



Arbitration CAS 2007/A/1348 International Association of Athletics Federations (IAAF) v. Bulgarian Athletics Federation, Vania Stambolova & Venelina Veneva, award of 4 February 2008

Panel: Mr Hans Nater (Switzerland), President; Prof. Richard McLaren (Canada); Mr Pantelis Dedes (Greece)

Athletics (sprint; high jump)

Doping (testosterone)

Scientific reliability and reliance of the IRMS testing

Standard of proof

Right of the IAAF to request an IRMS analysis in the absence of an elevated T/E ratio and/or an abnormal steroid profile

Limit of IAAF's discretion

1. An IRMS analysis is an independent and sufficient basis upon which to determine that an anti-doping rule violation has occurred with respect to the exogenous administration of testosterone.
2. In order to succeed in rebutting the presumption set out in the IAAF Rules, the Respondents have to prove the veracity of their arguments by a balance of probability. Proof by balance of probability means that the CAS panel needs more than unfounded scientific hypotheses in order to accept the rebuttal of presumption and to invalidate results provided by a WADA-accredited laboratory which clearly show the presence of a prohibited substance.
3. Effective anti-doping policies require target testing conducted by the Anti-Doping Organisations. Target testing does not only entail selection of a specific athlete, who will undergo a doping control at a specific time and place; it may also include the choice of the type of sample (urine or blood) to be collected or even the type of the analysis to be applied in order to detect a prohibited substance. There is no rule which would prohibit IAAF from requesting an IRMS analysis on a sample that is owned by IAAF itself.
4. Like any other right, IAAF's discretion as regards target testing is not to be abused and target testing should be used for anti-doping reasons only. However, a missed test and/or a missed test evaluation procedure is/are an objective indication that the concerned athlete might have been using prohibited substances which justifies the decision to request IRMS analysis of the athlete's samples. Furthermore, even without such justification, the balancing of interests between the international federation's role in representing all competing athletes equally and fairly may require the IAAF to order that additional laboratory analytical work be carried out in order to ensure the protection

of the integrity of the sport and instil confidence in athletes who are competing fairly that their representative organisation has acted in the best interests of the sport.

The International Association of Athletics Federations (IAAF or the “Appellant”) is the world governing body for the sport of athletics. Article 1 of the IAAF Constitution provides that *“the IAAF is established for an indefinite period with legal status as an association under the laws of Monaco (Act No. 1072 of 27 June 1984)”*.

The Bulgarian Athletics Federation (“BUL” or the “First Respondent”) is the national governing body for athletics in Bulgaria, and is a member of the IAAF.

Vania Stambolova (“Ms Stambolova”) and Venelina Veneva (“Ms Veneva”) (“the Athletes”) are Bulgarian athletes, whose disciplines are 400 meters and high jump respectively.

On 9 November 2006 the IAAF sought to conduct an unannounced out-of-competition test on Ms Veneva in Ruse, Bulgaria, based on the whereabouts information that she had provided to the IAAF. Ms Veneva could not be found at the locations specified in her whereabouts information. On 27 November 2006, Ms Veneva provided her written explanations, as part of a missed test evaluation procedure initiated by the IAAF. On 7 December 2006 the IAAF informed Ms Veneva that her explanations could not be accepted and that she would be considered to have missed the test according to the IAAF Anti-doping Rules (the “IAAF Rules”). Ms Veneva did not challenge this decision.

On 27 November 2006 the IAAF sought to conduct an unannounced out-of-competition test on Ms Stambolova in Dogubayazit, Turkey, based on the whereabouts information that she had provided to the IAAF. Ms Stambolova could not be found at the locations specified in her whereabouts information. On 14 December 2006, Ms Stambolova provided her written explanations, as part of a missed test evaluation procedure initiated by the IAAF. On 16 February 2007 the IAAF informed Ms Stambolova that her explanations could not be accepted and that she would be considered to have missed the test according to the IAAF Anti-doping Rules. Ms Stambolova did not challenge this decision.

On 26 January 2007 Ms Stambolova and Ms Veneva provided out-of-competition urine samples (samples #397987 and #397986) in Budapest, Hungary. On 6 February 2007 Ms Veneva underwent a further out-of-competition test in Sofia, Bulgaria (sample #3003893). All three tests were conducted by the company International Doping Tests and Management (IDTM) at the request of the IAAF.

On 1 February 2007 the IAAF requested that the WADA-accredited laboratory in Lausanne, Switzerland (the “Lausanne Laboratory”) conduct an IRMS analysis on samples 397987 and 397986. In accordance with the instructions of the IAAF the IDTM collection report for the 3003893 sample indicated that an IRMS analysis was to be performed on this sample.

On 27 February 2007 and 14 March 2007 the Lausanne Laboratory reported that all three samples indicated an exogenous administration of testosterone or its precursors and noted that Testosterone and its precursors were prohibited substances under IAAF Rules.

By letters dated 26 March 2007 and 5 April 2007 to the IAAF, Ms Veneva denied having taken any prohibited substances. By letter dated 4 April 2007 to the IAAF, Ms Stambolova also denied having taken any prohibited substances. Both athletes stated in their letters that they presumed, after having consulted “*several laboratories and scientists [...] that the results mentioned in Doping control repo[r]t are due to medicament number 4 Tribulus*” which was noted on their doping forms.

By letters dated 3 April 2007 and 10 April 2007 to the BUL, signed by the IAAF’s Anti-Doping Administrator Dr Gabriel Dollé (“Dr Dollé”), the IAAF informed BUL that it could not accept the explanations of the athletes as adequate and, therefore, Ms Veneva and Ms Stambolova were provisionally suspended by the IAAF from all competitions, pending resolution of the cases.

On 23 April 2007, the “B” sample analysis of samples 397986, 397987 and 3003893 were commenced at the Lausanne Laboratory. Present were Ms Darina Zinovieva, attorney-at-law (“Ms Zinovieva”) and Dr Angel Lozanov, representatives of Ms Veneva and Ms Stambolova, who asked for further analysis of the samples. The Director of the Lausanne Laboratory, Dr Martial Saugy (“Dr Saugy”) took note of his answer on all three Records of Attendance to a B-sample analysis: “further analysis (full steroid profile), discussed by representatives should be requested to the IAAF officially, due to the scope of the LAD’s task (WADA TD 2004 EAAS)”.

On 27 April 2007 the Lausanne Laboratory reported that all three “B” sample analyses, conducted by carbon isotope ratio analysis confirmed the findings in the corresponding “A” samples of an exogenous administration of testosterone or its precursors. The results were forwarded to the BUL by Dr Dollé on 18 May 2007.

On 4 June 2007 the BUL Board of Administration (the “BUL Board”) held a hearing in the cases of Ms Veneva and Ms Stambolova. By letter dated 5 June 2007 the President of the BUL, Mr Dobromir Karamarinov (“Mr Karamarinov”), reported to the IAAF the outcome of the hearing. He stated that, on the basis of the expert report provided by Dr Margarita Gancheva (“Dr Gancheva”), the BUL Board had taken the following decision:

*“On the strength of Art. 3.2.2 of the Result Management Guidelines of the World Anti-Doping Program and the IAAF Anti-doping Rules 36.1 (d), 36.3, 36.4, 36.5, 37.4 (b), 37.5 and 37.9, the laboratory has reported the presence of testosterone / epitestosterone ratio greater than 4 to 1 in the urine of both the athletes in all the A-samples and B-samples, and ascertained the presence of physiological and pathological conditions / medications and nutrition supplements taken/ which could affect the results. Based on that reason we consider A FURTHER INVESTIGATION OF THE SAMPLES NECESSARY. This further investigation must comprise **full spectrometric analysis of the urine samples.** [...]”*

As a consequence of the decision taken by the Board, we kindly ask you to make a follow-up investigation with full spectrometric analysis of the urine samples of the athletes”.

On 5 June 2007, the IAAF forwarded BUL's letter to the Lausanne Laboratory for its response. Dr Saugy responded to the IAAF on 11 June 2007 disagreeing with the issues raised by Dr Gancheva. Dr Saugy stated *inter alia* that:

"It is said in the letter that the T/E ratio was higher than 4 to 1 in the urines of the athletes. This is a wrong statement, because the T/E ratios were in the three urines lower than 4. [...] We received the information from the IAAF Medical Office to target these samples and to perform directly IRMS measurements, whatever the T/E ratio was. [...] The decision taken by the board indicate a request of full spectrometric analysis of the sample. In this case, because the substance or the ratio of interest were not testosterone, epitestosterone or their ratio, it is absolutely not necessary to perform such analyses. The results were consistent with administration of a steroid because the $^{13}\text{C}/^{12}\text{C}$ value measured for a metabolite differs significantly (i.e. more than 3 delta units) from that of the urinary reference steroid chosen (As indicated in TD 2004EAAS, page 3 of 11). In the doc-packs for the three samples, the full mass spectrometric data of the metabolite of interest was provided in order to assure no contamination of the peak".

This letter was forwarded to the BUL by the IAAF on 14 June 2007.

The IAAF forwarded the arguments raised by Dr Gancheva and the answer of Dr Saugy to Professor Christiane Ayotte ("Prof Ayotte"), head of the WADA-accredited laboratory in Montreal. On 4 July 2007 Prof Ayotte provided her opinion that *"the results are clear and convincing and are consistent with the use of prohibited testosterone or its precursors"*.

On 26 June 2007 the BUL Board held a second hearing. Dr Gancheva and Ms Zinovieva, who had received Dr Saugy's answer, submitted their views. Then, the BUL Board reached the conclusion that (a) the results of the analyses of the three samples were inconclusive as regards the presence of an exogenous prohibited substance and (b) further analyses of the above samples were necessary. The BUL Board decided that, based *"on the experts' conclusion and the IAAF Anti Doping Regulations Rule 37.5 [...] a follow-up investigation of the case is required"*. The English versions of the experts' reports were received by the IAAF on 2 July 2007 and were forwarded to Dr Saugy.

By letter dated 12 July 2007 Dr Saugy answered the issues raised in Dr Gancheva's and Ms Zinovieva's reports as follows:

"No conclusion was drawn from the T/E ratio. [...] The IRMS is not a verification method. The science behind it is completely validated and published. It can clearly be used without other previous steroid determination. [...] The criteria for reporting the IRMS finding as described in the TD2004EAAS at page 3 were entirely followed for the 3 cases. [...] Natural factors influencing the IRMS results for the metabolite of interest can be excluded because the other compounds such as pregnandiol have not been altered".

By letter of the same day to the BUL, Dr Dollé set out the IAAF's position as regards the scientific issues raised before the BUL Board. The IAAF stated that it considered that the analytical results produced were conclusive and clearly established the use of testosterone or its precursors. Dr Dollé stated that there were no departures from the International Standard for Laboratories and that the analyses established unambiguously and by reliable means the use of testosterone or its precursors. Therefore, the IAAF rejected the BUL's request for further analyses.

On 18 July 2007 the BUL Board reached its final decision on the cases of Ms Stambolova and Ms Veneva, which was communicated by letter to Dr. Dollé on the same day as follows:

“After a thorough examination of the full documentation on the case, and based on the argumentations presented by our experts and legal advisor, the Board, with all its respect to the IAAF anti-doping Administration, concluded there are no sufficient reasons to punish the athletes.

*The Board of Administration of Bulgarian Athletic Federation, considers that **no anti-doping rule violation has been committed by the athletes Venelina Veneva and Vanya Stambolova.***

The main reason for this decision is the fact that the athletes have been refused twice the follow-up investigation of the case with full spectrometric analysis of the samples”.

By e-mail of 18 July 2007 Dr Dollé acknowledged receipt of the final decision reached by the BUL Board and asked for an English version of the full decision of the Bulgarian Athletics Federation. Dr. Dollé’s request for the full decision of the Bulgarian Federation was answered by the BUL Board in the following way:

On 21 July 2007 Mr Karamarinov sent Dr Dollé the English version of the written submissions of the scientific expert and the legal advisor to the BUL Board, which represent the reasoning of the BUL Board’s decision. In the same letter Mr Karamarinov stated:

“We are sending you here enclosed the written argumentation of the scientific expert – Margarita Gancheva, Independent expert in mass spectrometry and the legal advisor Darina Zinovieva Ph.D. Attorney at Law.

On the basis of their opinions, the Board of Administration of Bulgarian Athletic Federation has reached the conclusion that no sufficient evidences were presented to establish an anti doping rule violation by the athletes. May we stress out that we didn’t question the analytical methods used by the Laboratory, nor the fact that the Laboratory have conducted the analyses in accordance with the WADA International Standard for Laboratories and the relevant Technical Documents. We consider the results not sufficient for proving the use of prohibited substances, therefore we asked for further analysis of the samples”.

Dr Gancheva’s opinion reads as follows:

“About: the results from samples A/B 397986, 397987, 3003893 and the questions and answers exchanged with Dr. M. Saugy and Ph. D. Ayotte,

On the basis of the detailed examination of the analytical results of samples A/B 397986, 397987, 3003893, the answers of Dr. M. Saugy and Ph. D. Ayotte, kindly submitted by fax by Dr. Dole on 13th July 2007, and after the refuse for further investigation both in screening programme and with the confirming IRMS method, I sustain my view that the increased values of metabolite of testosterone, etiocholanolone, are of an endogenous nature and are due to the general physiological condition in case of taking the announced and non-prohibited additive ‘Tribestan’.

The specific confirmation IRMS method applied is, in the words of its author, R. Aguilera, based on the difference between the C4 and C3 food chains (for people and plants, respectively). Stigmasterole and diogenine from plants are processed in a semi-synthetic way in certain steroid and anabolic products, testosterone preparations including. In our case, the food additive ‘Tribestan’ derived from the plant Tribulus terrestris (plant type C3 for the IRMS method) contains up to 45% diogenine (proto diogenine), where the additive is of a wide-spectrum physiological effect.

The additional information about the effect of the announced additive in the application of the IRMS method requested from me aimed to direct the analysing specialist's attention to the problem of interpreting results from a mixed type of samples where the food chains are simultaneously of C4 and C3 plant origin.

In this case, appropriate reference material should be used, derived from a male or female volunteer loaded with the same food additive, in order to compare the real values of testosterone and its metabolites in negative urine and the above mentioned samples.

To me, this is the explanation for the increased indicator of etiocholanolone and this cannot provide ground for making a final conclusion that this is a case of using exogenous testosterone or precursors. Unfortunately, the scientific discussion has boiled down to quoting WADA technical documents.

I will send a detailed answer to all questions asked by Dr. M. Saugy and Ph. D. Ayotte further on.

After the argumentation provided above, I don't think there is ground for sanctioning the athletes who gave voluntarily out of competition samples. [...]".

Ms Zinovieva's legal conclusions read as follows:

"Because of the simultaneous existence of:

- a) an expert's proof of the endogenous origin of the substance and*
- b) an expert's assertion that the application of an analytical laboratory method could prove more effectively the origin of the substance.*

In my opinion, in this case the following legal hypotheses are in defence of the athletes:

- 1. Application of Rule 38.10 about the lack of violation (IAAF Rules, Chapter 3 – Anti-Doping).*
- 2. Depending on the decision of the punishing authority and the subsequent procedural stages stipulated in the regulatory framework, we are ready to submit documents, explanations and opinions in support of the conclusions both to the punishing authority of Bulgarian Athletic Federation (provided it so requires) and to the IAAF Doping-Review Board or the Court of Arbitration for Sport".*

On 3 August 2007 the IAAF filed the Statement of Appeal with CAS against the decision reached by the BUL Board on 18 July 2007 and requested that the CAS Panel considered this matter as a hearing *de novo* and upon hearing the evidence decide:

- "(i) whether Ms Stambolova committed an anti-doping violation, as defined in IAAF Rules;*
- (ii) whether Ms Veneva committed an anti-doping rule violation, as defined in IAAF Rules;*
- (iii) whether, in proper compliance with IAAF Rules, Ms Stambolova should be declared ineligible from competition for a minimum of two years from the date of the CAS Panel's decision, less any period of suspension already served by her; and*
- (iv) whether, in proper compliance with IAAF Rules, Ms Veneva should be ineligible from competition for a minimum of two years from the date of the CAS Panel's decision, less any period of suspension already served by her".*

In its Appeal Brief of 7 September 2007 the IAAF required from CAS the following:

“Ms Stambolova committed an anti-doping violation; Ms Veneva committed an anti-doping violation; and consequently, Ms Stambolova and Ms Veneva should each be declared ineligible for a minimum of two years from the date of the hearing, less any period of provisional suspension already served.

In addition, the IAAF requests that the BUL and/or Ms Stambolova and Ms Veneva reimburses to the IAAF the CAS Court Office Fee of CHF500 and its costs, to be ascertained”.

By letter dated 10 October 2007 the BUL filed its Answer and submitted the following requests to the CAS:

“The IAAF’s appeal, which is the subject of this case presented before the CAS [...] to be rejected on the basis of lacking in grounds and lacking in evidence, with all the resulting legal consequences, including the rejection of the request, made by IAAF for reimbursement of the court fees it has submitted and other expenditures made on the case.

To pronounce a judgment, binding IAAF to reimburse the BUL.

[W]hen pronouncing its judgment on the appeal by the IAAF, to take in consideration and conduct of the athletes Venelina Veneva and Vanya Stambolova during the clarification of the circumstances on the case by the IAAF and the BUL. Both athletes have constantly and consistently, persistently and actively offered full cooperation with the BUL and with IAAF for the purpose of elucidating the objective truth of this case, and they have also insistently requested more concise and thorough analysis of their samples, including by means of the full scale GC-MS analysis (using 3/4 ions), and also for performing the testing on the so called “C” samples”.

By letter dated 10 October 2007 Ms Stambolova and Ms Veneva filed their Answer and submitted the following requests to the CAS:

“To declare that there is no doping offence ‘Use of Prohibited Substances’ committed by the Respondents as opposed to the allegations of IAAF Appeal Brief; to confirm the BUL Decision dated 18th July 2007; to eliminate the Ineligibility for the period 2 years as improperly and unfoundedly imposed; to declare that Respondents’ all rights to compete in further sports competitions of any kind are restored to themselves.

The Respondents reserve their right to request for an Alternative Decision of the Arbitral Panel in their favour in the following sense: Declaring that the Respondents have No Significant Fault for the alleged doping offence or that the alleged presence of Prohibited Substance is due of the Negligence admitted by the Respondents; reducing the period of the Ineligibility imposed to one-half of the minimum 2-years period, considered that period from the date of sample collection, e.g. 24th January 2007 for Vania Stambolova and 6th February 2007 for Venelina Veneva”.

A hearing was held in Lausanne on 18 December 2007 (the “Hearing”). Ms Stambolova and Ms Veneva were not present at the Hearing.

During the Hearing the Appellant’s counsel signed the Order of Procedure reserving, however, the Appellant’s rights on the issue of applicable law. He requested the IAAF’s Rules and the law of the Principality of Monaco, i.e. the law of IAAF’s constitution be applied, and referred to IAAF’s letter of 29 November 2007 to the CAS.

At the outset of the Hearing and for the first time during these proceedings, the Athletes raised an objection regarding the admissibility of the appeal and requested that the appeal be dismissed on the

ground that the 30-day time limit provided by IAAF Rule 60.25 had not been respected by the Appellant. The Athletes submitted that the decision by BUL not to punish the athletes of 4 June 2007 was announced to the IAAF on 5 June 2007, and, therefore, the statement of appeal of 3 August 2007 was not filed within the 30-day time limit.

At the end of the Hearing, the parties, after making submissions in support of their respective requests for relief, confirmed that they had no objections to raise regarding their right to be heard and have been treated equally and fairly in the arbitration proceedings.

LAW

Jurisdiction

1. Article R47 of the Code of Sports-related Arbitration (the “CAS Code”) states:
“An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body”.
2. IAAF Rule 60 provides the following:
“Appeals
 9. *All decisions subject to appeal under these Rules, whether doping or non-doping related, may be appealed to CAS in accordance with the provisions set out below. All such decisions shall remain in effect while under appeal, unless determined otherwise (see Rules 60.23-24 below).*
 10. *The following are examples of decisions that may be subject to appeal under these Rules: [...]*
 - (c) *Where a Member has taken a decision that an athlete, athlete support personnel or other person has not committed an antidoping rule violation”.*
3. The jurisdiction of the CAS has been explicitly recognised by the parties in their briefs and in the Order of procedure they have signed.

Applicable law

4. Article R58 of the CAS Code provides the following:
“The Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the Parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.

5. In this case the applicable regulations are the IAAF Rules.

IAAF Rule 60.28 provides:

"In all CAS appeals involving the IAAF, CAS and the CAS Panel shall be bound by the IAAF Constitution, Rules and Regulations (including the Procedural Guidelines) [...]".

6. The Parties disagree on the applicable rules of law. The IAAF submits that, Monegasque law is applicable because the Panel is bound by the IAAF Rules and Regulations, which state in Rule 60.29 that *"In all CAS appeals involving the IAAF, the governing law shall be Monegasque law [...]"*. The Respondents have signed the Order of Procedure which refers to article R58 of the CAS Code. At the Hearing the Respondents have also referred to Bulgarian Law, as the law of the seat of the national federation that issued the challenged decision. Both parties agreed at the Hearing that this issue would not have to be resolved by the Panel as long as the application of a state law did not appear necessary to decide the dispute.

Given the nature of the issues in this appeal, the Panel will not refer to municipal substantive law, except insofar as it may represent an expression of more general principles of law. In any event, the Panel will not decide any substantive issue on the basis of a specific national law. The Panel therefore finds it unnecessary to rule on the question of the substantive law applicable to this appeal.

Admissibility

7. Article R55 of the CAS Code states:

"Within twenty days from the receipt of the grounds for the appeal, the Respondent shall submit to the CAS an answer containing:

- *a statement of defence;*
- *any defence of lack of jurisdiction;*
- *[...].*

If the Respondent fails to submit its response by the given time limit, the panel may nevertheless proceed with the arbitration and deliver an award".

8. Article R56 of the CAS Code provides the following:

"Unless the parties agree otherwise or the President of the Panel orders otherwise on the basis of exceptional circumstances, the parties shall not be authorized to supplement their argument, nor to produce new exhibits, nor to specify further evidence on which they intend to rely after the submission of the grounds for the appeal and of the answer".

9. The Athlete Respondents have actively participated in the present proceedings since August 2007. They filed their Answer on 10 October 2007. In their answer no objection regarding the timeliness of the appeal was raised. This objection was for the first time raised at the outset of the hearing. Therefore, the Athlete Respondent's objection to the jurisdiction of CAS is belated.

10. Moreover, the Athlete Respondents in their Answer clearly stated that they “do not object the facts ascertained by IAAF in its Appeal Brief (items between 9 and 30 including)”. Item 30 of IAAF’s appeal brief reads: “On 3 August 2007, in accordance with the time limit stipulated in IAAF Rule 60.25, the IAAF submitted its Statement of Appeal, within 30 days of notification of the disputed decision”.

Merits

Burden and Standard of Proof

11. IAAF Rule 33 provides the following:

“Standards of Proof of Doping

1. *The IAAF, the Member or other prosecuting authority shall have the burden of establishing that an anti-doping rule violation has occurred under these Anti-Doping Rules.*
2. *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 body, bearing in mind the seriousness of the allegation which is made. This standard of proof is greater than a mere balance of probability but less than proof beyond a reasonable doubt.*
3. *Where these Anti-Doping Rules place the burden of proof on an athlete, athlete support personnel or other person alleged to have committed an anti-doping violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability.*
4. *Facts related to anti-doping rule violations may be established by any reliable means. The following standards of proof shall be applicable in doping cases:*
 - (a) *WADA-accredited laboratories are presumed to have conducted sample analysis and custodial procedures in accordance with the International Standard for Laboratories. The athlete may rebut this presumption by establishing that a departure from the International Standard for Laboratories has occurred, in which case the IAAF, the Member or other prosecuting authority shall have the burden of establishing that such departure did not undermine the validity of the adverse analytical finding. [...]*

[emphasis added by the Panel].

It is clear from these Rules that the Appellant, as any other International Federation that has adopted the World Anti-Doping Code (the “WADA Code”), has the burden to establish the anti-doping rule violation to the comfortable satisfaction of the Panel (see WADA Code, Article 3).

In the present case, the Athletes have explicitly accepted in their Answer that the collection of the samples, the chain of custody and the analysis by the Lausanne Laboratory were conducted according to the applicable rules. However, the Respondents submit that the results of the IRMS analysis are not sufficient to prove the anti-doping rule violation and further analysis is needed.

12. In this context, the Panel has first to answer the following question:

Is the IRMS analysis a sufficient basis to find that an anti-doping rule violation has occurred with respect to the exogenous application of testosterone? If yes, does the IRMS analysis indicate exogenous administration of testosterone?

13. The WADA 2007 Prohibited List (the “Prohibited List”), which is incorporated into the IAAF Rules through IAAF Rule 34, provides under Article S1.1.b (Endogenous Anabolic Steroids) the following:

“In all cases, and at any concentration, the Athlete’s sample will be deemed to contain a Prohibited Substance and the laboratory will report an Adverse Analytical Finding if, based on any reliable analytical method (e.g. IRMS), the laboratory can show that the Prohibited Substance is of exogenous origin. In such case, no further investigation is necessary” [emphasis added by the Panel].

IAAF Rule 36 provides:

“Analysis of Samples

1. All samples collected under these Anti-Doping Rules shall be analysed in accordance with the following general principles: [...] (d) Laboratories shall analyse samples and report results in conformity with the International Standard for Laboratories”.

The International Standard for Laboratories at p.5 reads:

“Technical Documents are issued, modified, and deleted by WADA from time to time and provide direction to the Laboratories on specific technical issues. Once promulgated, Technical Documents become part of the International Standard for Laboratories”.

The WADA Technical Document TD2004EAAS titled “Reporting and Evaluation Guidance for Testosterone, Epitestosterone, T/E ratio and other endogenous steroids” (the “TD2004EAAS”) in page 3 under item 4 provides:

“The results of the IRMS analysis and/or of the steroid profile measured by GC/MS shall be used to draw conclusions as to whether a doping violation may have been committed. If the IRMS study does not readily indicate exogenous administration, the result should be reported as “inconclusive” and if necessary further longitudinal studies performed” [emphasis added by the Panel].

14. In jurisprudence, the general scientific reliability and reliance upon IRMS testing has been commented upon by CAS Panels in the following cases:

In CAS 2000/A/274, the CAS Panel held that even though the T/E ratio in the athlete’s B specimen was not reliable because it may have been affected by bacterial degradation, IRMS analysis provided definitive proof of doping:

“Based upon the above analysis, the Panel has concluded that: (a) the IRMS analysis provides conclusive scientific evidence of an exogenous administration of testosterone and; (b) the Panel is entitled to rely upon the IRMS analysis as an independent and sufficient basis for finding that the Appellant committed a doping offence under FINA Rule DC 2.1(a)”.

The case CAS 2002/A/383 involved a Brazilian runner with an IRMS delta/delta value for a metabolite of approximately -6‰. The CAS Panel concluded:

“The IRMS analysis provides additional direct and conclusive scientific evidence of an exogenous administration of the prohibited substance testosterone by the Athlete”.

In CAS 2005/A/908, the Panel held that IRMS analysis is not affected by sample degradation and that IRMS independently determines doping. Several other cases dealt with the same issue and concluded that the IRMS is a scientifically reliable method of detecting the presence of exogenous testosterone: CAS 98/192; CAS 99/A/239; CAS 2002/A/382; CAS 2005/A/936.

15. In view of the above *expressis verbis* reference to the IRMS analysis in the Prohibited List and the TD2004EAAS as well as the established CAS jurisprudence on the same issue, the Panel concurs with those panels which have dealt with this issue in the past and finds that the IRMS analysis is an independent and sufficient basis upon which to determine that an anti-doping rule violation has occurred with respect to the exogenous administration of testosterone.
16. The Panel moves now to a discussion of the results of the IRMS analyses in the present case as reported by the Lausanne Laboratory.
17. TD2004EAAS in p. 3, under item 3 provides:
“The results will be reported as consistent with the administration of a steroid when the $^{13}\text{C}/^{12}\text{C}$ value measured for the metabolite(s) differs significantly i.e. by 3 delta units or more from that of the urinary reference steroid chosen. In some Samples, the measure of the $^{13}\text{C}/^{12}\text{C}$ value of the urinary reference steroid(s) may not be possible due to their low concentration. The results of such analyses will be reported as ‘inconclusive’ unless the ratio measured for the metabolite(s) is below -28‰ based on non-derivatised steroid”.
18. Applying this rule, the Lausanne Laboratory measures the delta values for the testosterone metabolites of etiocholanolone and androsterone and compares them with the delta values of the internal endogenous reference compounds chosen, which are pregnanediol and androstenol. The difference between the delta values of each metabolite and the delta values of each endogenous compound is referred to as a delta/delta value.
19. The results of the IRMS analysis on Ms Stambolova’s 397987 sample, as regards the delta values of the metabolites and the endogenous reference compounds, were as follows:

Isotope ratio / $\delta^{13}\text{C}$ [‰]				
	Testosterone metabolites		Endogenous reference	
	Etiocholanolone	Androsterone	Androstenol	Pregnanediol
A Sample	-28.92	-25.82	-22.46	-21.98
B Sample	-29.06	-27.47	-22.23	-21.80

These results clearly show that the delta values of etiocholanolone are below -28‰ and differ from that of the urinary reference steroid chosen (pregnanediol) by more than 6‰ in both A and B samples.

20. The results of the IRMS analysis on Ms Veneva's 397986 sample, as regards the delta values of the metabolites and the endogenous reference compounds, were as follows:

Isotope ratio / $\delta^{13}\text{C}$ [‰]				
	Testosterone metabolites		Endogenous reference	
	Etiocholanolone	Androsterone	Androstenol	Pregnanediol
A Sample	-30.49	-26.92	Not determined	-21.98
B Sample	-30.77	-28.16	Not determined	-21.92

These results clearly show that the delta values of etiocholanolone are below -28‰ and differ from that of the urinary reference steroid chosen (pregnanediol) by more than 8‰ in both A and B samples.

21. The results of the IRMS analysis on Ms Veneva's 3003893 sample, as regards the delta values of the metabolites and the endogenous reference compounds, were as follows:

Isotope ratio / $\delta^{13}\text{C}$ [‰]				
	Testosterone metabolites		Endogenous reference	
	Etiocholanolone	Androsterone	Androstenol	Pregnanediol
A Sample	-29.34	-26.33	Not determined	-21.25
B Sample	-29.85	-27.07	Not determined	-21.35

These results clearly show that the delta values of etiocholanolone are below -28‰ and differ from that of the urinary reference steroid chosen (pregnanediol) by more than 8‰ in both A and B samples.

22. In the Panel's view, these results are consistent with the exogenous administration of testosterone or its precursors. The IAAF has thus met its burden to prove that a prohibited substance was found in the Athletes' urine samples.

Rebuttal of Presumption

23. The Respondents submitted that the IAAF and the Lausanne Laboratory have violated the WADA International Standard for Laboratories and the WADA Technical Documents TD2004EAAS and TD2003IDCR. The main issues that arise from the Respondents' submissions are:

- (a) Did the IAAF have the right to instruct the Lausanne Laboratory to conduct an IRMS analysis on the samples in the absence of an elevated T/E ratio and/or an abnormal steroid profile?
- (b) Were the laboratory findings attributable to Tribulus Terrestris and/or contraceptive tablets and/or sunflower oil? Should the Laboratory perform a full mass spectrometric analysis of the sample as requested by the Respondents?

In order to succeed in rebutting the presumption set out in the IAAF Rules, the Respondents have to prove the veracity of their arguments by a balance of probability.

- (a) *Did the IAAF have the right to instruct the Lausanne Laboratory to conduct an IRMS analysis on the samples in the absence of an elevated T/E ratio and/or an abnormal steroid profile?*

24. WADA TD2004EAAS in p. 2 paragraph 2 provides:

"It is recommended that a urine Sample in which any one of the following criteria is met during the Screening Procedure, be routinely submitted to the IRMS analysis:

- i) T/E value equal or greater than 4;*
- ii) concentration of testosterone or epitestosterone (equivalent to the glucuronide) greater than 200 ng/mL1;*
- iii) concentration of androsterone or etiocholanolone (equivalent to the glucuronide) greater than 10,000 ng/mL1;*
- iv) concentration of DHEA (equivalent to the glucuronide) greater than 100 ng/mL1.*

It is recognised that other parameters may justify a need for IRMS study and the reason should be documented"
[emphasis added by the Panel].

25. The BUL's submission is that the Lausanne Laboratory and IAAF violated the TD2004EAAS, by performing IRMS analysis on the three samples without any of the criteria set out in the same technical document being met. On the other hand, the Athletes in their Answer Brief do not question IAAF's right to ask for IRMS analysis "*even [when] the technical parameters requested by WADA Technical Document – TD2004EAAS do not exist*", but they submit that *in concreto* there were no reasonable grounds for doing so and that IAAF took such decision in *mala fide* towards the Athletes.

26. The Panel disagrees with the BUL's submission and finds that the IAAF, based on Rule 36(1)(d) of its federation rules is bound to abide by the WADA Code and has in this case done so.

27. In the present case, the Lausanne Laboratory performed the IRMS analysis on the Athletes' samples upon the request of the IAAF. The Lausanne Laboratory, by following the instructions of the IAAF, which are documented in the laboratory package (see laboratory packages p.15 for sample A397987, p.14 for sample B397987, p.15 for sample A397986, p.14 for sample A397986, p.13 for sample A3003893 and p.13 for sample B3003893) did not violate the TD2004EAAS. Therefore, the BUL's submission has to be dismissed in that respect. The Panel shall now consider the legitimacy of IAAF's request for the IRMS analysis.

28. Article 5 of the WADA Code provides:

"Article 5: Testing

5.1 Test distribution planning. Anti-doping organisations conducting Testing shall in coordination with other Anti-Doping Organisations conducting Testing on the same Athlete pool: [...]

5.1.3 Conduct Target Testing

[5.1.3 Comment: Target Testing is specified because random Testing or even weighted random Testing, does not ensure that all the appropriate Athletes will be tested. (For example: world class athletes [...]). Obviously, Target Testing must not be used for any purpose other than legitimate Doping Control. The Code makes it clear that Athletes have no right to expect that they will be tested only on a random basis. Similarly, it does not impose any reasonable suspicion or probable cause requirement for Target Testing]."

IAAF Rule 36.2 provides:

"All samples provided by athletes in doping controls conducted under the responsibility of the IAAF shall immediately become the property of the IAAF".

Article 1.5 of the IAAF Procedural Guidelines provides:

"[...] For the purposes of the Anti-Doping Rules and these Procedural Guidelines, the body fluids currently analysed are urine and blood. The IAAF Council however reserves the right to authorise testing to be conducted on any other body tissues or fluids if advances made in the detection of prohibited substances or prohibited methods indicate that the analysis of such other body tissues or fluids would be useful and appropriate".

Article 2.5 of the same guidelines provides:

"As part of the test distribution plan, the Medical and Anti-Doping Commission shall allocate the number of sample collections by type of sample collection, including out-of-competition, in-competition, blood and urine sample collection, as may be required in order to achieve effective deterrence".

Article 4.11 of the same guidelines provides:

"Athletes in the IAAF Registered Testing Pool shall be selected for no advance notice out-of-competition testing by the IAAF using random selection methods and by target testing. Selection shall be made having regard to the number of sample collections allocated in the IAAF test distribution plan"

[emphasis added by the Panel].

29. The above provisions make it clear that effective anti-doping policies require target testing conducted by the Anti-Doping Organisations. Target testing does not only entail selection of a specific athlete, who will undergo a doping control at a specific time and place; it may also include the choice of the type of sample (urine or blood) to be collected or even the type of the analysis to be applied in order to detect a prohibited substance. Furthermore, all samples collected under the IAAF Rules become the property of the IAAF. There is no rule, and indeed none was referred to by the BUL, which would prohibit IAAF from requesting an IRMS analysis on a sample that is owned by IAAF itself. Therefore, it is the Panel's view that the IAAF did have the right to request an IRMS analysis on the samples in the absence of an elevated T/E ratio and/or an abnormal steroid profile. Therefore, the BUL's argument to the contrary is rejected.

30. Like any other right, IAAF's discretion as regards target testing is not to be abused and target testing should be used for anti-doping reasons only. The Athletes submit that they have been "a target to be discredited" and that IAAF's decision, as expressed in its letter of 1 February 2007 to the Lausanne Laboratory, was unreasonable. In this respect the Panel observes the following: Ms Stambolova and Ms Veneva are both International Level athletes with numerous world class performances and were included in the 2007 IAAF Registered Testing Pool. As such, they were subject to target testing according to the IAAF Rules. Both athletes had missed an out-of-competition test in November 2006, because they could not be found at the locations specified in their whereabouts information. Although the Athletes in their Brief do not accept that they were liable for missing the tests, they did not challenge the relevant IAAF's decisions when they were announced to them. The Panel finds the IAAF's decision to request IRMS analysis of the Athletes' samples legitimate because the IAAF had an objective indication (a missed test and/or a missed test evaluation procedure) that the Athletes might have been using prohibited substances. Therefore, the Panel finds the IAAF action perfectly understandable and appropriate under the said circumstances.

31. The Athletes allege prejudice towards them by the IAAF. They proffer no evidence of such an allegation to support their conspiratorial theory. The IAAF had legitimate concerns about these Athletes given the missed tests discussed in the previous paragraph. However, even if the IAAF did not have such concerns the balancing of interests between the international federation's role in representing all competing athletes equally and fairly may require the IAAF to order that additional laboratory analytical work be carried out in order to ensure the protection of the integrity of the sport and instil confidence in athletes who are competing fairly that their representative organization has acted in the best interests of the sport. Therefore, the Panel rejects as being without foundation the theory of the Athletes that there is a conspiracy against them.

- (b) *Were the laboratory findings attributable to Tribulus Terrestris and/or contraceptive tablets and/or sunflower oil? Should the Laboratory perform a full mass spectrometric analysis of the sample as requested by the Respondents?*

32. The Panel heard extensive evidence on these issues by the following experts:

Experts for the Appellant:

- Dr Christophe Saudan, Project Leader and Certifying Scientist at the Lausanne Laboratory, Switzerland, who was involved in the analysis of the samples;
- Professor Wilhelm Schänzer, head of the WADA accredited Laboratory in Cologne, Germany;
- Dr Olivier Rabin, Science Director of WADA, Montreal, Canada.

Experts for the Respondents:

- Dr Margarita Gancheva, Researcher and Methodologist in chromatography and mass spectrometry, Sofia, Bulgaria;
- Dr Ivelin Rizov, Research Fellow in AgrioBioInstitute, Sofia, Bulgaria

33. Taking into account the level of independence, qualification and experience of each expert, the Panel has reached the following conclusions concerning the scientific issues raised by the parties:

- (a) The delta values of testosterone metabolites may slightly increase or decrease, due to the effect of various factors, including Tribulus Terrestris, contraceptive tablets, local diet habits and extensive exercise. It is extremely rare – if not impossible – that these factors, even when combined, can give rise to delta values more negative than -28‰.
- (b) Even when these kind of alterations are observed, all delta values are affected in such a way, that the delta/delta values do not significantly change and remain under the threshold of -3‰. There is no scientific evidence that Tribulus Terrestris and/or contraceptive tablets and/or sunflower oil can give rise to a delta/delta value of more than -3‰ and therefore an adverse analytical finding. Arguments to the contrary presented by Dr Rizov – a scientist without any experience in anti-doping – were clearly hypothetical (these factors “*could be a logical reason for the test findings*”) and were not supported by any reliable publication or other scientific research on human beings.
- (c) The nutritional supplement Tribestan has been identified until today as the cause of an adverse analytical finding only in cases where it was contaminated with steroids not declared on the product’s label.
- (d) There was no elevated T/E ratio in the present case. When performing the IRMS analysis the Lausanne Laboratory properly applied the identification criteria provided for in TD2003IDCR: the steroids analysed by IRMS were first analysed by GC/MS in order to be properly identified (for a detailed presentation of the IRMS analysis see North American CAS/AAA USADA v. Landis, pp. 28-30). Therefore, a full steroid profile was

not required. Dr Gancheva's argument regarding the absolute necessity of a full steroid profile that would support the IRMS findings is not shared by the Panel. Dr Gancheva testified that she had never personally performed an IRMS analysis and that her knowledge of the method and the instrument is based solely on publications and observation of other colleagues. Dr Gancheva's experience on anti-doping issues is limited to an expert witness testimony in an arbitration hearing a decade ago. Without questioning Dr Gancheva's personal integrity, the Panel observed her lack of expertise on such a critical aspect of this case.

34. Based on the above the Panel is satisfied that the IAAF has completely satisfied its burden of proof with respect to a doping offence committed by Ms Stambolova and Ms Veneva under the IAAF Rules. On the other hand, the Athletes have failed to demonstrate any deviations from the International Standard of Laboratories or that the results could be explained by reasons other than administration of exogenous testosterone. Proof by balance of probability means that the Panel needs more than unfounded scientific hypotheses in order to accept the rebuttal of presumption and to invalidate results provided by a WADA-accredited laboratory which clearly show the presence of a prohibited substance. As a result, the analysis findings were not attributable to Tribulus Terrestris and/or contraceptive tablets and/or sunflower oil and the Lausanne Laboratory was not obliged by any applicable rule to obtain a full steroid profile before reaching a conclusion on the adverse analytical finding.

No (Significant) Fault or Negligence

35. The Athletes submitted in their Answer Brief that the nutritional supplement they were using (Tribestan) could have been contaminated and although they "*are aware [of] WADA's principle of 'strict liability' [...] they could not be treated completely responsible because of not examining the content of each Tribestan they take*". For this reason they asked the Panel to reduce the period of ineligibility to one year, on the basis of exceptional circumstances that they bore no significant fault or negligence in generating the result.
36. It is evident from the cases filed and the oral submissions of the Respondents that no evidence was brought to the Panel's attention as regards a possible contamination of the *specific* packages of Tribestan that the Athletes consumed. Therefore, the Panel cannot accept this argument.

Sanction

37. IAAF Rule 40 provides:

"1. If any person commits an anti-doping rule violation under these Anti-Doping Rules, he shall be subject to the following sanctions:

(a) for a violation under Rules 32.2(a), (b) or (f) (prohibited substances and prohibited methods), except where the prohibited substance is a specified substance in a case under Rule 40.5 below, or Rule 32.2(i) (competing whilst suspended or ineligible):

(i) first violation: for a minimum period of two years' ineligibility.

[...]

Commencement of ineligibility period

9. In any case where a period of ineligibility is to be imposed under this Rule, the period of ineligibility shall start on the date of the hearing decision providing for ineligibility or, if the hearing is waived, on the date the ineligibility is accepted or otherwise imposed. When an athlete has served a period of provisional suspension prior to being declared ineligible (whether imposed or voluntarily accepted), such a period shall be credited against the total period of ineligibility to be served”.

38. The Panel finds that the Athletes shall be declared ineligible for a period of two years starting on the date of this decision. Ms Veneva and Ms Stambolova were provisionally suspended by the IAAF on 3 April 2007 and 10 April 2007 respectively. The period of suspension shall be credited against the total period of ineligibility to be served.

The Court of Arbitration for Sport rules:

1. The appeal filed on 3 August 2007 by the International Association of Athletics Federation against the decision issued on 18 July 2007 by the Board of Administration of the Bulgarian Athletics Federation is upheld.
 2. The decision issued on 18 July 2007 by the Board of Administration of the Bulgarian Athletics Federation is set aside and nullified.
 3. A suspension of two years is imposed on Ms Vania Stambolova and Ms Venelina Veneva commencing on the date of this decision, less the period of provisional suspension already served.
 4. All other motions or prayers for relief are dismissed.
- (...).