

CAS 2014/A/3498 IAAF v TAF & Ms Asli Cakir-Alptekin

CONSENT ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Mr. Ken E. **Lalo**, Attorney-at-Law, Gan-Yoshiyya, Israel
Arbitrators: Mr. Romano F. **Subiotto**, Q.C., Attorney-at-Law, Brussels, Belgium, and
London, United Kingdom
Mr. Philippe **Sands**, Q.C., Barrister, Professor of law, London, United
Kingdom

in the arbitration between

INTERNATIONAL ASSOCIATION OF ATHLETICS FEDERATIONS, Monaco

Represented by Mr. Jonathan Taylor & Mrs. Elizabeth Riley, Bird and Bird LLP, Attorneys-at-law, London, United Kingdom

as Appellant

and

TURKISH ATHLETIC FEDERATION, Ankara, Turkey

Represented by Mr. Fatih Cintimar, President

as First Respondent

MS. ASLI CAKIR-ALPTEKIN, Turkey

Represented by Mr. Koray Akalp, Akalp Law Firm, Attorney-at-law, Istanbul, Turkey

as Second Respondent

I. PARTIES

1. The International Association of Athletics Federations (“**IAAF**”) is the international governing body for track and field athletes recognized as such by the International Olympic Committee. The membership of the IAAF primarily comprises national and regional athletics federations. It has its seat and headquarters in Monaco.
2. The Turkish Athletic Federation (“**TAF**”) is the national governing body for track and field athletes in Turkey. It has its headquarters in Ankara and is the relevant member federation of the IAAF for Turkey.
3. Ms. Asli Cakir-Alptekin (the “**Athlete**”) is an athlete of Turkish nationality and is affiliated to the TAF. She is a middle distance runner, specialising in 1,500 meter events and is an international-level athlete under the IAAF rules.

II. JURISDICTION

4. The IAAF relies on Rule 42 and in particular paragraphs 1, 2, 3, 13, 16, 17, 20 and 22 of the IAAF Rules (2012 – 2013 Edition) (“**IAAF Rules**”) as conferring jurisdiction on the Court of Arbitration for Sport (“**CAS**”). The jurisdiction of the CAS over this matter is not disputed by the TAF or the Athlete (the “**Respondents**”). Such jurisdiction has been further confirmed in the Order of Procedure executed by the parties and in the context of the settlement agreement reached by the parties, as later described.

III. FACTUAL BACKGROUND OF THE DISPUTE AND PROCEDURAL HISTORY

5. On 10 January 2013, the Athlete was formally charged by IAAF with an anti-doping rule violation on the basis of her Athlete Biological Passport Profile consisting of several variable measurements between 29 July 2010 and 17 October 2012, reviewed and analysed by an Expert Panel.
6. The Athlete's case was heard in accordance with IAAF Rule 38 by the TAF Disciplinary Board.
7. On 19 December 2013, the TAF Disciplinary Board issued a decision referenced 2013/79K, the English version of which has been delivered to and received by IAAF on 29 December 2013, which stated in its pertinent part as follows (the “**Appealed Decision**”):

“ **DECISION:**

Under the above mentioned grounds;

*It is decided with unanimity on 19.12.2013 that the athlete has not violated anti-doping rules, so **THERE IS NO NEED TO IMPOSE A PENALTY ON THE ATHLETE,***

The provisional suspension of the athlete shall be cancelled.

In 5 days from the date of the decision, the decision might be appealed (under TAF Disciplinary Regulation article 52 and 53) to SGMTK (General Directorate of Sports Arbitration Board)."

8. The TAF Disciplinary Board thus concluded that the Athlete Biological Passport's evidence as submitted by IAAF was not sufficient to support an anti-doping rule violation against the Athlete and that she should be exonerated accordingly. The IAAF disagreed with that decision since it considered that the Biological Passport profile of the Athlete constituted evidence that she used a prohibited substance or a prohibited method. The IAAF considered that the Athlete was guilty of an anti-doping rule violation in accordance with IAAF Rule 32.2(b), being a second anti-doping rule violation by the Athlete, which in the circumstances of this case warranted the imposition of a life-time ban on the Athlete under IAAF Rules 40.6 and 40.7.
9. On 12 February 2014, in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (the "**CAS Code**"), the IAAF filed a statement of appeal and had the following requests for relief:

"The IAAF hereby respectfully requests CAS to rule the following, that:

- (i) The IAAF's appeal is admissible;*
 - (ii) The decision of the TAF Disciplinary Board dated 19 December 2013 be set aside;*
 - (iii) Ms Cakir Alptekin be found guilty of an anti-doping rule violation in accordance with IAAF Rule 32.2(b);*
 - (iv) A life-time ban be imposed upon Ms Cakir Alptekin for a second serious anti-doping rule violation in accordance with IAAF Rule 40.7;*
 - (v) All competitive results obtained by Ms Cakir Alptekin from the date of commission of her anti-doping rule violation through to the commencement of her provisional suspension shall be disqualified, will all resulting consequences, in accordance with IAAF Rule 40.8.*
 - (vi) The IAAF be granted its costs in the appeal (including CAS costs), such costs to be assessed."*
10. In its statement of appeal the IAAF nominated Mr. Romano F. Subiotto as an arbitrator.
 11. On 24 February 2014, the IAAF filed a request for disclosure.
 12. On 6 March 2014, the Athlete nominated Mr. Philippe Sands as an arbitrator, which request was repeated and further supported by the Athlete in her letters of 19 March, 18 April, 1 May and 7 May 2014. The IAAF, in its letters dated 13 March, 25 March, 2 April and 25 April 2015, objected to such nomination based on the possible lateness of the request, finally leaving the decision regarding such nomination to the President of the CAS Appeals Division. In its letter dated 7 May 2014 the IAAF again objected

to the Athlete's proposal to nominate Mr. Philippe Sands as an arbitrator. The TAF never provided its position in respect of the nomination of an arbitrator by the Athlete. On 9 May 2014, the Appellant finally agreed to the appointment of Mr Philippe Sands as arbitrator for the Respondents in the present matter.

13. By a letter dated 12 May 2014, the CAS Court Office, pursuant to Article R54 of the CAS Code and on behalf of the President of the CAS Appeals Division, informed the parties that the panel to hear the appeal had been constituted as follows: President, Mr. Ken E. Lalo, Attorney-at-Law, Gan-Yoshiyya, Israel, Mr. Romano F. Subiotto, Q, solicitor-advocate, Brussels, Belgium and London, United Kingdom and Mr. Philippe Sands QC, barrister in London, United Kingdom.
14. On 19 May 2014, the Panel granted the IAAF's request for disclosure and decided that the deadline for the IAAF to file its appeal brief would start from the receipt of the requested documents from the Respondents.
15. On 2 June 2014, the Athlete filed her response to the document production order.
16. On 5 June 2014, the IAAF indicated that the Athlete did not comply with the Panel's order of 19 May 2014 and requested that the Panel's order be enforced.
17. On 11 June 2014, the Athlete submitted further documents pursuant to the Panel's order of 19 May 2014.
18. On 13 June 2014, the IAAF indicated that the Athlete had again failed to fully comply with the Panel's order of 19 May 2014.
19. On 17 June 2014, the Panel ordered the Athlete to comply with its order of 19 May 2014 and to provide additional information, documents and materials.
20. On 23 June 2014, the Athlete filed the requested documents.
21. On 9 July 2014, the IAAF filed its Appeal Brief in accordance with Article R51 of the CAS Code and had the following requests for relief:

"68. For the reasons set out above, the IAAF respectfully requests that the CAS Panel rule as follows:

68.1 The IAAF's appeal against the TAF Decision is admissible.

68.2 The TAF Decision is set aside.

68.3 Ms Alptekin committed an anti-doping rule violation under IAAF Rule 32.2(b), in that she Used a Prohibited Substance (an erythropoiesis-stimulating agent) or a prohibited Method (blood transfusion), starting prior to the 2010 European Championships and continuing through to mid-2012.

68.4 A life-time period of ineligibility is imposed on Ms Alptekin pursuant to IAAF Rule 40.7(a).

- 68.5 Pursuant to IAAF Rule 40.8, all the competitive results obtained by Ms Alptekin from 29 July 2010 on are disqualified, with all resulting consequences, including the forfeiture of all titles, awards, medals, points, and prize and appearance money.
- 68.6 Ms Alptekin is ordered to pay the IAAF the costs it has incurred in bringing this appeal, in accordance with IAAF Rule 42.24.
69. The CAS Panel is also invited to grant the IAAF such other and further relief as the CAS Panel sees fit.”
22. On 18 July 2014, the IAAF filed an additional submission letter highlighting certain matters.
23. Following certain grants of extensions, including due to a change of the legal counsel representing the Athlete, and on 15 December 2014, the Athlete filed her answer to the IAAF's brief in accordance with Article R55 of the CAS Code, concluding in its pertinent part as follows:
- “4.1 The Second Respondent asserts that she has not manipulated her blood as asserted by the IAAF (i.e. in a manner which is prohibited), and therefore has not committed any anti-doping rule violation as alleged. Any anomalies in her blood profile are explicable by various factors (and combinations of them), including (i) living and training at altitude, (ii) use of altitude-simulating techniques, and/or (iii) medical issues.
- 4.2 The Second Respondent submits that the IAAF has not proved the allegations to the requisite standard, particularly in light of the evidence submitted by the Second Respondent.”
24. Following requests made by the IAAF and the Athlete and no response by the TAF, the Panel considered and ordered that a hearing be convened in this case, in accordance with Article R 57 of the CAS Code.
25. Scheduling efforts were made by the Panel and the parties and finally the CAS Office informed the parties by a letter dated 17 March 2015 that the Panel had determined to convene a hearing on 2 June 2015, to which the parties, their experts, and witnesses, were invited in accordance with Article R57 of the CAS Code.
26. An Order of Procedure was issued and signed on behalf of TAF on 13 April 2015, on behalf of the Athlete on 14 April 2015 and on behalf of IAAF on 15 April 2015.
27. On 27 April 2015, the IAAF issued a letter enclosing a proposed hearing schedule agreed by and between the IAAF and the Athlete, with a list of witnesses and further including two additional witness statements. On 8 May 2015, the IAAF proposed a somewhat modified hearing schedule.
28. On 15 May 2015, the IAAF asked the Panel to issue an order requiring the Respondents to produce further documents in accordance with Articles R44.3, R51 and R 57 of the CAS Code.

29. In reply and on 26 May 2015 the Athlete provided a witness statement of Dr. Ahmet Karadac.
30. On 29 May 2015, the parties informed the CAS Court Office that they had reached a settlement and that the hearing would no longer be needed.
31. On 17 June 2015, the parties submitted a signed copy of their settlement agreement (the “**Settlement Agreement**”) to the CAS Court Office.
32. The parties requested the Panel to ratify the following Settlement Agreement:

**“BEFORE THE COURT OF ARBITRATION FOR SPORT, CAS
2014/A/3498**

BETWEEN:

**INTERNATIONAL ASSOCIATION OF ATHLETICS FEDERATIONS
(IAAF)**

Appellant

and

(1) THE TURKISH ATHLETICS FEDERATION (TAF)

(2) MS ASLI CAKIR-ALPTEKIN

Respondents

**SETTLEMENT AGREEMENT TO BE INCORPORATED IN A
CONSENT ARBITRAL AWARD PURSUANT TO CAS CODE ARTICLE R56**

Whereas:

- (a) *Ms Cakir-Alptekin was found to have committed a first anti-doping rule violation in 2004 (presence of an anabolic steroid in a urine sample collected from her at the IAAF World Junior Championships in Gressetto, Italy), for which she received a two-year period of ineligibility.*
- (b) *Blood samples were collected from Ms Cakir-Alptekin between 29 July 2010 and*

17 October 2012, and biomarker values from those samples were used to create an Athlete Biological Passport profile for Ms Cakir-Alptekin. Three independent experts have unanimously agreed that (i) several of the values found in that profile are abnormal; (ii) they are characteristic of and highly likely to have been caused by some form of blood manipulation; and (iii) the explanations that Ms Cakir-Alptekin has sought to offer for those values are unsubstantiated and/or scientifically unsound and so do not provide a credible non-doping explanation for those values.

- (c) On 10 January 2013, relying on the foregoing, the IAAF charged Ms Cakir-Alptekin with committing an anti-doping rule violation under IAAF Rule 32.2(b) (namely, some form of blood manipulation). Ms Cakir-Alptekin was provisionally suspended pending determination of the charge.
- (d) By decision dated 19 December 2013, the TAF Disciplinary Board dismissed the charge against Ms Cakir-Alptekin based on its view that the evidence was not sufficient to sustain that charge (the **TAF Decision**).
- (e) On 12 February 2014, the IAAF filed a Statement of Appeal with the CAS, asking for a ruling that:
 - (i) The IAAF's appeal is admissible.
 - (ii) The TAF Decision be set aside.
 - (iii) Ms Cakir-Alptekin be found guilty of committing an anti-doping rule violation under IAAF Rule 32.2(b).
 - (iv) A life-time ban be imposed on Ms Cakir-Alptekin under IAAF Rule 40.7(a) (as this is her second anti-doping rule violation).
 - (v) All of Ms Cakir-Alptekin's competitive results from the date of commission of her anti-doping rule violation through to the commencement of her provisional suspension be disqualified, with all resulting consequences, in accordance with IAAF Rule 40.8.
 - (vi) The IAAF be granted its costs in the appeal (including all CAS costs).
- (f) On 12 February 2014, a further provisional suspension was imposed on Ms Cakir-Alptekin pending resolution of the appeal.
- (g) As of 1 January 2015, the IAAF adopted revised Anti-Doping Rules that brought into effect the mandatory provisions of the 2015 World Anti-Doping Code. References to IAAF Rules below are to these revised Anti-Doping Rules. (References above are to the Anti-Doping Rules in effect before 1 January 2015).

- (h) *Following discussions between the parties' respective counsel in advance of the merits hearing scheduled to be held on 2 June 2015 in this matter:*
- (i) *It has been acknowledged on behalf of Ms Cakir-Alptekin that certain values in her Athlete Biological Passport relating to blood samples collected from her between 29 July 2010 and 17 October 2012 are abnormal, and that she is unable to substantiate the explanations she has offered for those values, and therefore is unable to rebut the IAAF's assertion that those values are the result of some form of blood manipulation contrary to IAAF Rule 32.2(b).*
 - (ii) *It has been acknowledged on behalf of the IAAF that, following the IAAF's revision of its Anti-Doping Rules with effect from 1 January 2015 to reflect the provisions of the 2015 World Anti-Doping Code, Ms Cakir-Alptekin is entitled to argue that, in accordance with IAAF Rule 40.8(a)(iii), the maximum period of ineligibility for a second anti-doping rule violation of this type is eight years.*
- (i) *The TAF reserves its right to claim the reimbursement of all the prize money paid by the General Directorate of Sports of Turkey to Ms Cakir-Alptekin regarding the medals listed under article 5 (b) of this agreement.*
- (j) *The terms set out in this agreement have been agreed as a full and final settlement of all claims relating to the subject-matter of these proceedings. Accordingly, any and all other claims for relief that any party might otherwise have made against another in relation to the subject-matter of these proceedings are released and discharged unconditionally, and they may not be pursued in any form hereafter.*

NOW, THEREFORE, THE PARTIES HAVE AGREED (SUBJECT ONLY TO THE APPROVAL OF THE CAS) TO THE FOLLOWING TERMS FOR DISPOSAL OF THE APPEAL:

- 1. This appeal is admissible.*
- 2. The decision of the TAF Disciplinary Board dated 19 December 2013, dismissing the charge brought against Ms Cakir-Alptekin on 10 January 2013, is set aside.*
- 3. The charge that Ms Cakir-Alptekin committed an anti-doping rule violation under IAAF Rule 32.2(b) (namely, some form of blood manipulation, during the period between 29 July 2010 and 17 October 2012) is upheld by default.*
- 4. This being Ms Cakir-Alptekin's second anti-doping rule violation, she shall serve a period of ineligibility of eight years, in accordance with IAAF Rule*

40.8(a)(iii). In accordance with IAAF Rule 40.11(c), she is given credit for the period of provisional suspension that she has served since 10 January 2013, so that this eight-year period of Ineligibility shall be deemed to have expired at midnight on 9 January 2021.

5. In accordance with IAAF Rule 40.9, all competitive results obtained by Ms Cakir-Alptekin from 29 July 2010 onwards are hereby disqualified, and all related titles, awards, medals, points, and prize and appearance money are forfeited, as follows:

(a) The following competitive results are disqualified:

1 August 2010	European Athletics Championships, Barcelona, outdoor, f5
19 August 2010	Zurich, outdoor, f11
22 August 2010	Dubnica nad Váhom Athletic Bridge, Slovakia, f6
5 September 2010	IAAF/VTB Bank Continental Cup, outdoor, f5
30 July 2011	Budapest, outdoor, f2
21 August 2011	Summer Universiade, Shenzhen, outdoor, f1
30 August 2011	IAAF World Championships, Daegu, outdoor, sf9
10 March 2012	IAAF World Indoor Championships, Istanbul, indoor, f3
1 July 2012	European Athletics Championships, Helsinki, outdoor, f1
6 July 2012	IAAF Diamond League, Paris Saint-Denis, outdoor, f2
10 August 2012	Olympic Games, London, outdoor, f1

(b) The following medals are forfeit and must be returned to the IAAF:

21 August 2011	Summer Universiade, Shenzhen, outdoor, f1
10 March 2012	IAAF World Indoor Championships, Istanbul, indoor, f3
1 July 2012	European Athletics Championships, Helsinki, outdoor, f1
10 August 2012	Olympic Games, London, outdoor, f1

(c) The following prize money is forfeit, and must be paid to the IAAF in full within 30 days of the date of this agreement:

5 September 2010	IAAF/VTB Bank Continental Cup, outdoor	US\$5,000
10 March 2012	IAAF World Indoor Championships, Istanbul, indoor	US\$10,000

6. The CAS arbitration costs (to be determined and notified by the CAS Court Office in due course) will be borne by the Respondents in equal shares. The IAAF shall not bear any part of those costs, and the money it has paid to the CAS as an advance against those costs shall be returned to it (but, for the avoidance of doubt, the CAS Court Office fee that the IAAF paid when it filed its Statement of Appeal shall be retained by the CAS).

7. *Each party will bear its/her own legal and other costs incurred in connection with this arbitration, save that Ms Cakir-Alptekin and the TAF are jointly and severally liable to pay the IAAF an agreed sum as a contribution towards its costs, to be paid within 14 days of the date of this agreement.*
8. *In the event that Ms Cakir-Alptekin and/or the TAF fails to pay any amount due under this agreement by the applicable deadline, the IAAF may collect such amount by any lawful means at its disposal, including (without limitation) by setting it off against any sums that would otherwise be payable by the IAAF to Ms Cakir-Alptekin and/or the TAF.*
9. *The parties hereby request that the CAS Panel issue a Consent Arbitral Award incorporating the terms of this agreement. The parties acknowledge and agree that, pursuant to CAS Code Article R59, that award will be made public by the CAS, and/or may be publicised by any of the parties.*

Name: Date: ... June 2015

Name:

Position:

For and on behalf of the IAAF

Name: Date: ... June 2015

Name:

Position:

*For and on behalf of the
Turkish Athletics Federation*

Name: Date: ... June 2015

Name:

Position:

For and on behalf of Ms Asli Cakir-Alptekin"

33. Under Swiss Law, an arbitration tribunal has authority to issue an award embodying the terms of the parties' settlement if the contesting parties agree to a termination of their dispute in this manner. The Panel's ratification of their settlement and its incorporation into this consent award serves the purpose of enabling the enforcement of their agreement.
34. Moreover, in accordance with Article R42 of the CAS Code:

"[...] Any settlement agreement may be embodied in an arbitral award rendered by consent of the parties."

35. The parties have requested that the Panel ratify and incorporate the Settlement Agreement reproduced in Paragraph 32 above into a Consent Award. It is the task of the Panel to verify the *bona fide* nature of the Settlement Agreement to ensure that the will of the parties has not been manipulated by them to commit fraud and to confirm that the terms of the Settlement Agreement are not contrary to public policy principles or mandatory rules of the law applicable to the dispute.
36. After reviewing the terms of the Settlement Agreement, the Panel finds no grounds to object or to disapprove of the terms of the Settlement Agreement and is satisfied that the Settlement Agreement constitutes a *bona fide* settlement of the dispute brought to its attention, with the exception of the clarification contained in paragraph 41 and item 4 of this Consent Award below relating to clause 6 of the Settlement Agreement.
37. In view of the above, and in particular of the joint request made by all parties, the present Consent Award puts an end to the arbitration procedure *CAS 2014/A/3498 IAAF v TAF & Asli Cakir-Alptekin* on the terms indicated in the Settlement Agreement and those detailed below.
38. The above conclusion, finally, makes it unnecessary for the Panel to consider the other requests submitted by the parties to the Panel. Accordingly, all other prayers for relief are rejected.

IV. COSTS

39. Article R64.4 of the CAS Code provides that:

“At the end of the proceedings, the CAS Court Office shall determine the final amount of the costs 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.”
40. Article R64.5 of the CAS Code provides that:

“In the arbitral award, the Panel shall determine which party shall bear the arbitration costs or in which portion the parties shall share them. As a general rule, 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.”
41. In the case at hand, the parties agreed that the costs of the arbitration, which shall be determined and separately communicated to the parties by the CAS Court Office, shall be borne by the Respondents in equal parts: 50% of the costs to be paid by the TAF and 50% to be paid by the Athlete. As a consequence, the money the IAAF has paid to the CAS as an advance against those costs shall be reimbursed to it by the

Respondents. The CAS Court Office fee that the IAAF paid when it filed its Statement of Appeal shall not be reimbursed.

42. The parties further agreed that each party shall bear its own legal costs and expenses incurred in connection with this arbitration, except that the TAF and the Athlete shall be jointly and severally liable to pay the IAAF an agreed sum as a contribution towards its costs in this matter. The Panel does not see any reason to deviate from the agreement reached by the parties on these matters, which is therefore confirmed by the present Consent Award.
43. The final amount of the costs, including the CAS Court Office fee, the administrative costs of the CAS, the costs and fees of the Panel and a contribution to the expenses of the CAS, shall be communicated separately to the parties by the CAS Court Office (see article R64.4 of the CAS Code).

Based on the above considerations, the Court of Arbitration for Sport renders the following:

CONSENT AWARD

1. The Panel, with the consent of the IAAF and the Respondents, hereby ratifies the Settlement Agreement provided by the parties on 17 June 2015 and incorporates its terms into this consent arbitral award, with the exception of the clarification contained in item 4 of this Consent Award below relating to clause 6 of the Settlement Agreement.
2. The arbitral procedure *CAS 2014/A/3498 IAAF v TAF & Asli Cakir-Alptekin* is terminated and deleted from the CAS roll.
3. Each party is hereby ordered to perform the obligations and duties as per the Settlement Agreement referred to above.
4. The costs of the arbitration, which shall be determined and separately communicated to the parties by the CAS Court Office, shall be borne by the Respondents in equal parts; namely, 50% of the costs to be paid by the TAF and 50% to be paid by Ms. Asli Cakir-Alptekin. As a consequence, the money the IAAF has paid to the CAS as an advance against those costs shall be reimbursed to it by the Respondents in equal parts (50% by each of the Respondents). The CAS Court Office fee that the IAAF paid when it filed its Statement of Appeal shall not be reimbursed.
5. As per clause 7 of the Settlement Agreement, each party shall bear its own legal costs and expenses incurred in connection with this arbitration, save that Ms. Asli Cakir-Alptekin and the TAF are jointly and severally liable to pay the IAAF an agreed sum as a contribution towards its costs.
6. All other requests of prayers for relief are rejected.

Done in Lausanne, 17 August 2015

THE COURT OF ARBITRATION FOR SPORT

Ken E. Lalo
President

Romano F. Subiotto
Arbitrator

Philippe Sands
Arbitrator