Arbitration CAS 2014/A/3668 Maxim Simona Raula v. Romanian National Anti-Doping Agency (RADA), award of 4 June 2015

Panel: Mr Conny Jörneklint (Sweden), Sole Arbitrator

Athletics (marathon)
Doping (EPO)
Burden of proof in connection with an anti-doping rule violation committed by evading sample collection
Anti-doping rule violation by the presence of EPO in the athlete's biological sample
Aggravating circumstances justifying an increase of the standard sanction

1. **The national anti-doping authority has the burden of proof to establish that a doping rule violation was committed "to the comfortable satisfaction of the hearing panel". The national anti-doping authority has met its burden where it has established that an athlete was informed of an upcoming doping control test and intentionally evaded the sample collection with no compelling justification.**

2. **The Prohibited Substance (EPO) is a stimulating agent included in the WADA 2013 Prohibited List classified under section S2 Peptide Hormones, Growth Factors and Related Substances. The human body cannot excrete EPO naturally, so the only means that EPO can be administered is through an injection into the human body. This is, unless it has been established that the athlete's sample was somehow spiked with EPO or switched out and replaced with some other athlete's sample along the way. This also means that neither the conditions during which the sample has been stored including the temperature during transportation and handling of the sample nor any alleged departures from the IST, can cause the Adverse Analytical Finding and therefore could invalidate the result.**

3. **The evasion of the doping control is an aggravating factor that justifies an increase in sanction, but an additional 2 years (4 years total) is excessive in light of CAS jurisprudence. Nevertheless, the fact to participate in an intentional scheme of doping in a sophisticated manner to improve the athlete's performance, and while doing so, to intentionally evade detection by failing to attend the doping control should be taken into account to increase the 2 years standard sanction.**

I. THE PARTIES

1. Ms. Maxim Simona Raula (the "Athlete" or "Appellant") is a professional marathon runner for with the Romanian sports club Steaua Bucharest, which is affiliated with the Romanian Athletics Federation ("RAF"), the governing body for athletics in Romania.

2. The Romanian National Anti-Doping Agency ("RADA" or the "Respondent") is a Romanian private law foundation with its seat in Bucharest, Romania, and has the mission to fight against doping in sport in Romania.

II. FACTUAL BACKGROUND

3. Below is a summary of the main relevant facts, as submitted by the Parties in their written submissions and in the evidence examined during the course of the proceedings. This 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 which follows.

4. On 30 July 2013, the representatives of the RAF informed the Athlete (among others on her team) that a doping control test would be conducted on 1 August 2013 at the training camp in Snagov by the RADA Doping Control Officers. The doping test was requested by the RAF in view of an upcoming international competition in Moscow in August 2013.

5. That evening, at approximately, 22.30-23.00 hours, the Athlete left the training camp after allegedly receiving a telephone call from her mother informing her that her father was ill with sciatica and needed immediate assistance from the Athlete. The Athlete informed her coach, Mr. Barbu Augustin, who also knew about the upcoming doping control, about her intention to leave for her father's village, Rastoltu Desert, in Salaj County, about 600 km away from the training camp.

6. Upon learning of the Athlete's departure, the RAF notified the Athlete by telephone that unless she returned to the camp on 31 July (or 1 August at the latest) for drug testing, she would not participate in the championship in Moscow.

7. On 31 July 2013 (at approximately 13.00), the Athlete called the Secretary General of RAF, Mr. Ganera Catalin, wherein it is alleged that the Secretary General recommended to the Athlete that she return immediately to the training camp for the doping control. Having note returned for testing as requested, the Athlete was then allegedly told to report on 2 or 3 August 2013 to fulfill her obligation.

8. On 5 August 2013, the Athlete arrived at the RADA headquarters in Bucharest and underwent a doping control test. The sample collected was reported positive for recombinant erythropoietin (EPO), a Prohibited Substance (stimulating agent) identified in the World Anti-

Doping Agency (WADA) 2013 Prohibited List classified under section 52. Peptide Hormones, Growth Factors and Related Substances.

9. The Athlete was informed of the adverse analytical finding and she subsequently requested that her B Sample be tested accordingly.

10. On 8 August 2013, a hearing was held concerning the Athlete's anti-doping rule violation. During the hearing, the Athlete denied having taken EPO, declaring she had no knowledge of how the Prohibited Substance entered her body.

11. On 28 August 2013, the Hearing Commission of RADA (the "Commission") issued its decision by which the Athlete was sanctioned with a period of ineligibility of four (4) years from any national or international sports event (the "Commission Decision").

12. The Athlete then filed an appeal against the Commission Decision. However, on 19 November 2013, the Athlete's appeal was upheld, following which the Commission was ordered to provide its written reasons for the Commission Decision.

13. On 11 March 2014, the Commission issued a new decision setting forth the basis of its decision and thereby confirming the four-year sanction against the Athlete based on article 49 para. 1 letter c), Article 51 para. 1 of Law 227/2006 (the "Law") as well as Article 2 para. 2 letter c) of the Law, and Article 2.3, 10.7.4 and 10.6 of the World Anti-Doping Code ("WADC").

14. On 23 April 2014, the Athlete filed another appeal against the second decision of the Commission. On 2 June 2014, the Appeal Commission dismissed the Athlete's appeal (the "Appealed Decision"). It is from the Appealed Decision that the Athlete now appeals to the Court of Arbitration for Sport ("CAS").

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

15. On 14 July 2014, the Athlete filed her statement of appeal with the CAS against the Appealed Decision in accordance with Article R47 *et seq.* of the Code of Sports-related Arbitration (the "Code"). In his statement of appeal, the Athlete stated that she preferred that this appeal be decided upon by a Sole Arbitrator.

16. On 28 July 2014, the Respondent informed the CAS Court Office that it preferred the appeal to be referred to a three-member panel.

17. On 5 September 2014, following an extension of time, the Appellant filed her appeal brief in accordance with Article R51 of the Code.

18. On 6 October 2014, the parties were informed that the President of the CAS Appeals Arbitration Division decided to submit this appeal to a Sole Arbitrator and nominated Mr. Conny Jörneklint, Chief Judge in Kalmar, Sweden, as Sole Arbitrator.

19. On 23 October 2014, the Respondent filed her answer in accordance with Article R55 of the Code.

20. On 26 November 2014, the CAS Court Office informed the parties that the Sole Arbitrator, in conjunction the parties' preference, decided not to hold a hearing in this appeal and to render a decision on the written submissions only in accordance with Article R56 of the Code.

21. On 27 and 30 November 2014, the Respondent and Appellant, respectively, signed and returned the Order of Procedure in this appeal. The Appellant commented that she deemed her right to be heard would be fully respected if she were granted an opportunity to file a reply submission.

22. On 15 December 2015, following a request from the Appellant, the Sole Arbitrator invited the parties to file a reply submission.

23. On 30 December 2014, the Appellant filed her reply submission.

24. On 15 January 2015, the Respondent files its reply submission.

IV. THE PARTIES' SUBMISSIONS

A. The Appellant

25. In her Statement of Appeal, the Appellant requests CAS to rule as follows:

    1. *Annul the Decision no. 2 of 2.06.2014 issued by Romanian NADA in the case NADA vs. Maxim Simona Raula.*
    2. *State that the marathoner Maxim Simona Raula has not violated the anti-doping rules, thus no sanction has to be imposed against her.*

    Subsidiary:

    3. *Replace the appealed decision and state that the suspension of 4 years is reduced to only two years, considering that the marathoner did not infringe the disposition of Articles 2, para 2, letter c) of the Law 227/2006 on the prevention and fight against doping in sport and Article 2.3 of the World Antidoping Code.*

    Finally:

    4. *Order NADA of Romania to bear all the costs incurred in the present litigation (expedition costs, translations, advance of costs, legal fees and others).*

26. The Appellant's submissions in support of her request can be summarized, in essence, as follows:

a) Regarding the facts

- The Athlete is 29 years old and has never violated any of the anti-doping regulations during her entire sporting career, which includes international competitions.
- In the evening of 30 July 2013, the athlete left the training camp in Snagov in order to urgently reach her father, Maxim Eugen, aged 61, since he had fallen ill and was unable to move from his bed due to a sciatica crisis.
- Before leaving, she discussed the situation with her coach, Mr. Barbu Augustin, who informed her that he was unable to prevent her from leaving and that he would inform the club the next day. Since the distance from Ilfov to Salaj (Snagov - Ilfov via Bucharest, Salaj – Agrij) is 578 km, the Athlete reached her destination in the morning of 31 July 2014 (at around 10.30 hours).
- Upon arrival, the Athlete telephoned the President of the Romanian Athletics Federation, Mr. Sandu Ion, who told her that she could stay with her father and that she should call the club upon her return. She also tried to contact Mr. Boroi George, President of club Steaua to explain the situation, but he did not reply to her call. She did, however, also speak with Mr. Ganera Catalin, the Secretary General of the RAF.
- On 31 July 2013 Mr. Ion, knowing that the Athlete was no longer present in the Snagov training camp, issued a letter on behalf of the RAF to club Steaua confirming that he indeed spoke with the Athlete who explained the reason behind her departure from training camp.
- On 1 August 2013, the RADA informed the Athlete that she had been included in a testing pool, following which she should immediately proceeded to the RADA headquarters for anti-doping testing upon her return. The letter included a request for the Athlete to register in the Adams electronic system, an internet database containing location information of the Athlete. Unless registered in this database, the Athlete cannot be sanctioned for not being present in a certain location.
- Despite the fact that such letter had not been notified to the Athlete, on 3 August 2013 the RADA representatives returned to the Snagov training camp and again learned that the Athlete was absent.
- On 5 August 2013, the Athlete returned to Bucharest and immediately proceeded to the RADA headquarters, where she conducted her anti-doping control test, the results of which resulted in a positive test for recombinant erythropoietin (EPO).

b) Regarding legal aspects

ba) Unlawful ground that the Athlete had evaded sample collection

- The Athlete notes that the Commission applied the provisions of Art. 49 para 1 letter c) of the Law on the prevention and fight against doping in sport. This article stipulates that:

Article 49 (1) The periods of suspension provided in Article 38 and 40 for the violation of Article 2 par. a)-j) shall be increased up to a maximum of 4 years, if the offense is committed in one of the following circumstances:
c) the athlete or another persons obstructs the detection or the determination of a violation of the anti-doping rules.

In addition to this legal provision, the Commission also referred to the provisions of Article 10.7.4 of the WADC, which stipulate that:

10.7.4. Additional Rules for Certain Potential Multiple Violations.

For purposes of imposing sanctions under Article 10.7, an anti-doping rule violation will only be considered a second violation if the Anti-Doping Organization can establish that the Athlete or other Person committed the second antidoping rule violation after the Athlete or other Person received notice pursuant to Article 7 (Results Management), or after the Anti-Doping Organization made reasonable efforts to give notice, of the first anti-doping rule violation; if the Anti-Doping Organization cannot establish this, the violations shall be considered together as one single first violation, and the sanction imposed shall be based on the violation that carries the more severe sanction; however, the occurrence of multiple violations may be considered as a factor in determining aggravating circumstances (Article 10.6).

If, after the resolution of a first anti-doping rule violation, an Anti-Doping Organization discovers facts involving an anti-doping rule violation by the Athlete or other Person which occurred prior to notification regarding the first violation, then the Anti-Doping Organization shall impose an additional sanction based on the sanction that could have been imposed if the two violations would have been adjudicated at the same time. Results in all Competitions dating back to the earlier anti-doping rule violation will be Disqualified as provided in Article 10.8. To avoid the possibility of a finding of aggravating circumstances (Article 10.6) on account of the earlier-in-time but later-discovered violation, the Athlete or other Person must voluntarily admit the earlier anti-doping rule violation on a timely basis after notice of the violation for which he or she is first charged. The same rule shall also apply when the Anti- Doping Organization discovers facts involving another prior violation after the resolution of a second anti-doping rule violation.

A comment to this rule is made by WADA, which states that:

In a hypothetical situation, an Athlete commits an anti-doping rule violation on January 1, 2008, which the Anti-Doping Organization does not discover until December 1, 2008. In the meantime, the Athlete commits another anti-doping rule violation on March 1, 2008, and the Athlete is notified of this violation by the Anti-Doping Organization on March 30, 2008, and a hearing panel rules on June 30, 2008 that the Athlete committed the March 1, 2008 anti-doping rule violation. The later-discovered violation which occurred on January 1, 2008 will provide the basis for aggravating circumstances because the Athlete did not voluntarily admit the violation in a timely basis after the Athlete received notification of the later violation on March 30, 2008.

The Commission applied the above-mentioned legal provisions and regulations and held that the Athlete committed the offences stipulated in Article 2 par. 2 let. a) and c) of the Law on the prevention and fight against doping in sport, their corresponding rules in the international regulations being Article 2.1. and 2.3. of the WADC.

Article 2 para 2 letter a) and c) of the Law stipulates that:

2) The following constitute violations of the anti-doping rules:

a) the presence of a prohibited substance or its metabolites or markers in the biological sample of an athlete;

c) the refusal or unjustified absence from sample collection after receiving the invitation to doping control, pursuant to anti-doping rules, or otherwise evading sample collection;

Article 2.1 and 2.3 of the WADC stipulates that:

The following constitute anti-doping rule violations:

2.1 Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample.
2.3 Refusing or failing without compelling justification to submit to Sample collection after notification as authorized in applicable anti-doping rules, or otherwise evading Sample collection.

- The Appealed Decision unlawfully found that the Athlete had committed the violation stipulated in Article 2 par. 2 let. c) of the Law and Article 2.3 of the WADC as such refers to the refusal or unjustified absence from sample collection after receiving an invitation to doping control or otherwise evading sample collection; yet, in this case, the requirements necessary to consider that the Athlete has committed this violation are not met. More specifically, all the correspondence sent by facsimile prior to the control was exchanged between RADA, the RAF and club Steaua after the departure of the Athlete from the training camp, namely after 30 July 2013, and was never communicated to the Athlete. Copies were not received by the Athlete until the hearing of the case by the Commission.

- The doping control of 1 August 2013 took place as if the Athlete was registered in the ADAMS database, despite the fact that an invitation to register her data in this system was issued on 1 August 2013 and received by the Athlete on 5 August 2013. Since she was not registered in the ADAMS database, the Athlete was not compelled to be in a certain location on 1 August 2013 and her absence from the Snagov training camp on that day did not constitute a violation of Article 2 para 2 letter c) of the Law or Article 2.3. of the WADC.

- From the date of notification regarding the inclusion in the testing pool, the Athlete was granted a time limit to file the statement with the elements requested by Article 11.3.1 of the International Testing Standard, letters a) - f). The RADA asked the Athlete to fill in the necessary data, without letting her know what that was, until 2 August 2013, 15.00 hours, which was impossible to do given that she had received the notification on 5 August 2013. In short, the form governed by Article 11.3.1 regarding the Athlete's

location had not been filled in by the Athlete prior to 1 August 2013 due to an objective obstacle.

- Article 11.3.5 of the International Testing Standard (the "IST") considers that an athlete committed a violation regarding the provision of data only if the relevant anti-doping agency finds that both the following requirements are met:

  - The athlete was duly notified regarding his designation for inclusion in the testing pool, the details to fill in regarding location and the consequences of a potential omission or refusal to comply with these requirements; and

  - The athlete did not comply with the requirements within the time limit granted.

  RADA is unable to establish that the Athlete has committed such an offence given that on 1 August 2013 the Athlete could not have registered in the ADAMS system because she was unaware of the request to do so.

bb) Unlawfulness of the testing

- There are several errors in the lab documentation for the results of 23 August 2013.
- The documents for A Sample collection of evidence shows that the date of collection was 5 August 2013, yet on the page of the lab documentation (2.2), the date of collection appears to be 13 August 2013, this date being circled with a red rectangle;

- There is no information regarding the location and conditions of storage of the sample in the interval from 5 August to 13 August 2013 and there is no information concerning the storage and handling of such sample.

- The document presented in chapter 2.3 shows that the receipt of the sample took place at a temperature of 4 degrees Celsius (between 2-8 degrees Celsius) but that after approximately 15 minutes the sample was taken over by Ms. Anne Claire Racine in a location entitled "waste", for which the temperature of 2 degrees Celsius referred to above was not kept. There is no record of the temperature maintained during this phase of the process.

- The document establishes that the weight of the package containing the sample is inaccurate in comparison to the doping control form, and signatures of the recipients of such sample are wrong.

- Mr. Valentin Pop is not indicated in the custody chain of the sample examined but he had contact with the sample and manipulated it, including during its alleged transmission to the Lausanne laboratory. Given that there are weight differences between the sample collected, the sample sent and the sample received by the lab as well as between the codes of the sample's seals, the intervention of Mr. Valentin Pop in the custody chain appears as unauthorized and unconfirmed.

- There was an unauthorized second sealing of the sample, with the seal 1003919.

- The Athlete raised many of these issues, along with others, with the RADA but RADA's answers were inconclusive and insufficient.

B. The Respondent

27. In its answer, the RADA requests CAS to rule as follows:

On the grounds of article R55 of the Code the Respondent respectfully asks the Panel:

A. to dismiss the appeal lodged by the Appellant against the Decision no. 2 rendered on June 2, 2014 by the RADA Appeal Commission

B. to maintain and consider RADA Appeal Commission's decision undisturbed

C. subsequently, to deny all the prayers for relief made by the Appellant

D. to order the Appellant to pay all costs, expenses and legal fees relating to the arbitration proceedings before CAS encumbered by the Respondent.

28. The Respondent's submissions in support of its request can be summarized, in essence, as follows:

a) Regarding the facts

- In the evening of 30 July 2013, the representatives of the RAF informed the Appellant (among others) about a doping control to be conducted on 1 August 2013 at the training camp in Snagov by the RADA Doping Control Officers. That evening, the Athlete left the training camp at around 22.30 - 23.00 hours to attend to her father and only told her coach about her departure.

- On 31 July 2013, the RAF notified the Athlete that, unless she returned to the camp on 31 July or 1 August at the latest for testing she could not participate in the championship in Moscow. The same message was given by the Secretary General of RAF, Mr. Ganera Catalin, when he was contacted by the Athlete by telephone on 31 July 2013 (despite the Athlete's claims that she had no signal on her phone).

- Despite the Athlete's assertions, while she allegedly visited her father's family doctor, Ms. Cordea Delia, in order to get a medical prescription, the Athlete did not visit the doctor from 31 July 2013 - 2 August 2013.

- During the underlying hearings, the Athlete denied having taken EPO, declaring she had no knowledge of how the Prohibited Substance entered her body.

- The Athlete first requested the B Sample to be tested, later on waiving her right to request Sample B on financial grounds. However, sample B was eventually accomplished, with

the financial help of RADA - in sign of good faith and for avoidance of any doubt - and the Athlete's club.

- The RADA subscribes to the findings set forth in the Appealed Decisions, principally that the adverse analytical finding involved the presence of a stimulating agent - prohibited substance; the Athlete's attitude during the proceedings was not sincere and contradicted the other statements of the persons interviewed; the Athlete's serious and faulty departure from the duty of care standard; the Athlete's evading sample collection by fleeing the training camp and avoiding being contacted by the relevant authorities, thus being included in Article 2.3 WADC - otherwise evading sample collection; and independent witnesses participated (a Romanian medical doctor designated by the Athlete's club and a notary from Switzerland), which also proved the ill-faith and direct intent of the Athlete in evading sample collection.

b) Regarding legal aspects

ba) The inapplicability of Article 10.4, 10.5.1 or 10.5.2 WADC

- The Adverse Analytical Finding involved the presence of a stimulating agent, namely EPO. Thus, Article 10.4 WADC would not apply because a prohibited substance is EPO – a stimulating agent which is not a Specified Substance.

- There are no provisions applicable for any reduction of the period of ineligibility, neither for the presence of the substance nor for evading sample collection. Article 10.4 of the WADC is not applicable, and the requirements of 10.5.1 or 10.5.2 of the WADC are not met by the Athlete - the contradictory, if any, explanations provided by the Athlete, the fact that the explanations have not been corroborated by any means of evidence, as well as the evidentiary material in contradiction with the Athlete's assertions support this conclusion.

- With regard to the standard of proof required from the Athlete and in accordance with established CAS jurisprudence and the WADC, *"the athlete must establish the facts that she alleges to have occurred by a balance of probability,"* which means that the Athlete bears the burden of persuading the Sole Arbitrator that the occurrence of the circumstances on which she relies is more probable than their non-occurrence or more probable than other possible explanations of the doping offence.

bb) Evading sample collection

- The Athlete failed to prove how she left the training camp in the evening of 30 July 2013, as she claimed to have been taken to Bucharest train station by her cousin - whose phone number, however, she could not provide to the Commission when asked in the hearing.

- She failed to prove the means of transportation by which she travelled from Snagov (training camp) to her father's village, Rastoltu Desert, a trip of approximately 600 km in one night.

- The test was ordered by the RAF in view of the upcoming Moscow championship, so the Athlete had the obligation to be present as she was to be tested within the national testing pool, not because she would have been in the Registered Testing Pool (RTP) or ADAMS data base;

- The RAF Secretary General talked to the Athlete on the phone on 31 July 2013 at about 13.00 hours (contrary to the Athlete's allegations that she could not contact the relevant staff as she had no phone signal), who recommended that she return to training camp for testing;

- The Athlete failed to prove that she visited her father's doctor, Ms. Cordea, as she declared to RADA that during 31 July and 2 August 2013 the Athlete had not contacted her;

- The Athlete was summoned, by her club, for another doping control on 2 August and 3 August, where she failed to appear;

bc) Means of entry of the substance into the Athlete's body

- The Athlete has failed to explain how the EPO entered her system. She limited herself to stating she did not know how an injectable substance entered her body. The only conclusion can be that the Athlete intentionally administered the substance, as EPO can only be administered by injection.

bd) The Athlete's caution and degree of fault or negligence

- In the light of the athlete's duty of care, and in addition to the Athlete evading the doping test, it is self-explanatory as to how the EPO had come into her body. The Athlete's behaviour was significantly negligent under the circumstances and her departure from the required duty of utmost caution was more than significant. Indeed, the Athlete not only failed to exercise the slightest caution, but also had the substance intentionally administered and evaded sample collection.

be) The applicability of Articles 2.2.1, 2.2.2, 2.3 (second thesis) and 10.7.4 related to 10.6 WADC

- In accordance to Article 2.2.1 WADC, *"It is each Athlete's personal duty to ensure that no Prohibited Substance enters his or her body. Accordingly, it is not necessary that intent, fault, negligenæ or knowing Use on the Athlete's part be demonstrated in order to establish an anti-doping rule violation for Use of a Prohibited Substance or a Prohibited Method"*. The presence of EPO in the Athlete's system was confirmed by means of an A and B Sample A. As a result from the case file,

the Lausanne Laboratory double-checked the presence of EPO, so in fact the tests were double-checked for proving the presence of the prohibited substance. Thus, the adverse analytical finding is clear enough for the standard sanction to be imposed on the Athlete by the Commission.

- Pursuant to Article 2.2.2 WADC, *"It is sufficient that the Prohibited Substance or Prohibited Method was Used or Attempted to be Used for an anti-doping rule violation to be committed"*. In this respect, the violation of the anti-doping rules by the Athlete was proved by the presence of the EPOin her body, as to lead to the just sanction imposed on her.

- According to Article 2.3 WADC, *"Refusing or failing without compelling justification to submit to Sample collection after notification as authorized in applicable anti-doping rules, or otherwise evading Sample collection"* constitutes a doping rule violation. In this respect, the Commission's decision was properly based on the second thesis, namely evading sample collection in any way, not failing or refusal to submit the sample based on an obligation to provide whereabouts data.

- As the Comment to Article 2.3 shows, *"This Article expands the typical pre-Code rule to indude "otherwise evading Sample collection" as prohibited conduct. Thus, for example, it would be an anti-doping rule violation if it were established that an Athlete was hiding from a Doping Control official to evade notification or Testing"*. All the evidentiary documents and statements show the Athlete in fact fled the training camp with the aim of evading sample collection, because she (i) had no compelling reason to travel approx. 600 km to her father, as she did not at least attempt to secure him an ambulance which is available in every corner of the country, (ii) did not prove how she travelled and when exactly to her father's home, (iii) she cannot support the allegation that her cousin (whose phone number she could not provide) drove her to Bucharest, (iv) contradicted herself when using the argument that she had no signal, as she, in fact, discussed on the phone with her coach and the RAF Secretary General, (v) was notified by the RAF Secretary General to urgently report for testing, (vi) contradicted her father's family doctor's statement as to the Athlete's presence for a medical prescription, (vii) brought no proof as to the medical emergency, since her father was not committed to hospital, nor did she take him at least to a doctor's practice, nor did she show that other neighbours or family friend were unavailable to assist him, instead of her - who had to compete in an international event only a few days later.

bf) Aggravating Circumstances

- According to Article 10.6 WADC, *"If the Anti-Doping Organization establishes in an individual case involving an anti-doping rule violation other than violations under Articles 2.7 (Trafficking or Attempted Trafficking) and 2.8 (Administration or Attempted Administration) that Aggravating circumstances are present which justify the imposition of a period of Ineligibility greater than the standard sanction, then the period of Ineligibility otherwise applicable shall be increased up to a maximum of four (4) years unless the Athlete or other Person can prove to the comfortable satisfaction of the hearing panel that he or she did not knowingly commit the anti-doping rule violation"*.

- In line with the WADC Comment to Article 10.6, the Athlete's conduct justifies the imposition of a period of ineligibility greater than the standard sanction such as *"the Athlete or Person engaged in deceptive or obstructing conduct to avoid the detection or adjudication of an anti-doping rule violation"*.

- Moreover, the RADA acted in compliance with Article 5.1 WADC, according to which *"each National Anti-Doping Organization shall have testing jurisdiction over all Athletes who are present in that National Anti-Doping Organization's country or who are nationals, residents, license-holders or members of sport organizations of that country. (…) All Athletes must comply with any request for Testing by any Anti-Doping Organization with Testing jurisdiction"*. Furthermore, according to 5.1.1 WADC, each Anti-Doping Organization shall plan and conduct an effective number of In-Competition and Out-of-Competition tests on Athletes over whom they have jurisdiction, including but not limited to Athletes in their respective Registered Testing Pools. Also, pursuant to 5.1.2 WADC *"except in exceptional circumstances all Out-of Competition Testing shall be No Advance Notice"*. Hence, the entire argumentation of the Appellant is based on erroneous premises, namely the testing under ADAMS or RTP provisions, whereas RADA acted under the above-mentioned provisions of the WADC

bg) The Athlete's intention to evade sample collection. The principle of fault.

- The concept of fault under Romanian as well as Swiss law is broad and covers a wide range of different forms of fault, from light fault to serious fault and intention. Fault is generally defined as an error or defect of judgment or of conduct respectively or as a breach of duty imposed by law or by contract. Here, the Athlete knowingly hid from the DCO's in order to avoid sample collection and could not explain how and when she arrived in her father's village and the real reason for her leave, as the medical emergency claimed could easily be solved with a telephone call to the ambulance. Moreover, even if we were to accept that her "cousin" drove her to the Bucharest train station, which should have happened, according to the Athlete's own declarations, after 22.00 hours on July 30 2013, the time when she allegedly received the call to go to her father. From Snagov to Bucharest train station (approximately 40 km), it takes at least 30 minutes. That means she could not have reached the train station earlier than 24.00 hours. Based on a routine check of the travel schedule between Bucharest North Station and Zalau North Station (the nearest city to her father's village, Rastoltu Desert), it is determined that the only train that departs from Bucharest N. S. after 24.00 hours is 24.30 hours, and arrives at Zalau N. S. at 17:55 hours the next day. The only train that arrives at Zalau N.S. before 10.30 hours, the time the Athlete alleges to have reached her destination, departs from Bucharest N.S. at 21.10 horus and arrives in Zalau at 9.10 hours. Thus, according to the Athlete's statements, she could have not left the camp earlier than 22.00 hours, so not being able to take the 21.10 hours train to Zalau. Moreover, the route between Zalau N. S. and Rastoltu Desert (her father's location) is another 28 km and another 32 minutes. Therefore, she could not have arrived at her destination at the time she alleged, bringing the Responent to the same conclusion as the Commission, i.e. that she was not truthful in her explanation.

bh) The Principle of Proportionality

- Any sanction must also comply with the principle of proportionality in the sense that there must be a reasonable balance between the kind of misconduct and the sanction.

bi) The adequate storage of samples. Compliance with the ISL provisions

- With regard to the storage of samples, the RADA took due account of the laboratory information which is sufficient information to understand how the final results were found. Therefore, the Commission was duly and comfortably satisfied that the Laboratory documentation package did not indicate that the sample was tampered with, or unsealed.

- EPO is a substance that, even in case of degenerated sample, the result is more likely to be positive rather than negative. In other words, even though, *quod non,* the sample would have been in any way mistreated, the positive result cannot be found unless actually present into the body.

- The sample management, transport and storage nevertheless, were made in complete observance with the IST in force.

- The Commission observed no reason for departure from the compliance requirements with Article 5.2.2.3 of the International Standard for Laboratories (the "ISL"). The Athlete's assertions are defeated by the letter of the General Director of the Bucharest Doping Control Laboratory, Mr. Valentin Pop, which establishes *inter alia* that:
  - The circled date found in chapter 2.2 (page 5), "13 August 2013", is not the date on which the sample was taken, it is the date on which the sample was registered in the Lausanne Laboratory. The date on which the sample was taken, 5 August 2013, is found on the same page, next to "TESTING DATE";
  - Between 5 and 8 August 2013, the sample was in Bucharest Doping Control Laboratory's custody (the lab where the sample was initially sent);
  - On the 12 August 2013, the sample was sent by UPS to the Laboratory in Lausanne, where it arrived on the 13 August 2013.
  - All this information is documented in the custody chain statements of the Bucharest Lab, and is not found in the documentation package prepared by the Lausanne Lab.
  - The package was received at room temperature. There is no evidence that the temperature that it was received at was 4 degrees Celsius, 2 degrees or between 2-8 degrees, or that the room temperature was 2 degrees Celsius.
  - The watches of the laboratory personnel are not synchronised with the watches of the UPS personnel, hence a difference of a few minutes is justified.
  - The package is not weighed when it is collected by UPS, its weight is estimated by the UPS employee that collects it. In order to maintain the sample at a low temperature, prior to it being dispatched, the sample was frozen and packed in an

expanded polystyrene box and kept at a -24 degrees Celsius temperature until it was dispatched.

- When it was collected, the 125 ml sample was divided into a 90 ml A sample and a B sample. From the 90 ml sample A aliquots where extracted for initial routine tests. The 40 ml represents the remaining of the 90 ml found in A sample after the initial tests.
- Sample A was resealed under nr. 1003919 in order to ensure the integrity of the sample while it was transported between the two laboratories. The reseal of a sample does not require the presence of the athlete. The seal that has the 502 code is the seal with which the doping control officer used to seal his package and is not relevant to the integrity of the sample.

- Notwithstanding the above, none of the alleged departures from the ISL can be subsequently linked to a credible, exterior explanation of how the substance could have appeared in the Athlete's sample by means of tampering or biasing the sample. In particular, (i) the human body cannot excrete EPO (the Substance) naturally; (ii) the only means that EPO can be administered is that of an injection - thus, by an action of direct intent; (iii) there is generally no way that EPO can appear in a urine sample, even if the cap were opened, or otherwise not properly sealed, or if the readings in the Laboratory documentation package were erroneous; (iv) the simple presence of EPO is sufficient for an Adverse Analytical Finding. ; and (v) any wrong handling, transportation or storage would have been that to degrade the sample – not manipulate such sample to create the present of EPO, and in any event, the sample B confirmed the result of sample A.

bj) The Athlete's obligation to submit to testing.

- Put simply, the Athlete was repeatedly informed and warned by the members of RAF as well as her own club that she should return to the camp immediately and to submit to testing. If she had any interest in being tested despite her not being present in the camp, so having nothing to hide from, she could have requested RADA to send a DCO to her location. However, not having indicated a location where she could have been tested, not asking RADA to send a DCO to her location, and not manifesting any cooperation with the authorities, shows her intent to evade sample collection.

- Therefore, the Athlete should not be entitled to a reduction of her sanction to only two years, as all the evidence leads to the conclusion that she intently administered the substance and that she intently left the camp in order to hide from the DCOs, so as to avoid being tested.

V. APPLICABLE LAW

29. According to Article R58 of the 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 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 Panel deems appropriate. In the latter case, the Court shall give reasons for its decision.

30. The Appealed Decision was issued under the Law and WADC, and there is no dispute as to the applicability of the Law or the WADC in the present matter. Therefore, the Law supplemented by the WADC shall apply on the merits. The Sole Arbitrator also finds that the Athlete, by competing in athletics on an international level, is bound by the IAAF Competition Rules.

31. As to procedural issues, the procedural rules of the Code, supplemented by Swiss procedural law and principles, are applicable as the CAS has its seat in Switzerland, pursuant to Article R28 of the Code.

VI. JURISDICTION

32. Article R47 of the Code provides as follows:

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

33. In accordance with Art. 58 of the Law 227/2006 on the prevention and fight against doping in sport, decisions passed by the Appeal Committee of the Romanian NADA can be challenged before the CAS.

34. The jurisdiction of CAS is not disputed by the Parties and is otherwise confirmed by the Order of Procedure duly signed by both Parties.

35. Therefore, CAS has jurisdiction to decide on the present matter.

VII. ADMISSIBILITY

36. Article 61 of the Law provides as follows:

The decisions of the Appeal Commission may be appealed to the Court of Arbitration for Sport (CAS), in Lausanne in 21 days since the date of the notification.

37. The Appealed Decision, rendered on 2 June 2014, was notified to the Athlete on 23 October 2013. The statement of appeal filed by the Athlete on 14 July 2014 was, thus, timely lodged before the expiry of the 21-day time limit set forth under the above-mentioned provision and is admissible, which is not contested by the Respondent.

VIII. MERITS

A. Anti-Doping Violation

a) Anti-Doping Violation by refusing, failing or otherwise evading Sample Collection

38. Article 2 paragraph 2 letters a) and c) of the Law states the following:

(2) The following actions constitute anti-doping rule violations:

(a) The presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's biological sample;
(c) Refusing or failing without compelling justification, to submit to Sample collection after notification as authorized in applicable anti-doping rules or otherwise evading Sample collection;

39. There are no provisions in the Law about burden of proof. Having found that the applicable law according to the merits in this case is the Law supplemented by the WADC, the Sole Arbitrator relies on Article 3.1 WADC which provides the following on burden and standard of proof in doping cases:

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 antidoping 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. Where the Code places the burden of proof upon the Athlete or other Person alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability, except as provided in Articles 10.4 and 10.6 where the Athlete must satisfy a higher burden of proof.

40. The commentary to this rule provides the following:

Comment to Article 3.1: This standard of proof required to be met by the Anti-Doping Organization is comparable to the standard which is applied in most countries to cases involving professional misconduct. It has also been widely applied by courts and hearing panels in doping cases. See, for example, the CAS decision in N., J., Y., W. v. FINA, CAS 98/208, 22 December 1998.

41. Thus, the RADA has the burden of proof to establish that a doping rule violation was committed "to the comfortable satisfaction of the hearing panel".

42. To establish that the Athlete has violated the rule in Article 2 paragraph 2 letter c) it is not necessary to find that she was notified of the Sample collection but it is enough to establish that she was "otherwise evading Sample collection".

43. The commentary to the Rule 2.3 WADC – which is the equivalent rule to Article 2 paragraph 2 letter c) of the Law – states the following:

For example, it would be an anti-doping rule violation of "evading Sample collection" if it were established that an Athlete was deliberately avoiding a Doping Control official to evade notification or Testing. A violation of "failing to submit to Sample collection" may be based on either intentional or negligent conduct of the Athlete, while "evading" or "refusing" Sample collection contemplates intentional conduct by the Athlete.

44. To determine whether the Athlete intentionally evaded sample collection, the RADA must establish that the Athlete had been informed about the coming doping control when she left the training camp in Snagov on the evening of 30 July 2013.

45. The Respondent has in this matter relied on a written statement by Mr. Ganera Catalin, Secretary General of the RAF, dated on 26 August 2013 which states among other things the following:

1. In the evening of Tuesday, 30 July 2013, I went together with the president of the RAF, Mr. Sandu Ion, to the National Sports Compounds Snagov- Silistea camp, where we had a meeting with the delegation of athletes and coaches who were about to travel to the World Athletics Championships 8 – 18 August in Moscow. During the discussion, the president specified that, in the context of participating in the W.C. and of Barca case, all athletes who travel to Moscow will be submitted to a doping control, the RAF requesting and paying for these tests.

2. On Wednesday 31 July 2013, coach Barbu Augustin, athlete Maxim Simona's coach (athlete who was about to participate in the W.C. in the marathon) told me by phone that the athlete Maxim Simona had to urgently leave the training camp due to her father's health problems. The talk took place at about 10 – 11 hours.

3. On Wednesday 31 July 2013 around lunch time (13.00 PM) I was contacted on the phone by the athlete Maxim Simona to whom I recommended to return to the training camp at once in view of the doping control and afterwards to come back for her family issue.

4. On Wednesday 31 July 2013 afternoon (please see the copies submitted to the file) two facsimiles were sent to the CSA Steaua and the Sports Camp Snagov (to the attention of the Steaua commander and to the coach) by which the athlete Maxim Simona was summoned to return at once to the training camp, in view of submitting to the doping control.

46. The Sole Arbitrator notes that the Athlete has not denied that she was informed about the upcoming doping control on the evening of 30 July by the representatives of RAF. She has only argued that she was not notified of the regulations about the ADAMS requirement and standards for the IST. The Sole Arbitrator also notes that according to the witness statement of Mr. Ganera Catalin, Secretary General of the RAF and one of the officials who informed the athletes in the evening of 30 July 2013, all the athletes who were about to travel to the World Athletics Championships were present during the discussion about the upcoming doping control prior to their trip to Moscow. Moreover, when Mr. Catalin describes the telephone call

from the coach of the Athlete and from the Athlete, he is clear to the point that he recommended the Athlete to return to the training camp at once in order to conduct the doping control test.

47. The Sole Arbitrator finds no reason not to believe Mr. Catalin's statement as he finds it accurate and compelling. Therefore, the Sole Arbitrator is satisfied that the Athlete was aware of the upcoming doping control test - both when she left the training camp to go to her father's home in the evening of 30 July 2013 and on the next day when she spoke to the Secretary General on the telephone. With this knowledge she intentionally evaded the sample collection, which she knew would take place at the training camp.

48. This said, the Sole Arbitrator must determine whether there was any compelling justification for the Athlete to evade sample collection. The Athlete herself has not given any reason why she evaded the test as she has argued that she was not aware of the test. One reason for her not to take part in the doping control could be that her father was so ill that she could not leave him alone. The evidence provided by the Athlete in this matter has not proven that her father's illness was so severe that she could not leave him for one or two days or that he could not get some help from a neighbour or someone else while the Athlete went back to the training camp to carry out the test. Moreover, the factual scenario as presented by the Athlete leaves doubt as to whether she indeed travelled to see her father and whether she met with his doctor on an emergency basis, as indicated and as one would expect under the alleged situation. With this background, the Sole Arbitrator cannot find any compelling justification for the Athlete to evade Sample Collection.

49. Therefore, the Sole Arbitrator concludes that the Athlete committed an Anti-Doping violation as defined in Article 2 paragraph 2 letter c) of the Law.

b) Anti-Doping violation by the presence of a Prohibited Substance in the Athlete's biological sample

50. The Athlete has criticised the sample collection and handling, sample transportation to the laboratory and laboratory analysis during the doping control process, and has pointed out several mistakes made during this process. The Respondent has rejected all these accusations and referred to the description of Mr. Valentin Pop, the director of Doping-Control Laboratory in Bucharest.

51. The Sole Arbitrator has carefully examined the parties' submissions and the accompanying evidence concerning the testing process and in doing so, refers to the rules set forth in Articles 3.2.1 and 3.2.2 WADC, which provide:

3.2.1 WADA-accredited laboratories are presumed to have conducted Sample analysis and custodial procedures in accordance with the International Standard for Laboratories. The Athlete or other Person may rebut this presumption by establishing that a departure from the International Standard for Laboratories occurred which could reasonably have caused the Adverse Analytical Finding. If the Athlete or other Person rebuts the preceding presumption by showing that a departure from the International Standard for

Laboratories occurred which could reasonably have caused the Adverse Analytical Finding, then the Anti-Doping Organization shall have the burden to establish that such departure did not cause the Adverse Analytical Finding.

3.2.2 Departures from any other International Standard or other anti-doping rule or policy which did not cause an Adverse Analytical Finding or other anti-doping rule violation shall not invalidate such results. If the Athlete or other Person establishes that a departure from another International Standard or other antidoping rule or policy which could reasonably have caused the Adverse Analytical Finding or other anti-doping rule violation occurred, then the Anti-Doping Organization shall have the burden to establish that such departure did not cause the Adverse Analytical Finding or the factual basis for the anti-doping rule violation.

52. In this case, the Prohibited Substance (EPO) is a stimulating agent included in the WADA 2013 Prohibited List classified under section 52. Peptide Hormones, Growth Factors and Related Substances. The human body cannot excrete EPO naturally, so the only means that EPO can be administered is through an injection into the human body. Indeed, there is no way that EPO can appear in a urine sample, unless the urine sample was spiked with EPO. This means that the conditions during which the sample has been stored including the temperature during transportation and handling of the sample could not affect the presence of the Prohibited Substance in this case. This is, unless of course, the Athlete's sample was somehow switched out and replaced with some other Athlete's sample along the way – a theory lacking any evidence. This said, even if there have been some departures from the IST, the Sole Arbitrator is satisfied that any such departures could not have caused the Adverse Analytical Finding and therefore could not invalidate the result.

53. This means that the Sole Arbitrator shares the view of the Appealed Decision that the presence of the Prohibited Substance in the Athlete's biological sample constitutes an anti-doping rule violation. The Athlete must be deemed to have violated Article 2 paragraph 2 letter a) of the Law.

B. Determining the sanction

54. According to Article 36 of the Law, there is a two-year period of ineligibility applicable to first time anti-doping rule violations, except for the cases when the provisions of Article 37, Article 46, and Article 47 of the Law are applicable.

55. Article 37 of the Law – corresponding to Article 10.4 WADC - deals, among others, with situations where the anti-doping rule violations set forth in Article 2 paragraph 2 letter a) involve *inter alia* the use of a Specified Substance. In this case, the Adverse Analytical Finding involved the presence of a stimulating agent, namely EPO. This means that Article 37 cannot be applied because EPO, which is a stimulating agent, is not a Specified Substance.

56. Article 46 of the Law clearly states that an athlete is strictly responsible for the presence in his/her biological sample of any prohibited substance or its metabolites or markers and that there is no need to establish the intention or fault to determine an anti-doping rules violation. Article 46 also deals with situations where an athlete establishes that he or she bears no fault or

no significant negligence in case of an anti-doping rule violation set forth in Article 2 paragraph 2 letter a). In order to apply the provisions set forth in paragraph 2, the athlete must also establish how the prohibited substance entered his or her body. These rules correspond to Article 10.5.1 and 10.5.2 in WADC.

57. In this case, the Athlete has given no explanation at all to how the prohibited substance entered her body. Thus, Article 46 cannot be applied.

58. Article 47 deals with circumstances which may increase the period of ineligibility. It says that the ineligibility periods set forth in Articles 36 and 38 for the anti-doping rule violations under Article 2 paragraph 2 letters a) - f) shall be increased up to a maximum of four years in case the violation is committed in one of the following situations:

a) the athlete or other person has committed the anti-doping rule violation as part of a doping plan or scheme, either individually or together with other persons;

b) the athlete or other person has possessed or used multiple prohibited substances or methods, or has possessed or used a prohibited substance or method on multiple occasions;

c) the athlete or other person is obstructing the detection or adjudication of an anti-doping rule violation.

59. In this context, one also has to consider the rule in Article 48 of the Law concerning Multiple Violations. Article 48 provides that for purposes of imposing sanctions under Articles 36 – 38, another anti-doping rule violation set forth in Article 2, paragraph 2 may be considered for purposes of imposing sanctions only when the Athlete or other person from Athlete's support personnel committed the other anti-doping rule violation after the Athlete or other person received notice of the first anti-doping rule violation.

60. The Respondent has argued that the four-year sanction decided by the Commission is fair because the Athlete obstructed the detection or adjudication of an anti-doping rule violation by evading the doping control test by leaving the training camp after she had been informed of the upcoming doping control (and did not return when requested).

61. According to Article 48 of the Law, it is clear that the system for sanctioning Multiple Violations cannot be applied in this case as the Athlete had not received notice of the first anti-doping rule violation when she tested positive for EPO on 5 August 2013. This means that the only possibility to give her a sanction over 2 years ineligibility is by applying Article 47 c) on the basis that she was obstructing the detection or adjudication of an anti-doping rule violation when she left the training camp well aware of the upcoming doping control. Consequently, the Sole Arbitrator must now consider the Athlete's behavior as an aggravating circumstance and determine what impact is has for the period of ineligibility in this case.

62. As set forth above, the Sole Arbitrator determines that the Athlete is also bound by the IAAF Competition Rules. These Rules provide *inter alia* the following:

Rule 40.2:

The period of Ineligibility imposed for a violation of Rules 32.2(a) (Presence of a Prohibited Substance or its Metabolites or Markers), 32.2(b) (Use or Attempted Use of a Prohibited Substances or Prohibited Method) or 32.2(f) (Possession of Prohibited Substances and Prohibited Methods), unless the conditions for eliminating or reducing the period of Ineligibility as provided in Rules 40.4 and 40.5, or the conditions for increasing the period of Ineligibility as provided in Rule 40.6 are met, shall be as follows: First Violation: Two (2) years' Ineligibility.

Rule 40.6:

If it is established in an individual case involving an anti-doping rule violation other than violations under Rule 32.2(g) (Trafficking or Attempted Trafficking) and Rule 32.2(h) (Administration or Attempted Administration) that aggravating circumstances are present which justify the imposition of a period of Ineligibility greater than the standard sanction, then the period of Ineligibility otherwise applicable shall be increased up to a maximum of four (4) years unless the Athlete or other Person can prove to the comfortable satisfaction of the hearing panel that he did not knowingly commit the anti-doping rule violation.

(a) Examples of aggravating circumstances which may justify the imposition of a period of Ineligibility greater than the standard sanction are: the Athlete or other Person committed the anti-doping rule violation as part of a doping plan or scheme, either individually or involving a conspiracy or common enterprise to commit anti-doping rule violations; the Athlete or other Person used or possessed multiple Prohibited Substances or Prohibited Methods or used or possessed a Prohibited Substance or Prohibited Method on multiple occasions; a normal individual would be likely to enjoy performance-enhancing effects of the anti-doping rule violation(s) beyond the otherwise applicable period of Ineligibility; the Athlete or other Person engaged in deceptive or obstructing conduct to avoid the detection or adjudication of an anti-doping rule violation. For the avoidance of doubt, the examples of aggravating circumstances referred to above are not exclusive and other aggravating factors may also justify the imposition of a longer period of Ineligibility.

(b) An Athlete or other Person can avoid the application of this Rule by admitting the anti-doping rule violation as asserted promptly after being confronted with the anti-doping rule violation (which means no later than the date of the deadline given to provide a written explanation in accordance with Rule 37.4(c) and, in all events, before the Athlete competes again).

Rule 40.7(d)(i):

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

63. In considering the Athlete's behavior as aggravating circumstances, the Sole Arbitrator has observed similar CAS jurisprudence wherein aggravating circumstances were considered in the sport of athletics.

64. In CAS 2013/A/3080, the Panel found that the athlete demonstrated certain behaviours that lend themselves to the existence of aggravating circumstances. Her course of conduct over at least a period of several months amounted to a doping plan or scheme, as well as her use or possession of a Prohibited Substance or Method on multiple occasions, thereby justifying the imposition of a period of ineligibility greater than a two-year period of ineligibility. The Panel continued:

75. The question then is what greater period of ineligibility shall be imposed. The words of the Rule are "shall be increased up to a maximum of four (4) years". These words impose a maximum. They do not mean that in every case in which there are aggravating circumstances a period of ineligibility of four years must be imposed.

76. ....

77. CAS 2012/A/2773 […], on which the IAAF placed great reliance, was a case in which neither Respondent filed an Answer and the Sole Arbitrator did not have the advantage of any argument on behalf of the athlete. The Sole Arbitrator found that the athlete used a Prohibited Substance as part of a structured regime between 2006 and 2009 and again in 2011. Further the athlete had used ferretin in concert with rhEPO or another ESA. The use of the additional substance to enhance the effects of a Prohibited Substanæ demonstrated a considerable degree of forethought and was an additional element of planning in what was already a methodical and drawn out doping scheme. In those circumstances, the Sole Arbitrator found that there was a multiple triggering of Rule 40.6 and that the Ineligibility Period should be extended to four years. That decision reflected a greater culpability than that of Ms Bekele in the present case in which the period over which doping has been established is one year, but that fact does not of itself mean that the sanction in this case should be a lesser one. It is well arguable that the athlete in the Kokkinariou case cleared the bar for the imposition of the maximum penalty by a considerable margin.

78. ….

79. ….

80. The IAAF relied upon the fact that a four-year period of ineligibility had been established as the norm in blood doping cases in athletics. In CAS 2012/A/2773 […] at para 75, the Sole Arbitrator referred to Portugese Athletics Federation v Ornelas in which a four-year period of ineligibility had been imposed for blood doping offences apparently committed over a period of one year. However, as was observed in 2010/A/2235 […], albeit in relation to a different set of rules, the rules do not differentiate between various forms of first offence or suggest that blood manipulation attracts ratione materiae a higher sanction than the presence of a prohibited substance. It is the circumstances of the offence, not the commission of the offence itself, which may aggravate.

81. That said, blood doping offences are by their nature repetitive and sophisticated. Aggravating features which involve a doping plan or scheme and a repetitive and sophisticated use or possession of a Prohibited Substanæ or Method are likely to be regarded as aggravating circumstances which require a substantial increase over the standard sanction. It is also true that it is difficult to conceive that the Appellant acted without the help or assistance of others. The IAAF itself speculated that assistance might have been given to the Appellant by an athlete support personnel. In this respect the Panel refers to the decision in CAS 2008/A/1718 to 1724 […] where it is stated at para 216:

82. On the other hand the Panel finds, that the circumstances of the case do not warrant to go to the upper limit of the range of the period of ineligibility, ie up to 4 years. The extent of the doping program of which the Athletes were undoubtedly part of has not been completely uncovered. It is hardly conceivable that the Athletes

could have acted the way they did without the assistance of athlete support personnel or persons holding certain official functions within the federation. The Panel is of the view that the Appellant may not have used all efforts at its disposal to uncover the full extent of the "doping program". … In view of these persisting uncertainties the Panel does not find it just and equitable to go to the upper limit of discretion at its disposal concerning the length of the sanctions".

83. In the present case, the established culpability of the athlete relates only to a single year and to the targeting of two competitions within that year, though by the repeated use of a Prohibited Substance or Method. This is offending on a substantially lesser scale than that of Ms Kokkinariou whose career over five of six years appears to have been built on blood doping. It is also true that although Ms Bekele has been shown to have used a Prohibited Substance or Method repeatedly in targeting two competitions, in the great majority of cases in which an athlete tests positive for a Prohibited Substance, the athlete will not have indulged in a single one-off breach of the rules and in many cases will have been targeting a specific competition or series of competitions.

65. In CAS 2013/A/3373, the IAAF submitted that there were multiple aggravating circumstances pursuant to Rule 40.6 which would justify the increase of the penalty up to a four-year period of ineligibility. The Panel, in determining the applicable sanction, considered the following submissions:

First, the Athlete used multiple Prohibited Substances. An analysis of the Athlete's urine samples collected in February 2013 disclosed the administration of not one but two distinct exogenous anabolic steroids (stanozolol and testosterone). The Athlete's argument that they came from a supplement called "methoxy-7-test" was rejected by the TAF panel because the lab tested the supplement and found no steroids. The Athlete has not appealed that ruling.

Second, the Athlete used those prohibited anabolic steroids on multiple occasions….

Third, in addition to steroid use, the Athlete also committed an entirely separate and distinct anti-doping rule violation under IAAF Rule 32.2(b), namely blood doping, either by using a prohibited method such as blood transfusions or by an erythropoiesis-stimulating agent such as rEPO, in the period starting before 28 June 2012 and continuing through February 2013…

Fourth, the Athlete committed the anti-doping rule violations as part of a doping plan or scheme. This is evidenced by the fact that the Athlete was organizing her doping in a repetitive and sophisticated manner designed to boost her performance in key competitions while avoiding detection by in-competition testing. The hematological profile shows that she took rEPO or similar in June 2012, just before the IAAF European Championships, and in February 2013, just before the start of the indoor season. Similarly, the endocrine profile and steroid urinary profile shows that she was at the end of the excretion phase of a previous intake of testosterone in both early August 2012 just before the Olympic Games and February 2013 at the beginning of the indoor season. This is also evidenced by the fact that there is increasing evidence of widespread doping among elite athletes in Turkey that is specifically tailored towards the achievement of national success for Turkey at international competitions. This is evidenced by the various tip-offs received as well as the dismissal of the TAF Head Coach, Mr. Or, after 43 Turkish athletes under his charge tested positive for steroids immediately prior to the 2013 Mediterranean Games.

Fifth, the Athlete engaged in deceptive or obstructive conduct to avoid detection of the violations. This is evidenced by the fact that Mr. Or blocked the testing team from testing the Athlete at an event in Ankara in June 2012. A video recording shows that she was with the coach when he blocked the testers from notifying her and she did

nothing, then or later, to submit to testing. In addition, the Athlete false-started and attempted to leave the arena in Dusseldorf on 8 February 2013 without presenting herself for testing. The fact that she was not successful in avoiding the test does not undermine the point.

Sixth, the Athlete is likely to enjoy the effects of the anti-doping rule violation(s) beyond the otherwise applicable period of ineligibility….

66. While the above-cited jurisprudence are not binding precedents, they do provide the Sole Arbitrator with helpful guidance and assist him in determining the appropriate level of the sanction to be imposed on the Athlete. In particular, the Sole Arbitrator notes that the applicable rules as they relate to aggravating circumstances come from a common source, namely the WADC. In addition, the examples of aggravating circumstances as set out in the WADA Comments, as well as the IAAF Rules, are expressly said not to be exclusive. So it is with this foundation that the Sole Arbitrator highlights the following factual elements of this case, which help shape the appropriate sanction based on the facts of this case.

67. First, the use of EPO in itself demonstrates a considerable degree of forethought and planning. It is hard to imagine any scenario where the Athlete's injection of such substance was by accident. While the Sole Arbitrator was provided with no evidence establishing repetitive use or the Athlete's involvement in some large-scale scheme, the facts do establish that the ingestion of EPO is made through the administration of an injection, which requires (significant) planning, guidance, and attention. This is not a situation where the Athlete's supplement was contaminated or mislabelled. Quite to the contrary; this involved the Athlete's direct intent to cheat herself, her teammates, her competitors, and the sporting community.

68. Second, the Athlete's deceptive and obstructive conduct to avoid the anti-doping control amounts to a clear attempt to avoid the detection of the EPO (and subsequent violations). This is reinforced by the Sole Arbitrator's uncertainly about the truthfulness concerning the Athlete's alleged travels from the time she left training camp until the time she reported for the sample collection, including the timeframe associated with the travel to attend to her ailing father. Concrete evidence about her true whereabouts was omitted, and such could have been easily remedied. The Sole Arbitrator finds it hard to imagine that the Athlete - starring in the face of a violation for failing to attend an anti-doping control – would not take more proactive measures to make herself available for such doping control, especially at the direct recommendation and warning of the RAF Secretary General. She knew she would be tested, yet she did nothing substantive to ensure that she would not be penalized (for example, arrange and confirm a test away from the testing facility).

69. Third, while the Sole Arbitrator has no reason to doubt the health condition of the Athlete's father, he does however find it incredibly coincidental that the Athlete's father became extremely ill, thus requiring the immediate assistance of the Athlete, at the time of a doping control, such that the Athlete was the only person who could assist in this regard (and requiring her to travel some 600 km by overnight train to do so). This is especially coincidental when one considers that shortly after the Athlete's alleged journey, the Athlete tested positive for EPO. The statement provided by her father's doctor, Ms. Cordea, does not support this theory either

as it appears unlikely that the Athlete was, indeed, with her father during the relevant time period.

70. Fourth, the Sole Arbitrator notes that the Athlete tested positive just in advance of the World Championships in Moscow. Accordingly, it is determined that the Athlete's actions establish a direct intent to gain an unfair competitive advantage in a targeted event.

71. Based on the foregoing, and in consideration of the facts and evidence put forth in this procedure, the Sole Arbitrator is not of the view that this is a case where the Athlete should be suspended with the maximum sanction available. Nevertheless, the Sole Arbitrator is comfortably satisfied that the Athlete participated in an intentional scheme of doping in a sophisticated manner to improve her performance in the Moscow Championships (and perhaps beyond), and while doing so, intentionally evaded detection when she failed to attend the doping control. Such behaviour cannot be condoned. Consequently, the Sole Arbitrator determines that the Athlete shall be sanctioned for a period of two (2) years and nine (9) months.

C. The start date of the period of ineligibility

72. Pursuant to Article 42 of the Law: *"(1) The Ineligibility period shall start on the date of the decision providing for Ineligibility. (2) Any period of provisional suspension shall be credited against the total period of Ineligibility. (3) In case of delays in the decision providing for Ineligibility, for reasons not attributable to the Athlete, the Ineligibility may start as early as the date of Sample collection".*

73. In this case, given that the Athlete has been provisionally suspended as of the date of her sample collection (i.e. 5 August 2013), the start of the period of ineligibility should be the date of such sample collection.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by the Athlete on 4 July 2014 is partially upheld.

2. The decision of the Appeal Commission of the Romanian National Anti-Doping Agency is set aside.

3. Maxim Simona Raula is sanctioned with a period of ineligibility of two (2) years nine (9) months as of 5 August 2013. The period of suspension already served by Maxim Simona Raula shall be credited against the total period of ineligibility.

4. All competitive results obtained by Maxim Simona Raula, if any, from 5 August 2013 shall be disqualified with all the resulting consequences including forfeiture of any medals, points and prizes.

5. (…).

6. (…).

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