



Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2018/A/6047 Russian Anti-Doping Agency v. Andrei Valerievich Eremenko

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Ms Sylvia Schenk, Attorney-at-Law in Frankfurt, Germany

in the arbitration between

Association Russian Anti-Doping Agency, Moscow, Russia

Represented by Mr Graham Arthur, GM Arthur, Liverpool, United Kingdom

Appellant

and

Andrei Valerievich Eremenko, St. Petersburg, Russia

Represented by Mr Egor Larichkin, Buzko Legal, St. Petersburg, Russia

Respondent

I. THE PARTIES

1. The Association Russian Anti-Doping Agency ("RUSADA" or "the Appellant") is the National Anti-Doping Organization for Russia. RUSADA has a number of responsibilities pursuant to the All Russian Anti-Doping Rules ("the ADR") and the individual provisions thereof, these being the Anti-Doping Rules approved by the order of the Ministry of Sport of the Russian Federation of 9 August 2016 No 947.
2. Andrei Valerievich Eremenko ("the Respondent" or "Mr Eremenko") is a coach of the Academy of Track and Field of St. Petersburg since 2005 and thus an Athlete Support Person as defined in Article 1.3.3.1(b) of the ADR.
3. Appellant and Respondent will together be referred to as "the Parties".

II. INTRODUCTION AND FACTUAL BACKGROUND

4. This is an appeal by the Appellant against a decision of the Disciplinary Anti-Doping Commission ("the DADC") in Russia dated 12 April 2018 ("the Decision").
5. The Decision acquitted the Respondent of having committed an Anti-Doping Rule Violation ("ADRV") by Attempted Tampering of a doping control and/or Complicity involving an anti-doping rule violation in connection with Yulia Viktorovna Malueva ("Ms Malueva" or "the Athlete").
6. The circumstances discussed below constitute a summary of the relevant facts and evidence as set forth by the Parties in their respective written submissions and orally during the hearing. This chapter on the factual background is made 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. The course of events was substantially uncontested.

A. Primary Facts

7. On 2 September 2017, a number of Doping Control Officers ("DCO") and other personnel instructed and authorized by RUSADA attended a track and field competition taking place in Camp Adler, City of Sochi, Russia, ("the Event") in order to collect samples for doping control.
8. The Event was attended by the Athlete who has been coached by the Respondent since she was 10 years old, i.e. since around 2005. Ms Malueva competed at the Event (2nd place hurdle relay) and was subject to the ADR as an athlete.
9. The Respondent was on holidays near the stadium where the competition took place and visited the race of his athlete, albeit not in an official function.
10. On 2 September 2017, at around 10:30 am, having finished her race at the Event, Ms Malueva was notified by one of the DCO that she was required to provide a urine sample. Since that moment, this DCO was with the Athlete until the attempt to receive a sample from her was finally given up around 7:15 pm on 2 September 2017.

11. After the notification the main course of events was the following:
- i) When the Athlete and the accompanying DCO, Olga Meshkova ("Ms Meshkova"), went to the doping control station ("the Station") they saw the Respondent and the Athlete waived to him with the notification letter.
 - ii) As the Athlete said that she was not able to provide a urine sample the proceedings lasted for hours. During all the time at the Station she was continuously texting with her phone. Around lunchtime, the Athlete asked to go to her hotel room, to change and to have lunch. She was accompanied by Ms Meshkova and had a meal and a drink in the restaurant.
 - iii) When returning to the Station, the Athlete stated to feel unwell, complained about nausea and headache and it looked like she was vomiting but Ms Meshkova could not see any vomits.
 - iv) Finally, at around 3:30 pm the Athlete said she was ready for sample collection and Ms Meshkova accompanied her to the toilet. The Athlete filled a bottle, then she fell to the floor and the bottle with urine was dropped into the toilet. The Athlete got up again stating that she had fainted and asking for medical treatment.
 - v) At some time during the afternoon the Athlete had phoned the Respondent who called an ambulance. There was also an ambulance present at the venue.
 - vi) The ambulance called by the Respondent arrived after 3pm; around that time also the Respondent, who had been playing tennis in between, came to the Station.
 - vii) The ambulance doctor saw no objective indication for hospitalization. Nevertheless, it was decided to bring the Athlete to the hospital.
 - viii) When the ambulance wanted to leave, there was a dispute about the Respondent joining the Athlete and Ms Meshkova; finally, around 4:00 pm the Respondent drove with them in the ambulance to the hospital where they arrived around 4:50 pm. DCO Georgiy Mareichev ("Mr Mareichev"), instructed by the Lead Doping Control Officer Igor Nikitin ("the LDCO" or "Mr Nikitin"), followed them in his own car.
 - ix) In the hospital Ms Meshkova stayed with the Athlete all the time, asking her several times whether she would provide a sample. The Athlete did not refuse but only repeated that she was not able to urinate.
 - x) While the Athlete was examined by a doctor with Ms Meshkova at her side, the Respondent and Mr Mareichev waited in front of the admission department of the hospital.
 - xi) Following the examination, the Athlete was provided with an infusion and then hospitalized. During this time Mr Mareichev and the Respondent waited in the hall of the hospital, the latter communicating with Ms Meshkova via WhatsApp between 6:41 pm and 7:10 pm.
 - xii) Mr Mareichev also communicated with the LDCO who finally at around 7:15 pm ordered the two DCO in the hospital to stop the attempt to collect a sample and instead to return to the Station where they arrived at around 8 pm.
12. All the DCO including the LDCO reported about the situation with the Athlete in their respective Doping Control Form as well as in Supplementary Report Forms.

B. Proceedings before the DADC

13. RUSADA did not believe that Ms Malueva had a genuine reason for failing to comply with the instructions given to her by the Doping Control Personnel. She was therefore

- charged with committing an ADRV pursuant to Article 2.3 of the ADR (Refusal, Evasion and/or Failing to Comply).
14. RUSADA also suspected that Mr Eremenko had advised Ms Malueva in her acts of *'deliberate evading from submitting to doping control and producing a sample'*.
 15. Additionally, based on the reports made by the DCO, RUSADA claimed that Mr Eremenko had offered a financial inducement to one of the DCO – Mr Mareichev - to subvert the doping control process.
 16. Mr Eremenko was charged by RUSADA with committing an ADRV pursuant to Article 2.5 of the ADR (Tampering/Attempted Tampering) and Article 2.9 of the ADR (Complicity).
 17. The ADR establishes that cases of ADRVs are resolved by way of hearings before and decisions by the DADC.
 18. Because of the overlap between the allegations made against Ms Malueva and those made against Mr Eremenko, the charges were heard and determined by the DADC by way of the same hearing on 12 April 2018, as a consolidated hearing.
 19. RUSADA did not request to call any witnesses for the hearing, explaining that all the DCO who were involved in the case were busy executing their duties.
 20. In its Decision No. 76/2018 dated 12 April 2018, the DADC found that Ms Malueva on 2 September 2017 has committed an ADRV pursuant to Article 2.3 of the ADR "Evading, refusing or Failing to Submit to Sample Collection" and sanctioned her with a suspension of four years. Ms Malueva did not appeal this decision of the DADC.
 21. In its Decision No. 77/2018 dated 12 April 2018, the DADC found that Mr Eremenko had not violated the ADR. In its reasoning the DADC is of the *"opinion, no sufficient evidence was provided to the case file that A. Eremenko conducted the actions aimed at bribing the doping control official."*

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

22. On 6 December 2018, the Appellant filed his Statement of Appeal with the CAS in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration of the Court of Arbitration for Sport ("the CAS Code").
23. After an extension of the time limit was granted by the President of the CAS Appeals Arbitration Division until 28 January 2019, the Appellant filed his Appeal Brief on 26 January 2019, in accordance with Article R51 of the CAS Code.
24. On 4 February 2019, the CAS Court Office notified the Appeal Brief to the Respondent, granting a deadline of twenty (20) days upon receipt of the letter, to file his Answer pursuant to Article R55 of the CAS Code.

25. On 20 February 2019, the CAS Court Office informed the Parties that the Panel appointed to decide the case was constituted as follows, pursuant to Article R54 of the CAS Code:

Sole Arbitrator: Ms Sylvia Schenk, Attorney-at-Law in Frankfurt, Germany

26. Several emails by the Parties and letters from the CAS Court Office were exchanged, especially in March and April 2019 but also beyond, regarding the Respondent's obligation to file his Answer. The Appellant accepted each request for an extension of the time limit and did not insist on any expiration of deadlines set by the CAS Court Office in order to give Mr Eremenko the opportunity to defend his case.
27. On 8 April 2019, the CAS Court Office noted that the Respondent did not file any Answer within the prescribed deadline of 1 April 2020, referred the Parties to Article R56 of the CAS Code and invited them to state their preference for a hearing to be held or for the Sole Arbitrator to decide the case on the Parties' submissions.
28. In parallel, upon receipt of the Parties' respective positions on the CAS Court Office's letter of 8 April 2020, the Sole Arbitrator tried to coordinate a date for the hearing with the Parties. This proved to be extremely difficult during the ongoing Athletics season, given the Respondent's profession as a coach and the number of DCO to be called as witnesses by RUSADA.
29. Finally, the Respondent filed his Answer on 3 July 2019 which was accepted by the Appellant, despite its late filing.
30. On 27 September 2019, the Respondent asked for a postponement of a Hearing scheduled for 3 October 2019, referring to the fact that on 17 September 2019 the World Anti-Doping Agency ("WADA") had opened a formal compliance procedure against RUSADA. The Respondent argued that "*RUSADA will become ineligible to proceed further with the case*".
31. On 30 September 2019, the CAS Court Office informed the Parties that the Hearing had to be postponed due to medical reasons that prevented the Sole Arbitrator to travel to Lausanne. New dates for a hearing were proposed. For the sake of clarity, it was confirmed that "*the basis for the postponement is not the Respondent's request of 27 September 2019*". The Hearing was rescheduled for 3 December 2019.
32. In a letter dated 11 November 2019, the Respondent again questioned the status of the Appellant referring to the information that WADA was expected to take a decision on the suspension of RUSADA due to alleged non-compliance with the WADA Code. The Respondent proposed to postpone the hearing as long as no decision had been taken regarding the status of RUSADA.
33. On 13 November 2019, the CAS Court Office informed the Parties that "*the Sole Arbitrator considers that, to date, neither has the Appellant been officially found as non-compliant with WADA regulations and/or standards, nor has it been suspended from any activity related to anti-doping matters. Additionally, even if WADA sends a formal notice asserting that the Appellant is non-compliant, it still needs to be seen*

which consequences WADA will specify (see WADA Code Part IV, Art. 23.5.4, and the International Standard on Code Compliance by Signatories, Art. 11). Therefore, the Sole Arbitrator finds that the Appellant has full capacity to act as a Party in these arbitral proceedings."

34. On 25 November 2019, on behalf of the Sole Arbitrator, the CAS Court Office issued an Order of Procedure that was signed by the Respondent on 28 November 2019 and by the Appellant on 29 November 2019.

IV. THE HEARING

35. On 3 December 2019, the Hearing was held in Lausanne, Switzerland. The Sole Arbitrator was assisted at the hearing by Legal Counsel to the CAS, Ms Andrea Sherpa-Zimmermann.

A. The Presence

36. The Appellant was represented in Lausanne by his Counsel Mr Graham Arthur as well as by Margarita Pakhnotskaya, Deputy Director General RUSADA, and Ksenia Sagdullaeva, Lawyer in the RUSADA Results Management Department.

37. The Respondent in person was connected via video from St. Petersburg. He was represented by his counsel, Egor Larichkin, who was connected via video from Spain.

38. The Appellant called the following anti-doping personnel as witnesses to give evidence via video link from Sochi, Russia:

- Igor Nikolaevich Nikitin
- Olga Borisovna Meshkova (called as well by the Respondent)
- Georgiy Vladimirovich Mareichev (called as well by the Respondent)
- Konstantin Sergeevich Sorokin
- Anastasia Vadimovna Barabanshchikova and
- Ieva Lukosiute-Stanikuniene, who gave evidence via telephone from Montreal, Canada.

39. The witnesses – beside their reports in the Doping Control Forms and/or Supplementary Report Forms signed on 2 September 2017 – also had given written witness statements signed in January 2019.

The same for the DCO Sergei Valeryevich Olkhovskiy and Elena Viktorovna Levova, who were also present in Sochi, but eventually not called to be questioned. Dmitry Alexandrovich Toloknov (DCO at the Event) and Tatyana Dmitrievna Galeta (Head of the Results Management of RUSADA) also had provided written witness statements submitted by the Appellant but were not called as witnesses at the Hearing.

40. The Respondent testified in person and called Ms Malueva as witness who gave evidence via video from St. Petersburg.

41. Translation for the witnesses in Sochi was delivered by Anna Maslyuk. For the Respondent and Ms Malueva the translator in St. Petersburg was Ksenia Persova. For some parts the Appellant's Deputy General Secretary, Margarita Pakhnotskaya, helped with the translation in Lausanne. There was no dispute that the translation was delivered properly.

B. The Testimony of the Witnesses and the Respondent

42. With regard to their testimony all witnesses, including the Respondent, were informed about their duty to tell the truth pursuant to Swiss law.
43. Having at least four persons present at different places who were able to understand Russian and English – the translator called by the Appellant in Sochi, the Deputy Director General RUSADA in Lausanne, the translator called by the Respondent in St. Petersburg and the Respondent's counsel in Spain – the Sole Arbitrator, understanding at least some Russian, feels comfortable to rely on the English wording of the testimonies as recorded during the Hearing.

The statements of the witnesses are summarized as follows:

(i) The Testimony of Mr Mareichev

44. At the outset of his testimony, Mr Mareichev confirmed his written witness statement and the accuracy of his official report as DCO on 2 September 2017.
45. He referred to two conversations with the Respondent during their stay at the hospital and summarized them as follows:
- i) The first conversation took place outside the hospital while the Athlete and Ms Meshkova were in the hospital for examination.
 - ii) Mr Mareichev stated that the Respondent asked about prohibited substances including Marihuana and light drugs. Mr Mareichev answered that the Respondent could learn about these substances from the RUSADA website.
 - iii) Then the Respondent suggested to Mr Mareichev to provide him with a clean sample in order for a replacement since they were alone, there was no one there except for them. The Respondent suggested money for this action, but did not indicate an amount. Mr Mareichev did not see any money.
 - iv) Mr Mareichev told the Respondent to stop this conversation – it would be better for the Athlete to provide a sample.
 - v) When the Athlete was forwarded to the ward the two men followed her and Ms Meshkova into the hospital and waited in the hall. There the second conversation took place.
 - vi) According to Mr Mareichev the Respondent again talked about attempting to provide another sample. Mr Mareichev answered that this is impossible and insisted to finish the conversation.
46. Questioned whether he did take the Respondent's suggestions seriously, i.e. was sure that he was not joking, Mr Mareichev confirmed: "Yes, of course! It didn't look like a joke."

47. Confronted with the screenshot of his WhatsApp exchange with Ms Meshkova during their stay in the hospital Mr Mareichev confirmed it to be authentic, and that he still can show it on his mobile phone that he has with him.
48. The decisive part of the WhatsApp conversation contains the following messages:
- 7:01 pm – Mr Mareichev to Ms Meshkova: *"The coach might begin to negotiate. With me he already tried. I reported to Igor."*
- 7:02 pm – Ms Meshkova to Mr Mareichev: *"Awesome"*
- 7:03 pm – Mr Mareichev to Ms Meshkova: *"He wants us to take another urine."*
- 7:04 pm – Ms Meshkova to Mr Mareichev: *"So it means it is 'dirty'". Here it is – sports 'malice'. It suffers already.*
- 7:05 pm - Mr Mareichev to Ms Meshkova: *"100 %"*
- 7:06 pm - Ms Meshkova to Mr Mareichev: *"His urine? But he is male. It will not work. Or girls urinated in advance."*
- 7:09 pm - Ms Meshkova to Mr Mareichev: *"More probably in her belongings a can with clean urine."*
- 7:10 pm - Mr Mareichev to Ms Meshkova: *"In 15 minutes we go."*
49. Asked why they messaged instead of speaking, Mr Mareichev pointed out that Ms Meshkova was in the ward that was *"women only"* and he in the hall with doors closed. He had to write messages as otherwise the coach could hear him.
50. Mr Mareichev confirmed that he called Mr Nikitin already from the hospital hall, going through it, and reported to him by phone. Mr Mareichev remembered to have reported also to Ms Barabanshchikova after returning to the station but not to whom else he may have reported.
51. He lives and works in Sochi and has not met the Respondent or Ms Malueva before 2 September 2017.
52. In cross-examination, Mr Mareichev did not remember whether he introduced himself as DCO to the Respondent, and did not know what assumption the Respondent could have. But he stressed that during in-competition testing all DCO had badges with names around the neck, he as well, and that it would be impossible not to understand that he is DCO. There was no other organization present, only RUSADA staff - all DCO with the same ID.
53. Mr Mareichev described the hot weather and that the Respondent, whose clothes he did not remember, had a big sports bag, always bringing it with him. When asked why he does not remember further details Mr Mareichev pointed out that all this was more than two years ago.
54. Asked why in his written report about money being offered he did not name the amount, currency, or way of transfer Mr Mareichev answered that the Respondent did not tell him any currency or way of transfer. Mr Mareichev was not interested in a bribe – that is why details were not of interest.

55. Mr Mareichev rejected the question of the Respondent's Counsel why he did not record the second conversation or asked for an order from Mr Nikitin to record a third one by saying that he had no such intention.
56. Mr Mareichev confirmed that there is no rule regarding a time limit for attempting to collect a sample. But he rejected to have violated the rules and his professional obligations when stopping the procedure without a sample, as he had been instructed to do so by the LDCO.
57. Mr Mareichev repeated that the first conversation with the Respondent was outside in the street in front of the admission department where they were alone. The conversation was about prohibited substances and the consequences taking them, then about replacement and finally the money offer.

(ii) The Testimony of Mr Sorokin

58. At the outset of his testimony, Mr Sorokin confirmed his written witness statement and the accuracy of his official report as DCO on 2 September 2017.
59. He especially confirmed the following statement in his Supplementary Report Form:
"Also, by information of DCO Mareichev, I learned that coach Eremenko had asked him in hospital to help with sample replacement and offered money for that, but did not specify exact amount."
60. Asked to describe this more in detail, Mr Sorokin said:
"On 2 September 2017, at the Station, approximately at 8 pm, Mareichev and Meshkova returned from the hospital. Mareichev told me that in the hospital he had conversations with the coach Eremenko, who suggested to make a replacement for money. But the amount of this bribe was not specified. We were laughing about the fact that the amount was not specified but it was taken seriously. We laughed because it was just a joke by a DCO to ask Mareichev why he didn't ask the amount. It was just a joke, no analysis or something like that. I remember about this fact because it was a joke by us. But the suspicion was seriously".
61. In cross-examination Mr Sorokin did not remember whether Mr Mareichev laughed on this when talking about it, pointing out that he cannot remember the reaction of each person as it was two years ago.
62. With regard to the general behavior of Mr Mareichev in that situation, whether he was smiling, relaxing, telling the story with some pleasure, Mr Sorokin described that it was an extraordinary situation, they had it for the first time and couldn't tell about any pleasure. Mr Mareichev was very strained. Mr Sorokin confirmed the conclusion that they joked to come down, not because it was a real joke, by saying: *"Yes, exactly"*

(iii) The Testimony of the Respondent

63. Mr Eremenko's testimony on the events on 2 September 2017 can be summarized as follows:

- i) He was present at Camp Adler and watched the performance. The Athlete came to him and told him that she had to undergo doping procedure. He said ok and continued his business at the competition. Later he was busy with his own business, playing tennis with friends.
 - ii) Then the Athlete called him and said that DCO Meshkova said it was necessary to call for an ambulance. DCO Meshkova did not inform about that in her report. He called an ambulance which later arrived at the Station.
 - iii) Mr Eremenko came up to the ambulance vehicle to see himself the condition of health of the Athlete and whether his help is necessary. The Athlete was lying in the vehicle and the doctor of the Event doing the examination, suggesting to go to the hospital or refusing hospitalization, saying that the diagnosis could only be done in hospital by a doctor.
 - iv) The doctor at the ambulance asked the Respondent to go and collect all the things in the Athlete's bag. When Mr Eremenko came back with the bag a DCO near to the ambulance tried to explain that leaving would be a violation of the rules. Mr Eremenko said if someone feels unwell hospitalization is needed.
 - v) The doctor said the representative should go in as he is responsible for the health of the Athlete, the DCO not. These were surprised, then the doctor made a wise decision allowing both – the Respondent and DCO Meshkova – to go into the vehicle.
 - vi) In the view of the Respondent the DCO tried to reverse the facts exaggerating the situation. They didn't think about the health of the Athlete, couldn't call for an ambulance themselves, couldn't even get the Athlete to the ambulance at place. It is strange not to think of a human being!
 - vii) The Respondent didn't know to which hospital they were going. He was carrying the sports bag, Ms Meshkova was constantly accompanying the Athlete, later the examination took place.
 - viii) A man turned up. He helped with carrying the case but didn't introduce to them. The Respondent said he did not see any badges, it was just a man in a different car who showed up in the place.
 - ix) After the examination and a preliminary diagnosis, they followed to the hospital itself, where the Athlete was allocated a place and provided with a drop, DCO Meshkova constantly accompanying her.
 - x) The Respondent said he wasn't in the hospital himself as it was an infection diseases hospital and he has children. He had a short lunch and when coming back, close to Ms Malueva's ward, the DCO went into the ward of the Athlete and asked something, then they just left. The Respondent made sure that the Athlete was sleeping and then left as well.
 - xi) Only later the Respondent found out that there were allegations against him. Many people called him and asked what happened, why do they accuse you?
64. Asked by his counsel why they went to the hospital when there was no indication, the Respondent repeated that the ambulance doctor said either refuse or go to the hospital to get the diagnosis there.
65. The Respondent said Mr Mareichev didn't identify, didn't show any badges, no ID that he was involved in the situation.
66. The Respondent described that he was wearing a cap, having a very big beard at that time and wearing a t-shirt, green with an elephant – difficult to forget.

67. Considering what could be the interest of Mr Mareichev accusing him of bribery the Respondent said:
- i) There are many factors, this was planned beforehand. He didn't want to be in the infectious hospital.
 - ii) He protected his own interest, wanting some bonuses in the future, build their career.
 - iii) Mareichev is not experienced, someone was instructing him. Also the actions were not coordinated in general.
 - iv) Most important: They left the hospital, didn't take a probe, didn't complete the control. They had to find a way out of the situation, they were a new team and couldn't allow themselves to make a mistake. The consequences would be very serious, that is why their actions and reports were like that. They wrote the reports from one another, repeating themselves and putting it like that later.
 - v) They are interested in the coach, that is the key figure, more than the Athlete. This will make their work more serious.
 - vi) They coordinated to make up but could have solved the issue on place – this says a lot on their competence and professional skills.
68. At this stage of the testimony, the Sole Arbitrator reminded the Respondent that he had to tell the truth and informed him that false accusations under specific circumstances may even lead to prosecution.
69. In cross-examination the Respondent denied any contact with the Athlete until she called him to ask for an ambulance. He was playing tennis, maybe there was a call, he doesn't remember whether he answered. That day he had a lot of calls but was with his friends on vacation. The doping procedure was not a big thing for him, he was doing his own business.
70. Asked whether he picked up the phone at around 2 pm, he said "yes" and that he then called the ambulance as instructed by the DCO. He was surprised by that as there was an ambulance present. He didn't take it seriously, didn't think it was a serious issue.
71. Before the departure to the Event the Athlete complained feeling unwell, the Respondent didn't expect that to become serious.
72. Asked again why he was keen to call an ambulance and whether this was because he wanted to take the Athlete away from the Doping Control Station as she was worried for the sample, the Respondent insisted that the Athlete was instructed by Ms Meshkova to tell him to call an ambulance.
73. The Respondent denied to have had any conversation with Mr Mareichev, he only knew Ms Meshkova, Mr Mareichev may say whatever he wants, it is only imagination.
74. After confirming that he knew it would be important for the Athlete to provide a sample, the Respondent was asked why he did not ask Ms Meshkova to stay until a sample is taken. He stressed that he suggested to return the next day to take a probe in the hospital but "*they didn't listen to me, did not specify, they ignored me*".

75. When his attention was drawn to the fact that he said "they", and consequently asked whether he was talking about Mr Mareichev and Ms Meshkova the Respondent answered that in the hospital was only Ms Meshkova, he only spoke to her.
76. On the suggestion that he was concerned of the sample and therefore offered a bribe the reaction of the Respondent was: *"I don't understand the question. I didn't talk to anyone."*

(iv) The Testimony of Ms Meshkova

77. At the outset of her testimony, Ms Meshkova confirmed her written witness statement and the accuracy of her official report as DCO on 2 September 2017.
78. The testimony of Ms Meshkova can be summarized as follows:
- i) She noticed that the Athlete texted after the notification, waved with the copy to a man who later introduced himself as the coach.
 - ii) After the notification the Athlete changed boots and they proceeded to the Station. The Athlete became very nervous. At the Station she later asked for dressing up and to have a meal in the restaurant.
 - iii) Ms Meshkova confirmed that she acted as the chaperone to the Athlete and accompanied her all the time. The hotel and restaurant were about 100 m from the Station, where they returned after the meal.
 - iv) Ms Meshkova stressed that there is always an ambulance at championships of such level. If she needs an ambulance she would always call for the local ambulance. She did not ask the Athlete to call the coach that he shall call an ambulance.
 - v) Ms Meshkova stated that the Athlete was treated in the hospital but the doctor said that the condition was normal. During that time, they were separated from Mr Mareichev because he is a man.
 - vi) Ms Meshkova has not saved the WhatsApp messages exchanged with Mr Mareichev in the evening of 2 September 2017 but confirmed the content. They left the hospital without a sample after Mr Mareichev had told her per WhatsApp about the situation with the coach, to bribe for sample replacement. Mr Mareichev had also phoned to the senior DCO Nikitin who instructed them to finish the procedure. Nikitin himself was instructed by the office management.
 - vii) They saw the Respondent on their way out, he tried to tell them something but they didn't contact him.

79. The cross-examination of Ms Meshkova can be summarized as follows:

- i) She denied that the Athlete felt ill when she first approached her. She said that until that time the Athlete felt well, and that she was always communicating.
- ii) Then the Athlete became ready for sample, they went to the toilet, there the athlete fell on the floor over the sample. After this, outside the Station, she tried to vomit, fingers in her mouth, but Ms Meshkova did not see any vomits.
- iii) When the Athlete fell Ms Meshkova asked her "do you need help" but she kept silent.
- iv) The Athlete fell on the floor forward and tipped the bottle back – according to Ms Meshkova it is hard to imagine that a person who faints has such a good

- coordination. When asked she expressed her opinion that the Athlete did everything she can to avoid the procedure.
- v) It was clarified that "*to avoid the procedure*" is not contrary to Ms Meshkova's written statement in the Supplementary Report Form that the Athlete "*did not refuse from the doping control procedure*" as there is a difference between refusing and avoiding. The Respondent's counsel then dropped his respective question.
 - vi) Ms Meshkova confirmed that Mr Mareichev was in the ward with the Athlete – at that time put on the drop and covered with bed sheet - for about 5 minutes around 5:45 pm while she had to go to the toilet.
 - vii) Ms Meshkova confirmed her reaction "that means she is dirty" on Mr Mareichev's WhatsApp information about the offered bribe. She herself had no thought that she could also receive an offer. She saw Mr Mareichev with the Respondent but didn't get direct contact with the latter herself.
 - viii) Asked why she perceived so seriously the threat of a replacement of the sample Ms Meshkova answered that she feels high responsibility for her job in any situation.
 - ix) She left the hospital in accordance with the instruction of the senior DCO, they acted strictly in accordance with the standards and instructions.

80. Asked by the Sole Arbitrator

- i) About the meal the Athlete had at the restaurant, Ms Meshkova said it was salad vinaigrette, mashed potato, meat and compote. She ate very good.
- ii) Whether the Athlete was injured when she fell on the floor in the toilet Ms Meshkova said this had no effect on the Athlete.
- iii) Whether she asked the Athlete to call the coach and tell him to call an ambulance Ms Meshkova said no.

(v) The Testimony of Ms Lukosiute-Stanikuniene

81. At the outset of her testimony, Ms Ieva Lukosiute-Stanikuniene updated her witness statement in so far as she is now working for WADA in Montreal. Before that she was – since 2015 - the Head of the Lithuanian Anti-Doping Agency and from April 2016 to April 2019 acted as an independent expert assisting RUSADA. She is giving evidence in her previous role.
82. Besides this update she confirmed her written witness statement and the accuracy of her official report as DCO on 2 September 2017.
83. She explained that she received the information about one of the DCO reporting that the Respondent offered him a bribe late on 2 September 2017 by Ms Barabanshchikova. She did not mention it in her own official report because when drafting it she had not yet seen the report of the DCO. She wanted to evaluate the DCO but not to report the incident herself.
84. At the Event Ms Lukosiute-Stanikuniene served as an observer. Her duties were to carry out testing, educate personnel. RUSADA was non-compliant at that time and she had to overview implementation of the WADA Code.

85. In cross-examination Ms Lukosiute-Stanikuniene confirmed that she drafted the statement herself, not knowing what is in the statement of Ms Barabanshchikova.
86. She also defended her view that the DCO made no mistake even when no sample was taken.

(vi) The Testimony of Mr Nikitin

87. At the outset of his testimony, Mr Nikitin confirmed his written witness statement and the accuracy of his official report as LDCO on 2 September 2017.
88. The testimony of Mr Nikitin can be summarized as follows:
- i) His duties as Lead DCO at the Event included preparation and organization of testing, coordination of the DCO and supervision to ensure that the international standard is met. He was the "boss" and would give the DCO instructions if they ask.
 - ii) Regarding the course of events Mr Nikitin remembered that for a long time at the Station the Athlete was not ready to provide a sample. She was very stressed. According to the report of Ms Meshkova there was an attempt to provide a sample however accidentally the sample tipped over in the toilet. After some time, he was told that an ambulance was called for the Athlete, he went out of the Station and saw the ambulance. At that time the examination was already finished. A man introduced himself as coach, he got a bag with him.
 - iii) Mr Nikitin prepared a package equipment and documents to test if necessary in the hospital, Ms Meshkova went with the Athlete to the hospital in the ambulance. The decision was made that Mr Mareichev should follow in his own car.
 - iv) Mr Nikitin answered the question whether he gave the instruction to go and obtain a sample with "yes".
 - v) Asked whether he received a call from Mr Mareichev Mr Nikitin confirmed that during the time being in the hospital they kept telephone connection with Mr Mareichev and Ms Meshkova. Finally, Mr Nikitin received a call from Mr Mareichev.
 - vi) In that call Mr Mareichev reported that Mr Eremenko suggested to make an agreement, to replace the sample and that he offered "good money". It was reported a so-called false sample, that he has a false sample with him.
 - vii) Mr Nikitin denied to have instructed to leave the hospital and pointed out that on that mission Anastasia (i.e. Ms Barabanshchikova) and the international expert (i.e. Ms Lukosiute-Stanikuniene) were present. He consulted with them and according to their approval he gave the instruction to finish the procedure, i.e. to stop the attempts. The two DCO then returned to the Station in Mr Mareichev's car.
 - viii) After the mission Mr Nikitin provided the DCO with the document blankets. He prepared the documents, then provided them, collected them and then sent them to RUSADA.
89. In cross-examination, Mr Nikitin was asked whether a person that is attempted to get a bribe would like to get into details. Mr Nikitin did not find it necessary to find out any details and stated that as far as he is acquainted with people who tried to bribe him no one never says details – amount, cash etc.

90. Mr Nikitin confirmed that according to the rules and instruction to take a sample one has to wait. He didn't know whether Ms Meshkova knew or not about the attempt to bribe, he kept telephone connection with her and Mr Mareichev. At the Station, Ms Meshkova constantly had offered the Athlete to provide a sample each 15 – 20 minutes.
91. Asked whether it is possible that after a competition and in a stressful situation an athlete does not want to provide a sample, Mr Nikitin stressed that he is no expert on physiology but to his experience as practice shows after 4 – 5 hours at a Doping Control station an athlete usually provides a sample. In this case, there were no attempts to provide at least a minimum quantity.
92. With regard to whether the Athlete formally refused to provide a sample or said "*wait for the moment that I am able to provide*" Mr Nikitin said it was all silent, absence of any action or statement on not readiness to provide a sample.
93. Asked why he took the decision to stop the procedure after it had been reported that the Athlete was likely under doping, fainted in toilet, another DCO was attempted to be bribed, Mr Nikitin answered that he was not told that she was probably under doping. Her behavior told that she probably tried to avoid to provide a sample. Her behavior was strange, not normal for athletes.
94. Mr Nikitin confirmed that there is no time-limit, it is the task to take a sample in any way. Here the decision to stop the attempts to test was made by Ms Lukosiute-Stanikuniene and Ms Barabanshchikova. There are no sanctions if a DCO doesn't take a sample. There was a case testing an athlete for 15 hours. In this case, the decision was made based on the opinion and instruction of the international expert.

(vii) The Testimony of Ms Barabanshchikova

95. At the outset of her testimony, Ms Barabanshchikova confirmed her written witness statement and the accuracy of her official report as DCO on 2 September 2017.
96. According to her written witness statement she was a Specialist within RUSADA's Testing Department in 2017 (now she is a Senior Specialist) and attended the Event "to evaluate and assess how well the Doping Control Personnel conducted their duties and to act as the overall supervisor of the testing activities that RUSADA was conducting at the Event." She was "in close contact with all of the Doping Control Personnel that day and had an overview of all the Doping Control activities" ... "*through contact with both Mr Nikitin, the Lead DCO; and the other DCOs.*"
97. Ms Barabanshchikova denied that her written witness statement had been written by someone else and said somebody just helped to translate it. The statement is true and she signed it.
98. During cross-examination, Ms Barabanshchikova stated that first of all she did not see the statement of Ms Lukosiute-Stanikuniene. As she does not speak English very well her statement was translated, she can confirm that it contains the truth.

99. Asked how the information that the Athlete was communicating with someone influences the procedure Ms Barabanshchikova answered that they all – including her – are trained DCO. When on mission they note each detail and make all observations. They don't make decisions on how it influences or not.
100. Ms Barabanshchikova pointed out that her observation in No 14 of her written witness statement "*At all times I was satisfied that the Doping Control Personnel conducted themselves in accordance with their training and the RUSADA Doping Control Manual.*" was based on the fact that all were trained not so long time ago, strictly according to the international standards. At the training course, representatives of UK Anti-Doping took part. They went through the whole course, passed an exam, she is sure that they were trained on a high level.
101. Confronted with the case of 15 hours waiting for a sample while here the procedure had been stopped after 7 hours Ms Barabanshchikova stated that she saw forms of that case. In the case at hand Mr Nikitin reported that Mr Mareichev who was in hospital with Ms Meshkova and the Athlete told him that the coach offered money. She consulted with Ms Lukosiute-Stanikuniene what to do in this situation. Finally, Ieva (i.e. Ms Lukosiute-Stanikuniene) told her "*we must stop*".
102. Asked about her experience Ms Barabanshchikova said that she was allowed to test from July 2017 on, i.e. had only 2 months of experience at the time of the Event. She stressed that this was exactly why she consulted with Ieva, i.e. the supervisor for her job.
103. With regard to the number of missions of Ms Meshkova and Mr Mareichev, how long they were in their position after the training, she could not give the exact number but "*maybe 3rd or 5th mission*".
104. Ms Barabanshchikova confirmed that she remembers the Respondent's presence at the Station when the ambulance was there. She did not repeat in full No 10 of her written witness statement where she described the course of events in no clear order.

(viii) The Testimony of Ms Malueva

105. Questioned by the Respondent's Counsel Ms Malueva made the following statements:
- i) With regard to the ambulance at the stadium Ms Meshkova said this ambulance cannot move, it had to stay in the stadium.
 - ii) The decision to call the coach was taken because Ms Meshkova asked for a representative of the team or call the doctor of the team or an ambulance.
 - iii) The decision on hospitalization was taken by the doctor in the hospital.
 - iv) She did not refuse to provide a sample.
 - v) She did not know Mr Mareichev, he did not introduce himself.
 - vi) She was not able to provide a sample.
106. During cross-examination, Ms Malueva confirmed that she already felt unwell before leaving for the Event. She consulted with the Respondent, she could not refuse to compete, could not let down the team. She denied the question whether she had taken

- any medication. The result – 2nd place – not depended on her, but on the team performance.
107. In the stadium, the Respondent was present as part of the audience. When notified, Ms Meshkova and she went to the point where she had left her things and passed near the place of the Respondent and he asked what she was doing. That would not influence the situation.
 108. She went to the hotel to take the documents for the control and then have lunch. The lunch time was coming to an end.
 109. She was not in contact with the Respondent. The whole situation did not worry her but she felt uncomfortable like all athletes. She had been tested two times before.
 110. Ms Malueva confirmed that, returned to the Station, she felt quite ill. First, she informed Ms Meshkova and asked her for a doctor at the Station. Ms Meshkova said no, there is an ambulance at the stadium but that has no connection with the Station, it cannot help us. Ms Meshkova advised her to ask for the doctor of the team but they have none. Ms Meshkova said: "*Find a representative of the team that he can save the problem*".
 111. Asked how the Respondent learned about the situation, Ms Malueva said that Ms Meshkova told her to call a representative, describe the whole situation and tell him to find a doctor.
 112. The Respondent did not come straight away, he arrived after some time. He arrived at the place after the ambulance.
 113. Ms Malueva confirmed that the sample she had provided at the station was spilt when she fainted. She had not fainted before.
 114. Confronted with being accused of pretending to be ill and exaggerating to have an excuse to avoid a sample Ms Malueva said this is not true, it is an assumption of RUSADA. She confirmed the symptoms were genuine, not exaggerated.
 115. Ms Malueva felt unwell before the competition but it did not hinder the competition. Then it exacerbated.
 116. Confronted with the quote "*Normal stool and urine output.*" from the report on "Physical Examination" at the Infectious Disease Hospital ER on 2 September 2017 at 04:55 p.m. and asked whether the doctor observed this or she told him, Ms Malueva asked: "*Which doctor?*" and continued that that is very strange, the doctor couldn't know. Maybe the doctor wrote himself, that is strange, finally she said "*I cannot comment on that*".
 117. Ms Malueva denied to have pretended to be more ill than she was in order to avoid a sample. She was not planning to avoid providing a sample and wasn't in close contact with the Respondent except for calling the ambulance and in the morning, i.e. after the notification.

118. Asked whether Ms Meshkova told her to call a doctor or a representative the answer was "yes" and then "*yes, I was advised to call an ambulance*". Asked again whether she should call the coach or an ambulance Ms Malueva said: "*To call a representative, he would call the ambulance.*"
119. Asked whether she assumed he would call an ambulance Ms Malueva said she was told to do so by the DCO that was present. Usually whether she calls an ambulance depends on the gravity. She felt very unwell, dizzy, had stomach ache, nausea and was very cold.
120. The symptoms started in the morning and exacerbated after lunch. She had been offered to go to the restaurant and as the lunch time was coming to an end she did not refuse the offer. It was a lot of time to wait until dinner. It was Ms Meshkova who told her, at the time of the offer she did not feel that bad.
121. Ms Malueva refused to tell with whom she was texting on 2 September 2017, that being confidential, she will not disclose her friends and relatives.
122. Asked why she was texting all the time and not resting Ms Malueva answered "I don't understand the question." Questioned again why she was texting when suffering from nausea and feeling dizzy she answered that she started texting long before.

C. Closing

123. At the outset of the Hearing, the Parties confirmed that they had no objection to the Sole Arbitrator. At the conclusion of the Hearing the Parties likewise confirmed that the proceedings had been fairly conducted and that due respect had been paid to their right to be heard.
124. The Parties agreed on written closing submissions and a deadline was set for 18 December 2019, confirmed by a letter of the CAS Court Office dated 5 December 2019. The Respondent filed his Post-hearing Brief by email on 17 December 2019 and the Appellant by email on 18 December 2019.

V. SUBMISSIONS OF THE PARTIES

A. The Position of the Appellant

Tampering Charge

125. The Appellant submitted that Mr Mareichev confirmed – in his initial report, his written witness statement and in his testimony at the Hearing – that he was induced by Mr Eremenko to act in a fraudulent manner, which would have been to submit for analysis an urine sample that purported to be that of Ms Malueva but in fact would not have been hers.
126. The evidence concerning the conversation with Mr Eremenko is supported by the screen shots of WhatsApp messages between Mr Mareichev and Ms Meshkova within the timeframe that the conversation took place. The genuineness of these messages was confirmed by Ms Meshkova, and not challenged.

127. Mr Mareichev reported the conversation to Mr Nikitin and Mr Sorokin which was confirmed by both witnesses.
128. News of the conversation was relayed as well to Ms Barabanshchikova and Ms Lukosiute-Stanikuniene the same evening, as confirmed by both witnesses. This evidence corroborates Mr Mareichev's account of his conversation with the Respondent.
129. According to his testimony, Mr Mareichev was readily identifiable as a DCO by way of identification issued by RUSADA and worn by him around the neck in the course of the day. It was clear to Mr Eremenko that Mr Mareichev was a DCO.
130. Mr Mareichev refuted the suggestion that he had failed in his responsibility to obtain an urine sample from Ms Malueva and stated that the sample collection was terminated on the direction of Mr Nikitin, the LDCO. This was confirmed by the witnesses Mr Nikitin, Ms Barabanshchikova, and Ms Lukosiute-Stanikuniene.
131. The DADC did not uphold the charge because the evidence of the Doping Control Personnel had only been presented by way of documents to it. It appears that the DADC was concerned by not being able to hear the witnesses in person. No inferences as to the reliability of the evidence itself should be drawn from the DADC decision.

Complicity Charge

132. The Appellant submits that the DADC, in finding that Ms Malueva committed an ADRV pursuant to Article 2.3 of the ADR, found that she did not have any 'compelling justification' for failing to provide an urine sample.
133. This can be evidence that whatever illness Ms Malueva may have had on 2 September 2017 it was not severe enough to excuse her from providing a sample. As it was not disputed that the Respondent was in close contact with the Athlete in the time prior to her admission to the hospital the evidence suggests that he was aware of this and in some manner counselled her in her avoidance of providing a sample.
134. To underline its allegations, the Appellant refers to the Respondent's behavior on 2 September 2017 and, among others, to the written witness statement of Dmitry Alexandrovich Toloknov stating that the Respondent wanted to prevent Ms Meshkova to accompany the Athlete in the ambulance to the hospital. This incident is as well mentioned in the written witness statement of Ms Barabanshchikova.

The Appellant's Requests of Relief

135. The Appellant submits the following prayers for relief in its Appeal Brief:
 - i) *Set aside Decision No. 77/2018 dated 12 April 2018*
 - ii) *Find that Mr Eremenko has committed an Anti-Doping Rule Violation contrary to Articles 2.5 and 2.9 of the ADR*
 - iii) *Impose a sanction in respect of such Anti-Doping Rule Violations as required by the ADR*
 - iv) *Order Mr Eremenko to reimburse the Appellant its legal costs and other expenses*
 - v) *Order Mr Eremenko to bear the costs of the arbitration*

B. The Position of the Respondent

136. The Respondent submits that RUSADA failed to demonstrate any credible evidence of the alleged violations.
137. In the first instance proceedings, RUSADA failed to demonstrate that the Respondent had attempted to bribe the DCO Mareichev and intentionally had counselled and encouraged Ms Malueva to feign and exaggerate the extent of her illness in an effort to avoid having to provide a urine sample.

Tampering Charge

138. The Respondent denies any conversation with Mr Mareichev. He submits that Mr Mareichev's testimony on the attempted bribe is false on its face, as Mr Mareichev can describe neither the amount of the bribe, nor the currency of the bribe, nor the process of its transfer, nor the process of the probe replacement. Such lack of important details suggests that Mr Mareichev's testimony is fabricated for the purpose of bolstering RUSADA's position, not getting to the truth of the allegations against Mr Eremenko.
139. In addition, even if Mr Eremenko had intended to bribe someone, he would have done so with respect to Ms Meshkova, as she was the officer responsible for taking the probe and could have potentially replaced the probe. Mr Mareichev, by contrast, had no ability to replace the probe or affect the matter in any other way.
140. In his Post-hearing Brief, the Respondent submits that neither Mr Mareichev nor Ms Meshkova asked for any details of the bribe and that Ms Meshkova confirmed that she had not supposed the Respondent to bribe her, even though she had previously received the message from Mr Mareichev. If Ms Meshkova asked nothing and did not fear for herself, Respondent submits that she either considered this conversation with Mr Mareichev not to exist, or she intentionally took part in the deliberate creation of untrustworthy evidence.

Complicity Charge

141. In his Answer, the Respondent refers to RUSADA alleging – based on Ms Meshkova's testimony - that Ms Malueva imitated fainting, deliberately destroyed the biomaterial during the attempt to produce a sample and ultimately evaded the doping control procedure, and to the fact, that the emergency doctor found no need for hospitalization.
142. However, in the view of the Respondent, these allegations should not be given any weight for the following reasons: First, the DCO Meshkova has no medical education. Second, she saw that Ms Malueva was heaving, which also necessitated her hospitalization. Third, the emergency doctor does not have sufficient equipment for making a proper diagnosis. Fourth, the doctor of the admissions department decided on the hospitalization of the athlete, which shows that her condition was unsatisfactory. Fifth, Ms Malueva was ultimately given a diagnosis which is acute respiratory infection and acute pharyngotracheitis. All of these reasons confirm that the actions of Mr Eremenko, Ms Malueva and the doctor of the admissions department were proper, and there was no intentional evasion of the doping control procedure.

143. RUSADA has failed to demonstrate any credible evidence of collusion between Ms Malueva and Mr Eremenko to evade the doping control procedure.
144. The Respondent refers to the fact that the numbers of the Supplementary Report Forms go almost in order, which is highly unusual in the normal practice of preparing such reports. This fact suggests that, after the DCOs had left the hospital, the RUSADA realized its mistake, and the DCOs started considering how they should strengthen the RUSADA's case. For this purpose, the DCOs forged the reports after the fact with a description of how Ms Malueva was communicating with Mr Eremenko, how nervous she was, how satisfactory she looked after the fainting, and how Mr Eremenko tried to prevent the DCO Meshkova from driving in the same car with Ms Malueva. Each of these fictional facts serves a single purpose – to demonstrate that Ms Malueva deliberately evaded the doping control procedure, and that Mr Eremenko encouraged her to do so.
145. The fact that numbers of the supplementary reports in relation to Ms Malueva go almost in order means that these reports were deliberately distributed between the DCOs after the fact to artificially create an evidentiary base against her.
146. Applicable law imposes no time limits for taking a probe. The RUSADA decided to leave the hospital on its own. Taking Ms Malueva's objective health indicators and lack of any credible evidence of Mr Eremenko's encouragement into account, RUSADA has failed to prove that Ms Malueva and Mr Eremenko had colluded to evade the doping control procedure.

Conclusion

147. The Respondent submits that RUSADA has failed to prove that he hindered the DCO from taking a sample. Although Mr Nikitin confirmed that the doping control procedure is over when a sample is taken and that on one occasion such a procedure terminated after 15 hours he failed to give a clear explanation why in this case the entire team of DCO felt compelled to leave the hospital without taking a probe.
148. In the Respondent's view the reality is that the Independent Expert, the Specialist, the Senior Officer and the DCO all made a serious mistake. But no one has been punished. Unprofessional employees are still collecting samples, testing them, making decisions which change athletes' and coaches' lives radically. All this has been decidedly confirmed when WADA found RUSADA non-compliant due to grave violations relating to manipulation of testing data. RUSADA should finally start taking its responsibilities seriously. It should be put an end to RUSADA's shifting of the blame for its own lax professional standards on Mr Eremenko so that he may restore his fine reputation.
149. In his final words, the Respondent pointed to the fact that he has been a coach since 2005 and never had an issue with doping before or afterwards. He respects the WADA rules, doping is unacceptable for him. It is difficult to fight a powerful agency like RUSADA, in his country the athletes have no money to appeal, that is why Ms Malueva did not appeal. This is just unfair, it is the mistake of the DCO who demonstrated incompetence.

The Respondent's Requests of Relief

150. The Respondent submits the following prayers of relief in its Answer:

*“1. Affirm Decision No. 77/2018 dated 12 April 2018 and recognize that it has binding force in relation to the RUSADA and Mr. Eremenko;
2. Find that Mr. Eremenko has not violated the ADR;
3. Release Mr. Eremenko from bearing the legal costs and any other costs associated with the present dispute; and
4. Impose on the RUSADA an obligation to reimburse to Mr. Eremenko his costs on legal representation in the full amount.”*

VI. JURISDICTION OF THE CAS

151. Article R47 of the CAS Code provides as follows:

“An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body.[...]”

152. The jurisdiction of this case derives from Article 13.2.1 and 13.2.2. ADR, which read as follows:

*“13.2.1 Appeals Involving International-Level Athletes or International Events
In cases arising from participation in an International Event or in cases involving International-Level Athletes, the decision may be appealed exclusively to CAS.
13.2.2. Appeals Involving Other Athletes or Other Persons
13.2.2.1. In cases where Article 13.2.1 is not applicable, the decision may be appealed exclusively to CAS.”*

153. The jurisdiction of CAS has not been contested by the Respondent. In addition, both Parties confirmed the jurisdiction of CAS by signing the Order of Procedure.

154. It follows that CAS has jurisdiction to adjudicate and decide the present matter.

155. Article R49 of the CAS Code provides in its relevant part 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 in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against.”

156. According to Article 13.6 ADR ‘*the time to file an appeal to CAS shall be twenty-one days from the date of receipt of the decision by the appealing party*’.

157. The Decision was received by RUSADA on 19 November 2018. RUSADA filed its Statement of Appeal on 6 December 2018, i.e. within the 21-day time limit set forth under Article 13.6 ADR.
158. The Sole Arbitrator concludes that this Appeal was made within the time-limit. On the basis of the procedural chronology the Appeal is accordingly admissible.

VII. APPLICABLE LAW

159. Pursuant to Article R58 CAS Code :

“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.”

160. The Sole Arbitrator, therefore, notes that the relevant ADR apply primarily, and subsidiarily Russian Law.
161. In accordance with Article R58 of the CAS Code, the provisions of the ADR which could be relevant to this case are as follows:

Article 2.5 Tampering or Attempted Tampering with any part of Doping Control

Conduct which subverts the Doping Control process but which would not otherwise be included in the definition of Prohibited Methods. Tampering shall include, without limitation, intentionally interfering or attempting to interfere with a Doping Control official, providing fraudulent information to an Anti-Doping Organization or intimidating or attempting to intimidate a potential witness.

Article 2.9 Complicity

Assisting, encouraging, aiding, abetting, conspiring, covering up or any other type of intentional complicity involving an anti-doping rule violation, Attempted anti-doping rule violation or violation of Article 10.12.1 by another Person.

162. Standard of Proof

Article 3.1 Burdens and Standards of Proof

The Anti-Doping Organization shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether the Anti-Doping Organization has established an anti-doping rule violation to the comfortable satisfaction of the 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.

163. The sanctions applicable to these Anti-Doping Rule Violations are as follows:

Article 10.3.1

For violations of Article 2.3 or Article 2.5, the period of Ineligibility shall be four years unless, in the case of failing to submit to Sample collection, the Athlete can establish that the commission of the anti-doping rule violation was not intentional (as defined in Article 10.2.3), in which case the period of Ineligibility shall be two years.

Article 10.3.4

For violations of Article 2.9, the period of Ineligibility imposed shall be a minimum of two years, up to four years, depending on the seriousness of the violation.

VIII. MERITS

164. The Sole Arbitrator has to decide whether the Appellant has established to her comfortable satisfaction that Mr Eremenko has committed an anti-doping rule violation by

- A. Tampering or Attempted Tampering and/or
- B. Complicity.

165. Given especially the seriousness of the allegation of offering a bribe to a DCO this needs thorough scrutiny with regard to the Parties' submissions, the evidence provided and above all the testimonies of the witnesses.

A. Tampering or Attempted Tampering

166. The Appellant bases its submission that the Respondent offered a bribe to Mr Mareichev for a replacement of a sample not just on the testimony of this witness but also on the WhatsApp messages exchanged with Ms Meshkova, and additional testimony by those DCO being present on 2 September 2019 as circumstantial evidence.

167. The Respondent denies any conversation at all with Mr Mareichev, and also any motive of his to offer a bribe. On the contrary, he alleges that the DCO had a motive to invent the story of a bribe.

Alleged Conversations between the Respondent and the Witness Mr Mareichev

168. Mr Mareichev confirmed two conversations with the Respondent at different times and different places during their stay at the hospital. He described the situation with the Respondent in a consistent manner and showed no irritation or any other sign of uncertainty when asked about details and under cross-examination while clearly indicating what he remembered – e.g. the big bag the Respondent carried with him – and what not – e.g. whether he expressively introduced himself as DCO.

169. At no part of his testimony Mr Mareichev gave the impression of making up the course of events, i.e. inventing a conversation that has not happened. He especially rejected the insinuation that he should have asked for details of the bribe and recorded the conversation.
170. The Sole Arbitrator finds that Mr Mareichev is a reliable witness who raises no doubt regarding the honesty of his testimony. Remembering the big bag but not the Respondent's beard or clothes fits perfectly with the situation: Witnesses tend to remember details of importance for the specific question as their memory is focused accordingly. Mr Mareichev was musing whether the Respondent was prepared to provide clean urine so it is credible that he remembers the big bag.
171. The credibility of the witness is underlined by the fact that he described a general attempt of bribing him in a convincing way. A bribe offer to a complete stranger – like it was the case on 2 September 2017 between the two men waiting at the hospital – is a big risk. That someone in such a situation starts immediately with details regarding the amount and way of transfer is against any experience of life.
172. Accordingly, to ask for details when a bribe has been offered is a stupid thing to do by someone who does not want to take the bribe. It would give the impression of being interested in a deal and raise suspicions. The only decent reaction to a general offer of a bribe is to reject it immediately, to stop any conversation, and to report to a responsible person as soon as possible.
173. This Mr Mareichev has done exemplarily by telling the Respondent to finish the conversation, by calling Mr Nikitin, messaging to Ms Meshkova, and reporting to Ms Barabanshchikova after his return to the Station.
174. Additionally, the Sole Arbitrator states that it was not Mr Mareichev's task and even unreasonable to produce any evidence by continuing talking to the Respondent and trying to record any detailed offer.

The WhatsApp Messages

175. There is no doubt that the WhatsApp messages exchanged between the witnesses Mr Mareichev and Ms Meshkova in the evening of 2 September 2017 in the hospital are authentic with a clear wording, i.e. regarding time, place and unmistakable content. The language is typically for a spontaneous conversation using such a medium.
176. The Sole Arbitrator notes that the beginning and end of the message exchange indicates it happened before any decision on stopping the procedure was finally taken and partly before even the discussion on it had started, especially taking into account the long row of persons involved in the decision-making. The Respondent mixes up cause and effect when alleging that the WhatsApp messages were constructed to explain why the DCO left the hospital without a sample.
177. The witnesses Mareichev, Meshkova, Nikitin, Lukosiute-Stanikuniene, and Barabanshchikova from their respective involvement all confirmed in a plausible, consistent way the decision-making on stopping the attempt to collect a sample from Ms

Malueva. There is no fault or negligence to be seen especially on the part of Mr Mareichev that could have caused him to start the WhatsApp conversation in the way he did and to tell others about an attempted bribe that never has been offered.

The Testimonies of the other DCO

178. Ms Meshkova described the events of the day since the notification was handed out to the Athlete clearly and without any hesitation. Under cross-examination she did not show any uncertainty, being firm on the reasons for her actions and assumptions.
179. She explained why on the one hand she took the proposal of a replacement of a sample very seriously and on the other hand did not think about being approached herself by the Respondent. Not having direct contact with him offers no opportunity for an attempted bribe. Refusing to talk to him on their way out of the hospital adds to the credibility of her testimony: After having read Mr Mareichev's WhatsApp messages it was only consequent to avoid any contact with the Respondent.
180. Mr Sorokin stressed the "extraordinary situation" and told in a very convincing way how Mr Mareichev - being very strained - informed him about the attempt to bribe him and how after that the DCO at the Station made a joke to come down. Mr Sorokin's testimony that they asked Mr Mareichev why he did not ask the amount was remarkable and underlined his credibility.
181. Also the other witnesses called by the Appellant convinced the Sole Arbitrator that there is no reason whatsoever to allege they have invented all this to cover up a mistake, protect themselves, or receive any bonus by creating untrustworthy evidence against the Respondent. To devise such a story with all the different details as presented by the witnesses would take great creativity, a sophisticated coordination regarding timing as well as content and skills like actors that can hardly be imagined. This allegation by the Respondent is therefore rejected.
182. Additionally, Ms Barabanshchikova gave convincing evidence on the training the DCO had received, while Ms Lukosiute-Stanikuniene confirmed that the whole mission on 2 September 2017 went according to the rules and standards. This added to the impression in the Hearing that the DCO - albeit relatively new in their job – take their task seriously and still feel uncomfortable at the thought of what happened during the mission on 2 September 2017.
183. Also, the fact that the numbers of the Supplementary Report Forms go almost in order does not raise any doubts with regard to the DCO's reports. Usually at such a mission forms with consecutive numbering are distributed, Mr Nikitin described the handling in his testimony. There are plenty of differences in the wording of the reports (and in the written witness statements) as well as in the description of the order of events on 2 September 2017. These differences underline that the reports are authentic, which has been confirmed by all the witnesses at the Hearing.
184. While Mr Mareichev had no motive to invent a story of the Respondent attempting to bribe him the latter had a motive to offer a bribe as has been confirmed by the decision

of the DADC regarding the Athlete; to replace a sample by providing clean urine would have avoided any further procedure.

The Credibility of the Respondent

185. During the Hearing the Respondent not only was inconsistent in his account of the events on 2 September 2017 but again and again attacked the DCO. Even if one accepts that the proceedings before CAS put him under extreme pressure given the severity of possible consequences, and that he must have the chance to defend himself also in an aggressive way, his behavior was extreme. He never gave the impression of an innocent man fighting wrong accusation.
186. The Respondent's description of playing tennis, having many calls, but only taking the one by the Athlete at around 2 pm is not plausible as is his report why he called an ambulance. Knowing about the ambulance at place there was no reason for calling another one and any reasonable person would not have followed such an instruction as alleged by the Respondent.
187. Additionally, the testimony of the Athlete did not support the Respondent's submission. Ms Malueva seemed to be unsure how to report the situation regarding the ambulance and made contradictory statements when asked for details.
188. This added to the overall impression that Ms Malueva could not be seen as a reliable witness. She was not able to answer the questions on having a full lunch but feeling unwell, on her continuously texting in such a situation and on the medical record of "Normal stool and urine output." in any understandable way.
189. Therefore, the Sole Arbitrator finds that the testimony of the witness Ms Malueva did not support the Respondent's case.
190. It is hardly to believe from the outset that the Respondent did not recognize Mr Mareichev as DCO and did not talk to him at all while waiting together more than two hours at the hospital. Mr Mareichev clearly confirmed that he wore a badge identifying him as a DCO and the situation itself did not offer any other explanation. Consequently, there was no further attempt by the Respondent and his Counsel to falsify this in the Hearing.
191. Additionally, Ms Meshkova reported at the Hearing that Mr Mareichev replaced her in the ward for about five minutes, when she went to the toilet. This must have told the Respondent that this is a DCO who takes over the task of a chaperone to ensure the continuous contact with the Athlete. Therefore, the Sole Arbitrator has no doubt that the Respondent knew about Mr Mareichev's role.
192. The credibility of the Respondent is further undermined by his own submission that he tried to ask the DCO Ms Meshkova to return the next day to take the sample. Anybody with experience in anti-doping knows that the chaperone has to stay continuously with the athlete that shall be tested. To only think about proposing returning one day later demonstrates the Respondent's unsuccessful attempt to blame the DCOs and find excuses for his own fault.

193. Finally, the Sole Arbitrator notes that the Respondent not even claims to have tried to convince the Athlete that she should do her outmost to provide a sample. After having been her coach for around 12 years, starting at a very young age, it was his duty to support her in the anti-doping procedure. Instead he let her take the risk to be sanctioned. This omission demonstrates that one cannot believe at all the Respondent's final words that doping is unacceptable for him.

Conclusion

194. The Sole Arbitrator has no reasonable doubt that the Respondent on 2 September 2017 made an attempt to bribe the DCO Mr Mareichev in order to prevent an authentic urine sample being collected from the Athlete.

B. Complicity

195. In this case, the alleged ADRV of "*Attempted Tampering*" and "*Complicity*" are closely linked to one another. Firstly, trying to bribe a DCO during sample collection is a form of complicity, and secondly, parts of the Respondent's behavior that supports the allegation of complicity also play a role in the reasoning about Attempted Tampering above.
196. The Respondent called an ambulance without any reasonable basis (No 185, 186 above), accompanied the Athlete to the Hospital, thus taking over responsibility for the situation, all the time did not make any attempt to persuade her to provide a sample (No 192 above), and attempted to bribe a DCO for sample replacement (No 193).

Conclusion

197. Thus, to the comfortable satisfaction of the Sole Arbitrator the Respondent demonstrated his complicity in Ms Malueva avoiding the anti-doping test.
198. As all this happened in one continuous course of events the two ADRVs have to be considered as one violation.

C. Sanction

199. In view of the above and according to Article 10.3.1 of the ADR, the Sole Arbitrator is satisfied that the sanction for attempted tampering is a period of ineligibility of four years. The additional finding of complicity does not add to this.

D. Period of Ineligibility start and end date

As the Respondent has not been provisionally suspended and the DADC did not sanction him, the period of ineligibility starts with the date when this Award is issued.

IX. COSTS

200. Article R64.4 of the CAS Code provides as follows:

“At the end of the proceedings, the CAS Court Office shall determine the final amount of the cost of arbitration, which shall include:

- the CAS Court Office fee,*
- the administrative costs of the CAS calculated in accordance with the CAS scale,*
- the costs and fees of the arbitrators,*
- the fees of the ad hoc clerk, if any, calculated in accordance with the CAS fee scale,*
- a contribution towards the expenses of the CAS, and*
- the costs of witnesses, experts and interpreters.*

The final account of the arbitration costs may either be included in the award or communicated separately to the parties. The advance of costs already paid by the parties are not reimbursed by the CAS with the exception of the portion which exceeds the total amount of the arbitration costs.”

201. Taking into consideration the outcome of this appeal, the Sole Arbitrator finds it reasonable that the Respondent shall bear the full costs of this arbitration, as determined by the CAS Court Office at the end of the proceedings.

202. Article R64.5 of the CAS Code provides as follows:

“In the arbitral award, the Panel shall determine which party shall bear the arbitration costs or in which proportion the parties shall share them. As a general rule and without any specific request from the parties, the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such contribution, the Panel shall take into account the complexity and outcome of the proceedings, as well as the conduct and the financial resources of the parties.”

203. Accordingly, pursuant to Article R64.5 of the CAS Code, the Sole Arbitrator has to consider the complexity and the outcome of the arbitration as well as the conduct and the financial resources of the Parties.

204. Having taken into account the proceedings before the DADC where the Appellant did not call any witnesses, thus depriving the DADC of thoroughly examining the evidence regarding the serious allegation of attempted bribery, as well as the financial resources of the Respondent on the one hand, the outcome, the Respondent's conduct and severe allegations towards the DCO on the other hand, the Sole Arbitrator holds that the Respondent shall pay 3,000 CHF (three thousand Swiss Francs) to the Appellant's legal and other costs incurred in this CAS proceedings.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed on 6 December 2019 by Association Russian Anti-Doping Agency against Mr Andrei Valerievich Eremenko is upheld.
2. The Decision No 77/2018 rendered by the Disciplinary Anti-Doping Commission in Russia on 12 April 2018 is set aside.
3. Mr Andrei Valerievich Eremenko has committed an Anti-Doping Rule Violation and is sanctioned with a period of four (4) years of ineligibility starting with the date of this decision.
4. The costs of the present arbitration, to be determined and served to the Parties by the CAS Court Office, shall be borne by Mr Andrei Valerievich Ermenko.
5. Mr Andrei Valerievich Eremenko is ordered to pay 3,000 CHF (three thousand Swiss Francs) as a contribution towards the legal fees and other expenses incurred by Association Russian Anti-Doping Agency in the present proceedings.
6. All other motions and prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland
Date: 16 April 2020

THE COURT OF ARBITRATION FOR SPORT



Sylvia Schenk
Sole Arbitrator