



**Arbitration CAS 2017/A/5021 International Association of Athletics Federations (IAAF) v. UAE Athletics Federation & Bethem Desalegn, award of 17 October 2017**

Panel: Mr Jacques Radoux (Luxembourg), President; Mr Markus Manninen (Finland); Mr Jirayr Habibian (Lebanon)

*Athletics (middle- and long distance)*

*Doping (Athlete Biological Passport; blood doping)*

*Aggravating circumstances under Rule 40.6 2014 IAAF Rules/ Article 10.6 2009 WADA Code*

*“Multiple occasions” and “doping plan or scheme” as aggravating circumstances*

*Disqualification of results under Rule 40.8 IAAF Rules*

1. The burden to establish the existence of aggravating circumstances in the meaning of Rule 40.6 2014 IAAF Rules (Article 10.6 of the 2009 WADA Code) lies on the IAAF. In this respect the standard of “comfortable satisfaction” not only applies to the IAAF, but also to the athlete, in order to rebut any claim of aggravating circumstances. Furthermore, even if aggravating circumstances in the meaning of Rule 40.6 2014 IAAF were to be established, a CAS panel has discretion whether to increase a sanction based on aggravating circumstances, and if so, how much the sanction should be increased, as Rule 40.6 2014 IAAF Rules does not impose a minimum increase. A single example of aggravating circumstances may sometimes warrant the maximum period of four years, while another time multiple examples may call for a lesser penalty only.
2. Given that a rEPO course commonly stretches over a period of two to three weeks and involves two to three injections a week, with a single injection not providing the expected enhancing effects, this course of injections may be considered a continuous doping practice. However, in case only one sample out of four taken for the purpose of an ABP establishes an abnormality (*i.e.* one doping violation), this does not necessarily establish use on “multiple occasions” in the meaning of Rule 40.6 2014 IAAF Rules. Put differently, the fact that blood doping, whether by use of rEPO or by blood transfusion, presupposes the use of syringes on more than just one occasion, *i.e.* injection of rEPO every two to three days or taking of blood to re-inject blood, does not necessarily justify the imposition of an increased period of ineligibility for use on “multiple occasions”. Furthermore, the sole fact that blood doping usually requires specific knowledge or assistance from a specialist, *i.e.* an athlete engaging in blood doping is most probably assisted by another person, does not automatically qualify the conduct as part of a doping plan or scheme in the meaning of Rule 40.6 2014 IAAF Rules and is therefore not *per se* constitutive of a doping plan or scheme.
3. Some limitation may be applicable to the retroactive disqualification of competitive results if in an individual case it is considered that “fairness requires” so. When determining whether or not to disqualify results under Rule 40.8 IAAF Rules the main

**purpose of disqualification of results, *i.e.* to correct any unfair advantage and remove any tainted performances from the record, has to be kept in mind.**

## **I. PARTIES**

1. The International Association of Athletics Federations (“IAAF”) is the world governing body for track and field, recognized as such by the International Olympic Committee. One of its responsibilities is the regulation of track and field, including, under the World Anti-Doping Code (“WADC”), the running and enforcing of an anti-doping programme.
2. The United Arab Emirates Athletics Federation (the “First Respondent” or “UAE AF”) is the governing body for the sport of athletics in the United Arab Emirates. It has its seat in Dubai and is an affiliated member of the IAAF.
3. Ms Bethem Desalegn (the “Second Respondent” or the “Athlete”) is an International-Level Athlete under the rules of the IAAF specializing in middle- and long-distance running. She was born on 13 November 1991 in Ethiopia and transferred allegiance to the UAE on 12 July 2010.

## **II. FACTUAL BACKGROUND**

### **A. Background Facts**

4. Below is a summary of the relevant facts and allegations based on the parties’ written and oral submissions, pleadings and evidence adduced. Additional facts and allegations found in the parties’ submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.
5. Blood doping is strictly prohibited under the WADC and is defined by WADA as “*the misuse of certain techniques and/or substances to increase one’s red blood cell mass, which allows the body to transport more oxygen to muscles and therefore increase stamina and performance*” (see WADA Questions & Answers on Blood Doping).
6. Three widely known substances or methods are used for blood doping, namely (i) administering recombinant human erythropoietin (“rEPO”) (by injection to trigger erythropoiesis, the stimulation of red blood cells); (ii) the use of synthetic oxygen carriers (*i.e.*, infusing blood substitutes such as haemoglobin-based oxygen carrier or perfluorocarbons to increase haemoglobin (“HGB”) concentration well above normal levels); and (iii) blood transfusions (*i.e.*, infusing a matching donor’s or an athlete’s own (previously extracted) red blood cells to increase the HGB well above normal. rEPO is a Prohibited Substance included in class “*S.2 Hormones and related substances*” on the WADA Prohibited List. Synthetic oxygen carriers and blood

transfusions are Prohibited Methods under class “M1. Enhancement of oxygen transfer” on the WADA Prohibited List.

7. The Athlete Biological Passport (“ABP”) – developed and refined by WADA – consists of an electronic record that compiles and collates a specific athlete’s test results and other data over time, unique to that particular athlete. The haematological module of the ABP records the values in an athlete’s blood samples of haematological parameters known to be sensitive to changes in red blood cell production. The values, collected and recorded in a Web-based database management tool ADAMS, include HGB and percentage of reticulocytes (“RET%”), the statistical combination of which is used to calculate the “OFF-score”, a value sensitive to changes in erythropoiesis.
8. For instance, when an athlete, in the lead up to a competition, takes rEPO and thus artificially stimulates erythropoiesis, there is an increase in RET% (*i.e.*, the percentage of immature red blood cells) and then a rapid increase in the level of HGB. When the athlete stops taking the rEPO before the competition event (to avoid detection at an in-competition doping test), the stimulation of erythropoiesis will stop abruptly, leading to a significant and prolonged decrease of RET%, and in turn a high OFF-score.
9. The marker values from the blood samples collected in the ABP programme are fed into a standardised Bayesian statistical model – the Adaptive Model. The Adaptive Model uses an algorithm that takes into account both (1) variability of such marker values within the population generally (*i.e.*, blood values reported in a large population of non-doped athletes) and (2) factors affecting the variability of an athlete’s individual values, including gender, ethnic origin, age, altitude, type of sport, and instrument-related technology. The selected markers are monitored over a period of time and a longitudinal profile is created that establishes an athlete’s upper and lower limits within which the athlete’s values are expected to fall, assuming normal physiological conditions (*i.e.*, the athlete is healthy and has not been doping). The athlete becomes his/her own point of reference, and each time a blood sample is recorded, the Adaptive Model calculates where the reported HGB, RET% and OFF-score values fall within the athlete’s expected distribution. Following a new test, a new range of expected results for the athlete is determined.
10. The main goal of assessing the ABP data is to differentiate between normal and abnormal profiles and assess possible causes for abnormalities. The assessment is performed by an automated software system that provides a probability for each ABP profile to be normal (*i.e.*, a profile found in a healthy, undoped population of athletes). If the Adaptive Model determines that an athlete’s values fall outside his or her expected individual range, the results are considered to be atypical and require further investigation and/or analysis. The “*specificity*” of the limits generated by the Adaptive Model (*i.e.*, the software’s ability to identify clean athletes) is 99%, in accordance with the WADA ABP Operating Guidelines (*i.e.*, at most, only one in 100 athletes who are not doping and with normal physiological conditions would produce values outside the range by chance). The further the value lies outside the limits of the range predicted by the Adaptive Model, the less likely it is that the value reflects normal physiological conditions. Under the IAAF Anti-Doping Regulations, an ABP profile is considered atypical if the athlete’s HGB and/or OFF-score values are beyond the 99.9 percentile (*i.e.*, there is less than one chance

in 1,000 that the abnormal values and variations observed in an athlete’s ABP profile could be explained by a normal physiological or pathological cause).

11. The IAAF implements the ABP through a 4-step procedure designed to safeguard an athlete’s due process in establishing whether the doping regulations were violated: (1) assessment by the Adaptive Model to determine whether the athlete’s blood profile is normal or abnormal; (2) if abnormal, analysis of the athlete’s ABP together with other pertinent information (e.g., athlete’s whereabouts and competition schedule) by three scientific experts on an anonymous basis; (3) the opportunity for the athlete to challenge the IAAF’s expert panel’s conclusions if the experts find strong indications of prohibited doping; and (4) a finding of a violation and the imposition of sanctions only if the experts conclude unanimously on the basis of the entire record (including the athlete’s submissions) that there is an overwhelming likelihood that the athlete engaged in prohibited doping.
12. Between 8 March 2012 and 24 August 2015, the IAAF collected four (4) ABP blood samples from the Second Respondent, each of which was analyzed by a WADA-accredited laboratory and logged in ADAMS using the Adaptive Model.
13. The Adaptive Model shows that the probability of the Athlete’s blood profile sequence being abnormal is in excess of 99.9% for HGB and OFF-score. The Athlete’s ABP also contains a number of individual outlier samples for HGB and OFF-score, meaning that such samples are abnormal with a probability in excess of 99.9%.
14. Below is a table summarizing the four (4) samples of Ms Desalegn used for the ABP.

No.	Date of Sample	HGB (g/dl)	RET%	OFF-score
1.	March 8, 2012	14.30	0.75	91.00
2.	August 8, 2013	13.40	0.49	92.00
3.	March 6, 2014	15.80	0.33	123.50
4.	August 14, 2015	11.70	1.13	53.22

15. Ms Desalegn’s ABP was submitted to a panel of experts for an initial review on an anonymous basis. The panel was comprised of Dr. Yorck Olaf Schumacher, Professor Giuseppe d’Onofrio and Professor Michel Audran (the “Expert Panel”). In its joint opinion dated 15 June 2016, the Expert Panel made, *inter alia*, the following remarks:

*“Blood parameters obtained from samples 1 and 2 before important competitions in March 2012 and August 2013 correspond to both the general athlete population and the individual ABP reference limit. Sample 3, collected before the indoor World Championship in March 2014, shows a radical and very suspicious difference. HB in fact is increased to 15.8 g/dl, that is higher than both the upper individual and population reference limit set by the ABP adaptive model. In addition, the reticulocytes percentage in sample 3 is very low, so that*

*the OFF score value is 123.5 abnormally high for a woman. The abnormality of these HB and OFF values is highlighted by the normality of results in the preceding years.*

*Such a set of hematological abnormalities is typical of the so-called OFF phase, characteristic of the erythropoietic suppression (low reticulocytes) produced by an increased circulating red cell mass (high HB) observed in athletes who have suspended an erythropoietic stimulating treatment weeks before an important competition, when they expect to be tested. [...] As an alternative possibility, transfusion of a large amount of blood (two or more bags of concentrated red cells) could cause a similar picture. The likelihood of an analytical issue is extremely low, and there is no known pathological condition capable of causing a similar OFF condition. The probability to have a single OFF score of 123.5 higher, such as in sample 3 of this Passport, in an undoped female athlete is less than 1 in 10000 (worst-case), and 1 in 1000 if even influence of altitude is taken into account [...].*

*Sample 4 was collected in August 2015, before the World Championship. HB appears much lower, to a level, below the individual ABP limit, which would lead to a clinical diagnosis of slight anemia. Reticulocytes have risen to an apparently normal value and the OFF score is low, below the individual limit. Red blood cell indices are normal and not different from the rest of the profile”.*

16. The Expert Panel further added that it was of the unanimous opinion that *“in the absence of an appropriate explanation, the likelihood of the abnormalities described above being due to blood manipulation, namely the artificial increase of red cell mass using erythropoiesis stimulating substances or blood transfusion, is high. On the contrary, the likelihood of environmental factors or a medical condition causing the described pattern is low”.*
17. The Expert Panel thus concluded, in its joint expert opinion, that *“it is highly likely that a prohibited substance or prohibited method has been used and that it is unlikely that the passport is the result of any other cause”.*
18. On 20 June 2016, the IAAF informed Ms Desalegn that she was given the opportunity to provide an explanation for the alleged abnormalities in her ABP before the IAAF would eventually bring charges against her.
19. On 3 July 2016, the General Secretary of the UAE AF provided, on behalf of Ms Desalegn, the following explanations:
 

*“Under the IAAF Anti-Doping Regulations [paragraph 8.31 (c)], the athlete said when she was in her training-camp in Ethiopia in Autumn of 2013, she was bleeding excessively after her miscarriage and felt tired. Also, she had shortness of breath during her training. Then, she consulted her doctor who put her under medical treatment.*

*Therefore, in 2015, the athlete was sick in Dubai, UAE, and had experienced the same problem of bleeding which caused her a problem of preparation before the world championships in Beijing, China”.*
20. These explanations having been submitted to the Expert Panel, the latter informed the IAAF (Anti-Doping Administrator) on 13 July 2016 that upon a second assessment of the ABP profile

in question, the Expert Panel was of the unanimous opinion that *“it is highly likely that the athlete used a prohibited substance or prohibited method”*.

## **B. Proceedings before the Previous Instance**

21. On 22 July 2016, the IAAF notified Ms Desalegn of the alleged anti-doping rule violation, her immediate provisional suspension and her right to request a hearing within 14 days of the notification.
22. On 27 July 2016, Ms Desalegn wrote to the IAAF Anti-Doping Administrator, denying that she had committed an anti-doping rule violation and requesting a hearing before the UAE National Anti-Doping Agency (“UAE NADC”).
23. On 28 July 2016, the UAE NADC received a letter from the UAE AF requesting a hearing for the Athlete.
24. On 2 August 2016, Ms Desalegn submitted her defense statement to the UAE NADC. Ms Desalegn’s defense statement reads, *inter alia*, as follows:

*“at the end of 2013 whilst I was training in Ethiopia, I have had some strange symptoms translated in fatigue, dizziness, breathing problems, abdominal pain followed by vaginal bleeding.*

*Accordingly, I have been rushed to the Hospital in Addis Ababa (Tinkur Anbesa Specialised Hospital) where my situation was diagnosed as having an anemia due to a miscarriage. My Hemoglobin level was very low 10.6mg% [sic!]. I was hospitalized for 5 days and have been prescribed iron sulfate injection (15ml pre [sic!] day), vitamin B12, antibiotic (Doxycylin) for 6 weeks. After being discharged from the Hospital my Hemoglobin level improved to 14.2 mg% [sic!]*

*The treatment, consisting of Iron Sulfate Injections, Vitamin Supplement and oral contraceptive continued till the end of April 2014.*

*Therefore, the logical result of my treatment I was administered increased the level of hemoglobin in my blood and my ABP is reflective of the medical situation and condition I have been through.*

*[...]*

*I would finally like to ask your esteemed panel to exonerate me from any disciplinary action as I have not committed any breach of the Anti-doping regulations and that the sudden hike in my Hemoglobin levels was only the direct result of the treatment I had been subject to as a result of my miscarriage and the Hypertension 2<sup>nd</sup> Anemia”.*

25. On the same date, Ms Desalegn submitted a handwritten document stating that *“in 2015 I had the same symptoms I had in 2013 and I had lost lots of blood which brought my HBG level down. In 2015 I have not consulted any doctor or any treatment at that time”*.

26. The UAE NADC held the hearing on 4 August 2016 and decided, that same day, that Ms Desalegn had not committed an anti-doping rule violation. The decision was sent on the same date to the IAAF by email.
27. On 5 August 2016, the IAAF Anti-Doping Administrator forwarded Ms Desalegn's written defense and medical certificates to two members of the Expert Panel for review.
28. In their additional expert report ("Additional Expert Report"), the two members of the Expert Panel analyzed Ms Desalegn's explanations, confirmed their findings and concluded that "*any causality of the pathology described by the athlete in view of the abnormality of the profile is scientifically unfounded*".
29. On 10 August 2016, the IAAF informed the UAE AF that it had decided to appeal against the UAE NADC's decision and to re-impose a provisional suspension with immediate effect on Ms Desalegn.
30. On 16 September 2016, the IAAF filed a statement of appeal/appeal brief with the Court of Arbitration for Sport (CAS), in Lausanne, Switzerland. An appeals arbitration procedure was opened under the number CAS 2016/A/4792. In its statement of appeal/appeal brief, the IAAF nominated Mr Markus Manninen as arbitrator.
31. This statement of appeal/appeal brief having been forwarded to the UAE AF, the UAE NADC and Ms Desalegn, the UAE NADC informed the CAS Court Office that it had rendered a new decision, annulling its decision to acquit Ms Desalegn and agreeing with any decision that will be rendered by the IAAF and the CAS concerning this case.
32. On 11 October 2016, the CAS Court Office confirmed the Respondents' joint nomination of Mr Jirayr Habibian as arbitrator.
33. On 10 November 2016, the IAAF sought a suspension of the existing CAS proceedings until such time as a new decision – regarding the commission of the anti-doping rule violation and the relevant consequences – could be rendered by or on behalf of the UAE AF.
34. On 17 November 2016, the CAS Court Office confirmed the suspension of the existing CAS proceedings.
35. On 22 January 2017, the UAE AF forwarded a decision from the UAE AF Disciplinary Committee to the IAAF (the "Appealed Decision"). It follows from the operative part of the Appealed Decision that the UAE AF Disciplinary Committee:
  - "1- Declared its jurisdiction to bear this matter and to render a first instance decision in this matter.
  - 2- Found the Athlete in breach of the IAAF anti-doping regulations by failing to justify the abnormalities reflected on her biological passport.
  - 3- Considered that the Athlete is highly likely to have taken a prohibited substance or have used a prohibited method.

- 4- *Confirmed the provisional suspension issued by the IAAF and further resolved to issue a ban on the Athlete for 15 months as of the 22<sup>nd</sup> of July 2016*”.

### III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

36. On 3 March 2017, the IAAF filed its statement of appeal/appeal brief in accordance with Articles R47 and R51 of the Code of Sports-related Arbitration (the “Code”), against the UAE AF, UAE NADC and Ms Desalegn (the “Respondents”), requesting that the Appealed Decision be set aside and a higher sanction imposed on Ms Desalegn. In its statement of appeal/appeal brief, the IAAF again nominated Mr Markus Manninen as arbitrator.
37. On 8 March 2017, the CAS Court Office sent a letter to the Respondents informing them, *inter alia*, that according to IAAF Rule 42.15 they should submit their answer within thirty (30) days of receipt of the said letter.
38. On 15 March 2017, the UAE NADC acknowledged receipt of the appeal procedure and explained that it was not involved in the Appealed Decision and should, thus, not be considered as respondent in the present proceedings.
39. On 20 March 2017, the IAAF informed the CAS Court Office that it was willing to withdraw its appeal to the extent that it is directed against the UAE NADC.
40. On 27 March 2017, the CAS Court Office, on behalf of the President of the CAS Appeals Arbitration Division, informed the Respondents that they were granted until 29 March 2017 to state whether they object to the same panel in case CAS 2016/A/4792 being appointed in the present procedure, namely Mr Markus Manninen (on behalf of the Appellant), Mr Jirayr Habibian (on behalf of the Respondents), and Mr Jacques Radoux (President of the Panel, appointed by the President of the Appeals Arbitration Division). The parties’ silence on this issue will be considered their agreement to appoint this Panel.
41. On 7 April 2017, the CAS Court Office informed the parties that as none of the Respondents had objected to the proposed Panel and as such, the following Panel was confirmed:
- President: Mr Jacques Radoux, référendaire at the European Court of Justice, Luxembourg
- Arbitrators: Mr Markus Manninen, attorney-at-law in Helsinki, Finland  
Mr Jirayr Habibian, attorney-at-law in Dubai, United Arab Emirates.
42. On 26 April 2017, the CAS Court Office informed the parties that although no answers had been filed within the given deadline, the Panel, according to Article R55 of the Code, may nevertheless proceed with the arbitration and deliver an award. The parties were further invited to inform the CAS Court Office by 4 May 2017 whether they preferred a hearing to be held or for the Panel to issue an award based solely on their written submissions.



43. On 30 May 2017, Ms Liesa Euton, on behalf of Ms Desalegn, informed the CAS Court Office that she would be representing the Second Respondent in the present procedure. She further requested to be communicated the complete file as it was asserted that not all correspondence was indeed received by Ms Desalegn.
44. Following some further correspondence, in which the Second Respondent confirmed having received, *inter alia*, the CAS Court Office letter dated 8 March 2017, the Second Respondent was requested, on 12 June 2017, to state, within seven (7) days, her position to the contents of all the letters in the file, her silence being considered acceptance of the content of the said letters.
45. On 18 June 2017, the Second Respondent requested a hearing in order to explain her side of the case to the Panel.
46. On 20 June 2017, the CAS Court Office, following its correspondence with Ms Euton, and on behalf of the President of the CAS Appeals Arbitration Division and in accordance with Article R54 of the Code, reconfirmed the appointment of the Panel with the parties.
47. On 22 August 2017, the Appellant signed and returned the order of procedure in this arbitration procedure. After a reminder by the CAS Court Office, the Second Respondent signed and returned the order of procedure on 25 August 2017. The Second Respondent's representative returned a separate signed copy of said order to the CAS Court Office on 30 August 2017. The First Respondent signed the order of procedure on 14 September 2017.
48. On 14 September 2017, a hearing took place at the CAS Court Office. The Panel was assisted by Mr Brent J. Nowicki, Managing Counsel, and joined by the following participants:  
  

**For the IAAF:**  
Mr Ross Wenzel and Mr Nicolas Zbinden (counsel) (in person)  
Dr. Yorck Olaf Schumacher (expert) (by phone)  
Prof. Giuseppe d'Onofrio (expert) (by phone)

**For the UAE AF:**  
Mr Ahmad Al Kamali (President of the UAE AF, in person)

**For Ms Desalegn:**  
Ms Bethlem Desalegn (in person)  
Ms Liesa Euton (Director of VIP Services/Protocol & International Relations) (in person).
49. At the beginning of the hearing, the parties confirmed that they had no objection to the constitution of the Panel. After the pleadings of the parties, Ms Desalegn was given the opportunity to explain her view to the Panel. At the conclusion of the hearing, the parties confirmed that their right to be heard has been fully respected.

#### IV. SUBMISSIONS OF THE PARTIES

##### A. The IAAF's submissions

50. In its statement of appeal/appeal brief, the IAAF requested the following relief:
- i. CAS has jurisdiction to decide on the subject matter of this dispute;*
  - ii. The Appeal of the IAAF is admissible;*
  - iii. The decision rendered by the Disciplinary Committee of the UAE AF on or around 22 January 2017 is set aside;*
  - iv. The Athlete be found guilty of an anti-doping rule violation in accordance with Rule 32.2(b) of the IAAF Rules;*
  - v. A period of ineligibility of between two and four years be imposed upon the Athlete, commencing on the date of the (final) CAS Award. Any period of ineligibility or provisional suspension effectively served by the Athlete before the entry into force of the CAS award shall be credited against the total period of ineligibility to be served;*
  - vi. All competitive results obtained by the Athlete from 6 March 2014, through to the commencement of her provisional suspension on 22 July 2016, shall be disqualified, with all resulting consequences (including forfeiture of any titles, awards, medals, profit, prizes and appearance money);*
  - vii. The arbitration costs are borne entirely by the Respondents, on a joint and several basis;*
  - viii. The Respondents are ordered to make a significant contribution to the IAAF's legal and other costs.*
51. At the hearing the IAAF modified its request for relief under vii) and viii) in so far that only the First Respondent, *i.e.* the UAE AF, should bear the costs of the arbitration and should make a considerable contribution to the legal and other costs that the IAAF had to engage in the present as well as the suspended appeals procedure.
52. The IAAF's submissions, in essence, may be summarized as follows:
- Pursuant to Article R58 of the Code, the Panel shall decide the dispute "*according to the applicable regulations and the rules of law chosen by the parties, or in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled*". It follows from Rules 42.23 and 42.24 of the 2016 IAAF Rules, that in the present appeal, involving an International-Level Athlete, the IAAF rules and regulations, in particular Chapter 3 of the IAAF Rules containing the Anti-Doping and Medical Rules, are applicable and that Monegasque law shall apply on a subsidiary basis. The procedural aspects of the present appeal shall be subject to the 2016 IAAF Rules as well as the Code whereas the substantive aspects shall be governed by the 2014 IAAF Rules.

- The competence of the CAS follows from Rules 42.1, 42.2, 42.3 of the 2016 IAAF Rules. According to Rule 42.5 (c), of the 2016 IAAF Rules, the IAAF has a right to appeal in the present case.
- According to Rule 42.15 of the 2016 IAAF Rules, the deadline to file the statement of appeal is forty-five (45) days, starting from the day after the receipt of the decision to be appealed. In the present case, the IAAF received the Appealed Decision on Monday 23 January 2017. The statement of appeal/appeal brief filed on 3 March 2017 has therefore to be considered as filed in a timely manner.
- The Appealed Decision has established that the Second Respondent has committed an anti-doping rule violation under Rule 32.2 (b) of the 2014 IAAF Rules. The ABP profile of the Second Respondent constitutes reliable evidence of blood doping at least in 2014.
- The ineligibility period of 15 months imposed in the Appealed Decision is not compatible with the 2014 IAAF Rules. As blood manipulation is necessarily an intentional violation there can be no mitigation of the sanction to reduce it below 24 months e.g. for no significant fault or negligence.
- On the contrary, according to Rule 40.6 of the 2014 IAAF Rules, there can be aggravating circumstances which may lead to an increase of the sanction. In the present case, there are two categories of aggravating circumstances. First, there is the use of a Prohibited Substance or Prohibited Method on multiple occasions as erythropoietin stimulating agents, for example rEPO, are taken on multiple occasions over a period of time in order to impact on the blood values. Second, there is the existence of a doping plan or scheme as the off-phase in or around competition dates pre-suppose the cessation of the rEPO course shortly before competition in order to avoid direct detection and maximise the impact in competition. Such a behaviour needs advice and support from medical personnel or other third parties. Thus, the period of ineligibility of the Second Respondent could be increased up to four (4) years. According to Rule 40.10 of the 2014 IAAF Rules the period of ineligibility should commence on the date of the final CAS Award, with a credit for any period of provisional suspension or ineligibility effectively served until that date.
- The first evidence of an anti-doping rule violation in the ABP profile of the Second Respondent can be found in sample 3, dated 6 March 2014. According to Rule 40.8 of the 2014 IAAF Rules, all results of the Second Respondent from that date until the date of her provisional suspension have to be disqualified with all of the resulting consequences for her.
- Although there is no explicit “fairness” exception to the principle of disqualification set out in Rule 40.8 of the 2014 IAAF Rules, the IAAF consents that such exception could be implicit and the Panel could apply such a “fairness” exception. However, in the IAAF’s view, a Panel should not discharge the principle too easily. In any event, in the present case, the conditions for applying this exception are not fulfilled, as the anti-

doping rule violation at hand, *i.e.* blood-doping, is a severe infraction that cannot be committed without intent and the Second Respondent has not been transparent during the investigations and the present procedure. Under these circumstances, the Second Respondent should not be able to benefit from the “fairness” exception.

**B. The First/Second Respondent’s submissions**

53. At the hearing, the First Respondent requested the following relief:

- i. Confirm the ineligibility period of 15 months imposed on the athlete,*
- ii. Reject all other prayers for relief of the Appellant.*

54. The First Respondent’s submissions may be summarized as follows:

- The Second Respondent is a role model for other athletes in the UAE.
- The Second Respondent’s progression as an athlete has been continuous and is due to hard and well-organised training. The UAE AF has been taking care of the Second Respondent’s development since she has received her UAE passport.
- The Disciplinary Committee of the UAE AF was of the opinion that the anti-doping rule violation was not clearly established. Therefore, said Committee tried to make a fair balance between the legal aspects and the factual elements of the case and imposed a fifteen (15) month ban on the Second Respondent.

55. The Second Respondent’s oral submissions may, in substance, be summarized as follows:

- At the end of 2013 she was in a difficult situation and had to be treated in a hospital in Ethiopia. After leaving the hospital, she followed the treatment prescribed by the doctor. The intake of the prescribed iron and vitamins could explain the results of sample 3 taken in March 2014.
- The positive effect, on HGB, of a prolonged stay and training in high altitude are established. Thus, as she was training in Ethiopia at the end of 2013, in an altitude of around 3000 meters, it would not be surprising that her values of HGB were still high in March 2014.
- She does not have any knowledge about doping and does not know anything about rEPO. Further, she does not have the financial means to engage in sophisticated doping practices such as blood-doping. Her results were not spectacular, she finished 8<sup>th</sup> at the competition at which she was, according to the Appellant, doped and her personal bests were in linear progression.

- She not only rejects the assumption of having intentionally doped but also rejects the assumption that the blood picture relating to sample 3 would be due to anything else than the treatment prescribed by the doctor in Ethiopia at the end of 2013.
- For the rest, she reiterates the explanations already given before the UAE AF Disciplinary Committee and refers the Panel to the documents submitted before the previous instance.

## V. JURISDICTION

56. Article R47 of the Code provides, *inter alia*, as follows:

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

57. The 2016 IAAF Rules, which are applicable to the present appeal *ratione tempore* as the proceedings [against the Second Respondent] that lead up to it began in 2016, provide in Rule 42.3:

*“In cases [...] involving International-Level Athletes [...], the first instance decision of the relevant body of the Member shall not be subject to further review at the national level and shall be appealed exclusively to CAS in accordance with the provisions set out below”.*

58. According to Rule 42.5 of the 2016 IAAF Rules:

*“In any case [...] involving an International-Level Athlete [...], the following parties shall have the right to appeal to CAS:*

- (a) *the Athlete [...];*
- (b) *the other party to the case in which the decision was rendered;*
- (c) *the IAAF;*

*[...]”.*

59. The 2016 IAAF Rules define as “*International-Level Athlete*” all athletes who are in the Registered Testing Pool established at international level by the IAAF or who are competing in an international competition under Rule 35.9 of the 2016 IAAF Rules. In the present case it is not contested that the Second Respondent is an “*International-Level Athlete*” in the sense of the 2016 IAAF Rules as she competed, *inter alia*, in the 2013 and 2015 IAAF World Athletics Championships, the 2012, 2014 and 2016 IAAF World Indoor Championships as well as in the 2012 Olympic Games.

60. Further, it is uncontested that the Appealed Decision adopted by the UAE AF Disciplinary Committee constitutes “*the first instance decision of the relevant body of the Member*” in the sense of that same rule.
61. In the light of the foregoing, the Panel finds that CAS has jurisdiction to hear the present appeal. In addition, all parties confirmed CAS jurisdiction by execution of the order of procedure.

## **VI. ADMISSIBILITY**

62. Article R49 of the Code provides as follows:

*“In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. [...]”*

63. In its relevant parts, Rule 42.15 of the 2016 IAAF Rules provides that “[...] *the appellant shall have forty-five (45) days in which to file his statement of appeal with CAS, such period starting from the day after the date of receipt of the decision to be appealed [...]*”.
64. The Appellant received notification of the Appealed Decision on 23 January 2017 and filed his statement of appeal, which also constitutes the appeal brief, on 3 March 2017.
65. By doing so, the Appellant clearly respected the forty-five (45) day period set out by the 2016 IAAF Rules to file the appeal. Moreover, the Respondents did not object to the admissibility of this appeal.
66. In the light of the foregoing, the Panel finds that the appeal is admissible.

## **VII. APPLICABLE LAW**

67. Article R58 of the Code provides 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”*.

68. Rule 42.23 of the 2016 IAAF Rules reads as follows:

*“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 Regulation). 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”*.

69. Further, Rule 42.24 of the 2016 IAAF Rules provides that 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*”.
70. Rule 30.1 of the 2016 IAAF Rules states that “[*t*]he *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*”.
71. As already set out above, the Second Respondent is an “*International-Level Athlete*” in the sense of the 2016 IAAF Rules.
72. The IAAF alleges that the Second Respondent’s anti-doping rule violations occurred, at least, in 2014. It submits that “*the substantive aspects of this appeal shall, subject to the possible application of lex mitior, be governed by the anti-doping regulations in force at the time of the alleged violations*”. Thus, IAAF argues that the 2014 IAAF Rules should apply.
73. Neither the First nor the Second Respondent made any submissions regarding this aspect of the present procedure and can thus be considered as having accepted the IAAF’s submissions.
74. Given that all parties can be considered as having agreed on the application of the *lex mitior* and considering that the alleged violations took place in 2014, the Panel holds that the substantive aspects of the present procedure are to be governed by the 2014 IAAF Rules.

## VIII. MERITS

75. The IAAF submits that the Appealed Decision has rightly established an anti-doping rule violation for blood doping but has made a false application of Rules 40.2 and 40.6 of the 2014 IAAF Rules concerning the period of ineligibility to be imposed on the Second Respondent.
76. Regarding the ABP model, the Panel recalls that, according to the well-established jurisprudence of the CAS, the ABP model is a valid and reliable means of establishing an anti-doping rule violation (e.g. CAS 2013/A/3080). Moreover, in the present case, the Respondents neither question the results of sample 3 in particular, nor the validity of the ABP model as such.
77. Concerning the evaluation of the explanations given by the Second Respondent in relation to the results from sample 3, the Panel relies, as the Disciplinary Committee did in the Appealed Decision, on the written expert reports submitted by the IAAF. It further relies on the oral evidence given by Dr. Schumacher and Prof. d’Onofrio during the hearing.
78. In this regard, the Panel notes that Dr. Schumacher explained the positive effects of rEPO and enhanced blood transfusions on the performance of athletes. He further explained that, in his view, it is more likely that the blood picture of sample 3 is the result of a course of rEPO than of a blood transfusion. One of the reasons he believes that the results are not due to blood transfusion lies in the fact that in order to store blood bags over a long period of time, sophisticated storage facilities are required. Such storage facilities would not be easily found in

developing countries. In any event, he excluded that the justifications given by the Second Respondent could explain the values found in sample 3. He therefore reiterated his conclusion that it is highly likely that the Second Respondent used a prohibited substance or method shortly before sample 3 was taken in March 2014.

79. Prof. d’Onofrio specified that, from a scientific point of view, the values related to sample 3 could absolutely not be explained by the treatment seemingly followed by the Second Respondent during and after her hospitalisation at the end of 2013. By no means could iron and vitamin supplements explain the extraordinary high HGB level and the high OFF-score. Asked whether he believed the results were due to a course of rEPO or a blood transfusion, he noted that the more probable explanation would be a rEPO course because a blood transfusion would have had to occur two (2) to three (3) days prior to the test. Prof. d’Onofrio further explained that the experts had doubts regarding the accuracy and reliability of the medical document produced by the Second Respondent in connection with her hospitalisation at the end of 2013. First, the indication of HGB in “mg%” would not make sense and is commonly unknown. Second, an increase in the HGB from 10.6 to 14.2 g/dl within four (4) days as a result of a treatment with iron and vitamins alone could be totally excluded. Such a recovery would take between thirty-six (36) to forty (40) days. The only way to achieve such a fast increase of HGB would be by blood transfusion, but in the present case there was no reference to any blood transfusion. In any event, a treatment with iron and vitamins could not produce the high OFF-score found in sample 3. Finally, regarding the question of the Second Respondent on the possible effects on HGB of training in high altitude, Prof. d’Onofrio pointed out that the changes in the HGB due to training in high altitude has no effect on the OFF-score because it has no influence on the production of reticulocytes.
80. In view of this strong and un-rebutted evidence, the Panel is comfortably satisfied that, prior to the taking of sample 3 on 6 March 2014, the Second Respondent committed an anti-doping rule violation by using a prohibited substance and/or method in the sense of Rule 32.2 (b) of the 2014 IAAF Rules. The Panel observes that, in its Appealed Decision, the Disciplinary Committee of the UAE AF came to the same conclusion.
81. Concerning the possible sanction, Rule 40.2 of the 2014 IAAF Rules provides that “[t]he 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”.
82. Given that, according to Dr. Schumacher and Prof. d’Onofrio, a course of rEPO as well as blood transfusion can exclusively be done by injections, the anti-doping rule violation at hand has, in the Panel’s view, to be considered as having been committed intentionally. In this regard, the Panel has not been convinced by the Second Respondent’s assertions according to which she had never engaged in any doping practice, had no knowledge of rEPO and did not have the financial means to engage in blood doping. Moreover, the Second Respondent did not try to establish the existence of any mitigating circumstances.



83. Thus, there can be no reduction of the period of ineligibility of two (2) years foreseen in Rule 40.2 of the IAAF 2014 Rules on basis of Rules 40.4 and 40.5 (a) and (b) of the 2014 IAAF Rules as these require a lack of intent. Rule 40.5. (c) and (d) of the 2014 IAAF Rules, do not apply as the Second Respondent neither provided assistance in discovering or establishing the anti-doping rule violation nor admitted the anti-doping rule violation.
84. The Panel notes that the Disciplinary Committee of the UAE AF must have come to the same conclusion regarding the absence of mitigating circumstances in the case at hand. Indeed, and contrary to the First Respondent's submissions during the hearing, the Appealed Decision does not contain any element that could be interpreted as referring to such a circumstance with the result that the ineligibility period set out in said decision has to be considered manifestly wrong.
85. Concerning the Appellant's request to increase the ineligibility period on the basis of aggravating circumstances in the sense of Rule 40.6 of the 2014 IAAF Rules, the Panel recalls that pursuant to this Rule *"[i]f 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"*.
86. Thus, the burden to establish the existence of aggravating circumstances lies on the Appellant, the standard of comfortable satisfaction applying to the Appellant as well as the Second Respondent.
87. The Panel further notes that in case such aggravating circumstances were established, it does not have the obligation to increase the ineligibility period. According to Rule 40.6, the ban *"shall be increased up to a maximum of four (4) years"*. The stipulation does not impose a minimum increase. Moreover, Rule 40.6 (a) gives examples of aggravating circumstances that *"may justify the imposition of a period of Ineligibility greater than the standard sanction"*. In other words, the Panel has discretion whether to increase a sanction based on aggravating circumstances, and if so applied, how much the sanction should be increased. As held by CAS panels, a single example of aggravating circumstances may sometimes warrant the maximum period of four years, while another time multiple examples may call for a lesser penalty only.
88. In the present case, the Appellant argues that the conditions to apply Rule 40.6 of the 2014 IAAF Rules are met as the Second Respondent, first, has used the prohibited substance or method on multiple occasions and, second, was engaged in a doping scheme or plan.
89. Concerning the alleged use on "multiple occasions", the Panel observes that contrary to the cases CAS 2012/A/2773, CAS 2013/A/3080 and CAS 2017/O/4980, in which it followed from several ABP sample results that the athletes had committed an anti-doping rule violation on several, clearly distinct, occasions which were generally linked to different sporting events, the present case is characterized by the fact that, according to the Appellant and the experts, only one sample, out of the four taken for the purpose of the ABP, is indicating the use of a prohibited substance or method. The fact that blood doping, whether by use of rEPO or by

blood transfusion, presupposes the use of syringes on more than just one occasion, *i.e.* inject rEPO every two (2) to three (3) days or to take blood and to re-inject blood, does not, in the Panel's view, necessarily justify the imposition of an increased period of ineligibility. Indeed, a rEPO course, which is, according to the experts the most probable scenario in the present case, commonly stretches over a period of two (2) to three (3) weeks and involves two (2) to three (3) injections a week, knowing that a single injection does not provide the expected enhancing effects.

90. This situation is to some extent comparable to CAS 2016/A/4486, wherein the panel held that “[g]iven that one preparation with Oxandrolone involves the intake of ten pills it cannot be considered that after the first pill every new intake of one pill is constitutive of a separate use in the sense that it could be qualified as use on multiple occasions”. The same can, in substance, be said about the doping offence at hand. While the course of injections may be considered a continuous doping practice, the fact that the Athlete's ABP only establishes one abnormality (*i.e.* one doping violation), the Panel considers that the Athlete's conduct does not amount to use of a prohibited substance on multiple occasions in the sense of Rule 40.6 (a) of the IAAF Rules. The Panel is also mindful of CAS 2016/O/4463, in which CAS did not apply aggravating circumstances even though the most probable explanation for the athlete's suspicious sample in her ABP was multiple injection of rEPO.
91. Under these circumstances and given that there are no elements to be found in the ABP suggesting that the Second Respondent has committed another anti-doping rule violation that could be considered as distinct from the one committed prior to the taking of sample 3, the Panel finds that it is not justified to increase the ineligibility period on the grounds of use on “multiple occasions” brought forward by the Appellant.
92. With regard to the second category of aggravating circumstances invoked by the Appellant, *i.e.* the fact that the Second Respondent allegedly engaged in a doping plan or scheme, the Panel acknowledges that case CAS 2013/A/3080 could be read in a way that any rEPO course or blood transfusion is constitutive of a doping plan or scheme as it involves “*a repetitive and planned application of drugs (rEPO) or sophisticated, premeditated reinfusion techniques*” and requires “*help or assistance of others*”.
93. However, the Panel observes that it is not clear from these quotes whether the panel in case CAS 2013/A/3080 would have taken the same decision if the ABP had not revealed that at least two samples were indicative of doping, that same panel even being suspicious that the results of a third sample demonstrated a “*further doping offence*”. Indeed, the panel in case CAS 2013/A/3080 came to the conclusion that the conduct of the athlete prior to the taking of these two samples, which were taken in the interval of five (5) months, did involve a “*course of conduct over a considerable period*” and “*amounted to a doping plan or scheme*”.
94. The Panel notes that, in the present case, such a conclusion cannot be drawn as the ABP contains only one sample revealing an anti-doping rule violation. The fact that blood doping usually requires specific knowledge or assistance from a specialist is, in the view of the Panel, not *per se* constitutive of a doping plan or scheme (similarly CAS 2016/O/4463). In this regard, the Panel shares the finding of the panel in case CAS 2013/A/3080 that “*the rules do not*

*differentiate between various forms of first offence or suggest that blood manipulation attracts 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”.*

95. In the present case, the established culpability of the Second Respondent relates only to one sporting event. Moreover, the Appellant, besides the argument that blood doping can only be done as part of a scheme or a plan, in so far as an rEPO course lasts two (2) to three (3) weeks and requires two (2) to three (3) injections per week, did not bring any supplementary elements likely to establish the existence a doping plan or scheme. Thus, the Panel is not comfortably satisfied that the anti-doping rule violation was committed as part of a doping plan or scheme. The sole fact that an athlete engaging in blood doping is most probably assisted by another person is not sufficient, in the eyes of the Panel, to automatically qualify the conduct as part of a doping plan or scheme.
96. Finally, in difference to the precedents invoked by the Appellant, it does not appear that the Second Respondent has built her career on blood doping or has repeatedly targeted specific competitions. Indeed, her ABP establishes that she did not show abnormalities in 2012 and 2013 – a period of time when the Athlete achieved most of her personal best times.
97. In the light of all those considerations and in view of the fact that each case has to be considered on its own merits, the Panel finds that in the present case there are no aggravating circumstances that would justify the imposition of a period of ineligibility greater than the standard period of twenty-four (24) months.
98. Rule 40.10 of the 2014 IAAF Rules provides as follows:

*“Except as provided below, the period of Ineligibility shall start on the date of the hearing decision providing for Ineligibility or, if the hearing is waived, on the date the Ineligibility is accepted or otherwise imposed. Any period of Provisional Suspension (whether imposed or voluntarily accepted) shall be credited against the total period of Ineligibility to be served”.*
99. In the present case, considering that the Athlete’s provisional suspension is still in force, namely since 10 August 2016, the two-year period of ineligibility shall thus start on 10 August 2016. The period of provisional suspension already served by the Athlete between 22 July 2016 and 4 August 2016, shall be credited against the two year period of ineligibility to be served.
100. Rule 40.8 of the 2014 IAAF Rules provides that:

*“In addition to the automatic disqualification of the results in the Competition which produced the positive sample under Rules 39 and 40, all other competitive results obtained 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 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”.*

101. In this regard, the Panel notes that according to the experts, the anti-doping rule violation must have occurred shortly, namely ten (10) to three (3) days, prior to the taking of sample 3, *i.e.* on 6 March 2014. Therefore, in principle and according to Rule 40.8 of the 2014 IAAF Rules all results obtained by the Second Respondent from the date of the offense until the imposition of any period of ineligibility should be disqualified. However, as the Appellant conceded at the hearing, while Rule 40.8 does not contain any explicit reference to a “fairness” exception, such an exception has been read into this clause by several CAS panels. The Panel agrees in this regard and considers that some limitation may be applicable to the retroactive disqualification of competitive results if it considers that “fairness requires” so.
102. In this regard, the Panel observes that it is up to the party, which invokes a specific rule, to establish on the balance of probabilities that that rule applies.
103. In the present case, the Second Respondent argues that the IAAF should have engaged the disciplinary action against her earlier and that, due to the occurred delay, it would be unfair to disqualify all the results she obtained between 6 March 2014 and 22 July 2016.
104. In response, the Appellant stated that a fourth sample was required to complete the ABP and that, as soon as that sample was available, the profile was sent to its experts. The Appellant acknowledges that it could have been helpful to have a shorter interval between the taking of sample 3 and the taking of sample 4, but refutes the argument that this circumstance should be taken into account when applying Rule 40.8 of the 2014 IAAF Rules. According to the Appellant, given the seriousness of the offence, the everlasting enhancing effects of blood doping and the fact that the Athlete did not admit the offence, the Panel should not consider applying the “fairness exception” in the present case.
105. In his answer to a question from the Panel, Prof. d’Onofrio stated that he completed his initial opinion on the ABP on 19 September 2015, thus confirming that the review of the ABP started very shortly after the taking of sample 4. Prof. d’Onofrio could not precisely explain why it took the experts until 15 June 2016 to submit the expert panel joint opinion, but he did concede that this period, although not extraordinary by its length when compared to reviews of other ABPs, could seem relatively long.
106. The Panel, in view of the explanations given in particular by Prof. d’Onofrio during the hearing, does not follow the Second Respondent’s argumentation that because the disciplinary proceedings were not opened in 2014, it would be unfair to disqualify all results obtained between 6 March 2014 and 22 July 2016. The Panel does not agree that the substantial delays were apparent in the prosecution of this violation such that any exception to Rule 40.8 applies.
107. However, keeping in mind that the main purpose of disqualification of results is to correct any unfair advantage and remove any tainted performances from the record (CAS 2016/O/4463), the Panel considers that in the light of its findings, *i.e.* that only one sample shows an anti-doping rule violation, that the use on “multiple occasions” is not established and that neither a doping scheme nor a doping plan has been established, and the circumstance that, according to the experts, sample 4, taken on 14 August 2015, is not suspicious for blood doping, it would be unfair to disqualify the results beyond the date of collection of sample 4.

108. This conclusion is not called into question by the alleged everlasting enhancing effects of blood doping. First, the examples given by the Appellant to establish the unceasing enhancing effects of doping were related to the use of steroids and was only suggested that the same long-term enhancing effects could exist for blood doping. Second, and in any event, even if such everlasting enhancing effects were to exist, it follows from the WADA Code, in which the IAAF Rules find their source, that these effects are not to be taken into consideration when applying the sanctions set out by the WADC or the IAAF Rules because to do so would entail that an athlete convicted for blood doping – or for the use of steroids – should, contrary to the WADC's dispositions, not be allowed to return to competition after he/she served his/her period of ineligibility.
109. As a result, the Panel concludes that all of the results obtained by the Second Respondent from 6 March 2014 to 13 August 2015 shall be disqualified, with all resulting consequences, including the forfeiture of any titles, awards, points, prizes and appearance money.

## **ON THESE GROUNDS**

### **The Court of Arbitration for Sport rules that:**

1. The appeal filed on 3 March 2017 by the International Association of Athletics Federations with the Court of Arbitration for Sport against the decision of the United Arab Emirates Athletic Federation's Disciplinary Committee dated 22 January 2017 is admissible.
2. The decision of the United Arab Emirates Athletic Federation Disciplinary Committee dated 22 January 2017 is set aside.
3. Ms Bethem Desalegn committed an anti-doping rule violation according to Rule 32.2 (b) of the 2014 IAAF Rules.
4. Ms Bethem Desalegn is sanctioned with two (2) year period of ineligibility, starting on 10 August 2016, date of her second provisional suspension. The period of provisional suspension served by Ms Bethem Desalegn between 22 July 2016 and 4 August 2016, shall be credited against the two-year period of ineligibility to be served.
5. All competitive results obtained by Ms Bethem Desalegn from 6 March 2014 to 13 August 2015 shall be disqualified, with all of the resulting consequences, including the forfeiture of any titles, awards, medals, points, prizes, and appearance money.

(...)

8. All other motions or requests for relief are dismissed.