



Arbitration CAS 2016/O/4455 International Association of Athletics Federations (IAAF) v. Elmira Alembekova, award of 13 October 2016

Panel: Prof. Matthew Mitten (USA), President; Prof. Ulrich Haas (Germany); Mr Chi Liu (China)

Athletics (race walking)

Doping (r-EPO)

Jurisdiction of the CAS as a sole instance adjudicatory body

International-level athlete

Procedure applicable to the arbitration

r-EPO as non-threshold substance

Period of ineligibility

1. If the national federation which should have been in charge of the matter as a first instance adjudicatory body is suspended, the matter can be directly referred to CAS in accordance with Rule 38.3 of the 2016-2017 IAAF Competition Rules. Furthermore, Rule 38.19 of the 2016-2017 IAAF Competition Rules expressly permit anti-doping rule violation cases to be filed directly with the CAS as a sole instance adjudicatory body.
2. Pursuant to the definitions provided in Chapter 3 (Anti-Doping & Medical Rules) of the IAAF Rules, an athlete who is in the Registered Testing Pool established at international level by the IAAF is considered to be an International-Level Athlete and, consequently, he or she is bound by the IAAF Rules.
3. According to Rule 38.3 of the IAAF Competition Rules, the CAS Appeals Arbitration Procedure shall be applied to such anti-doping rule violation cases filed directly with the CAS as a sole instance adjudicatory body, even though not literally appeals cases.
4. Pursuant to the 2015 WADA Prohibited List, there is no quantitative threshold applicable to r-EPO and thus any amount present in an athlete's bodily sample shall constitute an anti-doping rule violation.
5. If the athlete has not established that his/her anti-doping rule violations were not intentional, nor even adduced any evidence or explanation regarding the origin of the prohibited substance in his/her urine samples or his/her usage of this prohibited substance, none of the necessary conditions for eliminating or reducing the period of ineligibility are satisfied and the sanction to be imposed on the athlete for his/her first anti-doping rule violations shall be a four-year period of ineligibility.

I. PARTIES

1. The International Association of Athletics Federations (“IAAF” or the “Appellant”) is the International Federation governing the sports of athletics worldwide, which is recognized by the International Olympic Committee (“IOC”). Its seat and headquarters is in Monaco.
2. Ms. Elmira Alembekova (the “Athlete” or the “Respondent”) is an International-Level Russian athlete specialized in race walking.

II. FACTUAL BACKGROUND

3. A summary of the most relevant facts and the background giving rise to the present dispute is based on the parties’ written submissions and the evidence filed with these submissions. Additional facts and allegations found in the parties’ written submissions, pleadings and evidence is set out, where relevant, in connection with the legal discussion which follows. The Panel refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning. The Panel, however, has considered all the factual allegations, legal arguments, and evidence submitted by the parties in the present proceedings.
4. The Athlete was included in the IAAF Registered Testing Pool in force at the time of the events in dispute. Therefore, she is considered an International-Level Athlete in accordance with the IAAF Competition Rules (2015 version).
5. On 2 June 2015, the Athlete underwent an out-of-competition doping control at the Olympic Training Center for Race Walking of Saransk, Russia.
6. On 5 June 2015, the Athlete’s Sample (the “A Sample”, with Sample Code A3869262) was received by the World Anti-Doping Agency (“WADA”) accredited laboratory (*Deutsche Sporthochschule Köln- Institut für Biochemie*) located in Cologne, Germany (“Cologne laboratory”).
7. On 26 June 2015, the Cologne laboratory reported that the Athlete’s A Sample produced an adverse analytical finding for the substance *recombinant Erythropoietin* (“r-EPO”). It is used to increase the oxygen-carrying capacity of blood (often to enhance athletic performance in endurance sports) and is a prohibited substance included in section “S2” (Peptide Hormones, Growth Factors, Related Substances and Mimetics) of the 2015 WADA Prohibited List.
8. On 10 July 2015, the IAAF notified the Athlete of her adverse analytical finding and the alleged anti-doping rule violation, informing her, *inter alia*, about (i) her right to provide the IAAF within a specified time limit an explanation for the adverse analytical finding; (ii) her right to request the analysis of her B Sample; (iii) her right to attend the opening of the B Sample and the subsequent analysis; and (iv) her right to request copies of the Laboratory Documentation Packages for the A and B Sample. In this same correspondence, the IAAF also invited the Athlete to accept a voluntary suspension as a consequence of her anti-doping results.

9. On 15 July 2015, the Athlete sent a letter to the IAAF whereby she requested (i) an analysis of her B-Sample; and (ii) a copy of the full laboratory documentation package for her A Sample.
10. On 17 July 2015, the IAAF informed the Athlete that the deadline to provide a written explanation for the finding in her A-sample had expired and that pursuant to IAAF Rule 38.2 she was provisionally suspended from all competitions in athletics pending resolution of her case by her Federation, with immediate effect and not subjected to appeal. Furthermore, the IAAF informed her that the analysis of her B-sample would occur on 12 August 2015 at 10 a.m. at the Cologne laboratory. At the same time, WADA informed the Athlete of the costs of the analysis of the B Sample and requested that she provide an address to which the related invoice should be sent.
11. On 6 August 2015, the Athlete requested that the IAAF cancel the opening and the analysis of her B Sample because she “*could not find the money*” to pay the costs involved.
12. On 6 August 2015, the IAAF sent an email to the Athlete acknowledging receipt of her email and informed her that it considered that she had affirmatively waived her right to the analysis of her B Sample.
13. On 28 September 2015, the Athlete sent an email to the IAAF stating :

“[...] It is true that I have already waived my right to request the opening and analysis of my B sample. As I indicated in my previous letter, the reason of my waiver was only economical since I could not afford to spend this amount. However, I was provided with the necessary amount and I respectfully request the IAAF to conduct the analysis of my B sample [...]”.
14. On 30 September 2015, the IAAF sent an email to the Athlete offering to schedule the analysis of her B Sample on 2 November 2015 at 10 a.m. at the Cologne laboratory and asked her to confirm by no later than 15 October 2015 whether she would attend the analysis of the B Sample in-person or through a representative, in which case she was required to provide his or her identity.
15. On 6 November 2015, the Athlete’s B Sample was opened at the Cologne laboratory in the presence of the Athlete’s representative, Dr. Yulia Dykhal.
16. On the same day 6 November 2015, the Cologne laboratory reported that the results of the analysis of the Athlete’s B Sample (Sample Code B3869262) had also produced an adverse analytical finding for the substance *recombinant erythropoietin* (r-EPO).
17. On 18 December 2015, the IAAF informed the Athlete that following the finding of r-EPO in her A and B Samples her case had been referred to the Russian Athletic Federation (“ARAF”), and that because the ARAF had been suspended from membership of the IAAF, it had assumed responsibility for bringing a disciplinary proceeding against her. The IAAF informed the Athlete of her following procedural rights:

“[...]Pursuant to IAAF Rule 38.2, you have the right to request a hearing in order to determine (i) whether you committed an anti-doping rule violation and (ii) the consequences of such a violation under IAAF Rules.

*Should you wish to request a hearing, you must confirm this to me in writing within 14 days, by no later than **Friday 1st January 2015** [sic] (close of business).*

If you fail to confirm in writing that you wish to have a hearing by the above deadline, you will be deemed (i) to have waived your right to a hearing and (ii) to have accepted an anti-doping rule violation under IAAF Rule 32.2 (a) and a 4-year sanction in accordance with Rule 40.2 (a). In this event, the IAAF will notify both you and the Anti-Doping Organisations with a right of appeal of the conclusion in your case.

*If you confirm to me in writing before **Friday 1st January 2015** [sic] that you wish to have a hearing, your case will be referred without delay to the **Court of Arbitration of Sport (CAS)** in Lausanne, Switzerland for a hearing to be conducted at your election in accordance with one of the following procedures:*

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

18. On 31 December 2015, the Athlete confirmed with the IAAF by email that she wanted her case to be referred to the Court of Arbitration for Sport (the “CAS”) and that she preferred a hearing *“before a CAS Panel as a single hearing, with the agreement of WADA and any other anti-doping organization with a right of appeal, in accordance with Rule 38.19 and the decision rendered will not be subject to an appeal”.*
19. On 8 February 2016, both WADA and the Russian Anti-Doping Agency (“RUSADA”) informed the IAAF that they consented to submit this case directly to the CAS with no requirement for a prior hearing.
20. On 12 February 2016, the ARAF informed the IAAF that it did not object to directly submitting this case to the CAS with no requirement for a prior hearing.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

21. On 19 February 2016, the IAAF filed a Request for Arbitration before the CAS against the ARAF and the Athlete, in which it requested that this matter be heard by the CAS as a sole-instance adjudication body and to apply the provisions of the CAS Appeal Arbitration Procedure. For this reason, the Appellant requested that its Request for Arbitration be considered as its Statement of Appeal and Appeal Brief.
22. On 23 February 2016, the CAS Court Office sent a letter to the parties acknowledging receipt of the IAAF’s Request for Arbitration and inviting the Athlete and the ARAF (collectively,

the “Respondents”) to file their Answers within 30 days following the receipt of this letter, informing them that *“If a Respondent fails to submit an answer by the given time limit, the Panel may nevertheless proceed with the arbitration and deliver an award”*. The CAS Court Office also informed the parties that the present arbitration would proceed in accordance with the Appeals Arbitration Division rules (Articles R47 *et seq.* of the Code of Sports-related Arbitration 2016 edition)(“Code”) and that the Appellant’s Request for Arbitration would be considered as its Statement of Appeal and Appeal Brief. In addition, the CAS Court Office invited the Respondents to state, within 10 days from receipt of its letter, whether they agreed to the IAAF’s request to either consolidate the present case with three other allegedly related cases (i.e., CAS 2016/A/4454 IAAF v. ARAF & Vera Sokolova, CAS 2016/A/4456 IAAF v. ARAF & Ivan Noskov and CAS 2016/A/4457 IAAF v. ARAF & Denis Strelkov) or to refer the procedure to the same Panel or Sole Arbitrator, as appropriate.

23. On 4 March 2016, the IAAF informed the CAS that it agreed to refer the case to a Sole Arbitrator.
24. On 9 March 2016, the CAS informed the parties that, taking into account that it had not received any comment from the Respondents with regard to the number of arbitrators, the present arbitration procedure would be referred to a three-member Panel in accordance with Article R50 of the Code. At the same time, although the Respondents had failed to timely nominate an arbitrator, the CAS informed them that they were given a final opportunity to jointly nominate an arbitrator by no later than 14 March 2016. The CAS Court Office also informed the parties that because the Respondents did not object to English as the language of the procedure, pursuant to Article R29 of the Code, all written submissions and exhibits are required to be filed in English. In the same letter, the CAS Court Office informed the parties that the present procedure has been assigned to the CAS Appeals Arbitration Division and not any more to the Ordinary Arbitration Division. This confirmed that the CAS should act as a sole instance in this matter, with no further appeal possible before CAS, in accordance with the parties’ mutual will.
25. On 17 March 2016, the CAS informed the parties that, because it had not received any communication from Respondents nominating arbitrator within the required time limit, the President or Deputy of the Appeals Division would appoint an arbitrator.
26. On 18 March 2016, the ARAF informed the CAS that the Respondents had jointly nominated Mr. Chi Liu, attorney-at-law in Beijing, China as an arbitrator in the present matter. Because the Respondents’ nomination was received after the expiry of the given deadline, the CAS Court Office invited the Appellant to state whether it objected to this nomination.
27. On 21 March 2016, the CAS informed the parties that the Appellant did not object to the Respondents’ late nomination of Mr. Chi Liu as an arbitrator and advised the parties that his nomination had been accepted.
28. On 30 March 2016, the ARAF sent a letter to the CAS requesting the CAS to invite the Appellant to clarify: (i) *“why the ARAF was involved in the present case as a Respondent, not [sic] a witness”*; and (ii) *“what types of relief are sought by the Claimant against the First Respondent, if any”*.

29. On 1 April 2016, the CAS invited the Appellant to respond, within five days, to the questions posed by the ARAF in its 30 March 2016 letter.
30. On 6 April 2016, the Appellant informed the CAS that, even though it “*considers that it is appropriate for ARAF to remain as a respondent party in these proceedings*”, “*in the event that ARAF maintains its apparent unwillingness to participate, the IAAF would accept that the proceedings be directed henceforth only against*” the Athlete.
31. On 7 April 2016, the CAS invited the ARAF to confirm whether or not it would participate in this proceeding.
32. On 11 April 2016, the ARAF sent a letter to the CAS requesting that it be excluded from this proceeding.
33. On 12 April 2016, the CAS noted the ARAF’s request that it be excluded from this proceeding and asked that the Appellant indicate whether it wanted to proceed with its claims against the ARAF. It also informed the parties that even though the Respondents had not submitted an answer within the given time limit pursuant to Article R55 para. 2 of the Code, the Panel would nevertheless proceed with the arbitration and deliver an award. In addition, it invited the parties to state whether they preferred a hearing to be held in this matter or for the Panel, once constituted, to issue an award based solely on the parties’ written submissions.
34. In a 15 April 2016 letter, the Appellant confirmed “*its acceptance that the proceedings be directed henceforth only against the Second Respondent*” (i.e. the Athlete).
35. On 18 April 2016, the Appellant informed the CAS that it did not consider it necessary for a hearing to be held in connection with this proceeding.
36. On 19 April 2016, the CAS Court Office noted that the Athlete remained silent on her preference for a hearing, but nevertheless, it would be for the Panel, once constituted, to decide whether or not to hold a hearing.
37. On 25 April 2016, the Athlete sent correspondence to the CAS stating “*I prefer for the Panel to issue an award based solely on the parties’ written submissions and I refuse the hearing to be held*”. She also informed the CAS that, since she had been married, her full name was Elmira Ivanova (Alembekova).
38. On 24 May 2016, the CAS notified the parties that the Panel appointed to decide the present case had been constituted as follows: (i) Prof. Matthew Mitten, Professor of Law in Milwaukee, Wisconsin (USA), as President of the Panel; (ii) Prof. Ulrich Haas, Professor of Law in Zurich (Switzerland), as the arbitrator appointed by the Appellant; and (iii) Mr. Chi Liu, Attorney-at-Law in Beijing (China), as the arbitrator appointed by the Respondent.
39. On 16 June 2016, the CAS Court Office informed the parties that Mr. Yago Vázquez Moraga, Attorney-at-Law in Barcelona (Spain), had been appointed as *ad hoc* clerk in this proceeding.

40. On 30 June 2016, the CAS informed the parties that the Panel deemed itself sufficiently well informed to decide this case based solely on the parties' written submissions, without the need to hold a hearing.
41. On 6 July 2016, the CAS sent the Order of Procedure to the parties, which was returned and signed by the Appellant on 7 July 2016.
42. On 8 July 2016, the CAS Court Office received the Order of Procedure duly countersigned by the Respondent.
43. Even though she was duly summoned and timely provided with the Request for Arbitration by the IAAF by the CAS Office, Respondent voluntarily declined to submit an Answer to the Appellant's allegations or to provide any written submissions, despite her request that the Panel issue an award based solely on the parties' written submissions.

IV. SUMMARY OF THE PARTIES' SUBMISSIONS

44. The Panel has carefully considered all of the submissions made by the parties, which are summarized as follows.

A. The Appellant

45. In its Request for Arbitration, which constitutes its Appeal Brief, the Appellant requested that the Panel award as follows:

"The IAAF respectfully seeks the CAS Panel to rule as follows:

- (i) CAS has jurisdiction to decide on the subject matter of this dispute.*
- (ii) The Request for Arbitration of the IAAF is admissible.*
- (iii) The Athlete is found guilty of an anti-doping rule violation in accordance with Rule 32.2(a) or 32.2(b) of the IAAF Rules.*
- (iv) A period of ineligibility of four years is imposed upon the Athlete, commencing on the date of the (final) CAS Award. Any period of provisional suspension imposed on, or voluntarily accepted, by the Athlete until the date of the (final) CAS Award shall be credited against the total period of ineligibility to be served.*
- (v) All competitive results obtained by the Athlete from 2 June 2015 through to the commencement of her provisional suspension on 17 July 2015 are disqualified, with all resulting consequences (including forfeiture of any titles, awards, medals, profits, prizes and appearance money).*
- (vi) Any arbitration costs are borne entirely by the Respondents.*
- (vii) The IAAF is awarded a significant contribution to its legal costs".*

46. The Appellant's submissions, in essence, may be summarized as follows:

a. *Anti-doping Rule Violations*

47. Rule 32.2 (a) of the 2015 IAAF Competition Rules forbids the presence of a prohibited substance or its metabolites or markers in an athlete's sample. The presence of r-EPO, which is an In-Competition and Out-of-Competition prohibited substance under section S2 of the 2015 WADA Prohibited List, has been found in the Athlete's A Sample.

48. Pursuant to Rule 32.2 (a) (ii) of the 2015 IAAF Competition Rules, sufficient proof of an anti-doping rule violation under Rule 32.2 (a) is established "[...] where the Athlete's B Sample is analysed and the analysis of the Athlete's B Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the Athlete's A Sample [...]". The Athlete's B Sample also revealed the presence of r-EPO. Therefore, a violation of Rule 32.2 (a) is established.

49. In addition, the evidence in this case is also sufficient to constitute a violation of Rule 32.2 (b) of the 2015 IAAF Competition Rules (i.e. "Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method") because "there are additional indications of doping in addition to [the Respondent's] analytical results".

50. Specifically, "[t]he fact that at least six race walkers (including the Athlete) that were tested on 2 June 2015 at the Saransk centre reported adverse analytical findings for EPO". In addition, "the heavily diluted samples provided by the Athlete" and by the rest of the athletes that underwent doping controls, indicate "a concerted effort to prevent the detection of prohibited substances".

51. Although the Doping Control Officer ("DOC") arrived on site at 6.30 a.m. on 2 June 2015 to conduct the doping tests, no athlete could be found for almost 12 hours. Furthermore, the DCO tried to call the concerned athletes but none of them answered their phones and, after several other obstructive actions, the athletes finally showed up at 6 p.m. to be tested.

52. Moreover, "[t]he fact that the former Director of the Saransk centre, Viktor Kolesnikov, was suspended by RUSADA at the end of 2014 for possessing blood transfusion equipment" also indicates the use or attempted use of prohibited substances or methods by Russian race walkers training at this facility.

b. *Four Year Period of Ineligibility for Intentional Anti-doping Rule Violation*

53. In accordance with Rule 40.2 of the 2015 IAAF Competition Rules, the period of Ineligibility imposed for a violation of Rule 32.2 (a) or Rule 32.2 (b) shall be four years because r-EPO is not a Specified Substance and the Athlete cannot establish that her anti-doping rule violation was not intentional.

54. To demonstrate her lack of intention, the Athlete must first establish how the r-EPO entered her system, and she has not presented any evidence whatsoever regarding the origin of this prohibited substance.

55. Moreover, r-EPO is a prohibited substance whose usage is prevalent among endurance athletes such as race walkers. It has effective performance enhancing benefits for them by artificially augmenting red cell mass and, by extension, VO₂ max. Therefore, the Athlete's failure to explain the origin of the r-EPO in her samples combined with the fact that r-EPO cannot enter an athlete's system inadvertently (e.g. through contamination) establishes that her anti-doping rule violation was intentional.
56. Therefore, the Athlete should be sanctioned with a four-year period of ineligibility pursuant to Rule 40.11 of the 2015 IAAF Competition Rules, such period of ineligibility commencing on the date of the final Award.

c. *Disqualification of Competition Results*

57. Pursuant to Rule 40.9 of the 2015 IAAF Competition Rules, all competitive results obtained by the Athlete from 2 June 2015 (date of the urine samples collection) through the commencement of her provisional suspension on 17 July 2015, must be disqualified, with all resulting consequences (including forfeiture of any titles, medals, profits, prizes and appearance money).

B. The Respondent

58. The Panel is satisfied by CAS confirmations that all communications and Appellant submissions regarding her positive test for r-EPO and this proceeding were sent to the Athlete's email and/or file addresses and, according to the DHL track reports that hard copies of all documents were physically delivered to her.
59. As described in para. 17, the IAAF fully and timely informed the Athlete on 18 December 2015 of her right to request a hearing as well as the consequences of waiving such right to defend herself at the hearing.
60. However, the Athlete did not submit any Answer to the Appellant's Request for Arbitration or provide any written submissions or evidence for the Panel to consider. Moreover she did not raise any objections to the manner in which this procedure was conducted and countersigned the Order of Procedure issued by the CAS. Rather, she expressly communicated "*I prefer for the Panel to issue an award based solely on the parties' written submissions and I refuse the hearing to be held*". Nonetheless, based on circumstantial evidence, it appears to the Panel that the Athlete received centralized and coordinated advice and guidance with respect to the CAS hearing from an unidentified party, as further discussed in para. 90.

V. JURISDICTION

61. Pursuant to Article R47 of the Code "*An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body. An appeal may*

be filed with CAS against an award rendered by CAS acting as a first instance tribunal if such appeal has been expressly provided by the rules of the federation or sports-body concerned. [...]”.

62. In the present case, given the suspension of the ARAF, which is the national federation which should have been in charge of this matter as a first instance adjudicatory body, the matter was directly referred to CAS in accordance with Rule 38.3 of the 2016-2017 IAAF Competition Rules, which provides that:

“If the Member fails to complete a hearing within two months, or, if having completed a hearing, fails to render a decision within a reasonable time period thereafter, the IAAF may impose a deadline for such event. If in either case the deadline is not met, the IAAF may elect, if the Athlete is an International-Level Athlete, to have the case referred directly to a single arbitrator appointed by CAS. The case shall be handled in accordance with the CAS rules (those applicable to the appeal arbitration procedure without reference to any time limit for appeal)”.

Therefore, the CAS has jurisdiction to hear the present case on that basis already.

63. Furthermore, the 2016-2017 IAAF Competition Rules (which are applicable because the Appellant’s Request for Arbitration was filed on 19 February 2016) expressly permit anti-doping rule violation cases to be filed directly with the CAS as a sole instance adjudicatory body.

64. Indeed, notwithstanding Rule 38.1 of the 2016-2017 IAAF Competition Rules, which generally provides an athlete with the right to a hearing before a tribunal of her National Federation and Rule 38.3 (see above), Rule 38.19 provides:

“Cases asserting anti-doping rule violations may be heard directly by CAS with no requirement for a prior hearing, with the consent of the IAAF, the Athlete, WADA and any Anti-Doping Organisation that would have had a right to appeal a first hearing decision to CAS”.

65. In addition, Rule 42.5 of the 2016-2017 IAAF Competition Rules states:

“In any case arising out of an International Competition or involving an International-Level Athlete or his Athlete Support Personnel, the following parties shall have the right to appeal to CAS:

- (a) the Athlete or other Person who is the subject of the decision being appealed;*
- (b) the other party to the case in which the decision was rendered;*
- (c) the IAAF;*
- (d) the National Anti-Doping Organisation of the Athlete or other Person’s country of residence or where the Athlete or other Person is a national or licence holder;*
- (e) the IOC or the International Paralympic Committee, as applicable (where the decision may have an effect in relation to the Olympic Games or Paralympic Games, including a decision affecting eligibility for the Olympic Games or Paralympic Games or a result obtained at the Olympic or Paralympic Games); and*

(f) *WADA*”.

66. In the present case, the Athlete, the ARAF, the IAAF, the RUSADA, and WADA have expressed their consent to the present case being heard directly by CAS with no requirement for a prior or first instance procedure.
67. Taking into account the foregoing provisions of the 2016-2017 IAAF Rules as well as the fact that all the parties entitled to appeal to the CAS have consented to submit the present case directly to the CAS, the Panel confirms its jurisdiction to resolve this case as a sole-instance adjudicatory body. In addition, because the ARAF had already been suspended as a member of the IAAF at the time this dispute arose and could not provide a first instance proceeding, the Panel concludes that the Appellant exhausted the legal remedies available to it prior to filing its request for CAS arbitration.

VI. ADMISSIBILITY

68. Neither the Code nor the 2016-2017 IAAF Competition Rules provide a specific time limit within which to file this first instance appeal procedure or identify the date on which it could have been filed.
69. Rule 38.3 of the 2016-2017 IAAF Competition Rules provides:
“If the Member fails to compete a hearing within two months, or, if having completed a hearing, fails to render a decision within a reasonable time period thereafter, the IAAF may impose a deadline for such event. If in either case the deadline is not met, the IAAF may elect, if the Athlete is an International-Level Athlete, to have the case referred directly to a single arbitrator appointed by CAS. The case shall be handled in accordance with the CAS rules (those applicable to the appeal arbitration procedure without reference to any time limit for appeal)”.
70. Rule 38.19 of the 2016-2017 IAAF Competition Rules establishes that *“Cases asserting anti-doping rule violations may be heard directly by CAS with no requirement for a prior hearing, with the consent of the IAAF, the Athlete, WADA and any Anti-Doping Organisation that would have had the right to appeal a first hearing decision to CAS”.*
71. The Panel notes that, pursuant to Rule 42.15 of the 2016-2017 IAAF Competition Rules, the standard time-limit for an appeal to CAS is 45 days from receipt of the decision to be appealed. Then, an additional time limit of 15 days is granted to the Appellant to file its appeal brief, which gives a total of maximum 60 days to refer a case in full to the CAS.
72. On 18 December 2015, the Appellant informed the Athlete of her right to a CAS hearing, which she requested pursuant to Rule 38.19 of the 2016-2017 IAAF Competition Rules on 31 December 2015. The Appellant filed its request for arbitration with the CAS on 19 February 2016 (fifty days after the Athlete requested a hearing), which the Panel finds to be a reasonable and timely period for purposes of the admissibility of this Request for Arbitration.

73. Finally, pursuant to Rule 47 of the IAAF Rules, the statute of limitation for anti-doping rule violation proceedings is “ten years from the date on which the anti-doping rule violation is asserted to have occurred”.
74. As a consequence, because the anti-doping control that resulted in the Athlete’s positive test for r-EPO occurred on 2 June 2015 and that the Appellant filed its Request for Arbitration on 19 February 2016, the Panel concludes that this Request for Arbitration is admissible.

VII. APPLICABLE LAW

75. Article R58 of the Code reads as follows:

“The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.

76. As a threshold matter, the Panel deems it necessary to clarify that the version of the IAAF Competition Rules that should be applied in the present case is the one that was in effect when the alleged anti-doping violation occurred (i.e., on 2 June 2015). Therefore, the 2015 IAAF Competition Rules (the “IAAF Rules”), which were in force as from 1 January 2015 until 1 November 2015, are the “applicable regulations” regarding the substantive merits of this case for purposes of Article R58 of the Code. However, the procedural aspects of this case are governed by the 2016-2017 IAAF Competition Rules, pursuant to the rule of *tempus regit actum*.

77. Rule 42.23 of the IAAF Rules provides:

“In all CAS appeals involving the IAAF, CAS and the CAS Panel shall be bound by the IAAF Constitution, Rules and Regulations (including the Anti-Doping Regulations). In the case of any conflict between the CAS rules currently in force and the IAAF Constitution, Rules and Regulations, the IAAF Constitution, Rules and Regulations shall take precedence”.

78. Rule 30.1 of the IAAF Rules provides:

“The Anti-Doping Rules shall apply to the IAAF, its Members and Area Associations and to Athletes, Athlete Support Personnel and other Persons who participate in the activities or Competitions of the IAAF, its Members and Area Associations by virtue of their agreement, membership, affiliation, authorisation or accreditation”.

79. Rule 42.24 of the IAAF Rules further provides:

“In all CAS appeals involving the IAAF, the governing law shall be Monegasque law and the arbitrations shall be conducted in English, unless the parties agree otherwise”.

80. The Panel notes that pursuant to the definitions provided in Chapter 3 (Anti-Doping & Medical Rules) of the IAAF Rules, an Athlete who is in the Registered Testing Pool established at international level by the IAAF is considered to be an International-Level Athlete and, consequently, he or she is bound by the IAAF Rules.
81. In light of the foregoing and pursuant to Art. R58 of the Code, the Panel concludes that the substantive aspects of this case shall be decided under the IAAF Rules and, on a subsidiary basis, by Monegasque Law.
82. With respect to the procedure applicable to the present arbitration, the Panel notes that, even though the present case is not literally an appeals case, because the CAS is acting as a sole instance adjudicatory body, the CAS Appeals Arbitration Procedure shall be applied, in the light of Rule 38.3 of the IAAF Rules, on the basis of the specific request of the Appellant in this regard and in the absence of any objection to the contrary from the Respondent.

VIII. MERITS

A. Anti-Doping Rule Violations

83. It is undisputed that the analysis of the Athlete's A Sample (Sample Code A3869262) produced an adverse analytical finding for the substance *recombinant Erythropoietin* (r-EPO). Furthermore, it is also undisputed that the result of the analysis of the Athlete's B Sample (Sample Code B3869262) confirmed an adverse analytic finding for this substance. The usage of r-EPO is prohibited In-Competition and Out-of-Competition under section S2 of the 2015 WADA Prohibited List.
84. Rule 32.1 of the IAAF Rules defines doping as the occurrence of one or more of the anti-doping rule violations set out in Rule 32.2, which reads as follows:

“(a) Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample.

- (i) it is each Athlete's personal duty to ensure that no Prohibited Substance enters his body. Athletes are responsible for any Prohibited Substance or its Metabolites or Makers found to be present in their Samples. Accordingly, it is not necessary that intent, Fault, negligence or knowing Use on the Athlete's part be demonstrated in order to establish an anti-doping rule violation under Rule 32.2(a).*
- (ii) sufficient proof of an anti-doping rule violation under Rule 32.2(a) is established by any of the following: presence of a Prohibited Substance or its Metabolites or Markers in the Athlete's A Sample where the Athlete waives analysis of the B Sample and the B Sample is not analysed; or where the Athlete's B Sample is analysed and the analysis of the Athlete's B Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the Athlete's A Sample; or, where the Athlete's B Sample is split into two bottles and the analysis of the second bottle confirms the presence of the Prohibited Substance or its Metabolites or Markers in the first bottle.*

(iii) *except those Prohibited Substances for which a quantitative threshold is specifically identified in the Prohibited List, the presence of any quantity of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample shall constitute an anti-doping rule violation. [...]*

85. Based on this definition, the Panel notes that the presence of the substance r-EPO in the Athlete's urine samples constitutes an anti-doping rule violation. In addition, the Panel observes that, pursuant to the 2015 WADA Prohibited List, there is no quantitative threshold applicable to r-EPO and thus any amount present in the Athlete's bodily sample shall constitute an anti-doping rule violation.

86. Rule 32.2 (b) of the IAAF Rules provides:

"b) Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method.

(i) *It is each Athlete's personal duty to ensure that no Prohibited Substance enters his body and that no Prohibited Method is Used. Accordingly, it is not necessary that intent, Fault, negligence 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.*

(ii) *The success or failure of the Use or Attempted Use of a Prohibited Substance or Prohibited Method is not material. 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".*

"Use" is defined as *"The utilisation, application, ingestion, injection or consumption by any means whatsoever of any Prohibited Substance or Prohibited Method"*.

87. Rule 33.1 of the IAAF Rules places the burden of proving an anti-doping rule violation on the Appellant and states that *"[t]he standard of proof shall be whether the IAAF, Member or other prosecuting authority has established an anti-doping rule violation to the comfortable satisfaction of the relevant hearing panel, bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt"*.

88. It is undisputed that r-EPO was found in the Athlete's A and B Samples of urine through laboratory analysis; therefore, a Prohibited Substance was present in her body in violation of Rule 32.2. (a) (ii) of the IAAF Rules. The Panel deems it relevant to stress that the Athlete has not provided any explanation whatsoever regarding how or why this prohibited substance was present in her body to either the IAAF or as evidence in this proceeding concerning this issue.

89. The Panel also concludes that the Athlete violated Rule 32.2 (b) of the IAAF Rules by using r-EPO, which is a Prohibited Substance, based on its undisputed and unexplained presence in the Athlete's system and because r-EPO, which typically is injected intravenously, is used to enhance performance by endurance sport athletes such as race walkers.

90. The Panel is puzzled that the Athlete did not admit to committing any anti-doping rule violations, yet she did not offer any defense or exculpatory evidence in this proceeding. We

consider it appropriate to make the following observations regarding this matter. The Panel recognizes and expresses its concern about the apparent orchestrated and systemic nature of the usage of prohibited substances or methods by international-level Russian track and field athletes specializing in race walking. After the IDTM Doping Control Officer was unable to contact various athletes and encountered a delay of almost 12 hours locating any of the ten athletes selected for an out-of-competition doping control at the Saransk, Russia race walking center on 2 June 2015, six athletes (Emira Alembekova, Stanislav Emelyanov, Ivan Noskov, Mikhail Ryzhov, Vera Sokolova, and Denis Strelkov) provided individual urine samples (those given by Emelyanov, Noskov, Sokolova, and Strelkov were diluted), each of which tested positive for rEPO (2 June 2015 Mission Summary; Ryzhov, Alembekova, Noskov, Strelkov, Sokolova, and Emelyanov Doping Control Forms, Analytical Reports, and Test Reports). Moreover, the unwillingness of the ARAF to participate in any of the IAAF anti-doping rule proceedings against Alembekova, Noskov, Ryzhov, Sokolova, and Strelkov, each of whom requested on 25 April 2016 that the Panel “*issue an award based solely on the parties’ written submissions and I refuse the hearing to be held*” and signed the 6 July 2016 Order of Procedure on 8 July 2016, which acknowledged their respective decision not to file an Answer to the IAAF’s charges against them and that no hearing would be held, suggests that a centralized and coordinated approach has been adopted to preclude this Athlete and others from providing any evidence or testimony regarding the nature and scope of the usage of prohibited substances or methods by Russian race walkers and/or to identify other persons involved in orchestrating these anti-doping violations. (Because of their identical factual and legal issues, each individual case has been assigned to this Panel). Regrettably, this approach precludes any potential reduction of the Athlete’s disciplinary sanction based on her provision of substantial assistance in discovering anti-doping rule violations by others.

B. Period of Ineligibility

91. Rule 40 of the IAAF Rules establishes the disciplinary sanctions for a first anti-doping rule violation by athletes. In particular, Rule 40.2 of the IAAF Rules provides the following period of ineligibility for the violation of Rules 32.2 (a) and 32.2 (b):

“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 a Prohibited Substance or Prohibited Method) shall be as follows, subject to potential reduction or suspension pursuant to Rules 40.5, 40.6 or 40.7:

(a) The period of Ineligibility shall be four years where:

- (i) The anti-doping rule violation does not involve a Specified Substance, unless the Athlete or other Person can establish that the anti-doping rule violation was not intentional;*
- (ii) The anti-doping rule violation involves a Specified Substance and it can be established that the violation was intentional.*

(b) If Rule 40.2(a) does not apply, the period of Ineligibility shall be two years”.

92. *Recombinant Erythropoietin* (r-EPO) is not a Specified Substance; it is a Prohibited Substance whose usage is banned out-of-competition as well as in-competition. The Athlete has not established that her anti-doping rule violations were not intentional, nor even adduced any evidence or explanation regarding the origin of the r-EPO in her urine samples or her usage of this Prohibited Substance.
93. Therefore, taking into account the evidence produced by the Appellant, the Panel concludes that none of the necessary conditions set forth in the IAAF Rules (i.e. Rule 40.5, 40.6 and 40.7) for eliminating or reducing the period of Ineligibility are satisfied in the present case. Consequently, the Panel concludes that the sanction to be imposed on the Athlete for her first anti-doping rule violations shall be a four-year period of ineligibility, starting on 17 July 2015 which is the date when the provisional suspension, which is still running, was imposed on the athlete in accordance with Rule 40.11 of the IAAF Rules.

C. Disqualification of Individual Results

94. Rule 40.9 of the 2016-2017 IAAF Rules provides:

“In addition to the automatic Disqualification of the Athlete’s individual results in the Competition which produced the positive sample under Rules 39 and 40, all other competitive results obtained by the Athlete from the date the positive Sample was Collected (whether In-Competition or Out-of-Competition) or other anti-doping rule violation occurred, through to the commencement of any Provisional Suspension or Ineligibility period shall, unless fairness requires otherwise, be Disqualified with all of the resulting Consequences for the Athlete, including the forfeiture of any titles, awards, medals, points and prize and appearance money”.

95. Pursuant to Rule 40.9 of the IAAF Rules, the Panel rules that all competitive results obtained by the Athlete from 2 June 2015 (the date on which her positive Samples were collected) through and until the commencement of her suspension period on 17 July 2015 shall be disqualified with all of the resulting consequences for her, including the forfeiture of any titles, awards, medals, points and prize and appearance money. In the Panel’s view, fairness does not require otherwise.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The claim filed by the International Association of Athletics Federations against Mrs. Elmira Alembekova with the Court of Arbitration for Sport on 19 February 2016 is upheld.
2. Mrs. Elmira Alembekova has committed anti-doping rule violations pursuant to Rules 32.1 and 32.2 of the 2015 IAAF Competition Rules.
3. Mrs. Elmira Alembekova is sanctioned with a four-year period of ineligibility, starting on 17 July 2015.
4. All the competitive results obtained by Mrs. Elmira Alembekova from 2 June 2015 through to the commencement of her suspension period on 17 July 2015 are disqualified, with all the resulting consequences, including the forfeiture of any titles, awards, medals, points and prize and appearance money.
5. (...).
6. (...).
7. Any other motions or prayers for relief are rejected.