



Arbitration CAS 2016/O/4682 International Association of Athletics Federations (IAAF) v. All Russia Athletics Federation (ARAF) & Natalya Evdokimova, award of 22 June 2017

Panel: Mr Lars Halgreen (Denmark), Sole Arbitrator

Athletics (middle distance)

Doping (blood doping)

CAS jurisdiction under IAAF Rule 38-3

Applicable law

Establishment of the violation of “use” of a prohibited method

Determination of the period of ineligibility based on aggravating circumstances

Disqualification of results in light of the fairness exception

1. As a consequence of the suspension of its membership, the ARAF is not in a position to conduct a hearing process in an athlete’s case by way of the delegated authority from the IAAF pursuant to Rule 38 of the 2016 IAAF Rules. In these circumstances, it is plainly not necessary for the IAAF to impose any deadline on the ARAF for that purpose. Consequently, if the athlete is an International-Level Athlete in accordance with IAAF Rules, and the ARAF is indeed prevented from conducting a hearing in the athlete’s case within the deadline set by Rule 38.3 of the IAAF Rules, therefore, the IAAF is permitted to refer the matter directly to a Sole Arbitrator appointed by CAS subject to an appeal to CAS in accordance with Rule 42 of the IAAF Rules.
2. Pursuant to the legal principle of *tempus regit actum*, any procedural matters are governed by the regulations in force at the time of the procedural act in question, whereas the substantive issues are governed by the IAAF Rules in force at the time of the alleged violation.
3. According to Rule 33 IAAF Rules, the IAAF has the burden to establish the occurrence of an anti-doping rule violation. It is specifically stated that facts related to Anti-Doping Rule Violations may be established “by any reliable means” including, but not limited to, conclusions drawn from longitudinal profiling such as the athlete’s biological passport (ABP) and other analytical information. The ABP has been generally accepted as a reliable means of evidence to assist in establishing Anti-Doping Rule Violations. Furthermore, evidence such as an Expert Panel’s unanimous opinions can convincingly establish that the athlete engaged in blood doping practices throughout a subsequent period. Finally, the establishment of the fact that the athlete generally had high levels of haemoglobin (HGB) on the eve of competitions, whereas her base level of HGB appeared to be much lower as shown by the samples taken, when the athlete was not competing is relevant.
4. The fact for an athlete to be involved over a substantial period (almost five years) in

both multiple doping offences as well as a doping scheme or plan constitutes aggravating circumstances.

5. **The question of fairness and proportionality of Rule 40.8 of the 2008 IAAF Rules providing for automatic disqualification of results has been discussed in light of the length of the disqualification period vis-à-vis the time which may be established as the last time that the athlete objectively committed a doping offence according to the ABP. Under these circumstances, it may be unfair and disproportionate, if the disqualification period was extended all the way through the commencement of the provisional suspension especially where there is no clear evidence that the athlete was using doping after the last sample collection establishing doping. On that basis there would be no legal grounds to extend the disqualification for an additional period, such additional period of time being mainly caused by the duration of the IAAF investigations and procedures.**

I. THE PARTIES

1. The International Association of Athletics Federations (hereinafter referred to as the “Claimant” or the “IAAF”) is the world governing body for the sport of athletics established as an association under the laws of Monaco. The IAAF has its registered seat in Monaco.
2. The All Russia Athletics Federation (hereinafter referred to as the “First Respondent” or the “ARAF”) is the national governing body for the sport of athletics in the Russian Federation, with its registered seat in Moscow. The ARAF is the relevant member federation of the IAAF for Russia, currently suspended from membership.
3. Ms Natalya Evdokimova (hereinafter referred to as the “Second Respondent” or the “Athlete”) is a Russian athlete born 17 March 1978, specialising in middle-distance events and participating in world championships and Olympic Games. The Athlete is an International-Level Athlete for the purposes of the IAAF competition rules (hereinafter referred to as the “IAAF Rules”).
4. The Claimant, the First Respondent and the Second Respondent together shall herein-after be referred to as the “Parties”.

II. FACTUAL BACKGROUND

5. Below is a summary of the main relevant facts as established on the basis of the Parties written or oral submissions and the evidence as presented during the course of the present arbitration proceedings and during the hearing. This background is set out for the sole purpose of providing a synopsis of the matter in dispute. Additional facts may be set out, where relevant,

in connection with the legal discussion that follows below. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, he refers in his Award only to the submissions and evidence he considers necessary to explain his reasoning.

6. The Athlete has been charged with violating IAAF Rule 32.2(b) – *Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method* – based on a longitudinal analysis of her Athlete Biological Passport (hereinafter referred to as the “ABP”) and allegedly involves prohibited blood doping during the period from August 2009 until November 2014.
7. Blood doping is defined by the World Anti-Doping Agency (hereinafter referred to as “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 and Answers on the Athlete Biological Passport).
8. From 17 August 2009 until 26 November 2014, the IAAF collected seven ABP blood samples from the Athlete. Each of the samples was analysed by a laboratory accredited by WADA and logged in the Anti-Doping Administration & Management System (“ADAMS”) using the so-called “Adaptive Model”, which is the statistical model that calculates, whether the reported haemoglobin concentration (“HGB”), and the percentage of immature red blood cells viz. reticulocytes (“RET%”) and the so-called “OFF-score”, which is a combination of HGB and RET% values, fall within an athlete’s expected distribution.
9. Thus, the ABP consists of an electronic record that compiles and collates a specific athlete’s test results and other data over time and is unique to that particular athlete. The haematological model of the ABP records the value in an athlete’s blood sample of haematological parameters that are known to be sensible to change in red blood cell production.
10. In the testing period from August 2009 to November 2014, the registered values for HGB, RET% and OFF-score in the Athlete’s respective seven samples were as follows:

No.	Date of Sample	HGB (g/dL)	RET%	OFF-score
1.	17 August 2009	17.00	0.15	146.80
2.	27 August 2009	16.00	1.23	123.50
3.	29 July 2010	15.60	0.18	130.54
4.	26 August 2011	17.50	0.22	146.90
5.	26 January 2012	15.90	0.23	130.20
6.	29 May 2012	14.40	0.57	98.70
7.	26 November 2014	14.40	1.36	74.00

11. In accordance with IAAF procedures, the Athlete’s ABP was submitted to a panel of experts for an initial review on an anonymous basis. The expert panel was comprised of three experts, prof. York Olaf Schumacher, prof. Giuseppe d’Onofrio, prof. Michel Audran (hereinafter referred to as “the Expert Panel”), who each in their own right possessed expert knowledge in the field of clinical haematology (diagnosis of blood pathological conditions), laboratory

medicine, and haematology (assessment of quality control data, analytical and biological variability and instrument calibration) and sports medicine and exercise physiology.

12. The Expert Panel examined the Athlete's ABP, which was identified with the code "BPR982Q26", and the identity of the Athlete was anonymised. The Expert Panel produced a joint expert opinion dated 15 February 2016, which reads as follows:
13. **"Conc.: Evaluation of Blood Profile BPR982Q26 – Joint expert opinion**

Dear colleague,

*In accordance with paragraph 8.29 of the IAAF Anti-Doping Regulations, this letter constitutes the joint evaluation of the Expert Panel in the above referenced case. Access to the profile coded **BPR982Q26** was provided in ADAMS. Each of us had previously evaluated the profile individually and delivered an independent initial review. Furthermore, for the purpose of this joint evaluation, we have reviewed the following documents, available in pdf format:*

- *the ABP profile summary*
- *a review of the ABP Athlete Passport Documentation Package prepared by the Montreal APMU*
- *the full documentation packages (LPDs) of samples 1, 2, 3, 4, 5 and 6*
- *the certificate of analysis (CA) of sample 7*
- *the competition schedule of the athlete.*

The profile includes 7 valid samples obtained from a female athlete in the years 2011-2015. In the automated analysis by the adaptive model, which determines whether fluctuations in the biomarkers of the Athlete Biological Passport are within the expected individual reference ranges for an athlete or not, the intra-individual upper or lower limits of the profile are repeatedly breached with abnormalities at 99.9% specificity¹ for the following samples:

- *sample 1 (high hemoglobin [HB], low reticulocytes, high OFF score)*
- *sample 4 (high HB and high OFF score)*
- *sample 5 (low HB, low OFFs)*
- *sample 6 (low HB, high reticulocytes, low OFFs).*

The probability of sequence abnormality is above 99.9% for HB, reticulocytes and OFF score.

Hematological evaluation

The main abnormalities of this blood profile reside in samples 1 to 5, with extreme deviations in samples 1 and 4.

¹ *The Athlete ABP profile with 99.0% specificity, as indicated in the WADA ABP guidelines v. 4.0, is available in ADAMS and in the review of the ABP Athlete Passport Documentation Package prepared by the Montreal APMU*

Sample 1 was taken on 17-8-2009, on the eve of the Berlin Athletics World

Championship races. It shows an extremely high HB (17.0 g/dl), high enough to meet one of the WHO requirements for the diagnosis of the neoplastic disease polycythemia vera in females. At the same time, reticulocytes were very low and the OFF score was extraordinarily high, so as to identify a specific pattern of erythropoietic inhibition by increased red cell mass, consequent to previous intake of erythropoiesis stimulating agents (ESAs) or the recent transfusion of a large amount of blood [1-3]. This is confirmed by the complete absence of recently formed Immature Reticulocyte Fraction (IRF = 0.0%, from the instrument report in the LDP for sample 1, page 8). The same abnormal hematologic picture is present, although to a lesser extent, in sample 2 collected ten days thereafter: This indicates partial recovery from the suppressor effect of ESA suspended several weeks before.

Sample 3 was collected on 29-7-2010, on the eve of the Barcelona European Championship: HB is high, reticulocytes are extremely low and the OFF score is again very high. Similar to the feature outlined above, this is another full pattern of erythropoietic suppression (OFF phase), typical of ESA doping stopped a few weeks before the expected antidoping control at the time of an important competition.

Sample 4, collected on 26-8-2011, on the eve of the Daegu World Athletics Championship races, represents – with the highest HB, low reticulocytes (and IRF), and the highest OFF score of the profile – an even more striking example of the OFF condition following previous ESA doping or transfusion.

Sample 5 results are similar to sample 3.

The probability to have a single OFF score of 130 or higher, such as in samples 1 to 5 of the BPR982Q26 Passport – in an undoped female athlete is less than 1 in 10000 [2]; the probability of a sequence of five results above 130 in an undoped female athlete is thus even lower.

HB, reticulocytes and the OFF score in sample 6 (May 2012) and 7 (November 2014) are normal for an adult female and further highlight the extreme abnormality of the first part of the profile. The breach of ABP limits in sample 6 is a paradoxical consequence of a shift of the individual thresholds caused by the highly abnormal previous values.

Quality of haematological laboratory results

All samples were scrutinized for their analytical details outlined in the CAs and LDPs. In the available documentation, there is no indication that any analytical or pre-analytical issues might have influenced the results in a way that would explain the abnormalities in the profile or alter the analytical data to the disadvantage of the athlete. Several minor inaccuracies present in the documentation packages do not affect the analytical outcome. The observation and haematological assessment of instrument reports, including stable red blood cell indices and excellent preservation of the distribution and separation of the different white blood cell populations on the Sysmex scattergrams, as well as quality control data confirms absence of pre-analytical interferences, good analytical performance and interlaboratory comparability of results.

Conclusion

Based on these facts and the information available to date, it is our unanimous opinion that, in the absence of an appropriate explanation, the likelihood of the abnormalities described above of the BPR982Q26 profile being due to blood manipulation, namely the artificial increase of red cell mass using erythropoiesis stimulating substances or blood transfusion, is extremely high. On the contrary, the likelihood of environmental factors or

a medical condition causing the described pattern is extremely low.

We therefore conclude that it is highly likely that a prohibited substance or prohibited method has been used that it is unlikely that the passport is the result of any other cause.

We remain at your disposal for any further questions you might have.

Sincerely yours,

Michal Audran

[signature]

Guiseppe d'Onofrio

[signature]

York Olaf Schumacher

[signature]

References

1. *Audran M, Gareau R, Matecki S, et al. Effects of erythropoietin administration in training athletes and possible indirect detection in doping control. Med Sci sports Exerc 1999, 31:639-645.*
 2. *Gore CJ, Parisotto R, Ashenden MJ, Stray-Gundersen J, Sharpe K, Hopkins W, et al. Second-generation blood tests to detect erythropoietin abuse by athletes. Haematologica 2003, 88:333-344.*
 3. *Russell G, Gore CJ, Ashenden MJ, Parisotto R, Han AG. Effects of prolonged low doses of recombinant human erythropoietin during submaximal and maximal exercise. Eur j Appl Physiol 2002, 86:442-449".*
14. Based on the conclusion of the Expert Panel in the joint expert opinion, the IAAF Anti-Doping Administrator wrote to the Athlete on 22 February 2016 to report the abnormalities detected in her ABP profile. In the letter, the IAAF advised the Athlete that the IAAF was considering bringing charges against her, but that such charges would not be brought until she had been given the opportunity to provide an explanation for the alleged abnormalities. A deadline of 7 March 2016 was granted for the Athlete to provide any explanations.
15. At the end of the stipulated deadline, the Athlete has not provided any explanations to the IAAF. Notwithstanding the Athlete's participation, the Expert Panel on 13 April 2016 confirmed its previous joint expert opinion and stated that the Expert Panel unanimously has determined that *"based on the information in the passport, it is highly likely that the athlete used a Prohibited Substance or Prohibited Method, and that it was unlikely to find the passport abnormal assuming any other cause"*.

16. On 14 April 2016, the IAAF notified the Athlete of the alleged anti-doping rule violation, her immediate provisional suspension and of her right to request a hearing within 14 days of the notification.
17. On 15 April 2016, the Athlete acknowledged receipt of the IAAF letter of 14 April 2016.
18. On 10 May 2016, the IAAF Anti-Doping Administrator wrote another letter to the Athlete, who had not responded further to the notification. In the new letter, the IAAF advised the Athlete that her case would be referred to the Court of Arbitration for Sport (the “CAS”) in Lausanne, Switzerland, in view of the suspension of the ARAF membership of the IAAF.
19. The IAAF offered the Athlete to choose between the following two procedures: Her case could either be referred to a Sole Arbitrator appointed by the CAS with the possibility of a further appeal against such Sole Arbitrator’s decision pursuant to IAAF Rule 38.3 or, subject to the content of all relevant parties, to a CAS Panel for a single hearing with no right of appeal pursuant to IAAF Rule 38.19. The Athlete was given a deadline of 22 May 2016 to state her preference.
20. The IAAF never received a response from the Athlete to its letter of 10 May 2016.

III. PROCEEDINGS BEFORE THE CAS

21. On 23 June 2016, the IAAF filed a Request for Arbitration with CAS in accordance with Article R38 of the Code of Sport-related Arbitration (2016 edition) (the “CAS Code”).
22. The IAAF informed CAS that its Request for Arbitration was to be considered as its Statement of Appeal and Appeal Brief and requested the matter to be submitted to a Sole Arbitrator.
23. On 30 June 2016, the CAS Court Office initiated the present arbitration and noted the Claimant’s request for this matter to be heard by the CAS as a first instance body, but that in doing so the provisions applicable to the CAS Appeals Arbitration Division (Article R47 *et seq.* of the CAS Code) should apply accordingly and pursuant to Article S20 of the CAS Code. The present arbitration was assigned to the Ordinary Arbitration Division of the CAS, but would be dealt with according to the Appeals Arbitration Division Rules (Articles R 47 *et seq.* of the CAS Code). In its letter to the Parties, CAS further invited the Respondents to submit their Answers within 30 days of receipt of the letter by courier.
24. On 14 July 2016, Mr Lars Halgreen, Attorney-at-law, Copenhagen, Denmark, was appointed by the CAS as the the Sole Arbitrator in this matter.
25. On 15 August 2016, the CAS Court Office communicated to the Parties that the deadline set out in the letter of 30 June 2016 had expired on 3 August 2016. To date the CAS Court Office had not received the Respondents’ Answers to the Request for Arbitration or any other communication from the Respondents in this regard.

26. On 5 September 2016, the CAS Court Office informed the Parties that the Sole Arbitrator had decided to hold a hearing in this matter, which was to be held in Lausanne. For the sake of limiting the arbitral costs in these procedure, the Sole Arbitrator had proposed that the hearing be held on the same day as - albeit separately from - the hearing in the procedure CAS 2016/O/4683.
27. On 17 October 2016, the CAS Court Office forwarded an Order of Procedure to the Parties, which was duly signed by the First Respondent on 20 October 2016 and by the Claimant on 24 October 2016. The Second Respondent has not signed the Order of Procedure, whereas it has been duly notified to her by the email provided by the Appellant, as well as all other correspondences in this matter.
28. On 9 November 2016, the CAS Court Office informed the Parties that due to compelling reasons, the Sole Arbitrator was not in a position to hold the hearing on 30 November 2016, but he proposed that the hearing be rescheduled to 7 December 2016.
29. On 7 December 2016, a hearing was held at the CAS in Lausanne, Switzerland. In addition to the Sole Arbitrator, Ms Andrea Zimmermann, Counsel to the CAS, was present at the hearing.
30. Mr Ross Wenzel, Counsel, represented the IAAF, but no representatives of the First Respondent or the Second Respondent were present at the hearing.
31. The Sole Arbitrator asked at the outset of the hearing the IAAF to confirm that it had no objection to the constitution and composition of the arbitral tribunal, and the IAAF made such confirmation.
32. The Sole Arbitrator heard evidence via video conference by Prof. Giuseppe d'Onofrio, expert haematologist, and Dr. York Olaf Schumacher, expert in sports medicine.
33. Both expert witnesses were invited by the Sole Arbitrator to tell the truth subject to the sanctions of perjury under Swiss law. The IAAF and the Sole Arbitrator had the opportunity to examine and pose questions to the expert witnesses.
34. After the expert witnesses had testified, the IAAF was afforded ample opportunity to present its case, submit its arguments and answer the questions posed by the Sole Arbitrator.
35. At the end of the hearing, the IAAF expressly stated that it had no objections with the procedure of these proceedings and that its right to be heard had been respected.

IV. SUBMISSIONS OF THE PARTIES

A. The position of the IAAF

36. In its Request for Arbitration, the IAAF made the following requests for relief:
- i) *“CAS has jurisdiction to decide on the subject matter of this dispute;*
 - ii) *The request for arbitration of the IAAF is admissible;*
 - iii) *The Athlete be found guilty of an Anti-Doping Rule Violation in accordance with Rule 32.2(b) of the IAAF Rules;*
 - iv) *A period of ineligibility of between two and four years be imposed on 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 a total period of ineligibility to be served;*
 - v) *All competitive results obtained by the Athlete from 17 August 2009 through to the commencement of her provisional suspension on 14 April 2016, shall be disqualified, with all resulting consequences (including forfeiture of any titles, awards, medals, profits, prizes, and appearance money);*
 - vi) *The arbitration cost be borne entirely by the Respondents;*
 - vii) *The IAAF is awarded a contribution to its legal costs”.*
37. The IAAF’s submissions in support of its requests for relief may, in essence, be summarised as follows:
- The Athlete’s ABP profile constitutes clear evidence that the Athlete has committed an Anti-Doping Rule Violation in breach of Rule 32.2(b) as follows:
 - i) The ABP sequence is abnormal for HGB RET% and OFF-score with a probability in excess of 99.9 %.
 - ii) The Athlete’s ABP profile contains individual “outliners” for all three blood markers. An outlier on the upper or lower limit is abnormal with a probability of 99.9 % (i.e. 1 in 10,000) and an outlier over or under the limit is abnormal with an even higher degree of certainty.
 - iii) Sample 1 – 5 are all examples of OFF-phases following the succession of erythropoietic stimulation.
 - In view of the foregoing, and in particular, on the basis of the opinions of the Expert Panel, the IAAF submits that the ABP profile of the Athlete constitutes reliable evidence of blood doping in the period from 2009 to 2012.
 - With respect to the period of eligibility, the IAAF submits that the Sole Arbitrator may impose a sanction of up to four year ineligibility on the Athlete in accordance with the Rules 40.2 and 40.6 of the 2012 IAAF Rules.
 - In particular, the IAAF maintains that aggravating circumstances pursuant to Rule 40.6 of the 2012 IAAF Rules may be applied, as the evidence indicates that the Athlete (i)

used a Prohibited Substance or a Prohibited Method on multiple occasions, and (ii) engaged in a doping plan or scheme.

- In view of the CAS Jurisprudence in cases concerning aggravating circumstances, the IAAF submits that, in view of the extreme values and repeated indications of blood doping by the Athlete, the Sole Arbitrator should impose a period at the very upper end of the two – four year spectrum.
- In accordance with Rule 40.10 of the 2012 IAAF Rules, the IAAF submits that the period of ineligibility should commence on the date of the (final) CAS Award.
- With respect to disqualification, the IAAF is willing to consider that the date of sample no. 1 (17 August 2009) is the date of the first violation. This means that the 2012 IAAF Rules provides for the the automatic disqualification of all results from this date of the anti-doping rule violation through the commencement of any period of provisional suspension.
- Moreover, the IAAF submits that the “fairness exception”, which had been included in the 2008 IAAF Rules, were removed from all versions of the IAAF Rules from 2009 to 31 December 2014. Therefore, the applicable 2012 IAAF Rules do not include the “fairness exception” to be applied in this case.
- However, under the principle of *lex mitior* the Athlete’s sanction may be determined in accordance with the current IAAF Rules (i.e. the 2016 IAAF Rules). Thus, Rule 40.9 of the 2016 IAAF Rules provides that subsequent results shall be disqualified “*unless fairness requires otherwise*” (the “fairness exception”).
- The IAAF submits, however, that if the Athlete were on the basis of *lex mitior* to seek to avail herself of the fairness exception in the 2016 IAAF Rules, she would have to accept that her pre-2015 Anti-Doping Rule Violations were entirely, as opposed to only partially, under the 2016 IAAF Rules. The IAAF hereby rejects the notion of “mix-and-match” the rules and sanctions to the benefit of the Athlete.
- The IAAF points out that both the European Court of Human Rights and the Swiss Federal Tribunal have ruled that an athlete cannot combine two laws and applying parts of one and parts of another, whenever it would be more convenient.
- Should the Athlete elect to be sanctioned entirely pursuant to the 2016 IAAF Rules, it is her choice, but in that case the IAAF submits that she should necessarily suffer a four-year period of ineligibility in respect of her pre-2015 Anti-Doping Rule Violations.
- In this context, the IAAF points out that Rule 40.2(a)(i) stipulates that the Athlete has to establish that the Anti-Doping Rule Violation was not intentional to avoid a sanction of four years of ineligibility. It is uncontroversial to assert that blood manipulation is indeed an intentional form of doping, and the Athlete has made no arguments that the violations, if established, would not be intentional.
- In view of the foregoing and unless the Athlete accepts that her Anti-Doping Rule Violations may be sanctioned entirely in accordance with the 2016 IAAF Rules, the IAAF submits that all her results from 17 August 2009 until her provisional suspension

on 14 April 2016 shall be disqualified together with the forfeiture of any money, medals, prize money, and appearance money.

B. The position of the First and Second Respondents

38. Although duly invited by the CAS Court Office, neither the ARAF, nor the Athlete did submit any position on the merits in these proceedings.

V. LEGAL ANALYSIS

A. Jurisdiction

39. The IAAF submits that the jurisdiction of CAS in these proceedings derives from Rule 38.3 of the 2016-2017 IAAF Rules, which were effective as from 1 November 2015.

40. Rule 38.3 of the 2016 IAAF Rules provides as follows:

“If a hearing is requested by an Athlete, it shall be convened without delay, and the hearing completed within two months of the date of notification of the Athlete’s request to the member. Members shall keep the IAAF fully informed as to the status of all cases pending hearing and of all hearing dates, as soon as they are fixed. The IAAF shall have the right to attend all hearings as an observer. However, the IAAF attendance at a hearing, or any other involvement in a case, shall not affect its right to appeal its Member’s decision to CAS pursuant to Rule 42. If the Member fails to complete a hearing within two months, or, if having completed a hearing, fails to render a decision within a reasonably time period thereafter, the IAAF may impose a deadline for such event. If in either case the deadline is not met, the IAAF may elect, if the Athlete is an International-Level Athlete, to have the case referred directly to a Single Arbitrator appointed by CAS. The case shall be handled in accordance with CAS rules (those applicable to the appeal arbitration procedure without reference to any time limit for appeal). The hearing shall proceed at the responsibility and expense of the Member, and the decision of the Single Arbitrator shall be subject to appeal to CAS in accordance with Rule 42. A failure of the Member to hold an hearing for an Athlete within two months under this Rule, may further result in the imposition of a sanction under Rule 45”.

41. At the time of the IAAF letter to the Athlete dated 22 February 2016, the suspension of ARAF membership of the IAAF had been confirmed on the occasion of the IAAF Council meeting in Monaco on 26 November 2015. On 17 June 2016, the IAAF Council decided that the ARAF had not met the conditions for reinstatement to membership, and the suspension therefore remains in place.

42. As a consequence of the suspension of its membership, the ARAF was (and is) not in a position to conduct the hearing process in the Athlete’s case by way of the delegated authority from the IAAF pursuant to Rule 38 of the 2016 IAAF Rules. In these circumstances, it is plainly not necessary for the IAAF to impose any deadline on the ARAF for that purpose.

43. Consequently, the Sole Arbitrator notes that the Athlete is an International-Level Athlete in accordance with IAAF Rules, and the ARAF is indeed prevented from conducting a hearing

in the Athlete's case within the deadline set by Rule 38.3 of the IAAF Rules. Therefore, the Sole Arbitrator confirms that the IAAF has been permitted to refer the matter directly to a Sole Arbitrator appointed by CAS subject to an appeal to CAS in accordance with Rule 42 of the IAAF Rules. The IAAF and the ARAF also confirmed the jurisdiction of CAS based on this rule by having signed the Order of Procedure.

44. Hence, it follows that CAS has jurisdiction to adjudicate and decide on the present matter, and that the present case shall be dealt with according to the Appeals Arbitration Rules in the CAS Code.

B. Applicable Law

45. Article R58 of the the CAS Code provides the following:

"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 or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".

46. Rule 42.23 of the 2016 IAAF Rules states as follows:

"In all CAS appeals involving the IAAF and CAS, the CAS Panel shall be bound by the IAAF Constitution, Rules and Regulations (the Anti-Doping Regulations)".

47. Rule 42.24 of the 2016 IAAF Rules further provides as follows:

"In all CAS appeals involving the IAAF, the governing law shall be Monegasque law and the arbitration shall be conducted in English, unless the Parties agree otherwise".

48. Rule 30.1 of the 2016 IAAF Rules states as follows:

"The Anti-Doping Rules shall apply to the IAAF, its Members, and Area Associations and to Athletes, Athletes' 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".

49. With respect to the applicable law in these proceedings, the IAAF submits that the procedural aspects shall be subject to the 2016-2017 edition of the IAAF Rules and the substantive aspects of the asserted Anti-Doping Rules Violation shall be governed by the 2012-2013 edition of the IAAF Rules, being in force at the time of the alleged violations, and subject to the possible application of the principle of *lex mitior*. To the extent that IAAF Rules do not deal with the relevant issue, Monegasque law shall apply (on a subsidiarily basis) to such issue. Neither Respondents put forward any specific position in respect of the applicable law. Hence, the Sole Arbitrator observes that it is not disputed that the proceedings are primarily governed by the IAAF Rules.

50. The IAAF submits that the Athlete's ABP is evidence of Anti-Doping Rules Violations

occurring from 2009 – 2012, and the IAAF Rules in force at that period were the same, in all material aspects, with respect to violations and sanctions.

51. Pursuant to the legal principle of *tempus regit actum*, the Sole Arbitrator is therefore satisfied that any procedural matters are governed by the regulations in force at the time of the procedural act in question. As such, whereas the substantive issues are governed by the 2012-2013 edition of the IAAF Rules, procedural matters are governed by the 2016-2017 version of the IAAF Rules.

C. The Merits

a) *The Main Issues*

52. The main issues to be resolved by the Sole Arbitrator in these proceedings are:

Question 1

Did the Athlete violate Rule 32.2(b) of the 2012-2013 IAAF Rules?

Question 2

If so, what sanctions shall be imposed on the Athlete?

aa) *Analysing Question 1*

53. The Sole Arbitrator observes that the following general regulatory framework is relevant as to the merits of the case at hand.

54. The relevant parts of Rule 32 of the 2012-2013 IAAF Rules read as follows:

“RULE 32 Anti-Doping Rule Violation

1. *Doping is defined as the occurrence of one or more of the anti-doping rule violations set out in Rule 32.2 of these Anti-Doping Rules.*
2. *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) is 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 anti-doping rule violation for Use of a Prohibited Substance or a Prohibited Method.*
- (ii) the success or failure of the Use or Attempted Use of a Prohibited Substance or Prohibited Method is not material. It is sufficient that the Prohibited Substance or Prohibited*

Method was Used, or Attempted to be Used, for an anti-doping rule violation to be committed”.

55. Rules 33 (1), (2), and (3) of the 2012-2013 IAAF Rules read as follows:

“RULE 33 Proof of Doping

- 1. The IAAF, Member or other prosecuting authority shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether the IAAF, Member or other prosecuting authority has established an anti-doping rule violation to the comfortable satisfaction of the relevant hearing panel, bearing in mind the seriousness of the allegation which is made. The standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt.*
- 2. 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 40.4 (Specified Substances) and 40.6 (aggravating circumstances) where the Athlete must satisfy a higher burden of proof.*

Methods of Establishing Facts and Presumptions

- 3. Facts related to anti-doping rule violations may be established by any reliable means, including but not limited to admissions, evidence of third Persons, witness statements, expert reports, documentary evidence, conclusions drawn from longitudinal profiling such as the Athlete’s Biological Passport and other analytical information”.*

56. The Sole Arbitrator has noted that the IAAF in its attempt to establish an Anti-Doping Rule Violation on the Athlete under the IAAF Rule 32.2(b) relies on the conclusion drawn from longitudinal profiling as shown by the Athlete’s ABP.

57. In particular, the IAAF focuses on the abnormal sequence in HGB, RET %, and OFF-score values in the Athlete’s ABP with a probability in excess of 99.9 %, which findings are supported by the joint expert opinion of 15 February 2016 provided by the Expert Panel.

58. The following conclusion was thus reached by the Expert Panel:

“Based on these facts and information available to date, it is our unanimous opinion, that in the absence of an appropriate explanation, the likelihood of the abnormalities described above BPR 982Q29 profile being due to blood manipulation, namely the artificial increase of red cell mass using erythropoiesis stimulating substances or blood transfusion, is extremely high. On the contrary, the likelihood of environmental factors or a medical condition causing the described pattern is extremely low.

We therefore concluded that it is highly likely that a Prohibited Substance or Prohibited Method has been used and that it is unlikely that the passport is result of any other cause”.

59. Again, on 13 April 2016, notwithstanding the Athlete’s participation in explaining the abnormalities in her ABP profile, the Expert Panel confirmed its previous joint expert opinion and determined unanimously that *“based on the information in the passport, it is highly likely that the*

Athlete used a Prohibited Substance or Prohibited Method, and that it is unlikely to find the passport abnormal assuming any other cause”.

60. As pointed out above, Rule 33 of the 2012-2013 IAAF Rules outline the methods, by which the IAAF may establish facts and presumptions as proof that an Athlete has committed an Anti-Doping Rule Violation. It is specifically stated that facts related to Anti-Doping Rule Violations may be established “*by any reliable means including, but not limited to, ... conclusions drawn from longitudinal profiling such as the Athlete’s biological passport and other analytical information*”.
61. In the present proceedings, neither the ARAF, nor the Athlete has submitted any claims, arguments, or evidence at all. For that very reason, none of the Respondents have expressed a general or specific doubt regarding the reliability of the ABP or the findings in the seven samples submitted in the period from 2009 to 2012.
62. Although, the Respondents have refused to participate in these proceedings, it is nevertheless the duty of the Sole Arbitrator to ensure that the IAAF has fulfilled its burden of proof pursuant to Rules 33 (1), (2), and (3) of 2012-2013 IAAF Rules.
63. Firstly, the Sole Arbitrator observes that the ABP has been generally accepted as a reliable and accepted means of evidence to assist in establishing Anti-Doping Rule Violations. This has been confirmed in legal literature and in a number of CAS cases relating to blood doping, see e.g. CAS 2010/A/2174, para 9.8, CAS 2016/O/4469, para 137, CAS 2016/O/4463, para 90, and CAS 2016/O/4481, para 133.
64. Secondly, after having evaluated the evidence brought forward by the IAAF in these proceedings, in particular the Expert Panel’s unanimous opinions referred to above, the Sole Arbitrator finds it to be convincingly established by the IAAF that the Athlete engaged in blood doping practices throughout the period between August 2009 and November 2012.
65. Thirdly, the Sole Arbitrator is satisfactorily convinced that the Athlete generally had high levels of HGB on the eve of competitions, whereas her base level of HGB appeared to be much lower as shown by the samples taken, when the Athlete was not competing.
66. Against this background, the Sole Arbitrator finds that the IAAF successfully has established that the Athlete has violated Rule 32.2 (b) of the 2012-2013 IAAF Rules.

ab) Analysing Question 2

67. Having established that the Athlete has committed an Anti-Doping Rule Violation pursuant to Rule 32.2(b) of the 2012 IAAF Rules, the Sole Arbitrator will now deal with the issue of sanctions (in particular (a) the period of ineligibility and (b) disqualification).

- Period of Ineligibility

68. The Sole Arbitrator notes that the IAAF has requested that CAS imposes a sanction of up to

four years of ineligibility of the Athlete in accordance with Rule 40.2 and 40.6 of the 2012 IAAF Rules.

69. For the Sole Arbitrator to evaluate the relevant circumstances surrounding the Athlete's blood doping and the seriousness of this offence, it is necessary to analyse, whether aggravating circumstances have been present that may increase the period of ineligibility. In this context, Rule 40.6 of the 2012 IAAF Rules is important and reads as follows:

“Aggravating Circumstances which may increase the Period of Eligibility

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 the Person committed the anti-doping rule violation as part of a doping plan or scheme, either individually or involving a conspiracy or common enterprise to commit anti-doping rule violations; the Athlete or other Person used or possessed multiple Prohibited Substances or Prohibited Methods or used or possessed a Prohibited Substance or Prohibited Method on multiple occasions, a normal individual would be likely to enjoy performance-enhancing effects of the anti-doping rule violation(s) beyond the otherwise applicable period of Ineligibility; the Athlete or other Person engaged in deceptive or obstructing conduct to avoid the detection or adjudication of an anti-doping rule violation. For the avoidance of doubt, the examples of aggravating circumstances referred to above are not exclusive and other aggravating factors may also justify the imposition of a longer period of Ineligibility.*
- b) *An Athlete or other Person can avoid the application of this Rule by admitting the anti-doping rule violation as asserted promptly after being confronted with the anti-doping rule violation (which means no later than the date of the deadline given to provide a written explanation in accordance with Rule 37.4 (c) and, in all events, before the Athlete competes again)”.*
70. As shown in the listing of examples of aggravating circumstances that may justify the imposition of a period of ineligibility greater than the standard sanction of two years, the provision points to a doping plan or scheme or the use or possession of a Prohibited Substance or Prohibited Method on multiple occasions.
71. In relation to these two types of circumstances, the IAAF has argued that the Athlete's ABP clearly shows that the Athlete has been involved in both types of aggravating circumstances.
- (i) Doping plan or scheme
72. The IAAF submits that the Athlete's blood doping has been carefully planned to avoid direct detection and maximise the impact in competition. Indeed, the use of blood doping techniques, which necessarily involves advice and support from medical personnel and other

third parties, has consistently been held by the CAS to constitute a doping plan or scheme.

(ii) Use of Prohibited Substances and Prohibited Methods on multiple occasions

73. The IAAF has submitted that whereas the ABP profile provides only a snapshot of the Athlete's blood values, when the sample was collected, there is certainly evidence of repeated use of Prohibited Substances and/or Methods in that all five samples indicated blood doping, in particular around major competitions.
74. In support of its claim for increased sanctions based on aggravating circumstances, the IAAF has referred to CAS Jurisprudence, which has supported IAAF claims. In CAS 2012/A/2773 and CAS 2013/A/3080 a four-year period and a two-years and nine months' period of ineligibility, respectively were imposed on athletes for ABP violations. In CAS 2016/O/4469, the Sole Arbitrator established that the ABP violation of the Athlete had lasted considerably longer than the case CAS 2013/A/3080, but on the other hand the IAAF did not maintain that the whole career of the Athlete was built on doping, the sole arbitrator found that the period of ineligibility of three years and eight months was appropriate to the severity of the Athlete's misbehaviour. In a recent decision (CAS 2016/O/4481) decided after the hearing, an athlete was also sanctioned with a period of ineligibility of four years for having been engaged in using doping for more than three years.
75. Again, the Sole Arbitrator may unfortunately decide on the matter without having heard any mitigating or other circumstances by the Athlete that could lead to a lesser period of ineligibility.
76. Against this background, the Sole Arbitrator finds that the Athlete over a five-year period has been involved in both multiple doping offences as well as a doping scheme or plan, since the findings in her ABP profile clearly indicates that the blood doping had been orchestrated to avoid detection around major championships and competitions. In fact, to underscore the seriousness of the Athlete's doping offence, the Sole Arbitrator notes that the expert witnesses at the hearing testified that the OFF-score values in the Athlete's sample 1 and 4 were actually some of the highest they had ever seen in a female athlete.
77. Taking all relevant and aggravating factors into account, the Sole Arbitrator finds that the Athlete should be sanctioned with a period of ineligibility of four years.
78. In accordance with Rule 40.10 of the 2012 IAAF Rules, the Sole Arbitrator finds that the period of ineligibility should commence on the date of final CAS Award and that any period of provisional suspension effectively served by the Athlete before the entry into force of this CAS Award shall be credited against the total period of ineligibility to be served. In the light of such rule and of the fact that the provisional suspension is still running without any interruption, the Sole Arbitrator determines that, for practical reasons, the period of ineligibility shall start on 14 April 2016, i.e. on the date of commencement of the provisional suspension and not on the date of the award.

- Disqualification

79. With respect to the issue of disqualification pursuant to the Athlete's Anti-Doping Rule Violations, the Sole Arbitrator observes that the IAAF is willing to consider that the date of sample No. 1 on 17 August 2009 is the date of the first violation. The Sole Arbitrator therefore concurs with this date being the relevant for any possible consequences as a result of disqualification.
80. Based on Rule 40.8 of the 2008 IAAF Rules, the Sole Arbitrator notes that a literal reading of this provision would then provide for the automatic disqualifications of all results from the date of the Anti-Doping Rule Violation, i.e. 17 August 2009 through the commencement of the period of provisional suspension on 14 April 2014.
81. In this case, the automatic disqualification of all results would thus be for a period of almost five year (4 years, 7 months and 27 days), even though the date of 29 May 2012 (Sample 6) is the last date, which in the opinion of the Sole Arbitrator indicates that the Athlete has, or could have, been involved in a doping scenario. The Sole Arbitrator notes in this context that the expert opinion stated that "*HB, reticulocytes and the OFF score in Sample 6 (May 2012) [...] (is) normal for an adult female*" but the experts nevertheless also stressed that "*the breach of ABP limits in Sample 6 is a paradoxical consequence of a shift of the individual thresholds caused by the highly abnormal previous values*". Therefore, the Sole Arbitrator is of the opinion that the date of 29 May 2012 is the last date on record that establishes that the Athlete has or could have been involved in some form of "doping scenario".
82. The interpretation of Rule 40.8 of the 2008 IAAF Rules has been made by several CAS panels under these circumstances in recent decisions, see e.g. CAS 2016/O/4464, CAS 2016/O/4481 and CAS 2016/O/4883.
83. Especially the question of fairness and proportionality has been discussed in light of the length of the disqualification period vis-à-vis the time which may be established as the last time that the Athlete objectively committed a doping offence according to the ABP.
84. Based on established CAS Jurisprudence, which under the principle of proportionality requires the panel to assess, whether a sanction is appropriate to the violation committed in the case at stake, the panel in CAS 2016/O/4481 at para 197, stated the following in similar circumstances:
"The Sole Arbitrator does not consider it fair to disqualify any results of the Athlete between 19 August 2012 and 24 August 2015 considering that there is no evidence that the Athlete used doping substances or methods during this period and that she is not accountable for the fact that the result management process got started a long time after the relevant ABP samples became known to the IAAF".
85. Under these circumstances, and concurring with the opinion expressed in the paragraph above, the Sole Arbitrator finds that it would be unfair and disproportionate, if the disqualification period was extended all the way through the commencement of the provisional suspension of 14 April 2016.

86. This result is motivated by the fact that there is no clear evidence that the Athlete was using doping after the date of the sample collected on 29 May 2012, and on that basis there would be no legal grounds to extend the disqualification for an additional period of almost four years, such additional period of time being mainly caused by the duration of the IAAF investigations and procedures.
87. Consequently, and based on the principle of fairness and proportionality the Sole Arbitrator rules that all competitive results obtained by the Athlete from 17 August 2009 until 29 May 2012, shall be disqualified with all resulting consequences (including forfeiture of any titles, awards, medals, profits, prizes, and appearance money) pursuant to Rule 40.8 of the 2012 IAAF Rules.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The Request for Arbitration filed on 23 June 2016 by the International Association of Athletics Associations against the All Russia Athletics Federation and Ms Natalya Evdokimova is upheld.
2. A period of ineligibility of four years is imposed on Ms Natalya Evdokimova, starting on 14 April 2016.
3. All results of Ms Natalya Evdokimova since 17 August 2009 are disqualified through to 29 May 2012, including forfeiture of any titles, awards, medals, points, prizes, appearance money obtained during this period.
4. (...).
5. (...).
6. All other and further prayers or requests for relief are dismissed.