytes under menstrual cycle. Furthermore, she didn't show the record in which I asked her how she had been disqualified with her analyses as for her answer she couldn't*

explain it. She kept secret. Finally, I would like to point out the reasons why I haven't answered yet. First of all I am not able to pay for a translator and a lawyer because of having been suspended. Secondly, I don't understand what the enclosure 8 [the Coach's translated written submission as summarised above] is about".

V. JURISDICTION

40. The IAAF maintains that the jurisdiction of CAS derives from Rule 38.3 of the IAAF Rules (2016-2017 edition). As a consequence of its suspension, the ARAF was not in a position to conduct the hearing process in the Coach's case by way of delegated authority from the IAAF pursuant to Rule 38 of the IAAF Rules. In these circumstances, it is not necessary for the IAAF to impose any deadline on the ARAF for that purpose.

41. Rule 37.2 of the IAAF Rules determines as follows:

"[...] For the purposes of this Rule 37 and Rule 38, references hereafter to [...] an Athlete shall, where applicable, be references to any Athlete Support Personnel or other Person".

42. Rule 38.3 of the IAAF Rules determines as follows:

"If a hearing is requested by an Athlete, it shall be convened without delay and the hearing completed within two months of the date of notification of the Athlete's request to the Member. Members shall keep the IAAF fully informed as to the status of all cases pending hearing and of all hearing dates as soon as they are fixed. The IAAF shall have the right to attend all hearings as an observer. However, the IAAF's attendance at a hearing, or any other involvement in a case, shall not affect its right to appeal the Member's decision to CAS pursuant to Rule 42. If the Member fails to complete a hearing within two months, or, if having completed a hearing, fails to render a decision within a reasonable time period thereafter, the IAAF may impose a deadline for such event. If in either case the deadline is not met, the IAAF may elect, if the Athlete is an International-Level Athlete, to have the case referred directly to a single arbitrator appointed by CAS. The case shall be handled in accordance with CAS rules (those applicable to the appeal arbitration procedure without reference to any time limit for appeal). The hearing shall proceed at the responsibility and expense of the Member and the decision of the single arbitrator shall be subject to appeal to CAS in accordance with Rule 42. A failure of a Member to hold a hearing for an Athlete within two months under this Rule may further result in the imposition of a sanction under Rule 45".

43. The Sole Arbitrator observes that Rule 38.3 of the IAAF Rules determines that the IAAF may elect to refer the matter to CAS if a Member fails to complete a hearing within two months and if the Athlete is an "International-Level Athlete". The Sole Arbitrator has no doubt that the Coach falls under this definition, as, pursuant to Rule 37.2 of the IAAF Rules, "athlete" shall be understood as referring also to athlete support personnel. Coaches are listed in the definition of "athlete support personnel" in the IAAF Rules. The Coach clearly acted on an international level as he trained international-level athletes.

44. Since the membership of ARAF from the IAAF had been suspended, the ARAF is prevented from conducting a hearing in the Coach's case within the deadline set by Rule 38.3 of the IAAF Rules. The Sole Arbitrator confirms that the IAAF was therefore permitted to refer the matter directly to a sole arbitrator appointed by CAS, subject to an appeal to CAS in accordance with Rule 42 of the IAAF Rules, also taking into account the Coach's preference, as expressed in his correspondence dated 25 January 2016.
45. It follows that CAS has jurisdiction to adjudicate and decide on the present matter.

VI. APPLICABLE LAW

46. The IAAF maintains that the procedural aspects of these proceedings shall be subject to the 2016-2017 edition of the IAAF Rules and the substantive aspects of the asserted anti-doping rule violations shall, subject to a possible application of *lex mitior*, be governed by the 2014-2015 edition of the IAAF Rules. To the extent that the IAAF Rules do not deal with a relevant issue, Monegasque law shall apply (on a subsidiary basis).
47. The ARAF and the Coach did not put forward any specific position in respect of the applicable law.
48. Article R58 of the Code 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".

49. The Sole Arbitrator finds that the present proceedings are primarily governed by the IAAF Rules.
50. Pursuant to the legal principle of *tempus regit actum*, the Sole Arbitrator is satisfied that procedural matters are governed by the regulations in force at the time of the procedural act in question. Consequently, whereas the substantive issues are governed by the 2014-2015 edition of the IAAF Rules, procedural matters are governed by the 2016-2017 edition of the IAAF Rules.

VII. MERITS

A. The Main Issues

51. The main issues to be resolved by the Sole Arbitrator are:

- a. Are the recordings of Ms Stepanova's conversations with the Coach admissible as evidence in the proceedings at hand?
- b. Did the Coach violate Rule 32.2(e), Rule 32.2(f)(ii), Rule 32.2(g) and/or Rule 32.2(h) of the IAAF Rules?
 - (a) General reliability of the recordings made by Ms Stepanova
 - (b) The recordings
 - (c) Conclusion in respect of the alleged violation of Rule 32.2(e) of the IAAF Rules
 - (d) Conclusion in respect of the alleged violation of Rule 32.2(f)(ii) of the IAAF Rules
 - (e) Conclusion in respect of the alleged violation of Rule 32.2(g) of the IAAF Rules
 - (f) Conclusion in respect of the alleged violation of Rule 32.2(h) of the IAAF Rules
- c. If any of the charges has been established, what sanction shall be imposed on the Coach?

a) *Are the recordings of Ms Stepanova's conversations with the Coach admissible as evidence in the proceedings at hand?*

52. The Sole Arbitrator observes that the IAAF bases its case on the witness testimony of Ms Stepanova, corroborated partially by recordings of conversations she had with the Coach.
53. The Sole Arbitrator notes that, while the Coach maintains that the content of the recordings has been distorted, he does not dispute the admissibility of the recordings as such. In particular, the Coach has not submitted that the recordings have been obtained illegally.
54. Notwithstanding the above, the Sole Arbitrator deems it important to address this issue *ex officio* as the reliance on illegally obtained evidence in order to come to a conviction may constitute a violation of public policy (*ordre public*) if not properly assessed.
55. As a preliminary issue, the Sole Arbitrator finds that Ms Stepanova did not act as a "secret agent" for WADA and/or the IAAF, but rather as a "whistle-blower" on her own initiative. The allegations made by the Coach that Ms Stepanova may have benefitted financially or otherwise from her "whistle-blowing" activities, have not been substantiated let alone established by the Coach. The content of the recordings shows that Ms Stepanova did not provoke the Coach into making confessions. The conversations seem to have taken place in an open environment without any provocations being made or any duress being exerted by Ms Stepanova. The Coach has not submitted any evidence to the contrary. The Sole Arbitrator finds that the statements made by the Coach during the conversations with Ms Stepanova should therefore be regarded as such. Although the Coach claims that his theory can be corroborated "by both the athletes whom I trained and my colleagues, the coaches I have worked with", he did not express any desire to have such persons heard.
56. The admittance of means of evidence is subject to procedural laws, *i.e.* the *lex arbitri*. Since the seat of the present arbitration is Switzerland, Switzerland's Private International Law Act (the "PILS") is applicable.

57. Article 184(1) PILS determines as follows:

“The arbitral tribunal shall take evidence”.

58. This provision provides arbitral tribunals in international arbitration proceedings seated in Switzerland with ample latitude in the taking of evidence. They do not have to follow the rules of taking evidence in state courts in Switzerland. The power to determine the arbitral proceedings in the absence of an agreement between the parties thus allows the arbitral tribunal to freely determine the principles governing evidence to the extent that these are of a procedural nature and not governed by the applicable substantive law (VEIT, Article 184 PILS, in: ARROYO (Ed.), *Arbitration in Switzerland – The Practitioner’s Guide*, p. 127; with further reference to: POUURET/BESSON, *Comparative Law of International Arbitration*, 2nd ed., 2007, para. 644).

59. It is also contemplated in CAS jurisprudence that besides article 184(1) PILS, “[l]e pouvoir de la Formation de statuer sur l’admissibilité de la preuve est repris dans le Code TAS (cf. l’Article R44.2). Il découle de l’Article 184 alinéa 1 LDIP (ainsi que des articles du Code TAS) que la Formation dispose ainsi d’un certain pouvoir d’appréciation pour déterminer la recevabilité de la preuve (Kaufmann-Kohler/Rigozzi, *op. cit.*, no 478)” (TAS 2009/A/1879, para. 36 of abstract published on the CAS website).

Freely translated into English, without references:

“[t]he power of the Panel to rule on the admissibility of evidence is also noted in the CAS Code (cf. Article 44.2). It follows from Article 184, paragraph 1 of PILS (as well as the CAS Code) that the Panel disposes of a certain discretion to determine the admissibility or inadmissibility of evidence”.

60. In general, the power of the arbitral tribunal related to the taking of evidence is only limited by “procedural public policy”, the procedural rights of the parties, and, where necessary, by the relevant sporting regulations (DE LA ROCHEFOUCAULD E., *The Taking of Evidence Before the CAS*, CAS Bulletin 2015/1, p. 29).

61. In the matter at hand, the relevant sporting regulations are the IAAF Rules. Rule 33(3) of the IAAF Rules reads as follows:

“Facts related to anti-doping rule violations may be established by any reliable means, including but not limited to admissions, evidence of third Persons, witness statements, expert reports, documentary evidence, conclusions drawn from longitudinal profiling such as the Athlete Biological Passport and other analytical information”.

62. The discretion granted to admit evidence under Rule 33(3) of the IAAF Rules is thus fairly wide as it determines that anti-doping rule violations may be established by “any reliable means”. The Sole Arbitrator has no doubt that, pursuant to Rule 33(3) of the IAAF Rules, recordings can in principle be regarded as a reliable means of evidence.

63. The evidence against the Coach in the matter at hand consists of Ms Stepanova’s witness statement as well as the corroborating recordings and transcripts thereof.

64. Whereas Ms Stepanova's witness statement is undoubtedly admissible, particularly because witness statements are explicitly listed as a means of evidence in Rule 33(3) of the IAAF Rules, the Sole Arbitrator finds that the admissibility of the recordings and the transcripts thereof require a more detailed analysis as they have been made covertly.
65. Objectively, the Sole Arbitrator has no doubt that the recordings and transcripts fall under the category "any reliable means" provided for in Rule 33(3) of the IAAF Rules, as they adequately substantiate the IAAF's submissions regarding anti-doping rule violations committed by the Coach. It has to be examined, however, whether the recordings have been illegally obtained.
66. If a means of evidence is illegally obtained, it is only admissible, if the interest to find the truth prevails (Art. 152, 168 Swiss Code of Civil Procedure ("CCP"); HAFTER, Commentary to the Swiss Code of Civil Procedure, 2nd ed., para. 8). According to the Swiss Federal Tribunal and the ECHR, the courts shall balance the interest in protecting the right that was infringed by obtaining the evidence against the interest in establishing the truth. If the latter outweighs the first, the courts may declare a piece of evidence admissible for assessment even though it was unlawfully acquired (BERGER/KELLERHALS, International and Domestic Arbitration in Switzerland, 3rd ed., p. 461).

67. This view has been endorsed by the Swiss Federal Tribunal:

"The principle that illicitly obtained evidence is inadmissible is generally recognized in Swiss legal writing, corresponds with the case law of the Federal Tribunal, and is found in both Art. 140 f. of the Swiss Code of Criminal Procedure (CCrP); SR 312.0) and in Art. 152(2) of the Swiss Code of Civil Procedure (CCP; SR 272). The principle is also recognized in other legal orders; it may only be derogated from exceptionally and in a very limited way, particularly in an adversarial system.

[...] The Appellant rightly refrains from arguing that illegally obtained evidence would be excluded in all cases according to the Swiss view; the interests at hand must instead be balanced; they are, on the one hand, the interest in finding the truth and, on the other hand, the interest in protecting the legal protection infringed upon by the gathering of the evidence (see BGE 140 III 6 at 3.1, p. 8; 139 II 7 at 6.4.1, p. 25; 136 V 117 at 4.2.2, p. 125; 131 I 272 at 4.1.2, p. 279) [...]" (SFT 4A_362/2013, 3.2.1-3.2.2).

68. As to such balancing in the context of a doping case where blood bags were apparently illegally obtained, a CAS panel determined the following:

"L'ordre juridique interne suisse n'établit pas de principe général selon lequel des preuves illicites seraient généralement inadmissibles dans une procédure devant les cours civiles étatiques. Au contraire, le Tribunal Fédéral, dans une jurisprudence constante, est d'avis que l'admissibilité ou la non-admissibilité d'une preuve illicite est le résultat d'une mise en balance de différents aspects et intérêts juridiques (TF, 18.12.1997, 5C.187/1997; TF, 17.2.1999, 5P.308/1999 et TF, 17.12.2009, 8C_239/2008). Sont pertinents, par exemple, la nature de la violation, l'intérêt à la manifestation de la vérité, la difficulté de preuve pour la partie concernée, le comportement de la victime, les intérêts légitimes des parties et la possibilité d'acquérir les (mêmes) preuves de façon légitime (FRANK/STRÄULI/MESSMER, Kommentar zur zürcherischen Zivilprozessordnung, 3ème éd. 1997, vor § 133 ff no.6; VOGEL/SPÜHLER, Grundriss des Zivilprozessrechts, 9ème éd. 2008, 10. Kap. No. 101. La doctrine suisse prédominante suit cette jurisprudence

du Tribunal Fédéral (SPÜHLER, ZZZ 2/2002, p. 148; STAEHELIN, Der Beweis im schweizerischen Zivilprozessrecht, in: Der Beweis im Zivil- und Strafprozess der Bundesrepublik Deutschland, Österreichs und der Schweiz, Mittelbarer oder unmittelbarer Beweis im Strafprozess, 1996; RÜEDI, Materiellrechtswidrig beschaffte Beweismittel im Zivilprozess, 2009, p. 35 ss). L'approche adoptée par le Tribunal Fédéral et la doctrine dominante a, par ailleurs, été codifiée dans le nouveau CPC suisse (Article 152 alinéa 2), qui entrera en vigueur le 1^{er} janvier 2011.

[...]

“Dans le cas d'espèce la Formation considère qu'une lutte efficace contre le dopage constitue en tout état de cause non seulement un intérêt privé de l'association mais aussi un intérêt public. Cela est également mis en évidence par des Conventions, dont la Suisse est état contractant (Convention contre le dopage du Conseil de l'Europe no. 135, Convention internationale contre le dopage dans le sport de l'UNESCO). L'intérêt de lutter contre le dopage est – selon l'opinion unanime de la Formation – dans le cas d'espèce prépondérant à ne pas voir les analyses effectuées dans le cadre d'une enquête pénale transmise à une autorité sportive compétente” (CAS 2009/A/1879, para. 69-74 of abstract published on the CAS website).

Freely translated into English, without references:

“The Swiss national legal order does not establish any general principle according to which illicit evidence is to be considered generally inadmissible in procedure before state civil courts. On the contrary, the Swiss Federal Tribunal, as set out in its constant jurisprudence, is of the opinion that a decision regarding the admissibility of illicit evidence must be the result of a balancing of various juridical interest. Matters considered pertinent, for example, are the nature of the violation, the interest in discerning the truth, the difficulty of adducing evidence for the concerned party, the conduct of the victim, the legitimate interests of the parties, and the possibility of acquiring the (same) evidence in a legitimate manner. The predominant Swiss doctrine follows this jurisprudence of the Federal Tribunal. This approach adopted by the Swiss Federal Tribunal and the dominant doctrine, moreover, have been codified in the new Swiss Civil Code (Article 152, paragraph 2), which will enter into effect on January 1, 2011.

[...]

“[T]he Panel finds that the successful battle against doping constitutes not only a private interest of the association in question but also a public interest. This is also highlighted by the Conventions of which Switzerland is a contracting state. The interest underlying the fight against doping is – according to the unanimous opinion of the Panel – in the present case preponderant over the Athlete's interest in not having the analyses carried out in the context of a criminal investigation transmitted to the competent sport disciplinary authority”.

69. Finally, the Sole Arbitrator notes that, according to the Swiss Federal Tribunal, not only the interest of a complainant in abstaining from obtaining evidence in an illegal manner is relevant in this balancing, but also the interest of not having this evidence used against him:

“Insgesamt überwiegt nach der dargelegten Interessenabwägung das private Interesse des Beschwerdeführers, dass der fragliche Beweis unverwertet bleibt, das öffentliche Interesse an der Wahrheitsfindung. Ein Abstellen auf die rechtswidrig erlangten Filmaufnahmen hält deshalb vor dem Fairnessgebot nicht stand. Dies führt zu einem Beweisverwertungsverbot” (SFT 137 I 218, para. 2.3.5.5).

Freely translated into English

“Overall, after a balancing of the interests at stake, the private interests of the complainants that the evidence in question remains unutilized prevails over the public interest in discerning the truth. Fairness demands that the unlawfully obtained film recordings are excluded. This leads to a prohibition to rely on the evidence”.

70. The balancing test applied by the Swiss Federal Tribunal is confirmed by the European Court of Human Rights in *K.S. and M.S. v. Germany*, no. 33696/11, ECHR 2016-V, 6 October 2016.
71. Acknowledging the above general legal framework, the Sole Arbitrator, in the case at hand, proceeds with balancing the interest in finding the truth on the one hand and, on the other hand, the interest of the Coach in refraining from relying on the recordings.
72. As concluded *supra*, the recordings were not made by Ms Stepanova in her capacity as some sort of a “*secret agent*” for WADA or the IAAF, but rather on her personal initiative to accuse widespread doping in Russian sport. Clearly, Ms Stepanova acted as a whistle-blower.
73. The actions of Ms Stepanova triggered widespread investigations into the systematic use of doping by Russian athletes. Ms Stepanova’s recordings were used by Mr Hajo Seppelt in a documentary that was broadcasted on German television channel ARD on 3 December 2014, which subsequently triggered large scale investigations into the systematic use of doping in Russian athletics by the WADA IC, leading to the conclusion that “[*t*]he investigation has confirmed the existence of widespread cheating through the use of doping substances and methods to ensure, or enhance the likelihood of, victory for athletes and teams”. Following the backdrop of this conclusion, ARAF’s membership of the IAAF was suspended.
74. Therefore, with hindsight, it may be concluded that the interest in discerning the truth concerning systematic doping abuse in Russia was of utmost importance to keep the sport clean and to maintain a level playing field among athletes competing against each other. The Sole Arbitrator deems it unlikely that Ms Stepanova could have acquired the (same) evidence in a legitimate manner.
75. As noted by the Panel in TAS 2009/A/1879, the fight against doping is not only of a private interest, but indeed also of a public interest.
76. It is notorious that doping in Russia is widespread and has been systematically supported by coaches, clubs and government-affiliated organisations. In such a special situation, the interest in finding the truth must prevail over a possible reliance of the Coach on the principle of good faith as a defence against gathering illegally obtained evidence.
77. Considering all the elements above, the Sole Arbitrator finds that the interest in discerning the truth must prevail over the interest of the Coach that the covert recordings are not used against him in the present proceedings. The Sole Arbitrator is not prepared to accept that the principle of good faith has been violated in the proceedings at hand.

78. Consequently, the Sole Arbitrator finds that the recordings of Ms Stepanova's conversations with the Coach are admissible as evidence in the proceedings at hand.

b) Did the Coach violate Rule 32.2(e), Rule 32.2(f)(ii), Rule 32.2(g) and/or Rule 32.2(h) of the IAAF Rules?

79. The Coach has been charged with violating four separate provisions of the IAAF Rules. These charges will be discussed individually in more detail below.

80. Rule 33.1 of the IAAF Rules determines the following in respect of the burden and standard of proof for violations of the IAAF Rules:

“The IAAF, the Member or other prosecuting authority shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether the IAAF, the Member or other prosecuting authority has established an anti-doping rule violation to the comfortable satisfaction of the relevant hearing panel, bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt”.

81. The IAAF principally relies on three parts of the recordings of the conversations between Ms Stepanova and the Coach. The Sole Arbitrator will deal with these three parts separately below.

ba) General reliability of the recordings made by Ms Stepanova

82. The Coach maintains that Ms Stepanova knowingly adapted the content of the recordings and that the activities of Ms Stepanova were targeted solely against him out of revenge.

83. The Sole Arbitrator finds that the recordings are of a reasonably good quality and allow to draw conclusions therefrom. The Coach did not object to the content of the transcripts in the Russian language or the translations into English, and the Sole Arbitrator has no reason to doubt about the veracity thereof. Although certain parts of the recordings are inaudible, such inaudible parts are only short. The Sole Arbitrator considers it very unlikely that these short inaudible sections would entirely change the context in which the audible parts must be understood. The Sole Arbitrator concludes that nothing indicates that the recordings have been fabricated or distorted in any way.

84. As will be examined in more detail below, the Sole Arbitrator considers the statements made by the Coach in the recordings to be so abundantly clear that no further corroborating evidence is needed beyond Ms Stepanova's testimony, the recordings and the transcripts of the recordings. The IAAF Rules do not set forth that a conviction must be based on multiple pieces of evidence and, in any event, the evidence against the Coach does not consist only of Ms Stepanova's subjective opinion, but also on the recordings of the conversation between Ms Stepanova and the Coach, which is objective evidence.

85. At this stage, reference may be made to an article by Ms Estelle De La Rochefoucauld:

*“In two longstanding doping-related cases, CAS Panels have admitted that the uncontroverted testimony of a wholly credible witness can be sufficient to establish a doping offence absent any adverse analytical finding. The arbitrators also held the existence of a right and power to draw an adverse inference from the athlete’s refusal to testify. However, in the circumstances, the witness’ testimonies established the admission by the athlete of the use of a prohibited substance and were sufficient to establish the commission of a doping offence. The evidence alone was therefore sufficient to convict” (DE LA ROCHEFOUCAULD, *The Taking of Evidence Before the CAS*, CAS Bulletin 2015/1, with further reference to CAS 2004/O/645 USADA v. M. & IAAF, para. 45 ff. and CAS 2004/O/649 USADA v. G, para. 46 ff.).*

86. Notwithstanding the above, the Sole Arbitrator will be careful in reviewing the accusations of Ms Stepanova in her witness statement insofar they are not corroborated by her recordings. Pursuant to article 4(8) of the IBA Rules on the Taking of Evidence in International Arbitration, if the appearance of a witness has not been requested, none of the other parties shall be deemed to have agreed to the correctness of the content of the witness statement. However, in the light of the fact that no objection was raised against Ms Stepanova’s witness statement by the Coach and because both parties agreed to exempt Ms Stepanova from being examined, the Sole Arbitrator is prepared to rely on Ms Stepanova’s witness statement, subject to the credibility test.
87. Consequently, the Sole Arbitrator finds that the recordings are in general reliable evidence.

bb) The recordings

Turning his attention to the recordings, the Sole Arbitrator observes that between minute 5:21 and 8:18 of the recordings dated 12 July 2014, the following conversation took place between Ms Stepanova and the Coach:

Stepanova: *“And what have you brought? Eposhka?”*
Coach: *“Ah?”*
Stepanova: *“Eposhka?”*
Coach: *“Peptides”.*
Coach: *“[Inaudible]”*
Stepanova: *“[Inaudible] what sort of peptides?”*
Coach: *“That’s everything”.*
Stepanova: *“Is there anything on them? No, nothing?”*
Coach: *“No, they’re made by our institute”.*
Stepanova: *“So, they aren’t detectible? They’re what this, you know... What does it... give you? Stamina?”*

- Coach: *“There are various types. There are some that give stamina. There are some that increase testosterone. There are... For example some that increase adenosine triphosphoric acid... [inaudible] Basically, there’s a lot of everything... various types... 12 sorts in all”.*
- Stepanova: *“But what about the fact that there are steroid passports? It’ll show up now on your testosterone levels”.*
- Coach: *“Ah no, no... it doesn’t pick it up”.*
- Stepanova: *“No, they look at this testosterone in relation to normal testosterone and if you are saying it raises testosterone levels, then...”*
- Coach: *“For now still no, for the time being EPO is detectable for up to 12 days”.*
- Stepanova: *“I.e. the timings for EPO haven’t changed? So it’s still 12 days?”*
- Coach: *“Well, yeah, up to 20 days, so... 12 days it’s all the same... [inaudible]”*
- Stepanova: *“This only works out here in Russia. Overseas it’s all finished. There they get caught by the test data and the blood passport”.*
- Coach: *“People get caught on their date here as well. Khaleeva has recently been caught again... Did you know that she’s been caught? Did you know? They’ve caught a whole bunch of them [inaudible]”.*
- Stepanova: *“Well, she said that they didn’t ban her... but that they... just gave her a warning. Supposedly let her off for a first offence”.*
- Coach: *“They handed over a lot of money that time”.*
- Coach: *“About 50 grand we handed over”.*

88. In respect of this part of the conversation, the IAAF maintains that the Coach indicated to have peptides on him and that some of the peptides he was carrying would increase testosterone.
89. The IAAF further maintains that Ms Ugarova had been caught, amongst a “bunch” of others and that she got away by “hand[ing] over a lot of money”. “About 50 grand we handed over”.
90. Based on the statements of the Coach, the Sole Arbitrator is indeed convinced that the Coach was carrying peptides with him, of which some would increase testosterone.
91. In respect of the payment of “50 grand” in order to let Ms Ugarova get away although she had been “caught”, the Sole Arbitrator notes that the Coach first stated that “[t]hey handed over a lot of money that time”, before stating that “[a]bout 50 grand we handed over”. These statements are contradicting in the sense that the Coach first says “they” and then “we”. In the absence of any additional corroborating evidence of payments being made by the Coach in order to avoid an athlete being prosecuted for an anti-doping rule violation, the Sole Arbitrator is not convinced that the Coach proceeded with the payment of this money.

92. The conversation continues and between minute 21:09 and 23:08 of the recordings dated 12 July 2014, the following was discussed between Ms Stepanova and the Coach:

Coach: *"He began to meddle around with her early on. I said, Sasha, we've got the money, why do you need to do this? Well, he... you see,... These guys have gone, now [Volobuyev] has returned [inaudible] as he gave".*

Stepanova: *"What are you preparing him on?"*

Coach: *"Peptides".*

Stepanova: *"Peptides. Well don't you use any pills?"*

Coach: *"They took the last of them two months ago".*

Stepanova: *"Well, in general is it possible now? Because the timings seem to have increased".*

Coach: *"Nothing has increased".*

Stepanova: *"Well..."*

Coach: *"They've only just passed. They passed on the 31st".*

Stepanova: *"Well, they say that "Turik" now takes 90, and "Ox" – 30, but previously "Ox" was..."*

Coach: *"Ox" also used to be 30".*

Stepanova: *"25 wasn't it".*

Coach: *"30. Well, it was 23..."*

Stepanova: *"Or 16... Portugalov said 16".*

Coach: *"No, not "Ox", Parabolan was 16".*

Stepanova: *"So what used to be 16 has apparently now become 30".*

Coach: *"Well basically they passed on the 30th, they were tested and passed on Parabolan... Kupina and I got through on Parabolan last year... everyone got caught on the 21st day, but I got through on the 15th. Well I got... admittedly I gave 7,000".*

93. In respect of this part of the conversation, the IAAF argues that the Coach stated that he was preparing one of his athletes on peptides and steroids and that the latter had passed "on the 31st" day after taking the drugs.

94. The Sole Arbitrator notes that the conversation shifts from the Coach admitting that he prepared Mr Volobuyev on peptides to the statement that multiple athletes took pills two months ago, but nevertheless passed a doping test 31 days after taking the drugs. Although there are strong indications that the Coach prepared more than one athlete on peptides and pills, the Sole Arbitrator is only comfortably satisfied that the Coach admits in this part of the conversation that he prepared at least one athlete (Mr Volobuyev) with peptides.

95. Between minute 1:36 and 2:12 of the recordings dated 1 September 2014, the following conversation took place between Ms Stepanova and the Coach:

Coach: “[...] *Kate left immediately, you know?*”

Stepanova: “*Which Kate?*”

Coach: “*She told me there should be more. Well, Kupina*”.

Stepanova: “*And where has she gone?*”

Coach: “[*Inaudible*]”

Coach: “*I said to her: “Well, Ok, come on [inaudible]”. She came a week later: What are you not [inaudible: telling?] me? I said, “Listen to the godfather”, I said, “do you know how much I spent on you? [Inaudible] peptides are expensive... [inaudible] It’s not anabolic [inaudible]”.*”

96. Based on the content of the recordings, the Sole Arbitrator agrees with the conclusion drawn by the IAAF that the Coach purchased and delivered peptides to Ms Kupina.

97. Having examined all the parts of the recordings considered relevant, the Sole Arbitrator now turns his attention to examining of whether the Coach violated the four charges brought against him by the IAAF.

bc) Conclusion in respect of the alleged violation of Rule 32.2(e) of the IAAF Rules (tampering)

98. Rule 32.2(e) of the IAAF Rules determines as follows:

“Tampering or Attempted Tampering with any part of Doping Control”.

99. The IAAF Rules provide the following definitions of “Tampering” and “Doping Control” respectively:

“Altering for an improper purpose or in an improper way; bringing improper influence to bear; interfering improperly; obstructing; misleading or engaging in any fraudulent conduct to alter results or to prevent normal procedures from occurring; or providing fraudulent information”.

“All steps and processes from test distribution planning through to ultimate disposition of any appeal including all steps and processes in between such as provision of whereabouts information, Sample collection and handling, laboratory analysis, therapeutic use exemptions, results management and hearings”.

100. According to the IAAF, the evidence shows that the Coach made arrangements on three occasions for positive tests not to be reported in exchange for payments.

101. According to the IAAF, Ms Stepanova expressly stated in her witness statement that, upon the Coach’s instruction, she paid RUB 30’000 to the director of the Moscow laboratory, following which the Coach told her that she needed no longer be concerned about the positive

test. The Coach allegedly also admitted to paying “*about 50 grand*” for Ms Ugarova to get away with a positive test and “*7’000*” for Ms Kupina to get through a doping control 15 days after taking Parabolan.

102. Hence, the IAAF's position contains three separate allegations of “Tampering” by the Coach. The Sole Arbitrator will proceed to assess these three situations one by one.

103. The payment of RUB 30’000 allegedly made by Ms Stepanova upon the instruction of the Coach is not discussed in the recordings. Thus, the allegations expressed by Ms Stepanova in her witness statement are not corroborated by any objective evidence.

104. Ms Stepanova only stated the following in her witness statement in this respect:

“[The Coach] told me that he had discussed the matter directly with the Director of the Moscow laboratory, Dr. Rodchenkov; it was agreed that I would pay 30’000 roubles, i.e. approximately 1’000 dollars in 2010, to Dr. Rodchenkov.

I made the payment directly to one of Dr. Rodchenkov’s acquaintances, a person with the last name of Evsukov.

[The Coach] told me that Dr. Rodchenkov had called him on the same day as my payment to report that I need no longer be concerned about the positive test”.

105. Although the Sole Arbitrator does not consider Ms Stepanova’s witness statement to be incredible or unreliable, he finds that the information provided in respect of the payment of RUB 30’000 alone does not allow to conclude to his comfortable satisfaction that the Coach is guilty of “Tampering”.

106. In respect of the payment of “*about 50 grand*” for Ms Ugarova, the Sole Arbitrator finds that the recordings do not constitute clear evidence that the Coach proceeded with the payment of this amount. Indeed, as set out above, the Coach states that “we” made the payment as well as that “they” made the payment. The Sole Arbitrator considers this inconsistency important and leads him to the conclusion that he is not comfortably satisfied that the Coach paid an amount of “*about 50 grand*” to make a positive test of Ms Ugarova go away.

107. Finally, in respect of the alleged payment of “*7,000*” for Ms Kupina, the Sole Arbitrator finds that the transcripts of the recordings are not entirely clear. Whereas the Coach clearly admits to giving “*7,000*”, the Sole Arbitrator finds that no link can be established from which it derives that this amount was paid in order to make a positive test of Ms Kupina disappear. It rather appears that the Coach paid “*7,000*” in order to “get through” himself. The Sole Arbitrator finds that, in order to establish a serious offence such as “Tampering”, more circumstances regarding the payment would have to be provided.

108. Consequently, in view of all the above, the Sole Arbitrator is not convinced to his comfortable satisfaction that the Coach violated Rule 32.2(e) of the IAAF Rules.

bd) *Conclusion in respect of the alleged violation of Rule 32.2(f)(ii) of the IAAF Rules (possession)*

109. Rule 32.2(f)(ii) of the IAAF Rules determines as follows:

“Possession of a Prohibited Substance or Prohibited Method.

(ii) Possession by an Athlete Support Personnel In-Competition of any Prohibited Method or Prohibited Substance or Possession by an Athlete Support Personnel Out-of-Competition of any Prohibited Method or Prohibited Substance which is prohibited Out-of-Competition in connection with an Athlete, Competition or training, unless the Athlete Support Personnel establishes that the Possession is pursuant to a TUE granted to an Athlete in accordance with Rule 34.9 (Therapeutic Use) or other acceptable justification”.

110. The IAAF Rules provide the following definition for “Possession”:

“The actual physical possession or the constructive possession of a Prohibited Substance or Prohibited Method (which shall be found only if the Person has exclusive control over the Prohibited Substance / Method or the premises in which a Prohibited Substance / Method exists); provided, however, that if the Person does not have exclusive control over the Prohibited Substance / Method or the premises in which a Prohibited Substance / Method exists, constructive possession shall only be found if the Person knew about the presence of the Prohibited Substance / Method and intended to exercise control over it. Provided, however, there shall be no anti-doping rule violation based solely on possession if, prior to receiving notification of any kind that the Person has committed an anti-doping rule violation, the Person has taken concrete action demonstrating that the Person never intended to have possession and has renounced possession by explicitly declaring it to the IAAF, a Member or an Anti-Doping Organisation. Notwithstanding anything to the contrary in this definition (including by any electronic or other means) of a Prohibited Substance or Prohibited Method constitutes possession by the Person who makes the purchase”.

111. The Sole Arbitrator fully adheres to the position of the IAAF in this respect and considers that the Coach clearly admitted to be in possession of (at least) peptides on 12 July 2014. During the conversation with Ms Stepanova on 12 July 2014, the Coach explicitly admits having brought with him peptides:

Stepanova: *“And what have you brought? Eposhka?”*

Coach: *“Ah?”*

Stepanova: *“Eposhka?”*

Coach: *“Peptides”.*

112. The Sole Arbitrator notes that peptides are mentioned under section “S2” of the relevant lists of prohibited substances (the “Prohibited Lists”). Peptides are prohibited in- and out-of-competition and are non-specified substances. Possession of peptides is therefore prohibited at all times.

113. Consequently, the Sole Arbitrator is comfortably satisfied that the Coach violated Rule 32.2(f)(ii) of the IAAF Rules.

be) Conclusion in respect of the alleged violation of Rule 32.2(g) of the IAAF Rules (trafficking)

114. Rule 32.2(g) of the IAAF Rules determines as follows:

“Trafficking or Attempted Trafficking in any Prohibited Substance or Prohibited Method”.

115. The IAAF Rules provide the following definition for “Trafficking”:

“The selling, giving, transporting, sending, delivering or distributing of a Prohibited Substance or Prohibited Method (either physically or by any electronic or other means) by an Athlete, Athlete Support Personnel or any other Person to any third party; provided however, this definition shall not include the actions of bona fide medical personnel involving a Prohibited Substance or Prohibited Method used for genuine and legal therapeutic purposes or other acceptable justification and shall not include actions involving Prohibited Substances which are not prohibited in Out-of-Competition Testing unless the circumstances as a whole demonstrate such Prohibited Substances are not intended for genuine and legal therapeutic purposes”.

116. The Sole Arbitrator accepts the position of the IAAF. The evidence clearly shows that the Coach provided peptides to his athletes on multiple occasions in breach of Rule 32.2(g) of the IAAF Rules.

117. On the basis of the recordings of 1 September 2014, the Sole Arbitrator is convinced that the Coach also provided peptides to Ms Kupina. From this part of the recordings it also appears that the Coach was involved in the purchasing of the peptides:

Coach: “[...] I said, “Listen to the godfather”, I said, “do you know how much I spent on you [clearly talking about Ms Kupina]? [Inaudible] peptides are expensive... [inaudible] It’s not anabolic [inaudible]”.

118. Besides the content of the recordings, the Sole Arbitrator deems the Witness Statement of Mr Stepanova credible. Its content was at least implicitly accepted by the Coach as he allowed Ms Stepanova to be exempted from testifying at the Hearing.

119. In her Witness Statement, Ms Stepanova maintains that the Coach provided her with testosterone propionate, gave her EPO injections with dosages of Oral Turinabol, and provided her with Oxandrolone and Parabolan. Ms Stepanova also stated that “[a]t the start of my dealings with Dr. Portugalov, [the Coach] would pay him for the drugs and supplements” and that she injected testosterone ampoules that were provided to her by the Coach.

120. The Sole Arbitrator finds that these actions clearly fall under the definition of “Trafficking” set out in the IAAF Rules.

121. Consequently, the Sole Arbitrator is comfortably satisfied that the Coach violated Rule 32.2(g) of the IAAF Rules at least in respect of Ms Stepanova and Ms Kupina.

bf) *Conclusion in respect of the alleged violation of Rule 32.2(h) of the IAAF Rules (administration)*

122. Rule 32.2(h) of the IAAF Rules determines as follows:

“Administration or Attempted administration to any Athlete In-Competition of any Prohibited Method or Prohibited Substance, or administration or Attempted administration to any Athlete Out-of-Competition of any Prohibited Method or Prohibited Substance that is prohibited Out-of-Competition or assisting, encouraging, aiding, abetting, covering up or any other type of complicity involving an anti-doping rule violation or any Attempted anti-doping rule violation”.

123. The IAAF refers to CAS jurisprudence in submitting that for a coach to remit pills to his players before a match is administration of a prohibited substance.

124. The Sole Arbitrator agrees with the position of the IAAF insofar it argues that it is self-evident that peptides were provided by the Coach to his athletes, including to Ms Kupina.

125. The Sole Arbitrator observes that the CAS panel in the jurisprudence referred to by the IAAF argues as follows:

“It is undisputed that Mr Marques and Mr Medeiros tested positive on 31 October 2008 and on 9 November 2008 for Oxymesterone following the ingestion of pills given them by Mr Eranosian before the match. During the investigation of Mr Michanikos, as confirmed by the Investigation Report, it was held that the pills administered by Mr Eranosian were contaminated with Oxymesterone [i.e. a prohibited substance]. [...] The Panel therefore concludes that the administration of Oxymesterone by Mr Eranosian to Mr Marques and Mr Medeiros constitutes a doping offence [...]” (CAS 2009/A/1817 & CAS 2009/A/1844, para. 177-181).

126. The Sole Arbitrator finds that based on the recordings it is clear that the Coach administered peptides to his athletes and aided and encouraged them in taking the substances. The actions of the Coach therefore fall squarely within the definition of administration as set out in the IAAF Rules.

127. Furthermore, the Sole Arbitrator observes that Ms Stepanova in her witness statement maintains that the Coach *“started to give me EPO injections along with dosages of Oral Turinabol. He showed me how to inject the EPO”*.

128. The Sole Arbitrator has no reason to doubt about the truthfulness of Ms Stepanova’s Witness Statement in this respect and considers this evidence to be in line with the recordings.

129. Consequently, the Sole Arbitrator is comfortably satisfied that the Coach violated Rule 32.2(h) of the IAAF Rules at least in respect of Ms Stepanova and Ms Kupina.

c) *If any of the charges has been established, what sanction shall be imposed on the Coach?*

130. Rule 40.7(d)(i) of the IAAF Rules determines as follows:

“For the purposes of imposing sanctions under Rule 40.7, an anti-doping rule violation will only be considered a second violation if it can be established that the Athlete or other Person committed the second anti-doping rule violation after the Athlete or other Person received notice pursuant to Rule 37 (Results Management) or after reasonable efforts were made to give notice of the first anti-doping rule violation; if this cannot be established, the violations shall be considered together as one single first violation and the sanction imposed shall be based on the violation that carries the more severe sanction; however, the occurrence of multiple violations may be considered as a factor in determining aggravating circumstances (Rule 40.6)”.

131. The Sole Arbitrator agrees with the IAAF that, pursuant to Rule 40.7(d)(i) of the IAAF Rules, all violations in the matter at hand shall be considered together as one single first violation and that the sanction imposed shall be based on the violation that carries the more severe sanction.

132. Although the Coach is acquitted of violating Rule 32.2(e) of the IAAF Rules, the Coach is nevertheless found guilty of violating Rules 32.2(f)(ii), (g) and (h) of the IAAF Rules. Out of these three violations, “Trafficking” and “Administration” of prohibited substances carry the more severe sanction with an ineligibility period of four years up to lifetime.

133. Rule 40.3(b) of the IAAF Rules determines as follows:

“For violations of Rule 32.2(g) [...] or Rule 32.2(h) [...], the period of Ineligibility imposed shall be a minimum of four (4) years up to lifetime Ineligibility unless the conditions in Rule 40.5 are met. [...]”.

134. The Sole Arbitrator finds that no reduction of this “standard” period of ineligibility is warranted since the Coach provided non-specified prohibited substances to his athletes on multiple (at least two) occasions. The Coach thereby acted intentionally, and no reduction of the period of the period of ineligibility because of “No Fault or Negligence” or “No Significant Fault or Negligence” comes into play. Furthermore, the Coach neither admitted to the anti-doping rule violation, nor did he provide substantial assistance. Rule 40.5 of the IAAF Rules is therefore not applicable.

135. As a consequence, the Sole Arbitrator finds that the period of ineligibility to be imposed on the Coach shall not be shorter than four years.

136. The IAAF maintains that the 2014-2015 edition of the IAAF Rules does not provide any guidance as to how the *quantum* of the sanction shall be determined from four years to lifetime ineligibility, whereas the 2016-2017 edition of the IAAF Rules states that the sanction shall depend on the “*seriousness of the violation*”.

137. On the basis of an arbitral award of the American Arbitration Association (“AAA”) (USADA v. Block, AAA No. 77 190 00154 10 (2011)), the IAAF submits that the Panel has discretion in formulating an appropriate period of ineligibility on a fact specific, case-by-case basis.
138. Although the IAAF admits that the regime of aggravating circumstances of Rule 40.6 of the IAAF Rules is not directly applicable in the context of the violations of Rule 32.2(g) and 32.2(h) of the IAAF Rules, aggravating circumstances can be taken into account in determining the sanction for these specific violations since the commentary to the equivalent article in the World Anti-Doping Code provides that “*the sanctions for these violations [i.e. Trafficking and Administration] already build in sufficient discretion to allow consideration of any aggravating circumstances*”.
139. The Sole Arbitrator agrees with this interpretation of the IAAF and finds that “*aggravating circumstances*” can and must be taken into account in determining the period of ineligibility to be imposed on the Coach for violating Rule 32.2(g) and 32.2(h) of the IAAF Rules.
140. In this context, the IAAF submits that the occurrence of multiple violations, that “*athlete support personnel owe a higher duty to the integrity of the anti-doping system than even do athletes*” (with reference to jurisprudence), that “*deceptive and obstructive actions by coaches or managers aimed at covering up systematic and widespread doping practices of a serious nature (because of the type of products involved) may lead to the highest possible sanction, i.e. to a life ban*” (with reference to jurisprudence) may be considered aggravating factors.
141. The IAAF submits that since the Coach systematically and knowingly advocated the use of, administered and procured prohibited substances to his athletes, advised his athletes as to how and when to use prohibited substances, intentionally and knowingly participated in a doping programme organised by Dr. Portugalov, paid amounts, or arranged for amounts to be paid to third parties in order for positive tests not to be reported, he repeatedly committed different anti-doping rule violations over a period of at least seven years, from 2007 to 2014, he continues to deny any involvement with prohibited substances, a lifetime period of ineligibility is the only appropriate sanction.
142. In determining a specific period of ineligibility on the Coach, the Sole Arbitrator finds guidance in the reasoning of the Panel in USADA v. Geert Leinders, AAA No. 77 20 1300 0604 (2015):

“Anti-doping arbitration panels have determined that the following aggravating factors are relevant in determining whether a sanction longer than the prescribed four-year minimum period of ineligibility is appropriate and should be imposed on athlete support personnel: “lead[ing] an athlete into danger of using prohibited substances” rather than “being a watchdog when it comes to prohibited substances” (USADA v. Drummond, AAA No. 01-14-0000-6146 (2014) at p. 22-23); existence of “multiple violations and seriousness of the offences” (Bruyneel at §§231-232); “provid[ing] substantial help for multiple third-party anti-doping rule violations” (Hoch v. FIS & IOC, CAS 2008/A/1513 (2009) at §8.8.4); being “at the apex of a conspiracy to commit widespread doping ... spanning many years and many riders” (Bruyneel at §229); “act[ing] in bad faith and with a view to dissimulating doping practices” (WADA v. Jamaludin, et al., CAS 2012/A/2791 (2013) at p. 14); “acting intentionally when undertaking the serious anti-doping

violation he committed” (Jamaludin at p. 36); “*long-time experience in his position*” (Jamaludin at p. 37); “*under[taking] seriously deceptive and obstructive actions*” (Jamaludin at p. 37); *being in a position “which presents him to young men and women as a trusted advisor and confidant”*(USADA v. Stewart, AAA No. 77 190 110 10 (2010) at p. 6); “*administration of highly dangerous substances, which presented a risk of grave injury or death to any athlete who used the substances* (Stewart at p. 6); and “*the need to send a clear and deterring message to other athlete support personnel*” (USADA v. Block, No. 77 190 00154 10 (2011) at §9.6). (USADA v. Geert Leinders, AAA No. 77 20 1300 0604 (2015), para. 118).

143. The Sole Arbitrator finds, although the charge of “Tampering” is not proven, that the anti-doping rule violations of the Coach have nevertheless been severe, that multiple anti-doping rule violations have been committed by the Coach over a period of time, and that he provided multiple athletes (at least two) with prohibited substances.
144. The Sole Arbitrator agrees with the IAAF that athlete support personnel in general bears an even higher responsibility than athletes themselves in respect of doping considering the influence they usually exert on their athletes. Indeed, in an AAA arbitration, the panel reasoned that “[t]he cases are clear that athlete support personnel owe a higher duty to the integrity of the anti-doping system than even do athletes. The athlete support personnel suspensions are generally far more severe than those for athletes because of the position of trust and commitment to integrity expected of athlete support personnel”. (USADA v. Block, AAA No. 77 190 00154 10 (2011), para. 119)
145. These factors together warrant a significant period of ineligibility to be imposed on the Coach.
146. The Sole Arbitrator finds that, as a matter of principle, a lifetime period of ineligibility could be considered both justifiable and proportionate in doping cases even if the ban is imposed for a first violation. However, the Sole Arbitrator agrees with the reasoning of a CAS panel that “[the imposition of a lifetime ban] is only justified where the seriousness of the offence is most extraordinary” (CAS 2008/A/1513, para. 8.8.3).
147. The Sole Arbitrator considers pronouncing a lifetime period of ineligibility too severe in the circumstances of the present case. Although the Coach provided prohibited substances to his athletes, he does not appear to have been one of the ringleaders in the widespread use of doping in Russian athletics and appears to have contributed to the system in the same way as many others. The Sole Arbitrator finds that the Coach’s violations do not reach the level of seriousness required to justify imposing a lifetime period of ineligibility. Although the severity of the Coach’s violations should in no way be downplayed, the Sole Arbitrator considers it just and fair to provide the Coach with an opportunity to better his life and to continue his career as an athletics coach after having served his suspension.
148. In view of the above considerations, the Sole Arbitrator, realising that imposing a specific period of ineligibility without any clear regulatory guidance as to the range of sanctions available and without guiding precedents is necessarily somewhat arbitrary, finds that a period of ineligibility of 10 years shall be imposed on the Coach.
149. Finally, turning to the starting date of the period of ineligibility and the credit to be given for the provisional suspension served, Rule 40.10(b) of the IAAF Rules determines as follows:

“If a Provisional Suspension is imposed and respected by the Athlete, then the Athlete shall receive a credit for such period of Provisional Suspension against any period of Ineligibility which may be ultimately imposed”.

150. The IAAF submits that the Coach continued to train athletes, notwithstanding the provisional suspension imposed on him on 24 August 2015. The Coach also appears on the official score sheet of the Russian national championship held from 23 to 25 February 2016. The IAAF maintains that, since the Coach violated his provisional suspension, he shall not receive any credit for it.
151. The Sole Arbitrator observes that Rule 40.10(b) of the IAAF Rules specifically determines that a provisional suspension needs to have been respected in order for it to be credited from the period of ineligibility imposed.
152. Based on the documentary broadcasted on the German TV channel ARD on 6 March 2016, and in the absence of any arguments or evidence to the contrary, the Sole Arbitrator has no doubt that the Coach continued to train his athletes despite the provisional suspension imposed on him.
153. The Sole Arbitrator finds that any violation of the provisional suspension should lead to the consequence that no credit should be given for the provisional suspension at all, even if the Coach complied with his provisional suspension for a certain period of time before violating it.
154. The Sole Arbitrator feels comforted in this conclusion by the reasoning of another CAS panel, although such arbitral award was based on different anti-doping regulations:

“[A]s we read in Article 10.9.5 of the JADCO Anti-Doping Rules, an athlete’s obligation to respect a provisional suspension in order to receive credit for that period of ineligibility applies to the provisional suspension as a whole and not merely a part of it. Accordingly, even though Mr. Robinson respected approximately half of the provisional suspension, he did not respect it in its entirety and the Panel therefore concludes that he cannot receive credit for the provisional suspension”.

155. Consequently, the Sole Arbitrator finds that no credit shall be given for the provisional suspension imposed on the Coach.

B. Conclusion

156. Based on the foregoing, and after taking into due consideration all the evidence produced and all arguments made, the Sole Arbitrator finds that:
 - a. The illicit recordings of Ms Stepanova’s conversations with the Coach are admissible as evidence in the proceedings at hand.
 - b. The Coach did not violate Rule 32.2(e) of the IAAF Rules (tampering).
 - c. The Coach violated Rule 32.2(f)(ii) of the IAAF Rules (possession).

- d. The Coach violated Rule 32.2(g) of the IAAF Rules (trafficking).
- e. The Coach violated Rule 32.2(h) of the IAAF Rules (administration).
- f. A period of ineligibility of 10 years is imposed on the Coach.
- g. The provisional suspension imposed on the Coach shall not be credited against the period of ineligibility to be served by the Coach.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The claim filed on 17 March 2016 by the International Association of Athletics Federations against the All Russia Athletics Federation and Mr Vladimir Mokhnev is upheld.
2. A period of ineligibility of 10 years is imposed on Mr Vladimir Mokhnev starting from the date of this award.
3. (...).
4. (...).
5. (...).
6. All other and further prayers or requests for relief are dismissed.