



**Arbitration CAS 2012/A/2773 International Association of Athletics Federations (IAAF) v. Hellenic Amateur Athletic Association (SEGAS) and Irini Kokkinariou, award of 30 November 2012**

Panel: Mr. Romano Subiotto QC (United Kingdom), Sole Arbitrator

*Athletics (3000m steeplechase)*

*Doping (Athlete's Biological Passport, ABP)*

*Blood manipulation detected through the ABP*

*Aggravating circumstances*

*Range of penalties under aggravating substances*

*Standard of proof applicable to aggravating circumstances*

1. **The Athlete's Biological Passport (ABP) may reveal doping on a single or several occasion(s). Therefore, longitudinal hematological profile need not contain multiple irregular figures in order to be used effectively. The haematological module of the passport is simply a tool that allows for the extrapolation of an individual's blood data over time to assist in determining an anti-doping rule violation in the form of the use of a prohibited substance or method.**
2. **The IAAF provision related to aggravating circumstances (Rule 40.6) does not contain any specific requirements on how aggravating circumstances are to be detected, and absent such requirements, it must be presumed that the IAAF's ABP program can ground claims under IAAF Rule 40.6, in much the same way as it can ground claims under IAAF Rule 32 (anti-doping violation).**
3. **IAAF Rule 40.6 allows for a range of penalties. A 4-year ineligibility period is therefore not automatically applied wherever aggravating circumstances in the context of anti-doping violation are identified. The imposition of an increased Ineligibility Period is at the discretion of the relevant body and a single example of aggravating circumstances may warrant the maximum period, while multiple examples may call only for a lesser penalty.**
4. **IAAF Rules do not specify the "higher" burden of proof applicable to aggravating circumstances. This "higher" burden of proof is unlikely to be higher than the standard that applies to the IAAF pursuant to IAAF Rule 33.1, given that the standard of proof on athletes to rebut an allegation of an anti-doping rule violation is generally lower than that of the alleging authority. As a result, the standard of comfortable satisfaction shall be applicable on both sides.**

## **I. PARTIES**

1. The International Association of Athletics Federations (“IAAF”), the Appellant, is the international governing body for track and field athletes. The membership of the IAAF primarily comprises national and regional athletics federations (the “Members”). It has its headquarters in Monaco.
2. The Hellenic Amateur Athletic Association (“SEGAS”) is the national governing body for the sport of athletics in Greece. SEGAS has its registered seat in Athens and is a member of the IAAF.
3. Ms. Irini Kokkinariou is an International-Level Athlete under the rules of the IAAF specializing in the 3000m steeplechase event. The IAAF, SEGAS, and Ms. Kokkinariou are collectively referred to as the “Parties”.

## **II. FACTUAL BACKGROUND**

4. The following summary is based on the submissions of Parties, primarily those of the Appellant, which include records of the disciplinary procedure leading up to the decision of the Dikastiki Epitropi SEGAS (the “SEGAS Disciplinary Committee”) under appeal. Regardless of whether they are expressly referred to in the award, all the Parties allegations, evidence, and arguments have been considered carefully by the Sole Arbitrator.

### **A. TESTING UNDER THE IAAF RULES: INTRODUCTION**

5. Athletes who compete in any tournament organized by the IAAF or by one of its Member federations (“Athletes”) must adhere to the IAAF Competition Rules (the “IAAF Rules”). As a member of the World Anti-Doping Agency (“WADA”), the IAAF is required to incorporate into its regulations the World Anti-Doping Code (“WADA Code”). The IAAF Rules represent the IAAF’s implementation of the WADA Code. The IAAF Rules provide for the IAAF Medical and Anti-Doping Commission (the “IAAF Anti-Doping Commission”), which has the responsibility of supplementing the IAAF Rules through issuing regulations to be amended annually (the “IAAF Anti-Doping Regulations”).
6. Under the IAAF Rule 32, an Athlete must ensure that any substance prohibited by WADA (“Prohibited Substance”) does not enter her system. Similarly, an Athlete must not engage in a practice disallowed by WADA (“Prohibited Method”). IAAF Rule 32(b) provides

*“Athletes or other Persons shall be responsible for knowing what constitutes an anti-doping rule violation and the substances and methods which have been included on the Prohibited List. The following constitute anti-doping rule violations:*

- (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. Accordingly, it is not necessary that intent, fault, negligence or knowing Use on the Athlete's part be demonstrated in order to establish an antidoping 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 antidoping rule violation to be committed".*
7. WADA publishes a list of Prohibited Substances and Prohibited Methods on a yearly basis. IAAF Rule 35 provides that all Athletes must submit to in-competition testing and out-of-competition testing at any time or any place by either the IAAF itself or the relevant Member (depending on the competition).
8. The IAAF Anti-Doping Regulations provide for the annual issuing of "Test Distribution Plans", which detail how the IAAF's testing resources are to be deployed. The Test Distribution Plans provide for the targeting of Athletes who fit specific profiles (*e.g.*, those who have abnormal biological profiles, suffered recent injury, displayed sudden improvement in performance, *etc.*). To complement the Test Distribution Plans, the IAAF maintains a database of Athletes for targeted testing (the "Registered Athlete Pool"). Athletes within the Registered Athlete Pool are required to periodically provide updates to the IAAF on their whereabouts information, so as to facilitate testing without notice. The IAAF Anti-Doping Regulations provide that Athletes who should be entered into the Registered Athlete Pool are those who: (1) are top performing; (2) are serving periods of ineligibility; or (3) retired at a time when they were in the Registered Testing Pool and who wish to return to their sport. However, the IAAF can include in the Registered Testing any Athlete it wishes.
9. An Athlete who is found to have violated IAAF Rule 32 shall be ineligible to compete in any IAAF or Member competition for a period of two years ("Ineligibility Period"). Additionally, pursuant to IAAF Rule 40.8, all competitive results obtained from the date the positive sample was collected shall be disqualified. Under Rule 40, the Ineligibility Period can be increased (up to a maximum of a lifetime ban) if there were aggravated circumstances in the context of the violation (described below), or if the Athlete was previously found to have violated the IAAF Rules. Conversely, if the Athlete can demonstrate, for example, that she violated IAAF Rule 32 through no fault or negligence, or no significant fault or negligence, the period of ineligibility can be eliminated or reduced respectively.
10. This appeal primarily concerns IAAF Rule 40.6, which provides that where aggravating circumstances surrounded the violation in question, the Ineligibility Period may be increased from two years to four years. It should be noted that an Athlete can avoid the application of this rule by admitting the anti-doping rule violation as asserted promptly after being confronted. IAAF Rule 40.6 provides:

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

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

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

11. The procedural rules for finding an athlete guilty of violating IAAF Rules 32 and 40.6 are described at paragraphs 15-20 below.

## **B. ERYTHROPOIETIN AND THE ATHLETE BIOLOGICAL PASSPORT SYSTEM**

12. Prohibited Substances and Methods can be detected directly (*i.e.*, the chemical signature of a substance is isolated in a sample) or indirectly through analysis of the effects (or “biomarkers”) that they have on the body. Detection of biomarkers of Prohibited Substances or Prohibited Methods involves the development of longitudinal biological profiles for Athletes. In this way, an Athlete’s normal biological parameters can be estimated and used to isolate abnormalities. These profiles are referred to as Athlete Biological Profiles (“ABPs”).
13. The institution of longitudinal biological profile systems for doping control was proposed in a WADA report of June 2003 (“WADA EPO Report”) (G. Peltre and W. Thormann, Evaluation Report of the Urine EPO Test), in which the authors advised international sporting federations to take an athlete’s blood sample when conducting urine testing for erythropoietin (“EPO”). The hormone EPO stimulates the production of red blood cells, and pharmaceutical preparations of EPO have a legitimate use in the medical treatment of chronic renal failure and anemia. However, as EPO increases red blood cell production, it

also increases oxygen delivery to the muscles, thereby potentially enhancing an athlete's capacity or stamina. This has led to athletes administering recombinant (synthetic) human EPO ("rh-EPO") and other EPO stimulating proteins to improve their sporting performance. All erythropoiesis-stimulating agents ("ESAs") are scheduled on the Prohibited List as substances that cannot be used at any time by Athletes (WADA Prohibited List, 2012). Testing for rh-EPO was introduced at the 2000 Olympic Games under the so-called Sydney protocol: a combined blood and urine testing system in which a blood sample provides an indication of rh-EPO administration, and where the presence of rh-EPO is detected through the urine sample. The WADA EPO Report provided that urine tests stood alone as the scientific method for rh-EPO detection, but that the taking of blood samples for the construction of longitudinal hematological profiles was recommended. Systems which make use of these longitudinal profiles have evolved to become wide-spread and highly effective means of detecting EPO doping.

14. In 2005, in response to the WADA EPO Report, the IAAF issued a blood testing protocol (the "IAAF Blood Testing Protocol") (to be updated annually and to be read in conjunction with the IAAF Rules and the IAAF Anti-Doping Regulations), which systemized blood collection for the purpose of constructing longitudinal hematological profiles. In 2009, WADA formally introduced the concept of ABPs to its blood testing program and issued Athlete Biological Passport Operating Guidelines (the "ABP Guidelines"), which provided a detailed model ABP framework for any member federation who wished to institute such an ABP program. The ABP Guidelines were most recently amended in April 2012. The IAAF Blood Testing Protocols from 2009 onwards reflect the provisions of the ABP Guidelines.
  
15. Under the ABP Guidelines and the IAAF Blood Testing Protocol, each sample collected is analyzed by a WADA accredited laboratory and the biological results are logged on the Anti-Doping Administration and Managements System ("ADAMS"), a *"web-based database management tool for data entry, storage, sharing and reporting, designed to assist stakeholders and WADA in their anti-doping operations in conjunction with data protection legislation"* (WADA ABP Guidelines, April 2012, section 2.1). A statistical model developed for the ABP Program (the "Adaptive Model"), is then applied to the results of analyses to determine if abnormalities are present in the relevant profile. According to the Guidelines, the Adaptive Model is the *"[m]odel developed in which evidence or observations are used to update or to newly infer the probability that a hypothesis may be true or to discriminate between conflicting hypotheses. It was designed to identify unusual longitudinal results from Athletes"* (WADA ABP Guidelines, April 2012, section 2.2). The biological parameters which are tested by the Adaptive Model, indeed those which constitute an ABP, are:
  - Red blood cell count ("RBC")
  - Mean corpuscular volume ("MCV")
  - Hematocrit ("HCT")
  - Hemoglobin ("HGB")

- Mean corpuscular hemoglobin (“MCH”)
  - Mean corpuscular hemoglobin concentration (“MCHC”)
  - White blood cell count (“WBC”)
  - Platelet count (“PLT”)
  - Reticulocytes percentage (“%RETI/RET%”).
16. Under the IAAF Blood Testing Protocol, the IAAF is required to update ABPs consistently on ADAMS as new samples are collected (IAAF Blood Testing Protocol, 9.2). As ABPs are updated, they are reviewed by the IAAF Anti-Doping Commission. If the initial application of the Adaptive Model to an ABP yields an abnormal result (an “Adverse Analytical Finding”) which suggests use of Prohibited Substance or Prohibited Method, the ABP in question is passed on to a panel of three experts (the “Expert Panel”) for review. Other ABPs not flagged by the Adaptive Model are to be reviewed by individual experts on systematic basis. An Expert Panel must include three experts with knowledge in the fields of clinical hematology, laboratory medicine, quality control data, analytical and biological variability, and sports medicine or exercise physiology (specialized in hematology). The Expert Panel conducts an initial review based on ABP of the athlete in question, and any additional information it requests from the IAAF relating to any sample in the profile. The Expert Panel is also to take into account any *“confounding factor that might cause individual sample results to be inappropriate to use in the athlete’s profile without adjustment”*.
17. Based on such a review, the Expert Panel shall render one of the following opinions:
- *“That in the Panel’s unanimous opinion, absent a satisfactory explanation from the Athlete, it is highly likely that the athlete has used a Prohibited Substance or a Prohibited method; or*
  - *That the information received is suspicious for doping and additional investigation should be pursued. The Panel may advise what additional information it recommends; or*
  - *That the information does not warrant any additional Testing effort or investigation at this time”* (IAAF Blood Testing Protocol, 9.6.1-9.6.3).
18. Under Rule 37.3 the IAAF Anti-Doping Administrator shall, concurrently with the Expert Panel’s review, examine whether an alleged presence or use of the Prohibited Substance or Prohibited Method in question is consistent with a therapeutic use exemption (“TUE”), if one had been registered by the Athlete in question, or if the analysis that produced the result had deviated from the international standards for laboratories adopted by WADA.
19. If the Expert Panel, following its review, concludes that *“absent a satisfactory explanation from the Athlete, it is highly likely that the athlete has used a Prohibited Substance or a Prohibited method”*, and the IAAF Anti-Doping Administrator’s review does not provide an explanation for the result, the IAAF shall advise the Athlete that it is considering bringing an anti-doping rule

violation against the Athlete and invite the Athlete to provide her own explanation of the data provided.

20. Upon review of the explanation of the Athlete, if given, the Expert Panel shall either: (1) confirm the Adverse Analytical Finding and issue a unanimous opinion that there is no reasonable explanation for the blood profile information of the Athlete other than the use of a Prohibited Substance or Prohibited Method; or (2) fail to reach a unanimous opinion on the blood profile and suggest that further investigation be undertaken, or that no action be taken at all. In the case of the former, the IAAF must then take disciplinary action pursuant to Rule 38 of the IAAF Rules.
21. Under IAAF Rule 38, an Athlete in respect of whom an Adverse Analytical Finding has been confirmed shall be provisionally suspended pending resolution of the Athlete's case by her Member national federation. Every athlete has the right to request a hearing before her national federation within 14 days from receiving notification of her provisional suspension. The hearing must be convened within 3 months of the Athlete's request. At the hearing of the Athlete's case, the Member national federation shall rule on whether an anti-doping violation has been committed. Under IAAF Rule 42, the final ruling of the Member national federation can be appealed by the IAAF to the CAS.

### **III. PROCEDURAL BACKGROUND**

#### **A. PROCEEDINGS BEFORE THE IAAF AND SEGAS**

22. In the period from 2006 to 2009, Ms. Kokkinariou was subject to blood testing by the IAAF on four occasions for the measurement of hematological parameters. All samples were collected and analyzed in accordance with the IAAF Blood Testing Protocol in force at the relevant time.
23. In mid-2009, the IAAF started its official ABP program and, based on Ms. Kokkinariou's previous blood results on file, the IAAF elected to add her to the Registered Testing Pool for inclusion in the IAAF's ABP program. In the period from July 2009 to August 2011, Ms. Kokkinariou was subject to blood testing on a further nine occasions. These nine samples comprise Ms. Kokkinariou's official ABP. However, the IAAF includes hematological parameters measured from the four samples taken between 2006 and 2009 as evidence for this appeal. Ms. Kokkinariou's ABP and previous IAAF blood test results are set out in the table below.

**Ms. Iriini Kokkinariou ABP (G111J17) and Previous IAAF Blood Test Results**

Date of Test	HCT %	HGB g/dl	MCH pg	MCHC g/dl	MCV fl	Off-s	RBC: 10 <sup>6</sup> /ul	RET# 10 <sup>6</sup> /ul	RET %
<b>Samples Taken under IAAF prior to institution of official IAAF ABP Program</b>									
15.09.06	42.9	14.2				81.11			1.03
22.06.07	54.3	18				155.3			0.17
20.06.08	52.7	17.3	31.5	32.8	95.8	150.6	5.5		0.14
19.06.09	53.1	17.1	32.1	32.2	99.6	147	5.33	0.01	0.16
<b>Samples Taken as part of official IAAF ABP Program</b>									
02.07.09	53.4	16.9	31.1	31.6	98.2	134	5.44	0.02	0.34
09.07.09	50.7	16.7	31	33	94	139.5	5.39	0.01	0.21
12.08.09	55.5	17.5	29.3	31.3	93	139	5.97	0.02	0.36
25.11.09	35.3	11.7	31.2	33.1	94.1	55.52	3.75	0.04	0.76
03.03.10	40.4	13.4	30.7	33.2	92.7	89.5	4.36	0.02	0.55
18.06.10	48.6	15.6	30.2	32.1	94	103.7	5.17	0.04	1.05
26.07.10	46	14.6	30.2	31.7	95.2	115.4	4.83	0.01	0.26
17.06.11	54.2	17.2	30.6	31.7	96.3	145.9	5.63	0.01	0.19
22.08.11	43.2	14.6	31.1	33.8	92.1	104.4	4.69	0.02	0.48

24. On August 23, 2011, the IAAF initiated an investigation into a potential anti-doping rule violation by Ms. Kokkinariou after her ABP, through application of the Adaptive Model, was identified as abnormal with a probability of more than 99%.
25. In accordance with the IAAF Anti-Doping Regulations, Ms. Kokkinariou's blood profile was submitted to an Expert Panel for review. The Expert Panel comprised: Prof. Dr. med. Yorck Olaf Schumacher, based in Freiburg, Germany; Dr. Giuseppe d'Onofrio, based in Rome Italy; and Prof. Michel Audran, based in Montpellier, France (together the "Experts").
26. Upon reviewing Ms. Kokkinariou's ABP, the three Experts unanimously concluded that, in the absence of a satisfactory explanation, it was highly likely that she had used a Prohibited Substance or a Prohibited Method.
27. In accordance with the results management procedure set out in IAAF Anti-Doping Regulations, the conclusions of the Expert Panel, together with the Ms. Kokkinariou's complete file (e.g., sample collections, chain of custody and analytical documentation) were then sent to Ms. Kokkinariou. She was in turn required to provide an explanation for her abnormal profile.
28. Ms. Kokkinariou provided the IAAF with an explanation on September 23, 2011 in which she explained that the abnormal values and variations observed in her profile could be due to a combination of extreme fatigue, health problems, the use of a hypoxic device, training at altitude, as well possible analytical problems with some of the blood samples on her ABP.

29. Ms. Kokkinariou's explanation was submitted to the Expert Panel. After reviewing Ms. Kokkinariou's explanation, the Experts remained of the unanimous opinion that there was no reasonable explanation for Ms. Kokkinariou's blood profile other than the use of a Prohibited Substance or a Prohibited Method. Ms. Kokkinariou's explanation was therefore rejected and she was provisionally suspended by the IAAF pending the outcome of her disciplinary case on October 27, 2011.
30. Ms. Kokkinariou was notified (through the SEGAS) of her provisional suspension and further of her right to request a hearing. In its letter to the SEGAS of October 27, 2011, the IAAF also expressly indicated that, in light of the evidence on file suggesting the repeated use of a Prohibited Substance or Prohibited Method, it considered that there were aggravated circumstances in Ms. Kokkinariou's case and that a 4-year sanction should be applied in accordance with IAAF Rule 40.6.
31. The SEGAS confirmed to the IAAF by e-mail dated November 7, 2011 that Ms. Kokkinariou had been advised of the IAAF charge, including "that a 4 year sanction will be sought against her (unless she admits the violation and accepts a two-year sanction)". Ms. Kokkinariou declined the opportunity to avoid the possibility of a 4-year sanction by failing to admit to her violation in a timely manner in accordance with IAAF Rule 40.6(b). Ms. Kokkinariou denied the IAAF charge and sought a hearing before the relevant SEGAS tribunal.
32. Ms. Kokkinariou's hearing was subsequently held on December 15, 2011 before the SEGAS Disciplinary Committee and, in its decision (the "SEGAS Decision") of January 20, 2012, the SEGAS Disciplinary Committee found Ms. Kokkinariou guilty of an anti-doping rule violation under IAAF Rule 32.2(b) and imposed a 2-year sanction on her in accordance with IAAF Rule 40.2. Following receipt of the Decision, the IAAF informed Ms. Kokkinariou's legal advisor on February 14, 2012, that any appeal by Ms. Kokkinariou against the SEGAS Decision should be filed with the CAS in accordance with IAAF Rule 42. No such appeal to the CAS was filed.

### ***The SEGAS Decision***

33. The following is the segment of the SEGAS Decision that is relevant to this appeal:

*"Further to the above and based on the views expressed by the specialists' team, the Dikastiki Epitropi unanimously rules that the athlete Kokkinariou has committed violation of anti-doping regulation per article 32.2(b) (use or attempt of use of prohibited substance or method from an athlete) and must be imposed to her provided by the regulations the penalty (article 40.2 of IAAF regulations) of disqualification from the games for a two (2) years period. As far as concerns the possibility of the existence of aggravating circumstances of article 40.6 of IAAF regulations which (IAAF) points out in its letter of 27-10-2011 to SEGAS by virtue of which an increased penalty should be imposed up to four (4) years term, Dikastiki Epitropi rules that this provision that refers to the commitment of violation of anti-doping regulations as part of a plan or doping scheme and the use or possession of multiple prohibited substances or method or use or possession of a prohibited substance or method in a lot of cases (opportunities) cannot apply in the present case which concerns an abnormal variance of the hematologic profile in accordance with those provided by the protocol of blood control of IAAF since: 1) The formation of the hematologic profile presupposes a long term or repeated use*

*and in this meaning the above violation would lead in any case to the imposition of a graver penalty of up to four (4) years term, a fact that if the writer of regulation and protocol would wish to apply, should have expressly provided for it and 2) has not been evident in a satisfactory per the committee's opinion way the occurrence of the terms and conditions of article 40.6 of IAAF regulations.*

*Thus, the Dikastiki Epitropi unanimously rules that the appropriate for this offence penalty is the disqualification from the games for a period of two (2) years. In accordance with article 40.10 of IAAF and SEGAS regulations, the period of disqualification (non legality) commences from the date of this decision receipt (24-1-2012) being deducted the period of temporal disqualification (from 27-10-2011) that has elapsed.*

*For these reasons*

*The Dikastiki Epitropi of SEGAS rules as disciplinary audited the athlete, Erini Kokkanariou for violation of article 32.2(b) of IAAF and SEGAS regulations and of article 9 of the Protocol of blood control of IAAF and imposes to her the provided by article 40.2 of the above regulations penalty of disqualification from the games for a two (2) years period”.*

## **B. PROCEEDINGS BEFORE THE CAS**

34. On April 16, 2012, the IAAF filed its Statement of Appeal with respect to the Decision, and nominated Prof. Ulrich Haas as arbitrator.
35. On April 27, 2012, the SEGAS informed the CAS that it would not be present to support the decision in front of the CAS and would leave the case at the disposal of the IAAF and the CAS. This was acknowledged by the CAS on April 30, 2012.
36. On May 2, 2012, the IAAF submitted its Appeal Brief to the CAS.
37. On May 3, 2012, Ms. Kokkinariou, by letter from her counsel, Mr. Ioannis Marakakis, nominated Pantilis Dedes (Attorney-at-law (Greece)) as an arbitrator from the list of CAS arbitrators published on the CAS website, in accordance with Article R53 of the Code of Sports-related Arbitration (the “CAS Code”).
38. On May 4, 2012, the SEGAS informed the CAS by letter that it had no objection to the nomination of Ms. Kokkinariou and confirmed that it would have no part in the arbitration.
39. On May 4, 2012, the CAS informed the Parties of its acknowledgement of the IAAF's Appeal Brief, and that accordingly the Respondents had 30 days to file their Answers.
40. On May 8, 2012, the CAS informed the Parties by letter of the acceptance of Prof. Ulrich Haas to stand as arbitrator along with his statement of independence.

41. On May 24, 2012, the SEGAS informed the CAS that as it would not be participating in the arbitration, it was not obliged to advance any costs for the procedure and would accordingly not be doing so.
42. On June 4, 2012, the IAAF acknowledged that SEGAS was refusing to advance costs for the arbitration, and so it wished apply to the President of the CAS Appeals Arbitration Division (the “Division President”) to have the Appeal heard by a Sole Arbitrator pursuant to Article R54 of the CAS Code. The IAAF submitted that the Appeal was amenable to be heard by a Sole Arbitrator in that it focused solely on the issue of the sanction applied by the SEGAS and the interpretation of IAAF Rules 40.6. The IAAF sought a stay of its obligation to advance costs pending a decision of the Division President regarding hearing by a Sole Arbitrator.
43. On June 4, 2012, the CAS acknowledged the IAAF’s request for hearing of the Appeal by a Sole Arbitrator and informed the Parties that they had three days to object to the appointment of a Sole Arbitrator.
44. On June 11, 2012, the CAS informed the Parties that as the SEGAS informed the CAS it had no objection to the appointment of a Sole Arbitrator, and as Ms. Kokkinariou had not lodged an objection within the time limit set by the CAS, the Division President or his Deputy could now determine the number of arbitrators pursuant to Article R53 of the CAS Code.
45. On July 11, 2012, the CAS informed the Parties that neither the SEGAS nor Ms. Kokkinariou had filed an Answer within the time limit prescribed in Article R55 of the CAS Code, and that the Panel/Sole Arbitrator could nevertheless proceed with the arbitration and deliver an award. Furthermore, in accordance with Article R56 of the CAS Code, unless the Parties agreed otherwise or the Division President ordered otherwise on the basis of exceptional circumstances, the Parties were not authorized to supplement or amend their requests or the argument, nor to produce new exhibits, nor to specify further evidence on which they would intend to rely after the submission of the Appeal Brief and of the Answer.
46. On July 11, 2012, the IAAF informed the CAS of its preference for the appeal to be decided on the basis of written submissions only.
47. On July 20, 2012, Ms. Kokkinariou informed the CAS by letter that she no longer wished to participate in any arbitration procedure with the IAAF regarding the allegations of violating the IAAF Rules. Ms. Kokkinariou stated that she took this decision on the basis of two main factors: firstly, according to the Greek Athletic Law (Act 2725/1999) any and all appeals against a decision of a national sport federation must be filed exclusively before ASEAD (the National Supreme Sports Court), that Ms. Kokkinariou had filed an appeal against the Decision with ASEAD, and that she was expecting a decision with the following weeks. Ms. Kokkinariou went on to explain that she was in difficult financial circumstances and she could not afford any judicial expenses.

48. On July 30, the Parties were informed that Romano Subiotto QC, Solicitor-Advocate, Brussels, Belgium, and London, United Kingdom, had been appointed Sole Arbitrator. Attached to this letter was the Notice of Formation of a Panel and a copy of the Sole Arbitrator's Statement of Independence.

#### IV. CAS JURISDICTION

49. Article R47 of the CAS Code provides, in part, as follows:

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

50. IAAF Rule 42.3 provides

*“Appeals involving International-Level Athletes: in cases involving International-Level Athletes or their Athlete Support Personnel, the decision of the relevant body of the Member may be appealed exclusively to CAS in accordance with the provisions set out below”.*

51. IAAF Rule 42.5 provides:

*“Parties entitled to Appeal: in any case involving an International-Level Athlete of his Athlete Support Personnel, the following parties shall have the right to appeal to CAS:*

*(c) the IAAF”.*

52. An International-Level Athlete is defined in the Anti-Doping Regulations as *“an [a]thlete who is in the Registered Testing Pool for Out-of-Competition Testing or who is competing in an International Competition under Rule 35.7”*. As she is in the IAAF Registered Testing Pool, Ms. Kokkinariou is an International-Level Athlete. The decision of the SEGAS Disciplinary Committee was a decision of the *“relevant body relevant body of [a] Member”*.

53. The Sole Arbitrator therefore has jurisdiction to consider the IAAF's Appeal, as confirmed by the signature of the Order of Procedure by the IAAF and the SEGAS on September 25 and 27, 2012, respectively.

#### V. APPLICABLE LAW

Article R58 of the CAS Code provides:

*“This Arbitrator 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 as issued the challenged decision is domiciled or according to the rules*

*of law, the application of which the Arbitrator deems appropriate. In the latter case, the Arbitrator shall give reasons for its decision”.*

54. The Sole Arbitrator notes that SEGAS applied the IAAF Rules in determining whether Ms. Kokkinariou committed an anti-doping violation and whether aggravating circumstances were present.
55. The Sole Arbitrator therefore concludes that this dispute must be determined on the basis of the IAAF Rules, and in this does not appear to be contested by the Parties.

## **VI. ADMISSIBILITY**

56. Article R49 of the CAS 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 of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the Parties, the Division President may refuse to entertain an appeal if it is manifestly late”.*

57. IAAF Rule 42.13 provides:

*“Unless stated otherwise in these Rules (or the Doping Review Board determines otherwise in cases where the IAAF is the prospective appellant), the appellant shall have forty-five (45) days in which to file his statement of appeal with CAS starting from the date of communication of the written reasons of the decision to be appealed (in English or French where the IAAF is the prospective appellant) or from the last day on which the decision could have been appealed to the national level appeal body in accordance with Rule 42.8(b). Within fifteen (15) days of the deadline for filing the statement of appeal, the appellant shall file his appeal brief with CAS and, within thirty (30) days of receipt of the appeal brief, the respondent shall file his answer with CAS”.*

58. The IAAF received the SEGAS Disciplinary Committee decision in English by courier on March 5, 2012. In accordance with IAAF Rule 42.13, the IAAF appeal was filed with CAS on a timely basis on April 16, 2012.
59. Accordingly, the Sole Arbitrator concludes that this Appeal is admissible.

## **VII. THE SUBMISSIONS OF THE PARTIES**

60. The summary below refers to the substance of the Parties’ allegations and arguments without listing them exhaustively in detail.

**A. THE APPEAL OF THE IAAF**

61. The IAAF submits that the SEGAS Disciplinary Committee erred in holding that: (1) IAAF Rule 40.6 does not apply to anti-doping violations detected through ABP analysis; and (2) that in any event, Ms. Kokkinariou's violation was not committed under aggravating circumstances. The IAAF argues firstly that the application of IAAF Rule 40.6 calls for a case by case approach, and the Rule can be invoked in respect of findings born of an ABP analysis. Secondly the IAAF contends that Ms. Kokkinariou repeatedly used a Prohibited Substance as part of a doping scheme, and that these actions constitute three of the examples of aggravating circumstances listed in IAAF Rule 40.6.
62. Accordingly, the IAAF asks that the CAS uphold the SEGAS Disciplinary Committee's ruling that Ms. Kokkinariou violated IAAF Rule 32, but set aside the SEGAS Decision with respect to the finding that IAAF Rule 40.6 is not applicable to Ms. Kokkinariou's case. The IAAF seeks the CAS to apply IAAF Rule 40.6, and impose on Ms. Kokkinariou a 4-year Ineligibility Period.

**1. The Scope of IAAF Rule 40.6**

63. The IAAF argues that for IAAF Rule 40.6 to apply, it must be first considered whether the factual circumstances of the relevant violation fall within one or more of the examples of aggravating factors listed in IAAF Rule 40.6. The IAAF stresses, however, that other factual circumstances may fall under IAAF Rule 40.6 which provides that "*the examples of aggravating circumstances referred to [in the Rule] are not exclusive and other aggravating factors may also justify the imposition of a longer period of Ineligibility*". The IAAF contends that IAAF Rule 40.6 therefore calls for a case by case approach, and there is no requirement for blood manipulation or the IAAF's ABP Program to be specifically mentioned in the Rule (as was held by the SEGAS Disciplinary Committee).
64. The IAAF provides as evidence for its claim regarding the scope of IAAF Rule 40.6 a statement of Mr. Olivier Niggli, WADA's Legal Director, who was responsible for supervising the drafting of the WADA Code. Mr. Niggli affirms that cases of blood manipulation were specifically considered when drafting Article 10.6 of the WADA Code (the text of which is replicated without material alteration by IAAF Rule 40.6) as being the type of aggravating factor that could lead to an increased sanction:
65. Mr. Niggli states that "*I can confirm that there is no doubt whatsoever that we drafted [A]rticle 10.6 having in mind precisely the kind of factual circumstances that can be detected through the Athlete passport. Blood manipulation is a sophisticated method of doping which requires a significant amount of organization from the athlete and the use of the method on multiple occasions (blood withdrawal, blood reinjection, EPO treatment, etc)*".
66. Mr. Niggli states that WADA felt there was no need to make express reference to ABP programs in Article 10.6 because ABPs are simply tools by which evidence of blood manipulation can be determined. Mr. Niggli clarified that a case of blood manipulation

could, depending on the circumstances of the case, fall within the examples of aggravating factors that WADA listed in the comments to Article 10.6 of the WADA Code:

*“The Athlete passport was not mentioned expressly by name in [A]rticle 10.6 but nor was there need for it to be. The haematological module of the passport is simply a tool that allows for the extrapolation of an individual’s blood data over time to assist in determining an anti-doping rule violation in the form of the use of a prohibited substance or method, i.e., a means of establishing evidence of blood manipulation. As I have explained, blood manipulation was specifically considered in the context of [A]rticle 10.6 and, depending upon the factual circumstances of the case in question, such conduct was covered under the list of examples of aggravating circumstances provided for in the comment to [A]rticle 10.6, notably, the implementation of a doping plan or scheme and/or the use of a prohibited substance or method on multiple occasions and/or deceptive conduct to avoid detection of an anti-doping rule violation. Moreover, the examples listed in the comment to [A]rticle 10.6 were deliberately stated to be non-exhaustive so that other aggravating factors could also justify an increased sanction under [A]rticle 10.6”.*

67. In light of Mr. Niggli’s statement, the IAAF submits that the scope of Article 10.6 of the WADA Code (and hence the corresponding IAAF Rule 40.6) is clear, and that cases of blood manipulation may fall within the range of aggravating circumstances that were anticipated by the provision, depending on the facts of the case in hand. In light of the above, the IAAF contends that there is no basis to the first reason given by the SEGAS Disciplinary Committee for not applying IAAF Rule 40.6. to Ms. Kokkinariou’s case.

## **2. The Application of IAAF Rule 40.6 to Ms. Kokkinariou’s Case**

68. The IAAF notes that the second reason cited by the SEGAS Disciplinary Committee for not imposing a 4-year sanction on Ms. Kokkinariou was that the actual conditions of IAAF Rule 40.6 were not met in her case. The IAAF submits that there is clear evidence which demonstrates that Ms Kokkinariou was engaged in repeated blood doping between 2006 and 2011. The IAAF argues this repeated use represents three of the examples of aggravating circumstances provided in IAAF Rule 40.6, namely: (1) *“the Athlete or other Person committed the anti-doping rule violation as part of a doping plan or scheme, either individually or involving a conspiracy or common enterprise to commit anti-doping rule violations”*; (2) *“the Athlete or other Person used or possessed multiple Prohibited Substances or Prohibited Methods or used or possessed a Prohibited Substance or Prohibited Method on multiple occasions”*; and (3) *“[the Athlete] engaged in deceptive or obstructing conduct to avoid the detection or adjudication of an anti-doping rule violation”*.

### **(i) The claim that Ms. Kokkinariou used a prohibited substance or prohibited method on multiple occasions**

69. In its Appeal Brief, the IAAF quotes extensively from the Experts’ reviews of Ms. Kokkinariou’s ABP. Three sets of opinions of the Experts are attached to the IAAF’s Appeal Brief: (1) the initial reviews of Ms. Kokkinariou’s ABP; (2) the reviews of Ms. Kokkinariou’s explanations of the irregular values present in her ABP; and (3) statements in relation to this Appeal. The IAAF also refers to a statement of Dr. Pierre-Edouard Sottas

(an expert in the evaluation of biomarkers of doping and an Athlete Passport Manager of WADA) which was prepared for this appeal.

(a) *Statements of the Expert Panel members in relation to this appeal*

70. The IAAF submits that the Experts were unanimous in finding that Ms. Kokkinariou used blood doping on multiple occasions, including both prior to and following the introduction of the IAAF ABP Program in 2009.

71. The IAAF note that Prof. Schumacher concludes in his statement in relation to this Appeal:

On the period 2009-2011:

*“The profile of Ms Kokkinariou is indicative of the repeated use of a prohibited substance or prohibited method or a combination of both. The manipulations took place at least in May/June 2009 (the period preceding samples 1,2 and 3) and in May/June 2011 (preceding sample 8)”.*

On the period 2006-2009:

*“As the profile of Ms Kokkinariou from 2006 to 2009 shows very similar patterns compared to the profile from 2009 until present (ABP process), it is highly likely that the profile is indicative of the repeated (yearly) use of a prohibited substance or prohibited method by the athlete”.*

72. The IAAF note that Dr. D’Onofrio concludes in his statement in relation to this appeal:

On the period 2009-2011:

*“The sequence of results included in the ABP Athlete’s blood profile (2.07.09-22.08.11) provides clear evidence of the repeated use of a prohibited substance and/or method. In particular, the use of an erythropoietic stimulating agent (ESA) like erythropoietin or analogues is almost certain. The possible addition of transfusion practices cannot be excluded. Such evidence ensues from the finding of extremely high and variable haemoglobin values, associated with very low reticulocyte counts and high OFF scores”.*

On the period 2006-2009:

*“The sequence of four tests carried out on Ms Kokkinariou’s blood samples from September 2006 to June 2009 is indicative of the repeated use of a prohibited substance, probably in the form of ESA intake. This early part of Ms Kokkinariou’s profile is fully consistent with the subsequent part that I considered for the purpose of the ABP process. In fact, there is a perfect coincidence of typical OFF pictures in the summers of 2007, 2008, 2009 and 2011, alternated with much lower values of haemoglobin and normal reticulocyte counts in September, November and March of different years”.*

73. The IAAF notes that Prof. Audran concludes in his statement in relation to this Appeal:

On the period 2009-2011:

*“The haematological profile G111JL7 (Ms Kokkinariou) for the period 2/07/09 - 22/08/11 is indicative of repeated use of a prohibited substance or a prohibited method (or a combination of both) in two situations at least: July and August 2009 (samples 1, 2, 3), June 2011 (sample 8)”.*

On the period 2006-2009:

*“For the period 15/09/06-16/06/09 the passport is indicative of the use of a prohibited substance and/or prohibited method each year in June”.*

(b) *Statement of Dr. Sottas in relation to this appeal*

74. Dr. Sottas of WADA was asked for his independent expert opinion on Ms. Kokkinariou’s case, including whether he agreed with the conclusions of the 3 members of the Expert Panel that her ABP is indicative of the repeated use of a prohibited substance or a prohibited method. Dr. Sottas stated:

On the period 2009-2011:

*“I agree with the Expert opinions that the profile is characteristic of a doping behavior. These results confirm the evaluation made by the experts that we have at least two doping regimens, one in the summer 2009 and one from June 2010 to June 2011”.*

On the period 2006-2009:

*“I agree with the Experts opinions that the profile composed of 4 tests for the period 15.09.06- 16.06.09 is indicative of blood doping. The first test performed in September 2006 is compatible with the assumption of a normal physiological condition whereas the 3 other tests are characteristic of doping. The athlete consistently presents abnormal values in the summer period (June to mid-August and normal values between end of August and May”.*

(c) *Prior practice of sporting federations in relation to Article 10.6 of the WADA Code*

75. The IAAF submits that a 4-year sanction in Ms. Kokkinariou’s case would be consistent with the sanction imposed in a previous case of blood doping in the context of ABPs in athletics.
76. The case to which the IAAF points is the decision of the Portuguese Athletics Federation (“FPA”) concerning H. (Federação Portuguesa de Atletismo, case 4/2011). In this case, the FPA found that H. was guilty of blood doping following analysis of his ABP by an expert panel in accordance with the IAAF Rules. H.’s ABP comprised ten measurements. The FPA found that the *“athlete’s dossier...suggest[ed] repeated use of a prohibited substance or of a prohibited method during period of time around one year, being this one of the aggravating circumstances mentioned in*

IAAF Rule 40.6". The FPA accordingly applied a suspension of sporting activity for a period of four years.

**(ii) The claim that Ms. Kokkinariou's blood manipulation formed part of a doping plan or scheme**

77. The second claim of the IAAF is that Ms. Kokkinariou's blood manipulation formed part of a doping plan or scheme whereby she repeatedly engaged in blood doping in June of each year before stopping in advance of the main summer competition period. The IAAF argues that, in the view of the Expert Panel, Ms. Kokkinariou's actions were specifically designed to increase her performance in summer competitions whilst avoiding detection through in-competition tests, with her blood values then returning to near normal outside of the competition season. The Experts were further of the view that Ms Kokkinariou's high ferritin level measured at the IAAF World Championships (which took place in Daegu, South Korea, on August 27-September 4, 2011) was consistent with the practice of an annual blood doping scheme.

*(a) Statements of the Expert Panel members in relation to this appeal*

78. The IAAF note that Prof. Schumacher concludes in his statement in relation to this appeal:

*"The profile is the result of a doping scheme aimed at increasing performance at certain competitions and timed to avoid positive testing in conventional doping tests during such events".*

79. The IAAF note that Dr. D'Onofrio concludes in his statement in relation to this appeal:

*"For these reasons, the paradoxical association of high haemoglobin with low reticulocytes is a strong evidence of artificial inhibition of reticulocyte caused by the suspension of an ESA (or, less likely, by reinfusion of multiple blood bags). It is an indicator of the so-called OFF phase, which is seen when an ESA has been suspended one to three weeks before, such as it is observed in doped athletes before important competitions. When ESA is stopped, haemoglobin remains high for at least two or three weeks, depending on the dosage, while reticulocytes are reduced because the high haemoglobin inhibits endogenous EPO production".*

80. The IAAF note that Prof. Audran concludes in his statement in relation to this appeal:

*"The ferritin level in the sample provided by Ms Kokkinariou [at the 2011 World Championships] is abnormally high .... But there is another explanation to high ferritin levels. We have to remember that the use of erythropoietic stimulants, such as recombinant human erythropoietin (rhEPO) increases the need for iron so much that it exceeds the physiological occurring reserves in storage tissue. Furthermore, increasing body iron levels before or during rhEPO administration improves the resulting erythropoiesis. These facts explain why athletes who use rhEPO also take iron supplementation, mostly by parenteral access".*

(b) *Statements of Dr. Sottas in relation to this appeal*

81. The IAAF submit that Dr. Sottas was of the opinion that Ms. Kokkinariou was engaged in specific doping regimen focusing on the outdoor competition season. Dr. Sottas concludes in his statement:

*“Since rh-EPO does remain present in the body only a few hours (intravenous) or days (subcutaneous) whereas the effects last several weeks, athletes stop the treatment a few days before an important competition. Several haematological profiles of Ms Kokkinariou present this typical OFF scenario with high numbers of red blood cells, haemoglobin and haematocrit together with low reticulocytes and low mean cell haemoglobin content (tests performed July 2, 2009; July 9, 2009; August 12, 2009; [and] June 17, 2011)”.*

82. The IAAF also stress that Dr. Sottas described Ms. Kokkinariou’s ferritin level as being “completely out of the range” and refers to studies which have linked intravenous iron supplementation with high doses of rh-EPO. These studies indicated that “until the beginning of the 2000’s, very high levels of ferritin (> 1000 ng/ml) were observed on riders who admitted doping with rh-EPO”. Ms Kokkinariou’s ferritin level measured at the IAAF World Championships 2011 was far in excess of 1000ng/ml.

(iii) **The claim that Ms. Kokkinariou’s engaged in deceptive conduct**

83. The IAAF submits further Ms. Kokkinariou’s continuous blood doping as identified by the Expert Panel constitutes a clear course of deceptive conduct that was designed to avoid the detection of an anti-doping rule violation. In support of this claim, the IAAF refers to Prof. Schumacher conclusion that Ms. Kokkinariou’s profile is the result of a doping that was “timed to avoid positive testing in conventional doping tests during such events”.

**3. Summary of the Appellant’s Submissions**

84. The IAAF submits that the scope of IAAF Rule 40.6 extends to blood manipulation as detected through analysis of ABPs, and that Ms. Kokkinariou’s case clearly satisfies the conditions of the Rule, in that her actions could be characterized as any of three examples of aggravating circumstances which it lists, namely: (1) engaging in a doping plan or scheme; (2) multiple use of a prohibited substance or prohibited method; and (3) attempting to avoid the detection or adjudication of an anti-doping violation.

**B. RESPONSES OF THE FIRST AND SECOND RESPONDENTS**

85. Neither of the Respondents filed an Answer to the IAAF’s Appeal Brief within the prescribed time limit. Pursuant to Article R55 of the CAS Code, the Sole Arbitrator can proceed to make an award in relation to this Appeal. Despite the lack of any formal Answer

from the Respondents, the legal analysis below will take into account all available relevant information, and is not restricted to the submissions of the IAAF.

## VIII. LEGAL ANALYSIS

86. This appeal calls for an examination of two questions: (1) whether IAAF Rule 40.6 covers blood manipulation as detected through analysis of ABPs; and (2) whether Ms. Kokkinariou did in fact repeatedly engage in blood doping.

### A. THE SCOPE OF IAAF RULE 40.6

87. The full text of IAAF Rule 40.6 is provided above at paragraph 8 and contains the same wording as Rule 10.6 of the WADA Code.

88. IAAF Rule 40.6 (a) provides that “*Examples of aggravating circumstances which may justify the imposition of a period of Ineligibility greater than the standard sanction are: the Athlete or other Person committed the anti-doping rule violation as part of a doping plan or scheme, either individually or involving a conspiracy or common enterprise to commit anti-doping rule violations; the Athlete or other Person used or possessed multiple Prohibited Substances or Prohibited Methods or used or possessed a Prohibited Substance or Prohibited Method on multiple occasions*” [emphasis added].

#### 1. *The Use of ABP Evidence in Relation To IAAF Rule 40.6*

89. The SEGAS Disciplinary Committee held that the application of IAAF Rule 40.6 for multiple use of a Prohibited Substance or Prohibited Method cannot apply to an “*abnormal variance in a hematological profile*” as “[*t*]he formation of the hematologic profile presupposes a long term or repeated use and in this meaning the above violation would lead in any case to the imposition of a graver penalty of up to four (4) years term, a fact that if the writer of regulation and protocol would wish to apply, should have expressly provided for”. The SEGAS Disciplinary Committee appears to conclude that blood doping or other use of Prohibited Substances and/or Prohibited Methods cannot be amenable to IAAF Rule 40.6 when detected through analysis of an ABP, as ABPs “*presuppose a long term or repeated use*”.
90. The Sole Arbitrator can find no basis for the claim that “*the formation of the hematologic profile presupposes a long term or repeated use*”. ABPs may reveal doping on a single or several occasion(s) – a longitudinal hematological profile need not contain multiple irregular figures in order to be used effectively. As Mr. Niggli, states, “[*t*]he Athlete passport was not mentioned expressly by name in [A]rticle 10.6 but nor was there need for it to be. The haematological module of the passport is simply a tool that allows for the extrapolation of an individual’s blood data over time to assist in determining an anti-doping rule violation in the form of the use of a prohibited substance or method”. IAAF Rule 40.6 does not contain any specific requirements on how aggravating circumstances are

to be detected, and absent such requirements, it must be presumed that the IAAF's ABP program, a system of detection detailed in the IAAF Anti-Doping Regulations and IAAF Blood Testing Protocol, can ground claims under IAAF Rule 40.6, in much the same way as it can ground claims under IAAF Rule 32.

91. In light of the above, the Sole Arbitrator finds that the Disciplinary Committee of SEGAS erred in its interpretation of the scope of IAAF Rule 40.6, and repeated use of rh-EPO or other ESA as detected through analysis of an ABP can qualify as "*aggravating circumstances*" under the Rule.

## **2. *The Range of Penalties under IAAF Rule 40.6***

92. IAAF Rule 40.6 provides that its application will result in an increase of the 2-year Ineligibility Period "*up to a maximum of four (4)*" [emphasis added]. Accordingly, IAAF Rule 40.6 allows for a range of penalties – a 4-year ineligibility period is not automatically applied wherever aggravating circumstances in the context of anti-doping violation are identified (a lesser penalty may be imposed, *e.g.* an increase to a three year suspension). It appears to be at the discretion of the IAAF or "*relevant body of the member*" what factors would justify the imposition of the maximum 4-year penalty. Neither the comments on Article 10.6 of the WADA Code (which IAAF Rule 40.6 replicates), nor the statement of Mr. Niggli regarding the scope of Article 10.6 of the WADA Code give more detail regarding considerations relevant to scale of penalty under IAAF Rule 40.6.
93. The IAAF does not make any specific argument in its Appeal Brief to the effect that conduct which represents more than one of the examples of aggravating circumstances listed in IAAF Rule 40.6 justifies imposition of the maximum penalty under that rule. However, as noted above, the IAAF does argue that Ms. Kokkinariou's violation of IAAF Rule 32 was committed under three of the "types" of aggravating circumstances listed in IAAF Rule 40.6, and follows this by stating that "*Ms. Kokkinariou's case is the clearest possible example of aggravating circumstances under Rule 40.6*". It would appear that in the view of the IAAF, multiple triggering of IAAF Rule 40.6 justifies its harshest application.
94. The Sole Arbitrator finds it would be entirely reasonable to base imposition of a 4-year Ineligibility Period under IAAF Rule 40.6 on multiple examples of aggravating circumstances being identified in the case of an Athlete's anti-doping violation. Multiple examples of aggravating circumstances will generally correspond to the commission of a more serious offence, which warrants the imposition of a higher penalty. However, as noted above, imposition of an increased Ineligibility Period is at the discretion of the relevant body – a single example of aggravating circumstances may warrant the maximum period, while multiple examples may call only for a lesser penalty.

**B. THE APPLICATION OF IAAF RULE 40.6 TO MS. KOKKINARIOU'S CASE**

95. The question examined in this section is, given ABP evidence can be used to ground a claim under IAAF Rule 40.6, whether Ms. Kokkinariou's ABP reveals the presence of one or more kinds of aggravating circumstances around her violation of IAAF Rule 32. The IAAF submits that Ms. Kokkinariou's actions constitute three kinds of aggravating circumstances listed in IAAF Rule 40.6: (1) use of Prohibited Substance or Prohibited Method on multiple occasions; (2) engaging in a doping plan or scheme; and (3) engaging in deceptive or obstructing conduct to avoid detection or adjudication of an anti-doping violation. The Sole Arbitrator will examine each kind of aggravating circumstances in turn.
96. Ms. Kokkinariou's ABP comprises 9 blood tests taken over a period between July 2, 2009, and August 22, 2011. As explained above, Ms. Kokkinariou was also tested under the IAAF Blood Testing Protocol on four occasions between August 15, 2006, and June 19 2009. The IAAF attaches to its Appeal Brief the opinions of three hematology experts who were tasked with analyzing Ms. Kokkinariou's ABP pursuant to the IAAF Blood Testing Protocol. Three sets of opinions of the Expert Panel were submitted (1) the initial reviews of Ms. Kokkinariou's ABP; (2) the reviews of Ms. Kokkinariou's explanations of the irregular values present in her ABP; and (3) statements in relation to this appeal. These opinions represent the core evidence for the IAAF's claim that IAAF Rule 40.6 applies to Ms. Kokkinariou's case.
97. IAAF Rule 33.1 provides that:
- "The IAAF [...] shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether the IAAF [...] 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"*
98. IAAF Rule 33.2 provides that:
- "Where these Anti-Doping Rules place the burden of proof upon the Athlete or other Person alleged to have committed an anti-doping violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability, except as provided in Rules [...] 40.6 (aggravating circumstances) where the Athlete must satisfy a higher burden of proof".*
99. The rules do not specify this "higher" burden of proof, although the Sole Arbitrator considers that it is unlikely to be higher than the standard that applies to the IAAF pursuant to IAAF Rule 33.1, given that the standard of proof on athletes to rebut an allegation of an anti-doping rule violation is generally lower than that of the alleging authority. As a result, the Sole Arbitrator shall apply the standard of comfortable satisfaction on both sides.

**1. Application of Article 40.6 to Ms. Kokkinariou's case for use of Prohibited Substance or Prohibited Method on Multiple Occasions.**

100. The Sole Arbitrator examined in detail the opinions of each member of the Expert Panel to determine whether Ms. Kokkinariou had used a Prohibited Substance or Prohibited Method on more than one occasion.

**(i) Initial review by the Expert Panel of Ms. Kokkinariou's ABP**

101. On August 22, 2011, each of the Expert Panel received a request from the IAAF to review Ms. Kokkinariou's ABP coded G111JL7. On September 5, 2011, each member of the Expert Panel provided an analysis of the ABP, and each concluded that absent satisfactory explanation from Ms. Kokkinariou, the ABP was the result of the use of a prohibited substance or a prohibited method on multiple occasions.

102. Prof. Schumacher stated in reference to Ms. Kokkinariou's ABP that it was "*typical to have this kind of profile assuming blood manipulation with erythropoietic stimulants ... [t]here is intact regulation of Hemoglobin concentration and reticulocytes, with high Hemoglobin paired with very low reticulocytes on several occasions, which suggests the use and discontinuation of an erythropoietic stimulant such as erythropoietin*" [emphasis added]. Prof. Schumacher concluded that it was "*very unlikely that any kind of disease of blood cell disorder might have caused the picture seen in this profile, as the red cell indices are within the normal range*".

103. Dr. d'Onofrio stated that "*Hemoglobin values are abnormally high (167 to 175 g/l) in the first three samples collected in July and August 2009, as well as in sample no 8 collected on 17-6-2011*". Dr. d'Onofrio also noted abnormally low hemoglobin in the samples taken on November 25, 2009 (11.7 d/l), March 3, 2010 (13.4 d/l), and a striking increase in hemoglobin in the sample of June 18, 2010 (15.6 d/l), which was "*impossible to explain on the basis of physiology during the full competition season*". Dr. d'Onofrio concluded that the "*[c]lustering of the highest hemoglobin and OFF values in a specific season is an abnormality which cannot be explained by physiology alone, and suggests the action of external factors, such as blood doping ... this is very likely a case of ESA*".

104. Prof. Audran, in assessing the sequence of the OFF-score concluded that with a probability of the 99.9%, three values within the ABP were out of the normal range two above (the sample of July 2, 2009 and June 17 2006); and one below (the sample of November 25, 2009). Prof. Audran found that for the period of July to August 2009, Ms. Kokkinariou's ABP showed high values of hemoglobin and low RET% values which were *characteristic of a treatment with and ESA*". Prof. Audran noted that "*blood transfusions could also be another explanation to the values, but the effect of a blood transfusion doesn't last one month*". Prof. Audran also found that the sample of June 17, 2011 showed an abnormally high hemoglobin value (17.2 g/dl) with a very low RET% (0.19%), which suggested treatment with ESAs (in his opinion, Prof. Audran appears to have mistakenly referenced the RET% from the sample of July 26, 2010 (0.26%), as opposed to the RET% from the sample of June 17, 2011 (0.19%). It is not clear if this is merely a transcription error or if Prof. Audran based his analysis of the June 17, 2011 sample on the incorrect RET% figure. If that latter error occurred, it does not cast

any serious doubt on Prof. Audran's conclusions, as the substance of his analysis remains unshaken. Prof. Audran noted the combination of a high hemoglobin value and a very low RET% which remains the case with either the 0.26% figure, or the 0.19% figure. In any event, Prof. Audran confirmed his conclusions with respect to the June 2011 sample in his later two opinions).

105. All three Experts concluded in their initial review that the Athlete had engaged in a Prohibited Method or used a Prohibited Substance, on at least two occasions (July- August 2009, and June 2011).

**(ii) The Expert Panels' review of Ms. Kokkinariou's explanations of the irregular values present in her ABP**

106. Ms Kokkinariou provided the IAAF with a letter on September 23, 2011 in which she explained the abnormal values and variations observed in her profile. This letter contained three main arguments to explain the large variations in hemoglobin, Reticulocytes, and OFF-score:

- Ms. Kokkinariou underwent a period of extreme tiredness and overtraining due to military training from the end of 2009 until early 2010.
- Ms. Kokkinariou was intermittently using hypoxic devices and engaging in altitude training in Kenya and Lidoriki, Greece.
- The testing equipment used for certain of the samples suffered from analytical issues.

*(a) Extreme fatigue and overtraining*

107. Prof. Schumacher found that the arguments of Ms. Kokkinariou with respect to overtraining were consistent with the values in the samples of August 12, 2009, and November 25, 2009. Dr. d'Onofrio found that *"the striking inversion to a mild anemic condition in November 2009 (with decrease of 33.1% in hemoglobin) cannot simply be explained by overtraining and subjective symptoms"*. The Sole Arbitrator finds that despite possible irregularities with the samples of August 12, 2009, and November 25, 2009, Ms. Kokkinariou's explanation with respect to them is not of relevance to this appeal, as these values were not targeted by the Experts as evidencing use of a Prohibited Substance.

*(b) Altitude training and use of hypoxic devices*

108. In relation to Ms. Kokkinariou's claim regarding hypoxic devices and altitude training, Prof. Schumacher explained in his review that *"the hypoxia of altitude will stimulate the erythropoietic system to increase red cell product. It is now common knowledge that at least 14-18 days of altitudes at*

*2500m or more are necessary to reach a measurable and (regarding performance) worthwhile increase in red cell mass (and performance) using either natural (high mountains) or artificial hypoxia (altitude facilities). Based on the available documentation, the athlete never sojourned at such altitudes in close timely connection with the blood variables in question [samples of July 2, 2009, July 9, 2009, August 12, 2009, and June 17, 2011]. On the doping control forms, the question regarding altitude is answered positively for the samples of July 9, 2009, August 12, 2009, June 18, 2010, July 26, 2010, and June 17, 2011, but unfortunately, the details are illegible. The use of any hypoxic device was negated for all samples, where a DCF was available. In contrast, the only exposures to altitudes higher documented in the whereabouts in the letter of the athlete at locations higher than 1000m are a 2 month sojourn in Kenya at the end of 2010-2011 (duration unknown, no whereabouts available for that period)...and 14 days in Lidoriki (June 1, 2010 to June 13, 2010), which is situated at altitudes between 1200m and 1800m". Prof. Schumacher found that Ms. Kokkinariou's stay in Kenya, assuming it involved several weeks above 2400m, was consistent with the values taken on November 25, 2009, and March 3, 2010, "but off by a large margin from the values obtained in summer prior to the major races in 2009". In relation to Lidoriki, Prof. Schumacher found that the altitudes at that location were "not sufficient to trigger a hematological response of the magnitude such as that observed in the profile". Prof. Schumacher concluded that "natural or artificial hypoxia cannot explain the blood values and their variation observed in the profile G111J17".*

109. Dr. d'Onofrio reached the same conclusions as Prof. Schumacher in relation to hypoxia, noting that *"the training period in Kenya that the Athlete describes in December 2010 and January 2011 paradoxically caused a decrease in hematocrit. Unfortunately there is no mention of that period in the whereabouts information available to me. However, hematocrit and hemoglobin were again at their top after a few months, in the summer competition period"*.

(c) *Analytical problems with blood samples*

110. Ms. Kokkinariou contested analytical rigor of several samples, mainly that taken on June 26, 2010. None of the experts found that any of the samples which constitute Ms. Kokkinariou's ABP were analytically faulty. Prof. Schumacher found that *"careful scrutiny of the documentation packages of the sample mainly contested by the athlete (sample of June 26, 2010) reveals no major analytical or preanalytical flaws that might have influenced the result to the disadvantage of the athlete"*.
111. It is clear from the responses of the Experts to Ms. Kokkinariou's letter of September 23, 2011 that she did not put forward any argument which could put the initial findings of the Expert Panel into doubt. The Experts stressed that no explanation whatsoever was put forward for the *"most suspicious period, i.e. the blood tests obtained in summer 2009"*. Prof. Schumacher's Response to Ms. Kokkinariou's letter explaining the irregular values in her ABP, October 22, 2011). The responses of the Experts serve to buttress their conclusions reached in the initial reviews that Ms. Kokkinariou used a prohibited substance, likely ESA, on at least two distinct occasions – summer 2009 and summer 2011.

**(iii) The Expert's Statements in Relation to This Appeal**

112. On April 20, 2012, the IAAF sent letters to each of the Experts seeking their opinions on the following questions to serve as evidence for this appeal.

- “1. *Is Ms. Kokkinariou's profile for the period of 2.07.09 – 22.08.11 indicative of the repeated use of a prohibited substance or prohibited method (or a combination of both) and/or the employment of a doping scheme or plan? (“Question 1”)*
2. *Is Ms. Kokkinariou's profile for the period of 15.09.06 – 16.09.09 indicative of the use or repeated use of a prohibited substance or prohibited method? Is the athlete's profile in this period consistent with the profile you considered for the purpose of the ABP review process? (“Question 2”)*
3. *Did you consider the ferritin level measured in the sample provided by Ms. Kokkinariou at the 2011 World Championships in Daegu to be abnormal by comparison to the normal reference values? If so, what conclusions, if any, are you able to draw from the level of ferritin found in the athlete's system at the IAAF World Championships in Daegu? (“Question 3”)*
4. *From your review of the athlete's blood profile 2.07.09 – 22.08.11, when do you consider that the athlete first started using a prohibited substance or a prohibited method? (“Question 4”)*”.

*(a) Question 1*

113. All three Experts concluded that Ms. Kokkinariou's ABP is indicative of repeated use of a prohibited method or a combination of both. Prof. Schumacher noted that *“there seem to be different periods in the profile: periods of manipulation which involve samples of [July 2009-August 2009, and June 2011] and periods with more normal values [samples of November 2010, March 2011, and August 2011]. Possible manipulation techniques include the abuse of an erythropoietic stimulant, such as recombinant human erythropoietin. Such substances have to be administered repeatedly (every few days, depending on the substance) over a period of weeks to have a boosting effect on the red cell production of the bone marrow and increase hemoglobin concentration”*.

114. Dr. d'Onofrio stated in response to Question 1 that *“the sequence of results included in the ABP Athlete's blood profile (2.07.09 – 22.08.11) provides clear evidence of the repeated use of a prohibited substance and/or method. In particular the use of an erythropoietic stimulating agent (ESA) like erythropoietin or analogues is almost certain”*. Dr d'Onofrio based his conclusion on *“a) the repeated finding of exceptionally high values of hemoglobin ... b) the interposition, between such high values, of much lower values ... c) the speed and the entity of such repeated variation ... [and] d) the low values of reticulocyte counts in association with high hemoglobin, and the consistently high OFF scores”*. In relation to point d), Dr. d'Onofrio explained that *“association of high hemoglobin with low reticulocytes is a strong evidence of artificial inhibition of reticulocyte formation caused by the suspension of an ESA (or, less likely, by reinfusion of multiple blood bags). It is an indicator of the so-called OFF phase, which is seen when an ESA has been suspended on to three weeks before, such as is observed in doped athletes before important competitions. When the ESA is stopped, hemoglobin remains high for at least two to three weeks,*

*depending on the dosage, while reticulocytes are reduced because the high hemoglobin inhibits endogenous EPO production”.*

115. Prof. Audran concurred with Prof. Schumacher and Dr. d’Onofrio, stating that *“the hematological profile G111JL7 (Ms Kokkinariou) for the period 2/07/09 – 22/08/11 is indicative of repeated use of a prohibited substance or a prohibited method (or a combination of both) in two situations at least: July and August 2009 (samples 1, 2, 3), [and] June 2011 (sample 8)”.*

(b) *Questions 2-4*

116. The Experts responses to questions 2-4 support their shared conclusion set out in their responses to Question 1 that Ms. Kokkinariou had engaged in a Prohibited Method or used a Prohibited Substance on multiple occasions.
117. In relation to Question 2, all Experts found that Ms. Kokkinariou’s profile for the period between August 15, 2006, and June 16, 2009, was indicative of the repeated use of a Prohibited Substance or Prohibited Method. Prof. Schumacher concluded that *“as the profile of Ms. Kokkinariou from 2006 to 2009 shows very similar patterns compared to the profile from 2009 until present (ABP process), it is highly likely that the profile is indicative of the repeated (yearly) use of a prohibited substance or prohibited method by the athlete”.* Dr. d’Onofrio noted that *“a 27.5% increase [in hemoglobin between 2006 and 2007] – as well as the 30.1% decrease in 2009 – is definitely abnormal and cannot be explained by chance or physiology, but only by [a] very unusual, severe and documented disease or by blood doping with ESA”.* Prof. Audran concluded *“that for the period 15/09/06 – 16/06/09, the passport is indicative of the use of a prohibited substance and/ or a prohibited method each year in June”.*
118. All three Experts noted, in response to Question 3 that Ms. Kokkinariou’s ferritin level as measured at the 2011 IAAF World Championships (which took place in Daegu, South Korea, from August 27, 2011 – September 4, 2011) was highly irregular. Prof. Schumacher explained that *“[i]n the sample of Ms. Kokkinariou, a [f]erritin value of 1454 ng/ml was measured. The normal range indicated by the measuring facility for the analytical kit utilized for the analysis (Immulite) is 6-159 ng/ml for adult females ... the data of Ms. Kokkinariou is therefore highly abnormal and represents severe iron overload, which can be caused by excessive intravenous (i.v.) or intramuscular (i.m.) iron substitution, or by a medical condition called “hemochromatosis” .... [I]ron is usually given to patients under therapy with erythropoietic stimulants such as EPO, as these substances only deploy their full effects if the iron supply is sufficient”.* Prof. Schumacher went on to conclude that *“it is unlikely that the cause for [Ms. Kokkinariou’s] ferritin levels is primary hemochromatosis. It is more likely that the levels have been induced by repeated, uncontrolled iron application”.* Dr. d’Onofrio stated that *“in the absence of a very unlikely form of hemochromatosis, the value of ferritin of 1454 ng/mL is strongly abnormal and necessarily reflects intravenous administration of high doses of an iron preparation ... the finding of high ferritin in an athlete is an indirect clue which supports the suspect of a doping program based on ESA intake”.* Prof. Audran stressed that *“that the use of erythropoietic stimulants, such as recombinant erythropoietin (rhEPO), increases the need for iron so much that it exceeds the physiological occurring reserves in storage tissue. Furthermore, increasing body iron levels before or during rhEPO administration improves the resulting erythropoiesis, mostly by parenteral access”.*

119. For the period between July 2, 2009 and August 22, 2011, the Experts agreed that Ms. Kokkinariou first began using a Prohibited Substance shortly before the sample taken on July 2, 2009.

(c) *Dr. Sottas' Submission*

120. In addition to the opinions of the Experts, the IAAF attaches to its Appeal Brief a statement by Dr. Sottas of WADA. Dr. Sottas was asked by the IAAF to provide his expert opinion on the ABP of Ms. Kokkinariou, and whether he agreed with the conclusions reached by the Expert Panel in respect of her case. In his statement, Dr. Sottas made reference to the Abnormal Blood Profile Scores that were computed from Ms. Kokkinariou's ABP. The Abnormal Blood Profile Scores do not form part of an ABP *per se*, but are produced by the ABP software used by the IAAF to aid analysis of ABPs.

*Ms. Irini Kokkinariou Abnormal Blood Profile Scores*

<b>Date</b>	02.07.09	09.07.09	12.08.09	25.11.09	03.03.10	18.06.10	26.07.10	17.06.11	22.08.11
<b>ABP S</b>	3.94	2.88	3.69	-1.85	-1.09	1.20	1.60	4.43	-0.54

Dr. Sottas explained that “falling between 0.0 and 1.0 indicates a suspicion of doping”, and that “superior to 1.0 indicates that is more likely to obtain a hematological profile assuming blood doping than assuming a normal physiological condition”. Dr. Sottas explained that 6 of the 9 samples which formed Ms. Kokkinariou's ABP had an Abnormal Blood Profile Score of above 1.0, and that “these results confirm the evaluation made by the experts that we have at least two doping regimens, one in summer 2009 and one from June 2010 to June 2011”.

(d) *Conclusion on the Experts' Statements*

121. All three Experts as well as Dr. Sottas concluded unequivocally that Ms. Kokkinariou used a Prohibited Substance or engaged in a Prohibited Method on multiple occasions. These findings are not contested by any of the Respondents. The arguments of the Experts are thoughtfully constructed and well grounded, and no evidence has been presented to or found by the Sole Arbitrator that places the conclusions of any of the Experts in doubt. Accordingly, the Sole Arbitrator finds that the opinions of the Experts, taken together, indicate to his comfortable satisfaction that Ms. Kokkinariou used a Prohibited Substance or engaged in a Prohibited Method on more than one occasion.

122. The Sole Arbitrator concludes, it being clear from the evidence set out above, that Ms. Kokkinariou both breached IAAF Rule 32, and that in light of her repeated use of a prohibited substance (rh-EPO), aggravating circumstances were present in the context of the violation pursuant to IAAF Rule 40.6.

**C. APPLICATION OF ARTICLE 40.6 TO MS. KOKKINARIOU FOR ENGAGING IN A DOPING PLAN OR SCHEME AND DECEPTIVE CONDUCT**

123. As explained above, the IAAF argues not only that Ms. Kokkinariou's repeated use of rhEPO triggers IAAF Rule 40.6, but that her actions represent two further examples of aggravating circumstances, namely: (1) a doping plan or scheme; and (2) deceptive conduct designed to avoid detection and/or adjudication of a doping violation.

**1. Ms Kokkinariou's Violation as Part of Doping Plan or Scheme**

124. The IAAF submits that the Experts concluded that Ms. Kokkinariou was engaged in a doping plan or scheme. Prof. Schumacher unambiguously stated that *"The profile is the result of a doping scheme aimed at increasing performance at certain competitions and timed to avoid positive testing in conventional doping tests during such events"*.

125. Neither Dr. d'Onofrio nor Prof. Audran explicitly state that Ms. Kokkinariou was engaged in a doping plan or scheme. However, all three Experts' opinions indicate that Ms. Kokkinariou's ABP taken together with her blood test results from the 2006-2009 period reveal a consistent pattern of rhEPO/ESA doping. Similar hemoglobin and reticulocyte values appear at around the same time of year every year between 2006 and 2011 except 2010. As noted by Prof. Schumacher in relation to the 2006-2009 period, *"it is highly likely that the profile is indicative of the repeated (yearly) use of a prohibited substance or prohibited method by the athlete"*. Dr. Sottas stated in relation to the same period that Ms. Kokkinariou *"consistently presents abnormal values in the summer period (June to mid-August) and normal values between end of August and May"*. The Sole Arbitrator views that the consistency of irregularity in Ms. Kokkinariou's ABP and prior blood screens as evidencing her engaging in a yearly doping scheme. It should be noted, as did Dr. Sottas, that *"no test was performed during the end of July 2010 and middle of June 2011 in which the athlete may have stopped doping (typical doping regimes to rEPO do not last more than three months)"*. Accordingly, the Sole Arbitrator cannot hold that Ms. Kokkinariou used an ESA during 2010, although is inclined to support Dr. Sottas opinion that *"a plausible scenario is that the athlete blood doped during the summer sport season in 2009, 2010, and 2011"*. Regardless of whether Ms. Kokkinariou did in fact halt her use of rhEPO in 2010, her use prior and subsequent to that time was highly consistent, strongly indicating the presence of a well organized doping scheme.

126. Additional evidence of the presence of a doping scheme is provided by Ms. Kokkinariou's ferritin level measured at the IAAF World Championships, 2011. All three Experts as well as Dr. Sottas agree that Ms. Kokkinariou's ferritin level was highly irregular, and was likely the result of iron supplements taken to boost the efficacy of an ESA regimen. Prof. Schumacher concluded *"it is unlikely that the cause for [Ms. Kokkinariou's] ferritin levels is primary hemochromatosis. It is more likely that the levels have been induced by repeated, uncontrolled iron application"*. Dr. d'Onofrio stated *"the finding of high ferritin in an athlete is an indirect clue which*

*supports the suspect of a doping program based on ESA intake*". Dr. d'Onofrio stated that Ms. Kokkinariou's high ferretin value in August 2011 is "*consistent with former use of ESA, almost certainly demonstrated by her blood picture on 17 June 2011*". The Sole Arbitrator finds that the opinions of the Experts and Dr. Sottas are sufficient proof that Ms. Kokkinariou used ferritin in concert with rh-EPO or another ESA in June 2011. The use of an additional substance to enhance the effects of a Prohibited Substance demonstrates a considerable degree of forethought, and as such Ms. Kokkinariou's use of ferritin forms an additional element of planning to an already methodical and drawn-out doping scheme.

127. The Sole Arbitrator agrees with the conclusion of Prof. Schumacher that Ms. Kokkinariou's profile is the result of a long-running doping scheme "*the result of a doping scheme*". The statements of the Experts regarding Ms. Kokkinariou's ABP and ferritin levels (measured in 2011) show to the Sole Arbitrator's comfortable satisfaction that Ms. Kokkinariou used a Prohibited Substance as part of structured regimen between 2006 and 2009, and once again in 2011. The Sole Arbitrator finds this clearly qualifies as planned activity under IAAF Rule 40.6.

## **2. Ms Kokkinariou Engaged in Deceptive Conduct Designed to Avoid Detection and/or Adjudication of a Doping Violation**

128. The final claim of the IAAF in relation to Ms. Kokkinariou's actions constituting aggravating circumstances under IAAF Rule 40.6 is that she engaged in deceptive conduct to conceal detection of her violation of IAAF Rule 32. In support of this claim, the IAAF noted that Prof. Schumacher concluded that Ms Kokkinariou's profile is the result of a doping that was "*timed to avoid positive testing in conventional doping tests during such events*".
129. The Sole Arbitrator notes that most, if not all, doping practices are timed to avoid detection. As a result, an aggravating circumstance is likely to require a further element of deception. However, since IAAF Rule 40.6 is already engaged, this point may be left open in this case.

## **3. Conclusion on Application of IAAF Rule 40.6**

130. For the reasons outlined above, the Sole Arbitrator finds that Ms. Kokkinariou committed a violation of IAAF Rule 32 under two separate categories of aggravating circumstances pursuant to IAAF Rule 40.6. Ms. Kokkinariou has been found to have repeatedly used a Prohibited Substance over a protracted period as part of a doping scheme, and on the basis of this multiple triggering of IAAF Rule 40.6, the Sole Arbitrator finds that Ms. Kokkinariou's Ineligibility Period should be extended to the maximum permitted period of four years.
131. Pursuant to IAAF Rule 40.10, the Ineligibility Period shall begin on the date of this award, and shall be reduced by any period of Provisional Suspension. The IAAF provisionally

suspended Ms. Kokkinariou on October 27, 2011. As a result, the Ineligibility Period shall be reduced by the period between October 27, 2011 and the date of this award.

132. Pursuant to IAAF Rule 40.8, all competitive results obtained by Ms. Kokkinariou from the date of the first anti-doping violation to the start of the Provisional Suspension shall be disqualified. The IAAF submits that all Experts agree that Ms. Kokkinariou committed an anti-doping violation from at the latest the period immediately prior to the sample collected on July 2, 2009. As a result, all of Ms. Kokkinariou's results shall be disqualified from July 2, 2009 through to the commencement of her provisional suspension on October 27, 2011, in accordance with IAAF Rule 40.8.

### **ON THESE GROUNDS**

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

1. The appeal filed by the International Association of Athletics Federations on April 16, 2012 against the decision of the Disciplinary Committee of the Hellenic Amateur Athletic Association of January 20, 2012 is upheld.
2. The decision of the Disciplinary Committee of the Hellenic Amateur Athletic Association of January 20, 2012 finding Ms. Iriini Kokkinariou guilty of anti-doping violation under IAAF Rule 32.2(b) is upheld.
3. The decision of the Disciplinary Committee of the Hellenic Amateur Athletic Association of January 20, 2012 finding that there were no aggravating circumstances under IAAF Rule 40.6 are set aside.
4. Ms. Iriini Kokkinariou is held to have committed a violation of IAAF Rule 32 under aggravating circumstances pursuant to IAAF Rule 40.6.
5. Ms. Iriini Kokkinariou is declared ineligible to compete in any IAAF or IAAF Member competition for a period of four years starting from the date of this award. Credit shall be given to the period of provisional suspension served by Ms Iriini Kokkinariou since October 27, 2011.
6. All competitive results obtained by Ms. Kokkinariou on or after July 2, 2009 through to the commencement of her provisional suspension on October 27, 2011 are disqualified.
- (...)
9. All other requests for relief are rejected.