



**Arbitration CAS 2019/A/6254 Alexander Ivanov v. Russian Anti-Doping Agency (RUSADA),
award of 14 February 2020**

Panel: The Hon. Annabelle Bennett AC SC (Australia), Sole Arbitrator

Athletics (race walking)

Doping (Athlete's Biological Passport, ABP)

Establishment of an anti-doping rule violation by the ABP

ABP profile

OFF Score

Adaptive Model

ABP as reliable means of evidence

Standard of proof

- 1. The Athlete's Biological Passport (ABP) is not, of itself, sufficient to establish an anti-doping rule violation; it is also a matter for the interpretation of the ABP by experts.**
- 2. The ABP is an electronic record maintained for an individual athlete in which the results of the analysis of samples collected over a period of time are collated. It contains a haematological profile consisting of the combined results of haematological parameters analysed in respect of a series of blood samples. These parameters are subject to natural fluctuations. By tracking the parameters, it is possible to establish a range for these natural variations. The purpose of a passport is to individualise parameters within an expected range.**
- 3. The OFF Score refers to the relationship between haemoglobin and reticulocytes in the athlete's blood. Doping to increase endurance is designed to increase the oxygen-carrying capacity of blood which, in turn, will affect the amount of haemoglobin in blood and the percentage of reticulocytes. A significant fluctuation in an OFF score can indicate doping.**
- 4. The haematological profile incorporates the use of "the Adaptive Model", a mathematical model designed to identify unusual longitudinal results from athletes, based on a series of algorithms, which identifies a profile which deviates from an athlete's usual parameters, referred to as "atypical". An ATPF is a report generated by the Adaptive Model, which identifies either a single marker value or a longitudinal profile of marker values as being outside the athlete's individual range. Under the ABP Guidelines, an ATPF requires further investigation and/or analysis.**
- 5. The ABP is, and has been generally accepted as, a reliable mean of evidence to assist in establishing ADRV.**

6. A conclusion drawn from an ABP by an expert panel that it is *“highly likely”* that an athlete used a prohibited substance or prohibited method and that any alternative explanation is *“highly unlikely”*, establishes the ADRV to the requisite standard of comfortable satisfaction of the adjudicating body, greater than a mere balance of probabilities.

I. PARTIES

1. Mr. Alexander Ivanov (“Mr. Ivanov”, the “Appellant” or the “Athlete”) is an international-level race walker of Russian nationality.
2. The Russian Anti-Doping Agency (“RUSADA”) is the Russian National Anti-Doping Organisation affiliated with, but currently suspended by, the World Anti-Doping Agency (“WADA”).

II. FACTUAL BACKGROUND

A. Background Facts

3. Below is a summary of the relevant facts and allegations based on the Parties’ written submissions, pleadings and evidence adduced at the hearing. Additional facts and allegations found in the Parties’ written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, she refers in her Award only to the submissions and evidence that she considers necessary to explain her reasoning.
4. The object of this dispute is a decision issued by a disciplinary committee of RUSADA in an anti-doping case brought against Mr. Ivanov based on various irregularities in his Athlete Biological Passport (“ABP”) between 9 July 2012 and 9 February 2014.
5. As the characteristics of the ABP are essential to understanding the facts and submissions in this case, the Sole Arbitrator considers it necessary to give some explanation of the ABP.
6. As described by RUSADA in its written submissions, the ABP is an electronic record kept for an individual athlete. The ABP organises the results of Sample analysis collected from an athlete over a time period and regularly monitors biological markers on a longitudinal basis to help the indirect detection of prohibited substances and methods. From the collection and monitoring of values related to these identified markers, an individual longitudinal profile is created. The collected Samples are analysed following the appropriate analytical protocol by a WADA-accredited Laboratory and their results are integrated into the Anti-Doping Administration and

Management System (“ADAMS”), which is an online data management tool operated by WADA. The ABP program uses a statistical model referred to as the Adaptive Model, that is meant to detect unusual longitudinal results from athletes. An Atypical Passport Finding (“ATPF”) is a report generated by the Adaptive Model which identifies either a single Marker value, or a longitudinal profile of Marker values, as being outside the athlete’s individual range. When new biological data are uploaded in ADAMS, the Athlete Passport Management Unit (“APMU”) receives a notification, which updates the ABP and applies the Adaptive Model. The APMU proceeds with the mandatory steps outlined in the Athlete Biological Passport Operating Guidelines (“ABP Guidelines”). Pursuant to the ABP Guidelines:

“for the Haematological Module, the Adaptive Model automatically processes in ADAMS two primary Markers, haemoglobin concentration (HGB) and stimulation index OFF-score (OFFS), and two secondary Markers, the reticulocyte percentage (RET%) and the Abnormal Blood Profile Score (ABPS). An ATPF is generated when a HGB and/or OFFS value of the last test falls outside the expected intra-individual ranges. Furthermore, the longitudinal profile composed of (up to) the last 5 valid HGB and/or OFFS values is also considered as an ATPF when deviating from the expected ranges, as determined by the Adaptive Model (sequence ATPF). An ATPF is only generated by the Adaptive Model based on values of the primary Markers HGB and OFFS or the sequence thereof”.

If the athlete’s haemoglobin and/or OFF Score values exceed the 99.9 percentile of the expected ranges returned by the Adaptive Model, the APMU is required to assign and liaise with an expert panel. The statistical result for the athlete does not in itself justify a conclusion that an anti-doping rule violation (“ADRV”) has occurred but calls for an explanation by the athlete (see CAS 2015/A/4010).

a. *The collection of Mr. Ivanov’s blood Samples*

7. Mr. Ivanov was subjected to testing by RUSADA on several occasions between 9 July 2012 and 9 February 2017. This testing resulted in the collection of several blood samples, which were analysed by a Laboratory accredited by the WADA in respect of the analysis of biological samples, specifically blood samples. The analyses gave the following results:

Select#	Sample Code	Test Type	Date of Test	Hemodilution	Validity	CAT (h)	HGB [g/dL]	RET% [%]	IRF [%]	MCV [fL]	RDW-SD [fL]	Off-score []
* 16	228096	OOC	09-Feb-2017	No	Valid	30	13.8	0.78	6.0	89.0	38.2	85.00
15	223043	OOC	16-Jan-2017	No	Valid	30	14.9	0.93	7.0	88.7	38.8	91.10
14	128403	OOC	15-Nov-2016	No	Valid	35	13.8	1.20	9.8	90.9	41.9	72.30
13	223010	OOC	11-Oct-2016	No	Valid	16	13.7	1.01	6.5	87.5	37.9	76.70
12	107005	OOC	24-Sep-2015	Unknown	Valid	18	13.5	1.01	5.5	87.8	39.8	74.70
11	107013	OOC	30-Jul-2015	Unknown	Valid	19	14.5	0.70	7.0	97.0	48.5	94.80
10	105563	OOC	12-Jun-2015	Yes	Valid	24	15.2	0.78	6.7	91.8	43.0	99.00
9	105414	OOC	04-May-2015	Unknown	Valid	16	16.1	1.32	7.2	93.6	46.0	92.10
8	105572	OOC	10-Apr-2015	No	Valid	44	14.3	1.17	7.4	91.8	42.0	78.10
7	827520	OOC	29-Jan-2015	Unknown	Valid	28	15.2	1.19	8.3	88.4	43.1	86.50
6	157360	OOC	12-Aug-2014	No	Valid	25	15.6	0.56	4.4	91.2	44.0	111.10
5	809845	OOC	16-Apr-2014	No	Valid	38	14.6	1.47	7.3	89.9	44.0	73.30
4	832954	OOC	05-Aug-2013	No	Valid	8	14.8	0.68		88.7		98.50
3	809340	OOC	18-May-2013	No	Valid	10	15.1	0.60		88.0		104.52
2	797938	OOC	21-Dec-2012	Unknown	Valid	41	15.6	0.64		85.6		108.00
1	565673	OOC	09-Jul-2012	Unknown	Unknown	28	15.7	0.54		91.0		112.90

8. During this testing period, the haematology profile of Mr. Ivanov’s biological passport consisted of 16 samples and Mr. Ivanov’s profile was marked by the APMU in ADAMS as abnormal. An ATPF was then generated by the Adaptive Model in respect of Mr. Ivanov’s ABP.
9. On 13 August 2015, Mr. Ivanov was informed that he was not selected by the Association of Russian Athletics Federation (“ARAF”) for the 2015 World Athletics Championships in Beijing from 22 to 29 August 2015 on the basis of alleged violations of anti-doping rules by other individuals at the training center where he trained. Mr. Ivanov subsequently requested information and documentation concerning this decision. The ARAF did not provide Mr. Ivanov with such information.
10. Pursuant to the ABP Guidelines, Mr. Ivanov’s haematology profile data were forwarded for consideration to three experts in the area of classical haematology, sport medicine and sport physiology, notably Mssrs. Giuseppe d’Onofrio, Jacob Morkeberg and Yorck Olaf Schumacher (the “Expert Panel”). The Expert Panel was requested by RUSADA to provide a joint expert statement on Mr. Ivanov’s haematological profile in the context of the ABP.
11. In accordance with the ABP Guidelines, the Expert Panel did not know the identity of the Athlete when providing its opinion.

b. The Expert Panel Report

12. On 21 March 2017, the Expert Panel completed its expert report (the “Expert Panel Report”). The relevant points read as follows:

“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 profile

was flagged with abnormalities at 99% specificity twice for sample 5 (lower limit OFF score, upper limit Reticulocyte%) and once for sample 12 (lower limit haemoglobin concentration) The sequence for OFF score is abnormal at >99.9%.

All samples were scrutinized for their analytical details outlined in the documentation packages and certificates of analysis. In the available documentation, there is no indication that any analytical or preanalytical issues might have influenced the results in a way that would explain the abnormalities in the profile or influence the analytical result to the disadvantage of the athlete.

In our view, the data of the athlete bears as main abnormal feature high OFF scores in samples collected just prior to certain competitions (sample 1 and 6 and to a lesser degree sample 3). This reflects an artificially elevated red cell mass (high haemoglobin) and a subsequent suppression of erythropoiesis (low reticulocytes) as a compensation (1). In addition, sample 5 shows stimulation reflected by an elevated reticulocyte percentage (%ret) and the pattern observed in sample 5 and 6 is pathognomonic for the use and discontinuation of an erythropoiesis stimulating substance (2). The samples in question have been obtained prior to major events, which adds to the suspicion: Sample 1: Junior World Championships 2012, sample 3: European cup 2013, sample 6: European Championships 2014.

The samples collected from the 24th of September 2015 onwards most likely represent the athlete's true baseline values.

Based on these facts and the information available to date, it is our unanimous opinion that in the absence of an appropriate physiological explanation, the likelihood of observing the described abnormalities assuming blood manipulation, namely the artificial increase of red cell mass using for example erythropoiesis stimulating substances, is high. On the contrary, the likelihood of environmental factors or a medical condition causing the described pattern is low.

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

13. The Expert Panel Report refers to the OFF Score, which is defined as a numerical expression of the relationship between haemoglobin and reticulocytes. The Expert Panel Report specifies that a significant fluctuation in an OFF Score can indicate doping.
14. In the case of Mr. Ivanov, the Expert Panel declared “main abnormal feature high OFF Scores” in the following samples:
 - Sample 1 (565673) provided on 9 July 2012 (“Sample 1”);
 - Sample 3 (809340) provided on 18 May 2013 (“Sample 3”); and
 - Sample 6 (157360) provided on 12 August 2014 (“Sample 6”).
15. In addition, the Expert Panel asserted that Mr. Ivanov’s profile was flagged with abnormalities at 99% specificity (the sequence for OFF Score being abnormal at >99.9%) for the following samples:

- Sample 5 (809845) provided on 16 April 2014 (“Sample 5”) was flagged twice with abnormalities at 99% specificity; and
- Sample 12 (107005) provided on 24 September 2015 (“Sample 12”) was flagged once with abnormalities at 99% specificity.

16. The Expert Panel indicated that most samples were obtained prior to major events. The competition schedule of Mr. Ivanov during the testing between 9 July 2012 and 9 February 2017 was as follows:

Date	Competition
11-12 June 2011	Russian Race Walking Championships
21-24 July 2011	European Junior Championships
28-29 December 2011	Student Indoor Competitions
6 January 2012	Rodionova Memorial Walk
18-19 February 2012	Russian Race Walking Championships
12-13 May 2012	World Race Walking Cup
10-15 July 2012	World Junior Championships
23-24 February 2013	Russian Race Walking Championships
19 May 2013	European Cup
11-14 July 2013	European Championships U23
10-18 August 2013	IAAF World Championships
22-23 March 2014	Russian Race Walking Championships
3-4 May 2014	World Race Walking Cup
12-17 August 2014	European Championships
27-28 February 2015	Russian Race Walking Championships
27-28 February 2016	Russian Race Walking Championships

17. On 13 April 2017, RUSADA, in accordance with the IAAF Anti-Doping Rules (the “IAAF ADR”), requested inter alia that Mr. Ivanov be given an opportunity to explain his abnormal blood profile.

18. On 14 April 2017, Mr. Ivanov responded to this letter as follows:

“I confirm receipt of notification from the Russian Anti-Doping Agency “RUSADA” about the initiation of an investigation into atypical indicators of my biological passport, including expert opinions.

In August 2015, I formally addressed to the CEO of the RUSADA anti-doping agency Khabriev R. U. with a request to find out what kind of claims do they (RUSADA) have personally to me. At that time, RUSADA was checking all athletes and employees of the Olympic Training Center named after V.M. Chegin (I was training in this center). No charges have been brought against me. That is, my ABP profile was not marked by the ADAMS program as abnormal.

Prior to the commencement of the proceedings, I ask you to provide possible explanations, as atypical indicators appeared in my hematological profile, which had not existed before”.

19. RUSADA did not consider this response to be satisfactory.

c. RUSADA Notification to Mr. Ivanov – the Decision

20. On 2 May 2017, RUSADA informed Mr. Ivanov that it was proceeding with a disciplinary case against him based on the Expert Panel Report and following the atypical profile in his ABP. He was, therefore, notified that he was being charged with having committed a violation of Article 2.2 (Use or attempt to use a prohibited substance or method by an athlete) of the World Anti-Doping Code – 2015 edition – (the “2015 WADC”). A provisional suspension was subsequently imposed on him as from 2 May 2017.

21. On 15 and 16 May 2017, Mr. Ivanov contested the alleged ADRV and requested a hearing.

22. On 17 May 2017, Mr. Ivanov requested additional documentation related to his ABP.

23. On 24 May 2017, RUSADA submitted its initial response to Mr. Ivanov.

24. On 11 July 2017, RUSADA provided additional documentation to Mr. Ivanov, namely six laboratory documentation packages.

25. On 3 August 2017, Mr. Ivanov requested additional documentation related to his ABP, notably:

“1. In the 21 March 2017 “Joint Expert Opinion”, it is claimed that “the data of the athlete bears as main abnormal feature high OFF scores in samples collected just prior to certain competitions (sample 1 and 6 and to a lesser degree sample 3)”. While the 6 laboratory documentation packages that were provided by email on 12 July 2017 did contain the laboratory documentation packages for “sample 1” and “sample 6”, it did not include the laboratory documentation package for “sample 3” [sample #809340, collected on 18 May 2013]. As this is one of the 3 samples on which the joint experts principally rely in their contention that an anti-doping rule violation has been committed, it is submitted that fairness requires that the complete laboratory documentation package be provided for “sample 3” [sample #809340, collected on 18 May 2013].

2. For “sample 6” [sample #157360, collected 12 August 2014], the Blood Sampling Form that is contained as a part of the laboratory documentation package notes that the athlete had resided or trained at altitude (>1000 m) during the prior 2 weeks; however, the details portion of the form (date, altitude and location) are illegible. It is requested that a legible copy of this portion of the Blood Sampling Form be provided (if necessary, a copy of the original that would be maintained by the LAAF). It is submitted that this information is highly relevant to any fair assessment of the Athlete Biological Passport.

3. For “sample 5” [sample #809845, collected 16 April 2014], the Doping Control Form that is contained as a part of the laboratory documentation package provides no information as to whether that the athlete had resided or trained at altitude (>1000 m) during the prior 2 weeks. However, the ADAMS information that was provided previously seems to indicate that the athlete had trained at altitude (>1000 m) during the prior 2 weeks, although the information is incomplete. Please provide the information that is in the possession of RUSADA and/ or the LAAF regarding the date/ duration, altitude and location that Mr. Ivanov had provided at the time that the 16 April 2014 sample was collected”.

26. In September 2017, the Expert Panel was requested by RUSADA to comment on further questions raised by Mr. Ivanov in relation to Sample 5 and Sample 6.
27. On 24 September 2017, the Expert Panel evaluated Mr. Ivanov's additional questions and issued a document named Evaluation of Additional Questions (the "Expert Panel Opinion of 24 September 2017"). The relevant points read as follows:

"1- Altitude sample 6

In the DCF, it is stated that the athlete resided or trained at altitude 1800 m from 28 July until 09 August 2014, thus 13 days.

It is well known that altitude can impact certain markers of the Athlete Biological Passport (ABP) (1-3). However, altitude needs to be of sufficient duration and exposure height to trigger measurable changes in the haematological system. In the present case, the athlete resided 13 days at an altitude of 1800m, which corresponds to an hypoxic dose (4) of 561 kmh, which, according to the scientific literature in the field causes only small changes in haemoglobin mass of around 2% (see figure 1 in (4)). Accordingly, the changes in peripheral markers such as haemoglobin concentration and reticulocytes will highly likely be very minor.

Relating these facts to the profile, it appears that the OFF score of the athlete in the sample in question was 111, with her [sic] normal baseline ranging around 80. There is thus an increase of 30 points in her OFF score. Comparing this change to the data reported in the literature, it appears that in the altitude studies investigating the OFF score after altitude interventions (see references above), the changes were much smaller (between 10 and 20 points) despite a much higher and longer exposure. Furthermore, the sample in question here was taken 3 days after the return from altitude. An OFF picture, which can be observed after return from altitude, usually develops after 7-14 days (1).

Thus, both in terms of timing and magnitude of the effect, altitude exposure alone does not explain the abnormalities observed in the profile. The information that the athlete resided or trained at an altitude of 1800 m from 28 July till 09 August 2014 therefore does not influence the conclusion of our joint expert opinion.

2- Altitude sample 5

For this sample, it apparently is not clear whether or not the athlete had resided at altitude, as there seem to be contradicting declarations in ADAMS and the DCF.

The pattern visible in sample 5 shows high reticulocytes, which are typically observed while the bone marrow is stimulated to produce new red cells. This can be either in the first phase of (significant) altitude exposure or during the administration of an erythropoiesis stimulating agent. Given that there has apparently been no documented altitude exposure (ABP supplementary report form is not available as indicated on the DCF: N/A box ticked in the middle of the page), the first option therefore becomes highly unlikely, the second one remains a possibility. Even if altitude had been declared, the magnitude of reticulocyte changes is large and likely only achievable at significant altitudes at a very specific period of an altitude stay (typically in the first week, after which reticulocytes usually normalise).

Thus, the additional new information does not change our evaluation of the profile.

Conclusion

Considering the information available at this stage, we therefore confirm our previous opinion that it is typical to observe features such as seen in the profile assuming blood manipulation. It is highly unlikely that it is the result of a normal physiological or pathological condition but might in contrast be caused by the use of a prohibited method”.

28. On 4 October 2017, RUSADA provided Mr. Ivanov with the documentation and the Expert Panel Opinion of 24 September 2017.
29. On 8 December 2017, Mr. Ivanov submitted his prehearing written submissions and a written expert report from Mr. Paul Scott (“Mr. Scott’s Report”). Mr. Scott’s Report provided inter alia as follows:
 5. *The documentation for samples 1,2, 3, 5 and 12 have reasons to doubt their validity based on the documentation provided. Sample 1 is listed as being of “unknown” validity in the ABP. Samples 2, 3, 5 and 12 have no temperature log.*
 6. *As reported in the Joint Expert Report, the main abnormalities in the athlete’s ABP are the high OFF scores for samples 1 and 6.*
 7. *I do not agree that the passport sufficiently establishes artificial manipulation. The athlete routinely trains at altitude, including in the weeks prior to these sample collections. The elevation in HB is explainable by this training.*
 8. *There is no “pattern” to observe in samples 5 and 6. These samples were collected four months apart. In no way can these samples be related to one another.*
 9. *There is no reason to single out collections after September 24, 2015 as being “true” baseline values. Elite athletes place themselves under enormous stresses. The idea that any one sample (or small subset of samples) is “true baseline” has no basis. The model (the ABP) is the baseline.*
 10. *It is possible that a prohibited substance or method was used and that this explains some of the variation seen in the athlete’s ABP (particularly samples 1 and 6). It is also possible that a combination of altitude and normal physiological and analytical variation fully explain the ABP. This is a borderline case, at best. It is not “highly likely” that a prohibited substance or method was used”.*
30. It is noted that Mr. Ivanov raised some questions about the laboratory packages, namely that an absence of the temperature registration log was identified in Sample 2 (797938, collected on 21 December 2012) (“Sample 2”); Sample 3; Sample 5; Sample 9 (105414, collected on 4 May 2015) (“Sample 9”) and Sample 12.

31. On 31 January 2018, the Expert Panel assessed the issues raised by Mr. Ivanov in his prehearing written submissions and completed a document entitled “Reply to Athlete” (the “Expert Panel Opinion of 31 January 2018”).
32. On 22 August 2018, RUSADA provided its second written response to Mr. Ivanov.
33. On 30 August 2018, a hearing took place before the Disciplinary Anti-Doping Committee of RUSADA (the “Anti-Doping Committee”) whereby Mr. Ivanov disputed his charge. As the hearing did not conclude, the procedure was adjourned until 9 October 2018.
34. On 9 October 2018, the hearing reconvened and the Anti-Doping Committee, after hearing from Mr. Ivanov and assessing the charge against him, orally decided to impose on him a three-year period of ineligibility starting as from the date of his provisional suspension, i.e. 2 May 2017. Additionally, the Anti-Doping Committee disqualified Mr. Ivanov’s results between 9 July 2012 and 17 August 2014.
35. On 14 November 2018 and 7 March 2019, Mr. Ivanov made inquiries regarding the status of the written, reasoned decision.
36. On 22 March 2019, the Anti-Doping Committee issued the following decision (the “Decision”):

“After analyzing the case file and, in particular, the report of the three experts of March 21, 2017, the Committee came to conclusion that use of prohibited method or prohibited substance takes place, at least, in two cases: on July 09, 2012 No.565673 (Specimen No. 1) and on August 12, 2014 No. 157360 (Specimen No.6). In so doing, the experts made the conclusion, which was not refuted during the case review, that in this case, the atypical indicators of the specimens, could not be caused by the environmental factors (trainings at heights) or health condition.

As art. 9.2 of then acting All-Russian Anti-Doping Rules adopted by Order of Ministry of Sport and Tourism of Russia of April 13, 2011 No. 307 (with consideration of the changes introduced by Order of Ministry of Sport and Tourism of Russia of October 24, 2011 No. 1243), sets out, the standard sanction for this violation is disqualification for 2 (two) years’ period.

At the same time, art. 9.6 of All-Russian Anti-Doping Rules sets out imposition of disqualification for the period of up to 4 (four) years in case if during the case review, aggravating circumstances will be identified, examples of which are given in art. 9.6 of All-Russian Anti-Doping Rules. During the case review, the Committee identified that the anti-doping rules violation was committed repeatedly by the Athlete. In addition, with consideration of the circumstance that the atypical indications of the samples were identified directly before the athlete’s participation in important competitions, the Committee believes that in this case, implementation of the anti-doping scheme, created for enhancing the Athlete’s performance, took place.

In this regard, the Committee believes that the applied sanction is disqualification for 3 (three) years’ period starting from the provisional suspension date of May 02, 2017 (art. 9.10.2 of All-Russian Anti-Doping Rules). In addition, all the results obtained by the Athlete in the period of the established use of prohibited substances or methods, are to be disqualified, namely starting from collection of the first sample with atypical

result on July 09, 2012 to the date of the end of European Championship of 2012, following the date of collection of the last atypical sample on August 12, 2014, namely until August 17, 2014”.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

37. On 12 April 2019, Mr. Ivanov filed his Statement of Appeal with the Court of Arbitration for Sport (the “CAS”) against RUSADA with respect to the decision rendered orally by the Anti-Doping Committee on 9 October 2018 in accordance with Article R47 et seq. of the Code of Sports-related Arbitration (2019 edition) (the “Code”). In his Statement of Appeal, Mr. Ivanov nominated Mrs. Sylvia Schenk, Attorney-at-law in Frankfurt-am-Main, Germany, as arbitrator, thus implicitly requesting that a panel comprised of three arbitrators be appointed.
38. On 25 April 2019, the CAS Court Office noted that Mr. Ivanov stated in his Statement of Appeal that no written decision had yet been issued by RUSADA. In this respect, RUSADA was invited, by 29 April 2019, to: i) confirm that no written decision had yet been issued, and if not, when it intended to issue one; and ii) indicate whether it agreed with Mr. Ivanov that his deadline to file the Appeal Brief was not currently running. In the meantime, Mr. Ivanov’s deadline to file his Appeal Brief was suspended.
39. On that same day, RUSADA confirmed that the reasoned Decision was indeed sent to Mr. Ivanov on 22 March 2019. The CAS Court Office subsequently invited RUSADA to file by 30 April 2019 an English translation of the Decision, as well as proof of transmission to Mr. Ivanov on 22 March 2019.
40. On 25 April 2019, Mr. Ivanov disputed that he received the reasoned Decision by RUSADA and requested that the deadline for the filing of his Appeal Brief be extended to 31 May 2019.
41. The next day, on 26 April 2019, the CAS Court Office reminded the Parties that the deadline for the Appeal Brief was already suspended and, therefore, such request was moot.
42. On 29 April 2019, RUSADA filed an English translation of the Decision and a translated version of an email dated of 22 March 2019, which RUSADA asserts included the transmission of the Decision to Mr. Ivanov.
43. On 30 April 2019, the CAS Court Office invited Mr. Ivanov to file his Appeal Brief within 10 days.
44. On 6 May 2019, RUSADA nominated Mr. Romano Subiotto, Attorney-at-law in Brussels, Belgium, as arbitrator.
45. On 14 May 2019, the Appellant challenged the nomination of Mr. Subiotto as arbitrator.
46. On 23 May 2019, following an agreed-upon extension of time, Mr. Ivanov filed his Appeal Brief in accordance with Article R51 of the Code.

47. On 27 May 2019, RUSADA informed the CAS Court Office that it maintained its nomination of Mr. Subiotto as arbitrator.
48. On 30 May 2019, RUSADA informed the CAS Court Office that it did not intend to pay its share of the advance of costs.
49. On 31 May 2019, Mr. Ivanov sought an extension of time to determine whether he would maintain his challenge of Mr. Subiotto (in light of RUSADA's refusal to pay the advance of costs) or, alternatively, request that this procedure be referred to a Sole Arbitrator.
50. On 3 June 2019, the CAS Court Office granted Mr. Ivanov's request for a 10-day extension of time to determine whether he maintained his challenge to the appointment of Mr. Subiotto.
51. On 13 June 2019, Mr. Ivanov informed the CAS Court Office that the Parties were currently discussing whether a Sole Arbitrator could be agreed upon and that his challenge to Mr. Subiotto was now moot.
52. On 17 June 2019, RUSADA agreed to the appointment of a Sole Arbitrator in the present procedure and requested an extension until 12 July 2019 to file its Answer.
53. On that same date, 17 June 2019, the CAS Court Office invited the Parties to jointly nominate an arbitrator by 3 July 2019, failing which the President of the CAS Appeals Arbitration Division, or her Deputy, would proceed to appoint the Sole Arbitrator in accordance with Article R54 of the Code.
54. On 9 July 2019, the Parties mutually agreed to nominate Dr. Annabelle Bennett, Retired Judge in Sydney, Australia, as Sole Arbitrator and suggested Prof. Dr. Ulrich Haas, Professor in Zurich, Switzerland, as a substitute in case Dr. Bennett was not available.
55. On 30 July 2019, the CAS Court Office, on behalf of the Deputy President of the Appeals Arbitration Division, confirmed the appointment of the Hon. Dr. Annabelle Bennett AC SC, Retired Judge in Sydney, Australia as Sole Arbitrator.
56. On 2 August 2019, following an agreed-upon extension of time, RUSADA filed its Answer in accordance with Article R55 of the Code.
57. On 3 September 2019, the CAS Court Office informed the Parties of the appointment of Me. Marianne Saroli, Attorney-at-Law, Montreal, Canada as ad hoc Clerk.
58. On 13 December 2019, Mr. Ivanov and RUSADA both signed and returned the Order of Procedure in this appeal.

59. On 13 December 2019, a hearing was held in Lausanne, Switzerland. The Sole Arbitrator was assisted by Ms. Kendra Magraw, CAS Legal Counsel, and Me. Marianne Saroli, ad hoc Clerk, and joined by the following:

For Mr. Ivanov

- Mr. Howard Jacobs Legal Counsel, in-person;
- Mr. Alexander Ivanov, Party, by video conference;
- Mr. Ravilov Nailevich, interpreter, by video conference;
- Mr. Paul Scott, expert, by video conference; and
- Mr. Ivan Astradomov, colleague of Mr. Ivanov/observer by video conference.

For RUSADA

- Mr. Graham Arthur, Legal Counsel, in-person;
- Mr. Kristina Coburn, Deputy Head, Results Management Department of RUSADA;
- Ms. Valeriya German, specialist within the Results Management Department of RUSADA; and
- Professor Giuseppe d’Onofrio, expert.

60. At the outset of the hearing, the Parties confirmed that they had no objection to the appointment of the Sole Arbitrator or to jurisdiction. At the close of the hearing, the Parties confirmed that their right to be heard had been fully respected.

IV. SUBMISSIONS OF THE PARTIES

A. The Appellant

61. In his Appeal Brief, Mr. Ivanov sought the following relief:

- “11.2.1 Annul the Decision of the First Instance Tribunal;*
- 11.2.2 Find that RUSADA has not established a violation of the IAAF ADR with respect to the ABP;*
- 11.2.3 Alternatively, if the Tribunal find that RUSADA has established a violation of the IAAF ADR with respect to the ABP:*
 - 11.2.3.1 Determine that the sanction in this case shall be two years;*
 - 11.2.3.2 Determine that Mr. Ivanov is entitled to credit for the period of the provisional suspension that has been served so far since 2 May 2017;*
 - 11.2.3.3 Backdate any sanction to the date of the last alleged violation (12 August 2014); and*
 - 11.2.3.4 Determine that no results shall be disqualified prior to 12 August 2014.*
- 11.2.4 Order RUSADA to:*
 - 11.2.4.1 Reimburse Alexander Ivanov for his legal costs and other expenses pertaining to these Appeal proceedings before CAS; and*
 - 11.2.4.2 Bear the costs of arbitration.*

11.3 *Appellant respectfully requests the right to file separate costs submissions on completion of this Appeal*”.

62. Mr. Ivanov’s submissions, in essence, may be summarised as follows:

a) *The lack of validity of Samples 1, 2, 3, 5, 9*

i. Sample 1 is unknown

- Sample 1 must be excluded because the Expert Panel determined that it was one of the two most abnormal samples yet listed its validity as “unknown”.
- RUSADA cannot rely on a sample for which the validity is unknown in attempting to meet its burden of proving that Mr. Ivanov committed an ADRV.

ii. Samples 2, 3, 5, 9 and 12 were not transported and/or stored in compliance with the WADA Guidelines for Blood Sample Collection

- The documentation packages reveal that Samples 2, 3, 5, 9 and 12 were not transported and/or stored in compliance with the WADA Guidelines for Blood Sample Collection that were in place at the time of collection, i.e. the 2011 edition (“2011 WADA Blood Sample Guidelines”).
- Pursuant to the 2011 WADA Blood Sample Guidelines, Samples 2, 3, 5, 9 and 12 were not properly transported and/or stored:
 - Sample 2 was transported without a temperature logger. Pursuant to the Documentation Package, the *“data from the temperature ID monitor is absent (delivery without ID monitor)”*.
 - Sample 3 was transported without a temperature logger. Pursuant to the Documentation Package, *“the sample was delivered by world courier and they kept the temperature data logger. Because of that, there is no information about the temperature monitoring in this document”*.
 - Sample 5 was transported without a temperature logger. Pursuant to the Documentation Package, the *“data from the temperature ID monitor is absent (delivery without ID monitor)”*.
 - Sample 9 was transported without a temperature logger. According to the Documentation Package, the *“data from the temperature ID monitor is absent (delivery without ID monitor)”*.
 - Sample 12 was transported without a temperature logger. Pursuant to the Documentation Package, the *“data from the temperature ID monitor is absent (delivery without ID monitor)”*.

- Mr. Ivanov asserts that the violation of the rules of transportation of samples constitute a departure from rules that must be strictly complied with and that such departure could have affected the analytical results.

iii. Burden to prove the validity of the samples

- The Anti-Doping Committee improperly shifted the burden of proof when it ruled that *“the Athlete’s side did not provide sufficient evidence of whether violations of the rules of samples’ transportation took place, which could significantly affect the outcome of the conducted study”*. By doing so, the Anti-Doping Committee placed an additional burden on the Athlete to prove that the transportation deficiencies *“significantly affect[ed] the outcome was also improper, and unsupportable under the applicable rules”*.
- To the contrary, Mr. Ivanov submits, it was not his burden to disprove the validity of the samples, but rather RUSADA’s burden to prove their validity.

b) Mr. Ivanov’s ABP profile was not abnormal

- Mr. Ivanov contends that his ABP profile was not abnormal. At most, his ABP profile was “borderline”.
- Mr. Ivanov notes that the ABP system identifies abnormal values of a blood sample by reference to an athlete’s range. When a sample value falls outside those limits, it might be considered abnormal. However, Mr. Scott specifies that a breach of the thresholds does not necessarily mean that doping has taken place. Rather, he stresses that further explanations are required to determine whether any of the observed abnormalities can be justified by non-doping causes.
- In the case-at-hand, even if Mr. Ivanov’s scores can be considered abnormal, they were not caused by doping. More specifically, Mr. Scott asserts that the relatively high OFF scores are explicable by the following factors:

i. Ignoring the second set of measurements

- The Expert Panel selectively ignored the second set of measurements performed on the exact same blood samples. Hence, it was incorrect to rely solely on the first set of measurements.
- If the second set of measurements is used instead of the first set, Mr. Ivanov’s ABP profile is normal. According to Mr. Scott’s Report:

“e. In short, WADA requires that two tests be run on each sample (both tests measure Retic. % and haemoglobin in the same blood). Generally, and in this case specifically, the ABP will only use the values from the first test (and the measurements from the second test are ignored).

f. There is no reason, however, to conclude that the measurements from the first test are more accurate than the measurements from the second test.

g. In this case, for both Sample 1 and 6, there is a significant difference (to the athlete's detriment) between the Retic % measurements of the first and second tests".

ii. Treating the individual measurements in a quantitative way without considering uncertainty

- According to Mr. Scott, the Expert Panel made "two basic errors":
 1. The Expert Panel erroneously treated "individual measured values in a quantitative way without considering uncertainty"; and
 2. The Expert Panel erroneously chose "to compare the effects of the explanation on individual samples" and failed "to return to the model".
- At the hearing, Mr. Scott explained that when assessing individual values, the measurement uncertainty must be accounted for. In the Adaptive Model, the measurement uncertainty is not an issue but when samples are isolated, the measurement uncertainty must be considered. For Mr. Scott, these adjustments must be made but, he says, the Expert Panel failed to do so.
- Mr. Scott contends that when the different considerations are put back into the model, the "profile looks quite a bit different – very normal – and that is by modifying only the values discussed by the Joint Experts". He also says that these considerations are not the only uncertainties present in the values.

iii. Failing to account for known variability in reticulocyte measurements from different instruments

- In the Expert Panel Report, the Panel Expert claims that "sample 5 shows stimulation reflected by an elevated reticulocyte percentage (%ret) and the pattern observed in sample 5 and 6 is pathognomonic for the use and discontinuation of an erythropoiesis stimulating substance".
- However, Mr. Scott expresses the belief that such a statement is unwarranted, highlighting that Sample 5 and Sample 6 were collected four months apart. He contends that "during that time, a normal person's entire red blood cell population would have been replaced. There is no relationship between the reticulocytes of Sample 5 and the red blood cells (and the associated HB concentration) of Sample 6".
- In Mr. Scott's opinion, "Sample 5 has high reticulocytes, which would drive up the HB seen in Sample 6 which, in turn, would suppress reticulocyte release as seen in Sample 6".

iv. Failing to account properly for the effect of altitude training on the blood parameter measurement values (haemoglobin and reticulocytes)

- According to Mr. Scott, altitude training, combined with normal biological and analytical variability, could explain the alleged abnormal ABP samples, i.e. samples 1, 3 and 6.
- Indeed, Mr. Ivanov was training at altitude in proximity to the blood collections:
 - On 9 July 2012, Sample 1 was collected and during this period, Mr. Ivanov was training in Kislovodsk.
 - On 18 May 2013, Sample 3 was collected and during this period, Mr. Ivanov was training in Kislovodsk.
 - On 12 August 2014, Sample 6 was collected and during this time, Mr. Ivanov was training in Kislovodsk.

c) False assertions regarding Mr. Ivanov's true baseline values

- False assertions were made in relation to the baseline values used in Mr. Ivanov's ABP. In fact, the Expert Panel failed to explain its choice of 24 September 2015 as the starting point for what it described as his "*true baseline value*".
- Mr. Scott asserts that such conclusion has no basis because – if a true baseline value existed – choosing the 16 January 2017 as the starting point would be equally appropriate.

d) The alleged correlation of suspect values to major competitions

- Mr. Ivanov denies any correlation between his competition schedule and the results of his ABP profile.
- The competition schedule proves that it is incorrect to suspect that high OFF Scores were found in samples collected just prior to major competitions. In point of fact, Sample 2 showed the third highest OFF Score (108.00) and was collected on 21 December 2012 while Mr. Ivanov's next competition took place on 23 February 2013, i.e. 2 months after the collection of Sample 2.
- While the Expert Panel asserts that the high OFF Scores reflect blood manipulation close in time to major competitions, it ignores the fact that numerous low OFF Scores can also be seen close to major competitions. For instance:
 - Sample 5 with an OFF Score of 73.30 was collected on 16 April 2014, i.e. 17 days prior to World Race Walking Cup;

- Sample 7 with an OFF Score of 86.50 was collected on 29 January 2015, i.e. 29 days prior to Russian Race Walking Championships.

e) *The sanction*

- Mr. Ivanov denies having committed any ADRV and therefore, no sanction should be imposed upon him.
- If the CAS were to hold that an ADRV was committed, any sanction must be limited to two years pursuant to Article 40.2 of the 2012-2013 edition of the IAAF ADR (the “2012-2013 IAAF ADR”).
- Prior to the implementation of the 2015 WADC, the sanction in most ABP cases resulted in two-year suspensions (see TAS 2010/A/2178; TAS 2010/A/2335; CAS 2010/A/2235; CAS 2011/A/2612; CAS 2011/A/2353). The standard two-year sanction could be increased by up to a further two years only if aggravating circumstances existed.
- In this respect, Mr. Ivanov highlights Article 40.6 of the 2012-2013 IAAF ADR, which provides as follows:

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

- (a) *Examples of aggravating circumstances which may justify the imposition of a period of Ineligibility greater than the standard sanction are: the Athlete or other Person committed the anti-doping rule violation as part of a doping plan or scheme, either individually or involving a conspiracy or common enterprise to commit anti-doping rule violations; the Athlete or other Person used or possessed multiple Prohibited Substances or Prohibited Methods or used or possessed a Prohibited Substance or Prohibited Method on multiple occasions; a normal individual would be likely to enjoy performance-enhancing effects of the anti-doping rule violation(s) beyond the otherwise applicable period of Ineligibility; the Athlete or other Person engaged in deceptive or obstructing conduct to avoid the detection or adjudication of an anti-doping rule violation. For the avoidance of doubt, the examples of aggravating circumstances referred to above are not exclusive and other aggravating factors may also justify the imposition of a longer period of Ineligibility”.*
- In this regard, Mr. Ivanov claims that the Anti-Doping Committee incorrectly found aggravated circumstances in the present case on the basis “that the anti-doping rule violation was committed repeatedly by the Athlete” and “the atypical indications of the samples were identified directly before the athlete’s participation in important competitions”.

- If the CAS were to impose a sanction, Mr. Ivanov should receive credit for the period of the provisional suspension that has been served since 2 May 2017 in accordance with Article 40.10 of the 2012-2013 IAAF ADR.
 - Moreover, the sanction may start as early as the date of Sample collection or the date on which another ADRV last occurred, in accordance with Article 10.9.1 of World Anti-Doping Code – 2009 edition – (the “2009 WADC”) since there have been substantial delays in the hearing process and other aspects of Doping Control. Indeed, RUSADA is guilty of substantial delays because it waited until April 2017 to bring forward a case relating to alleged rule violations taking place between 2012 and 2014. These delays were not attributable to Mr. Ivanov, who requested all details regarding any allegation that he had personally violated the anti-doping rules in August 2014. Consequently, any sanction should be backdated to the date of the last alleged violation (i.e. 12 August 2014) pursuant to Article 10.9.1 of the 2009 WADC.
 - With respect to results disqualification, Mr. Ivanov maintains that he did not commit an ADRV and, therefore, that no results should be disqualified.
 - However, to the extent that the Sole Arbitrator finds to the contrary, only those results associated with ABP samples showing use of a prohibited substance should be disqualified. In this context, Mr. Ivanov states that the results from 9 July 2012 cannot be disqualified as no violation can be found in connection to Sample 1, as to which validity is unknown. As to Sample 3, the results from 18 May 2013 cannot be disqualified as no violation can be found, as there is no information about the temperature monitoring of that Sample.
63. Mr. Ivanov gave evidence at the hearing, including that he had been a race walker since 2010, and was trained by Mr. Viktor Chegin between 2011 and 2014. He had been tested around 100 times. He had never had a positive drug test. He denied having been given any prohibited substances by Mr. Chegin and denied having seen Mr. Chegin give such substances to other athletes. This evidence was not the subject of cross-examination.

B. The Respondent

64. In its Answer, RUSADA sought the following relief:
- 68.1 *“Mr Ivanov has committed an Anti-Doping Rule Violation contrary to IAAF ADR Article 32.2;*
 - 68.2 *Applying IAAF ADR Article 40.2, the Consequences to be applied in respect of the Anti-Doping Rule Violation are that a period of Ineligibility of two years be imposed;*
 - 68.3 *In addition, a further period of Ineligibility of up to two years should be imposed pursuant to IAAF ADR Article 40.6;*
 - 68.4 *Applying IAAF ADR Article 40.8, Mr Ivanov’s results from 9 July 2012 to 17 August 2014 should be disqualified.*
 - 68.5 *Applying IAAF ADR Article 40.10, the period of Ineligibility should commence on the date the Provisional Suspension was imposed, being 2 May 2017.*

69. RUSADA respectfully requests that costs be awarded to RUSADA in accordance with Rule 64.4 and Rule 64.5 of the Code of Sports-related Arbitration (in force from 1 January 2017)".

65. RUSADA'S submissions, in essence, may be summarised as follows:

a) The alleged lack of validity of Samples 1, 2, 3, 5, 9

i. The asserted invalidity of Sample 1

- Mr. Ivanov's argument – asserting invalidity of Sample 1 because it is listed as unknown – reflects his misunderstanding as to what the term “unknown” means in this context.
- RUSADA makes reference to the explanations provided in the Expert Panel Opinion of 31 January 2018, which read as follows:

“With regards to the validity of sample 1, which in ADAMS appears as ‘unknown’. The reason for this is that at the time when the sample was reported the ‘validity column’ did not exist in ADAMS, and when the column was subsequently added, all samples already reported in ADAMS got the status ‘unknown’ by default. Therefore, the ‘unknown’ declaration has to do with a technical issue in ADAMS”.

- ADAMS implemented some changes in September 2012, according to which blood passport samples were valid for passport purposes only if the analysis arose within 36 hours of the date and time of the sample collection. Any blood passport results entered before these changes were set with a validity of “unknown”.
- Had these changes been in place back in July 2012, Sample 1 would have been considered valid by ADAMS, such that that the wording “unknown” could be changed to “valid”.
- In any event, some samples were listed “unknown” due to administrative issues where ADAMS defaults to this designation when no data are available. In this regard, as the Sole Arbitrator in CAS 2016/0/4464 stated, *“‘unknown’ cannot be put on the same footing as ‘invalid’ and more substantial arguments would have been required in order to disqualify these samples from being adopted in the Athlete’s ABP”.*

ii. Samples 2, 3, 5, 9 and 12 were allegedly not transported and/or stored in compliance with the 2011 WADA Guidelines for Blood Sample Collection

- With respect to Samples 2,3,5,9 and 12, RUSADA refers to the following comments from the Expert Panel Opinion of 31 January 2018:

“[...] we agree that no temperature logger data is included in the LDP for samples 2, 5, 9 and 12. For sample 3, only the certificate of analysis (CA) was provided by the laboratory upon our request, and here no temperature logger data is required. From the evaluation of the SYSMEX scattergrams contained in

the LDPs for samples 2, 5, 9 and 12 there is nothing in the data that indicate pre-analytical issues such as haemolysis in the samples. In addition, and with reference to our first Joint Expert Opinion dated 21.3.2017 the main abnormalities in the profile were the high OFF scores mainly in samples 1 and 6 and to a lesser extent sample 3. With a collection to analysis time of only 10 hours in sample 3, any suboptimal temperature conditions will potentially only have very minor impact on the analysis result.

To conclude, storage and transportation conditions in sample 1 and 6 are in accordance with current WADA recommendations, and based on the SYSMEX scattergrams included in the LDPs and CA we find it highly unlikely that any pre-analytical issues have had any impact on the analysis results in samples 2, 3, 5, 9 and 12”.

- RUSADA stresses that the Laboratory Documentation Packages do not suggest any pre-analytical issues.
- As to Sample 3, no temperature logger data were required.

iii. Burden to prove the validity of the samples

- Pursuant to Article 3.2.2 of the 2009 WADC, the athlete must establish a departure from an applicable standard which could reasonably have caused the AAF. RUSADA conceded at the hearing that said article only applies to an AAF and that the present case rather concerns an ABP. Hence, RUSADA accepts the burden of proving the validity of the samples.

b) Mr. Ivanov’s ABP profile is allegedly not abnormal

i. The second set of measurements

- While Mr. Ivanov contends that his ABP profile is normal if a second set of measurements is used, such contention is refuted by the Expert Panel in the Expert Opinion of 31 January 2018. In this respect, RUSADA points out the following comments from the Expert Panel Opinion of 31 January 2018, referring to the use of the second and not the first measurement:

“On page 13 the authors speculate how the profile of the OFF score would look like if the second and not the first measurement conducted on each sample was used in the profile and if an additional ‘retic. % error adjustment’ and ‘an accepted 2% uncertainty in the measurement is factored in’. While the current individual reference ranges pictured in the profile plot as red lines take these variations already into account, it is critical in the evaluation of a profile that the data provided from the blood analysis is the data interpreted and not arbitrary, corrected data. Nevertheless, even though the suggested adjustments were considered, this would not change our conclusion. In addition, the absence of individual atypical OFF scores does not exclude the profile from being atypical. Hence, in this case, the profile was also flagged as being atypical by the sequence OFF score evaluation. Hence any arbitrary correction of values does not rule out the profile being flagged as ‘atypical’ due to sequence abnormality”.

ii. *The effect of altitude training on the blood parameter measurement values (haemoglobin and reticulocytes)*

- According to Mr. Scott, the allegedly abnormal ABP samples (i.e. Samples 1, 3 and 6) could be explained by altitude training, combined with normal biological and analytical variability.
- RUSADA accepts that some markers present within the ABP can be influenced by altitude. Consequently, a methodology was created that applies kilometer hours to factor into the evaluation of whether an athlete's ABP is abnormal or appears abnormal. The number of hours that an athlete spent at altitude is multiplied with the height in kilometers at which he has been present.
- In this respect, RUSADA points out the following comments from the Expert Panel Opinion of 31 January 2018 in relation to the blood results for Sample 1, Sample 3 and Sample 6:

“Sample 1

It is evident from the ‘Blood Sampling Form’ included in the LDP that the athlete has resided at an altitude of 1800 meters above sea level for a period of 31 days; from the 5th of June 2012 to the 6th of July 2012, the last day of altitude being three days before the sample was collected. This hypoxic dose, corresponding to 1339 kilometer hours⁶, is likely to result in a small increase in Hb, which persists after return to sea level, but the observed reduction in reticulocyte percentage observed in the profile is inconsistent with the expected unchanged level three days after return to sea level. Hence, at this point no change in OFF score is expected⁶, which contrasts with the elevated OFF score in the sample.

Sample 3

Since only the CA is provided no ‘Blood Sampling Form’ is available. Nevertheless, on the ‘Doping Control Form’ in ADAMS the following is stated under the question ‘Has the athlete trained, competed or resided at an altitude greater than 1000 meters within the previous two weeks?: ‘2000mt Kislovodsk 3 weeks until 03MaV, the 3rd of May being 15 days before the sample was collected. The hypoxic dose is calculated to 1008 kilometer hours. 15 days post altitude exposure any previous effect on Hb is likely to have disappeared although a small reduction in the percentage of reticulocytes is expected. Considering these two parameters in connection, no effect on OFF score is expected at this time, which contrasts the elevated OFF score in the sample.

Sample 6

For this sample, the impact of altitude was already addressed in our previous report ‘Conc.: Blood Profile C2Z37 - EVALUATION OF ADDITIONAL QUESTIONS’ from the 24th of September 2017. on the DCF, it is stated that the athlete resided or trained at altitude 1800 m from 28 July until 09 August 2014, thus 13 days. In the present case, the athlete resided 13 days at an altitude of 1800m, which corresponds to a hypoxic dose of 561 kilometer hours, which, according to the scientific literature in the field causes only small changes in haemoglobin mass of around 2% (see figure 1 in (7)). Accordingly, the changes in peripheral markers such as haemoglobin concentration and reticulocyte percentage will highly likely be very minor. Relating these facts to the profile, it appears that the OFF score of the athlete in the

sample in question was 111, with his normal baseline ranging around 80. There is thus an increase of 30 points in the OFF score. Comparing this change to the data reported in the literature, it appears that in the altitude studies investigating the OFF score after altitude interventions (see references below), the changes were much smaller (between 10 and 20 points) despite a much higher and longer exposure. Furthermore, the sample in question here was taken 3 days after the return from altitude. An OFF picture, which can be observed after return from altitude, usually develops after 7-14 days. Thus, both in terms of timing and magnitude of the effect, altitude exposure alone does not explain the abnormalities observed in the profile”.

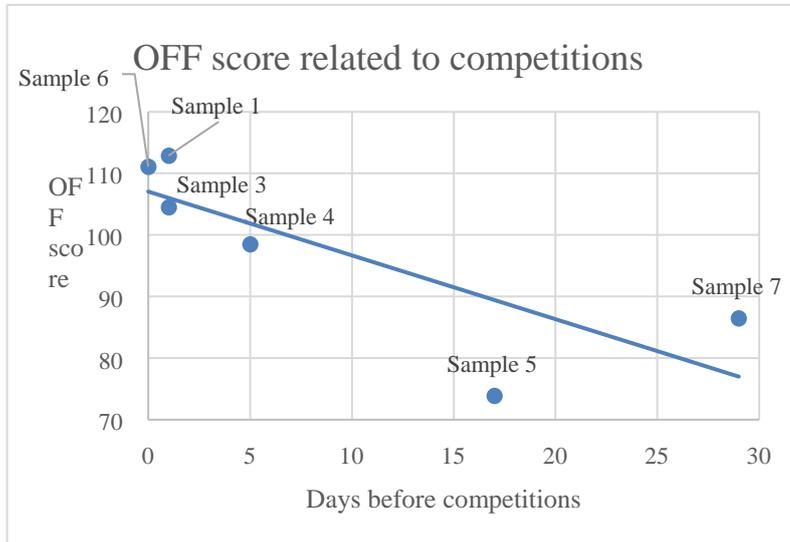
iii. Alleged false assertions regarding Mr. Ivanov’s true baseline values

- Mr. Ivanov incorrectly claims that false assertions were made about the baseline values used in his ABP. On this issue, RUSADA refers to the Expert Panel Opinion of 31 January 2018:

“We acknowledge that it can be difficult to establish a ‘true baseline’ and that choosing the sample from the 24th of September 2015, showing relatively low Hb and normal percentage of reticulocytes might seem biased. Nevertheless, if we consider the sample results from samples collected after the last competition (samples 13-16) which are less likely to have been affected by blood manipulation, the average Hb and percentage of reticulocytes are 14.1 g/dL and 1.0 % giving an OFF score of 81. This OFF score is considerably lower than the OFF score in samples collected close (<7 days) before competitions ranging from 99-113”.

iv. The alleged correlation of suspect values to major competitions

- The correlation between the competition schedule and the results of his ABP profile is disputed by Mr. Ivanov.
- As illustrated in the Expert Panel Opinion of 31 January 2018, “there are 6 samples (sample 1, 3, 4, 5, 6 and 7) collected in the high-risk window for doping e.g. in the 8-week period preceding competitions”. In this respect, the Expert Panel made a graph (Figure 1), which exemplifies the OFF Score and the number of days before the competition the samples were collected:



- In its Expert Panel Opinion of 31 January 2018, the Expert Panel declares “*there is an inverse relation between the OFF score and the days before the competition e.g. highest OFF scores are observed close to competitions. In this profile, 4 of the 6 highest OFF score values and 4 of 5 lowest percentage reticulocytes values in the entire profile (consisting of 16 samples) are measured during the last 5 days before a competition. This being due to coincidence only is very unlikely*”.

c) The sanction

- Mr. Ivanov committed an ADRV in accordance with Article 32.2 of the 2012-2013 IAAF ADR, which is subject to a two-year mandatory period of Ineligibility pursuant to Article 40.2 of the 2012-2013 IAAF ADR.
- Pursuant to Article 40.6 of the 2012-2013 IAAF ADR, the standard sanction can be increased to a maximum of four years if there are “aggravating circumstances”.
- RUSADA submits that the Anti-Doping Committee correctly imposed a period of Ineligibility of three years on Mr. Ivanov after finding aggravating circumstances in his case.
- Imposing an additional one-year period of Ineligibility was appropriate considering the context within which Mr. Ivanov carried out his doping activities. RUSADA highlights that Mr. Ivanov was associated with Mr. Chegin, an established doping coach who was involved with many race walkers found guilty of doping. It is, therefore, reasonable to infer that Mr. Ivanov’s conduct was part of a doping plan or scheme. RUSADA underscores that the Commentary to Article 10.6 of the 2009 WADC provides examples of aggravating circumstances which may justify the imposition of a period of Ineligibility greater than the standard sanction, namely an ADRV committed by an Athlete “*as part of*”

a doping plan or scheme, either individually or involving a conspiracy or common enterprise to commit anti-doping rule violations”.

- It is reasonable to believe that Mr. Ivanov was part of a concerted campaign orchestrated and led by Mr. Chegin whereby doping was used to assist athletes in preparing for competitions.
- RUSADA asserts that the commencement date for Mr. Ivanov’s period of Ineligibility should be from 2 May 2017, which is consistent with Article 40.10 of the 2012-2013 IAAF ADR.
- RUSADA contests Mr. Ivanov’s allegations about substantial delays that warrant the period of Ineligibility being backdated to a date earlier than 2 May 2017. RUSADA submits that Mr. Ivanov’s results from 9 July 2012 to 17 August 2014 should be disqualified in accordance with Article 10.8 of the 2009 WADC (as reflected in Article 40.8 of the 2012-2013 IAAF ADR).

V. JURISDICTION

66. Article R47 of the Code provides as follows:

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

67. The Parties rely on Article 13 of the IAAF ADR as conferring jurisdiction on the CAS, which provides as follows:

“13.1 Decisions Subject to Appeal

Unless specifically stated otherwise, decisions made under these Anti-Doping Rules may be appealed only as set out in this Article 13. Such decisions shall remain in effect while under appeal unless CAS orders otherwise. Before an appeal is commenced, any post-decision review provided in these Anti-Doping Rules must be exhausted. Reviews of Demands made by the chairperson of the Disciplinary Tribunal or his delegate in accordance with Article 7.8 are not subject to appeal under this Article 13 or otherwise. 13.1.1 Scope of Review Not Limited The scope of review on appeal includes all relevant issues to the matter and is expressly not limited to the issues or scope of review before the initial matter.

(...)

13.2.2 *Appeals involving International-Level Athletes or Athlete Support Persons or International Competitions In cases arising involving International-Level Athletes or Athlete Support Persons or involving International Competitions, a decision may be appealed exclusively to CAS*".

68. An International-Level Athlete is defined in the IAAF ADR as "an athlete who is in the Registered Testing Pool". As Mr. Ivanov is in the IAAF Registered Testing Pool, he is therefore an International-Level Athlete. Moreover, the sanction against him involves alleged doping practices during International Competitions.
69. No Party objects to the application of Article 13 or to CAS jurisdiction. Indeed, the Parties confirmed CAS jurisdiction when they signed the Order of Procedure.
70. The Sole Arbitrator, therefore, confirms CAS jurisdiction.

VI. ADMISSIBILITY

71. Article R49 of the Code provides as follows:

"In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or 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".

72. Mr. Ivanov is an International-Level Athlete and the sanction against him involves International Competitions. According to Article 13.7 of the IAAF ADR, which are the rules applicable to the present arbitration (as discussed below), the Athlete's deadline for filing an appeal "*shall be 30 days from the date of receipt of the reasoned decision by the appealing party*".
73. In this context, the Sole Arbitrator notes that: i) on 12 April 2019, Mr. Ivanov filed his Statement of Appeal against RUSADA with respect to the Decision rendered orally by the Anti-Doping Committee on 9 October 2018; ii) Mr. Ivanov stated in his Statement of Appeal that no written decision has yet been issued by RUSADA; iii) RUSADA affirmed on 25 April 2019 that the final decision was sent to Mr. Ivanov on 22 March 2019; iv) Mr. Ivanov stated on 25 April 2019 that he never was sent the written decision by RUSADA; v) on 29 April 2019, RUSADA sent an English translation of the Decision and a translated version of an email dated of 22 March 2019 showing that the Decision was transmitted to Mr. Ivanov; and vi) on 30 April 2019, the CAS Court Office wrote to Mr. Ivanov on 30 April 2019, inviting him to file its Appeal Brief within 10 days of receipt of said letter.
74. In light of the foregoing, the Sole Arbitrator does not need to ponder the debate as to whether Mr. Ivanov actually received the Decision on 22 March 2019 by email. In either case, his Statement of Appeal was duly filed on 12 April 2019 and, therefore, within the 30-day deadline set out in Article 13.7 of the IAAF ADR.

75. No Party has otherwise objected to the admissibility of this appeal and the Sole Arbitrator hereby confirms that it is admissible.

VII. APPLICABLE LAW

76. Article R58 of the Code provides as follows:

“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”.

77. The Anti-Doping Committee asserted that the disciplinary proceedings initiated by RUSADA against Mr. Ivanov were governed according to the All-Russian Anti-Doping Rules (“ARADR”) because Mr. Ivanov was a member of the ARAF, and as such was subject to the ARADR.

78. However, Mr. Ivanov asserted throughout the proceedings, and RUSADA agreed, that the applicable anti-doping rules were the IAAF ADR, not the ARADR.

79. In this respect, the Sole Arbitrator notes that athletes who compete in any tournament organized by the IAAF, or by one of its member federations, must adhere to the IAAF Constitution, Rules and Regulations (the “IAAF Rules”). Given that Mr. Ivanov is an International Athlete, and that he had competed at several competitions organised by or with the sanction of the IAAF, he was thereby bound by the applicable IAAF ADR.

80. Pursuant to Article 13.9.4 of the IAAF ADR:

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

81. Moreover, the Parties agree that the procedural aspects of these proceedings shall be subject to the 2012-2013 IAAF ADR, which were the rules in place at the time of the relevant events, i.e. between 12 July 2009 and 12 August 2014.

82. In this respect, the Sole Arbitrator highlights Article 21.3 of the IAAF ADR, which states:

“Any case pending prior to the Effective Date, or brought after the Effective Date but based on an Anti-Doping Rule Violation that occurred before the Effective Date, shall be governed, with respect to substantive matters, by the predecessor version of the anti-doping rules in force at the time the Anti-Doping Rule Violation occurred and, with respect to procedural matters by (i) for Anti-Doping Rule Violations committed on or after 3 April 2017, these Anti-Doping Rules and (ii) for Anti-Doping Rule Violations committed prior to 3 April 2017, the 2016-2017 IAAF Competition Rules. Notwithstanding the foregoing, (i) Article 10.7.5 of these Rules shall

apply retroactively, (ii) Article 18 of these Rules shall also apply retroactively, unless the statute of limitations applicable under the predecessor version of the Rules had already expired by the Effective Date; and (iii) the relevant tribunal may decide it appropriate to apply the principle of lex mitior in the circumstances of the case”.

83. Pursuant to Article 21.3 of the IAAF ADR, the Sole Arbitrator is satisfied that ADRVs committed prior to the effective date as defined by Article 1.13 of the IAAF ADR are subject, for substantive matters, to the rules in place at the time of the alleged ADRV and subject to the principle of lex mitior.
84. As the relevant events took place between 12 July 2009 and 12 August 2014, the 2012-2013 IAAF ADR are, therefore, applicable to the case-at-hand.
85. Moreover and to the extent that the IAAF Rules do not deal with a relevant issue, Monegasque law shall be applied on a subsidiary basis to such issue. In this respect, Article 13.9.5 of the IAAF ADR provides as follows:

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

86. As a result, pursuant to Article R58 of the Code, the Sole Arbitrator will apply primarily the IAAF Rules and, subsidiarily, Monegasque law.

VIII. SCOPE OF THE SOLE ARBITRATOR’S REVIEW

87. According to Article R57 of the Code:

“The Panel shall have full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance”.

88. Under Article R57 of the Code, the Sole Arbitrator considers both fact and law de novo on appeal. Accordingly, any procedural defects which may have occurred in the internal proceedings of a federation are cured by the present arbitration proceedings before the CAS (see CAS 96/156, p.61; CAS 2001/A/345, para. 8).
89. Since the Sole Arbitrator is conducting a de novo proceeding pursuant to Article R57 of the Code, she will decide the appeal on the evidence before her, whether or not the same evidence was available to the Anti-Doping Committee, subject only to the rejection of any fresh evidence under the discretion vested in the Sole Arbitrator under paragraph 3 of the same Article.
90. In addition, the Sole Arbitrator notes that Article 42.20 of the 2012-2013 IAAF ADR confirms in that regard that:

“All appeals before CAS (save as set out in Rule 42.21) shall take the form of a re-hearing de novo of the issues on appeal and the CAS Panel shall be able to substitute its decision for the decision of the relevant tribunal

of the Member or the IAAF where it considers the decision of the relevant tribunal of the Member or the IAAF to be erroneous or procedurally unsound. The CAS Panel may in any case add to or increase the Consequences that were imposed in the contested decision”.

IX. MERITS

A. The undisputed facts

91. The Sole Arbitrator begins her analysis of the merits by noting that there is no dispute between the Mr. Ivanov and RUSADA about the following factual matters:

- Mr. Ivanov has never tested positive for a prohibited substance;
- It is alleged that Mr. Ivanov has used a prohibited substance;
- There is no challenge to the use of an ABP as a reliable method to establish the use of a prohibited substance. RUSADA points to the commentary in the 2009 WADC which specifically states that an ADRV under Article 2.1 may be established by, inter alia, conclusions drawn from longitudinal profiling, including data collected as part of the ABP.
- The onus is on RUSADA to establish such use, to the comfortable satisfaction of the hearing panel. It is not for Mr. Ivanov to prove that he has not committed an ADRV.
- The ABP is not, of itself, sufficient to establish an ADRV; it is also a matter for the interpretation of the ABP by experts.
- The applicable rules are the 2012-2013 IAAF ADR, which provided that the period of Ineligibility for use or attempted use of a prohibited substance or a prohibited method, unless conditions for increasing or reducing the period apply, is two years. If aggravating circumstances are present, the period of Ineligibility can be increased to a maximum of four years, unless the athlete can prove to the comfortable satisfaction of the hearing panel that he did not knowingly commit the ADRV. An example in the Rules of an aggravating circumstance is that the ADRV was committed as part of a doping plan or scheme.
- From 24 September 2015, the Athlete’s ABP showed no anomalies. There is no suggestion of doping after this date.

B. The Main Issues

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

- a) Did Mr. Ivanov's ABP demonstrate the use by him of a prohibited substance or method in violation of Rule 32.2 of the 2012-2013 IAAF ADR?
- b) If so, what sanctions shall be imposed on Mr. Ivanov?

93. Relevantly Article 32 (2)(b) of the 2012-2013 IAAF ADR provides that:

“(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 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”.

94. The Sole Arbitrator also observes the existence of Rule 33 (1), (2), and (3) of the 2012-2013 IAAF Rules, which read as follows:

“RULE 33 Proof of Doping

1. The IAAF, Member or other prosecuting authority shall have the burden of establishing that an antidoping 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 [emphasis added].

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”.

95. The Sole Arbitrator notes that RUSADA relies chiefly on the conclusions drawn from longitudinal profiling shown by Mr. Ivanov's ABP in order to establish that he committed an ADRV.

a) *Did Mr. Ivanov violate Rule 32.2 of the 2012-2013 IAAF ADR?*

i. The ABP Profile

96. The Sole Arbitrator reiterates that the ABP is an electronic record maintained for an individual athlete in which the results of the analysis of samples collected over a period of time are collated. It contains a haematological profile consisting of the combined results of haematological parameters analysed in respect of a series of blood samples. These parameters are subject to natural fluctuations. By tracking the parameters, it is possible to establish a range for these natural variations. The purpose of a passport is to individualise parameters within an expected range. The results of analyses are uploaded into the ADAMS database, an online data management tool operated by WADA.
97. The Sole Arbitrator underlines that the present case centres on the OFF Scores as recorded in the ABP profile. The OFF Score refers to the relationship between haemoglobin and reticulocytes in the athlete's blood. Doping to increase endurance is designed to increase the oxygen-carrying capacity of blood which, in turn, will affect the amount of haemoglobin in blood and the percentage of reticulocytes. A significant fluctuation in an OFF score can indicate doping.
98. The haematological profile incorporates the use of "the Adaptive Model", a mathematical model designed to identify unusual longitudinal results from athletes, based on a series of algorithms, which identifies a profile which deviates from an athlete's usual parameters, referred to as "atypical". An ATPF is a report generated by the Adaptive Model, which identifies either a single marker value or a longitudinal profile of marker values as being outside the athlete's individual range. Under the ABP Guidelines, an ATPF requires further investigation and/or analysis. Relevantly in this case, this required that three experts are consulted and come to their independent view, without knowledge of the identity of the athlete. If the three experts are unanimous in their opinion that it is highly likely that a prohibited substance or method has been used and highly unlikely that it is the result of any other cause, an "adverse passport finding" is declared and an alternative explanation sought from the athlete before disciplinary proceedings are opened for an ADRV. Such proceedings are opened if the athlete fails to provide an alternative explanation or if the Expert Panel does not accept the explanation.
99. It is not in dispute in the present case that the ABP is, and has been generally accepted as, a reliable mean of evidence to assist in establishing ADRV. This has been confirmed in several 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).

ii. Analysis of the evidence

100. The Expert Panel declared three of Mr. Ivanov's samples abnormal, i.e. Samples 1 and 6, and to a lesser extent, Sample 3. Mr. Ivanov provided an explanation, but neither the Expert Panel or RUSADA considered it to be satisfactory.

101. Mr. Ivanov contends that when variations and proper adjustments are taken into account, RUSADA has not met its burden of establishing that the samples are valid or that, even if those samples are not excluded, it could be concluded to the requisite standard that any abnormality was caused by doping, that is, by use of a prohibited substance. Mr. Ivanov relies upon the description of his case, in the evidence of Mr. Scott, an expert retained by the athlete, as this being a “borderline case”, which does not enable a conclusion of the use of a prohibited substance or of a prohibited method, to the requisite standard, to be drawn.
102. As the Expert Panel observed, ADAMS provides the automated analysis by the Adaptive Model, which determines whether fluctuations in the biomarkers of the ABP are within the expected individual reference ranges for an athlete or not. Mr. Ivanov’s profile was flagged with abnormalities at 99% specificity twice for Sample 5 (lower limit OFF score, upper limit reticulocyte) and once for Sample 12 (lower limit haemoglobin concentration). The sequence for the OFF Score was abnormal at greater than 99.9%. The Expert Panel determined that the high OFF Scores in samples just prior to certain competitions were abnormal and reflected an artificially elevated red cell mass (high haemoglobin) and a subsequent suppression of erythropoietin (“EPO”) and low reticulocytes as a compensation. It also concluded that the pattern observed in Sample 5 and Sample 6 is pathognomonic for the use and discontinuation of an erythropoiesis stimulating substance.
103. The Expert Panel expressed the unanimous opinion that in the absence of an appropriate physiological explanation, the likelihood of observing the anomalies present, namely the artificial increase of red cell mass using, for example, erythropoiesis stimulating substances, is high and that the likelihood of environmental factors or a medical condition causing the pattern, is low. It concluded that it is highly likely that a prohibited substance or prohibited method had been used and that it was highly unlikely that the ABP was the result of any other cause. The Expert Panel stated that all samples were scrutinised for their analytical details and that, in the available documentation, there was 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 influence the analytical results to the disadvantage of the athlete.
104. Mr. Ivanov relies on the fact that at no time did any parameter breach the upper or lower limits of what is considered normal. Indeed, he submits that even a crossing of the upper or lower limits of what is considered normal does not, of itself, establish doping. In a reply to the expert report of Mr. Scott (i.e the Expert Panel Opinion of 31 January 2018), the Expert Panel agreed that a breach of individual thresholds in the ABP per se does not necessarily mean that doping has taken place.
105. Mr. Ivanov relies on the expert evidence of Mr. Scott, who explains that the ABP, or any longitudinal marker analysis, is not concerned with the error of measurement in any one sample. He points out that a comparison of individual samples removed from the model must necessarily involve correction for measurement uncertainty. In particular, measurements can be affected by the method of collection, storage and transport of samples, in particular for the measurement of haemocrit and haemoglobin. This is recognised in the ABP Guidelines and the 2011 WADA Blood Sample Guidelines. Failure to follow these guidelines introduces further

possible analytical errors, over and above the variations in normal biological variability. He emphasises that any analysis must be interpreted “*inside the model*”.

106. Mr. Scott accepts that Mr. Ivanov’s ABP can be interpreted to indicate doping. However, he says that while it is possible that a prohibited substance was used and that this explains the variations observed, it is also possible that a combination of altitude and normal physiological and analytical variation fully explain the ABP. Thus, he describes this case as “*borderline*” at best and says that it is not “*highly likely*” that a prohibited substance or method was used. In his evidence, and in Mr. Ivanov’s submissions based on that evidence, it was emphasised that there are many variables on which Mr. Ivanov relies, that these must be factored into an interpretation based on the model and that doping is not the only reasonable explanation of the results.
107. Both Parties accepted that the integrity of the data is essential.
108. Generally, Mr. Scott criticises the interpretation of the results of individual samples in a quantitative way without consideration of the uncertainties to which he points, and within the context of the model itself. He points out the uncertainties about individual samples and the measurements of those samples. These analytical and experimental errors, he explains, are compounded. While many of them are minimized and standardised within the model, they must be accounted for in the interpretation of the results of individual samples and in any quantitative comparison.
109. Professor d’Onofrio, one of the Expert Panel, who gave written and oral evidence, does not agree with Mr. Scott’s model of the use of ADAMS. He accepts that it is an Adaptive Model for use as a statistical tool and says that it is a different model to that contended for by Mr. Scott. He points out that the ABP uses a probabilistic approach which provides information for an individual. RUSADA submits that the model itself relies on statistical analysis of fluctuations. Professor d’Onofrio does not say that the OFF Score values were abnormal by themselves – they were not above or below the line – but, he says, they were atypical because of the sequence. He declares that the role of the expert is partly to see if confounding factors affect the observed pattern; the fluctuation is the element that highlights possible further examination, which is then subjected to consideration by an expert panel. Such consideration includes looking to a possible doping scenario. For example, a high OFF Score means high haemoglobin and reduced reticulocytes: this can be the wash-out phase of a prohibited substance and so the timing relative to competition can be considered and this may lead, as the Expert Panel concluded, to a doping scenario. In the present case, other factors were considered by the Expert Panel to be highly unlikely.
110. Mr. Scott raises a number of specific possible causes of anomalous results which, he submits, should be considered not only individually but also cumulatively in the model. Those factors are as follows:

- The validity of Sample 1
111. Mr. Scott had pointed out that, for Sample 1, the column in ADAMS headed “validity” had an entry of “unknown”.
 112. RUSADA explained that at the time of the entries for Sample 1, that column did not exist in ADAMS, so that when the column was subsequently added by an upgrade in September 2012, “unknown” was entered by default. Further, RUSADA points out that Sample 1 was analyzed twenty-eight hours after collection and would thus have been considered valid by ADAMS had these software changes been in place at this time. Similarly, the entry “unknown” is made where ADAMS defaults to this entry when no data are available.
 113. That explanation was not disputed by Mr. Ivanov at the hearing. No specific argument was advanced by Mr. Ivanov as to a reason for this entry, other than the fact that it had been made. As was the case in CAS 2016/O/4464, in the absence any specific argument as to why Sample 1 should be declared invalid, other than the entry of “unknown” which has been the subject of an explanation in the evidence, the Sole Arbitrator concludes that Sample 1 should not be disqualified from consideration or adoption in the Athlete’s ABP.
- The use of the second set of measurements
114. Each sample is subjected to two measurements. Mr. Ivanov submitted that selectively relying on the first measurement rather than the second measurement was not justified and that if the second measurement had been relied upon, the different reading would not have suggested an anomaly. If the second set of measurements were used, the ABP profile is, he says, normal. At the least, in Mr. Scott’s view, the use of the second test results would move this athlete’s profile, which is already marginal in his view, from “adverse” to “of concern”, especially when combined with the other factors that he highlights.
 115. RUSADA points out that the Adaptive Model says that the first measurement is to be relied upon, and it is the first measurement that is used in the statistical model to recognize fluctuations. The use of the second measurement is to confirm the correct functioning of the machine used in the first measurement. It says that it would be misleading to pick the second measurement randomly or when it suited a party. In its reply, the Expert Panel dispute the use of what it describes as arbitrary, corrected data. Nevertheless, it states that even considering the suggested adjustments, it maintains its previous conclusion and say that the use of corrected values does not rule out the profile being flagged as “atypical”, due to sequence abnormality.
 116. In circumstances where it is common to use the first measurement and there is no good reason given for use of the second measurement for one or more of the samples, the Sole Arbitrator concludes that there is no good reason to reject the first measurements.

- Failure to account for known variability in reticulocyte measurements from different instruments
117. Mr. Scott points to scientific literature which recognizes analytical variation between analyses, which can be relevant to the interpretation of a biological passport. This should, he said, be accounted for in assessing the uncertainty for relevant values.
118. This was a contention advanced in a general fashion by Mr. Scott. Professor d’Onofrio disagreed with the contention and with the appropriateness of applying such variation to the results. Mr. Scott did not seek to apply a mathematical correction for such variation but said that it should be somehow accounted for as imparting further uncertainty. The Sole Arbitrator concludes that, in the absence of evidence as to the existence of, and quantification of, any such variation in the case of analysis of Mr. Ivanov’s samples, she cannot apply such a factor to the results, except to take note of this as one of Mr. Scott’s uncertainty factors.
- Failure to account properly for the effects of altitude training on the blood parameter measurement values
119. There is an effect from the time spent at altitude and the time after removal from altitude. It is accepted that prior to the taking of Samples 1, 3 and 6, Mr. Ivanov trained at altitude at Kislovodsk, in close proximity to the blood collections of those samples. He submits that if the effect of altitude on haemoglobin and reticulocytes is properly accounted for, the ABP profile is normal. Mr. Scott expresses the view that altitude training, combined with normal biological analytical variability, does explain the ABP profile. He does not say that Mr. Ivanov’s altitude training alone can explain the results obtained in Samples 1 and 6; he says that all of the data have to be put back into the model, to quantify all errors including sampling, physiological variation and the effect of hypoxia and that this approach is preferable to the analysis of, and conclusions drawn from, individual OFF Scores. Mr. Scott says that the analysis by the Expert Panel is flawed in that it looked at the Samples individually rather than seeing how they should be interpreted in the adaptive model, where the inclusion of the 2% effect of altitude results in increased measurement uncertainty, which will affect the conclusions properly drawn from the ABP.
120. The Expert Panel accepts that the time spent at altitude could have an effect of 2% on the results for those samples but point out that this does not affect the pattern nor, in its view, does it explain the OFF Scores. The Expert Panel discusses the effects of altitude training in its Expert Panel Opinion of 31 January 2018 and it accepts that altitude can impact certain markers of the ABP. Giving detailed reasons, and accepting the Mr. Ivanov’s evidence as to the time of and elevation of altitude training, taking into account various matters including the time between the training and the taking of the Sample, the Expert Panel concludes that:
- For Samples 1 and 3, no resultant change in OFF Score would be expected, which contrasts with the elevated OFF Score in the Samples; and
 - For Sample 6, in terms of timing and magnitude of effect, altitude exposure alone does not explain the abnormalities observed in the profile.

121. Professor d’Onofrio elaborated his reasoning concerning the possible effects of altitude. He explained that reduced availability of oxygen increases endogenous erythropoietin, giving an increase in haemoglobin and this takes one week to ten days to be visible; just before this increase, there can be a small increase in reticulocytes. However, these changes are not relevant below 2000 metres, as is the case here where there is an increase in the OFF Score and there can be a small change after return to sea level. The change here is not explained, in his view, by the time spent at altitude by Mr. Ivanov. As to the specific samples, he pointed out that Sample 1 was taken three days after return to sea level when one would not expect a change in the OFF Score and Sample 6 was taken after a shorter stay at altitude and, again, after three days.
122. Thus, the information that Mr. Ivanov resided or trained at altitude before the collection of Samples 1, 3 and 6 does not influence the conclusion of the Expert Panel. Even taking such an effect into account, it does not affect its conclusions that it is highly likely that the ABP profile demonstrated the use of a prohibited substance. The Sole Arbitrator notes that Mr. Scott does not attribute the results to altitude alone and accepts the detailed explanation of the Expert Panel as to why altitude cannot explain Mr. Ivanov’s OFF scores.
- There is no relationship between Samples 5 and 6
123. These samples were collected four months apart, during which time a normal person’s entire red blood cell population would have been replaced; therefore, Mr. Ivanov says, there is no relationship between the reticulocytes of Sample 5 and the red blood cells of Sample 6.
124. In its Expert Panel Opinion of 31 January 2018, the Expert Panel accepts that the results of Samples 5 and 6 could be considered as unrelated and independent of each other. RUSADA’s submission, based on Professor d’Onofrio’s evidence, is that the Samples indicate the suppression and stimulation of blood factors such that Sample 5 is the stimulation phase of one doping cycle and Sample 6 is the suppression phase of a later doping cycle, and that initial bone marrow stimulation followed by suppression does indicate a discontinued use of erythropoiesis stimulation. There is a correlation between the timing of those samples and competitions in which Mr. Ivanov participated: Sample 6 was collected on the first day of the European Championships, four months after the collection of Sample 5, and shows suppressed bone marrow activity. The Expert Panel states that it finds it likely that erythropoiesis stimulation ceased before the World Race Walking Cup and resumed afterwards, ceasing in the period leading up to the European Championships.
- The relevance of the timing of the samples and major competitions
125. RUSADA submits that the correlation of the results with competitions is an environmental factor that can be taken into account to ascertain the most likely explanation for the fluctuations. Some dates are relevant:
- Sample 1 was collected on 9 July 2012;
 - Sample 2 was collected on 21 December 2012;

- The World Junior Championships were on 10-15 July 2012;
 - Sample 3 was collected on 18 May 2013;
 - The European Cup was on 19 May 2013;
 - Sample 5 was collected on 16 April 2014;
 - The previous race for Mr. Ivanov was on 22-23 March 2014;
 - The next race for Mr. Ivanov was the World Race Walking Cup on 3-4 May 2014;
 - Sample 6 was collected on 12 August 2014;
 - The European Championships were on 12-17 August 2014; and
 - Sample 7 was collected on 29 January 2015.
126. Mr. Ivanov questions the reliance by the Expert Panel on the time correlation between sample collection, the OFF Score and a major competition. The Expert Panel said that these correlations supported their conclusions. Mr. Ivanov points out that the highest reported OFF Score was in Sample 2, when his next competition was two months later; Sample 5 was collected 17 days prior to competition and Sample 7 collected 29 days prior. He points out that there were low OFF Scores close to major competitions.
127. Mr. Scott notes the relatively high OFF Scores for Samples 1 and 6 and agrees that it is understandable that they were highlighted. However, he also notes that the components of the OFF Score, haemoglobin and reticulocytes, were normal across the Athlete's profile. It is in this context that Mr. Scott also criticised the WADA rule that two tests be run on the same sample and that the first test results are used. Mr. Scott says that there can be no linking of the reticulocytes of Sample 5 and the haemoglobin concentration of Sample 6, as they were collected four months apart, during which time a normal person's entire red blood cell population would have been replaced.
128. In the Expert Panel Opinion of 31 January 2018, the Expert Panel includes a graph in which it plotted the OFF Score against the days before competition for Samples 1, 3, 4, 5, 6 and 7, from which it concluded that there is an inverse relation between the OFF Score and the days before the competition, for example, the highest OFF Scores are observed close to competitions. It says that the profile, where 4 of the 6 highest OFF Score values and 4 of 5 lowest percentage reticulocyte values in the entire profile of 16 samples being measured, occurred during the last 5 days before a competition being due to coincidence only *"is very unlikely"*. The Expert Panel confirmed its previous opinion that such features are typically *"seen in the profile assuming blood manipulation"* and that it is *"highly unlikely that the profile is the result of analytical or confounding factors such as altitude exposure"*.
129. The Sole Arbitrator notes that the ABP is subject to analysis and interpretation by an Expert Panel and accepts the conclusions so drawn.
- The method of collection and transport of samples
130. Article 7.7.1 of the 2011 WADA Blood Sample Guidelines provided as follows:

“The Blood Samples shall be transported to the Laboratory in a refrigerated state. No sample should be allowed to freeze, and should ideally be kept at a temperature of approximately 4 degrees. Temperature should be maintained between 2 – 12 degrees Celsius. A temperature recording device is recommended to be included with the transported samples to ensure the appropriate temperature range has been maintained during transport”.

131. As to the transport of samples, Mr. Ivanov points to the 2011 WADA Blood Sample Guidelines, which provide for the temperature at which blood samples should be stored, namely between 2 and 12 degrees Celsius. The 2011 WADA Blood Sample Guidelines also provide at Article 7.6.5 that if the temperature deviates outside that recommended range for a period of time likely to affect the composition of a blood sample, the Anti-Doping Organization and the Laboratory shall determine whether or not analysis should proceed on the sample. This temperature range also ideally applies to the transportation of samples from collection to the Laboratory and a temperature recording device is recommended to be included with the transported sample to ensure that the appropriate temperature range has been maintained during transport. Mr. Ivanov notes that, from the documentation packages:
- No temperature log was provided for Sample 2, collected on 21 December 2012;
 - No temperature log was provided for Sample 3, collected on 18 May 2013;
 - No temperature log was provided for Sample 5, collected 16 April 2014;
 - No temperature log was provided for Sample 9, collected 4 May 2015; and
 - No temperature log was provided for Sample 12, collected 24 September 2015.
132. Mr. Ivanov’s position is that any failure to follow technical guidelines, in this case the absence of a temperature logger with each sample to provide information on the temperature during transport and to establish that the sample was maintained at the required temperature of between 2 and 12 degrees Celsius, means that any such sample, and the results using such sample, must be rejected. The samples to which this submission applies are Samples 2, 3, 5, 9 and 12. Mr. Ivanov also points to the available information as to the maintenance of temperature during transport of samples.
133. Mr. Scott emphasises that maintaining proper temperature is essential for ABP analysis and that failure to do so can affect the reliability of the measurement of reticulocytes and haemoglobin. He observes that it is possible that the samples without a temperature log were handled appropriately, it is not possible to know if that was the case.
134. Further, Mr. Ivanov submits that, where the temperature data are absent, it is *“reasonably plausible”* that the results could have been caused by temperature and that the burden shifts to RUSADA to show that there was no such cause with respect to the five samples for which there were no temperature data. Mr. Ivanov says that it is for RUSADA to prove the validity of those samples, not for the athlete to show that the transportation deficiencies could significantly affect the outcome of the conducted study. He submits that Samples 1, 2, 3, 5, 9 and 12 should be disregarded. In this respect, Mr. Ivanov relies on CAS 2014/A/3487, at para. 155, where the panel relevantly held that:

“Rule 33.3(b) requires a shift in the burden of proof whenever an athlete establishes that it would be reasonable to conclude that the IST departure could have caused the Adverse Analytical Finding. In other words, the athlete must establish facts from which a reviewing panel could rationally infer a possible causative link between the IST departure and the presence of a prohibited substance in the athlete’s sample. For these purposes, the suggested causative link must be more than merely hypothetical, but need not be likely, as long as it is plausible”.

135. RUSADA relies on Article 3.2.2 of the 2015 WADC, which provides that the burden is on the athlete to establish both the fact of a departure from an applicable standard and to establish that the departure might reasonably have caused the ADRV to be established. However, RUSADA also points to the evidence of Professor d’Onofrio and to the Expert Panel Report, where the conclusion was that it is highly unlikely that any pre-analytical issues have had any impact on the analysis results in Samples 2, 3, 5, 9 and 12, and submits that this is supported by the lack of any indication in the laboratory documentation packages. RUSADA says that, despite the absence of temperature loggers, the results show that there were no issues about the integrity of the samples or about the analytical results and no indication that the integrity of either had been corrupted. It accepts that there is strict liability as to the integrity of the transported samples and contends that the purpose of the guidelines is to monitor that integrity; if there is no indication that it has been compromised, then the samples can properly be used.

136. Professor d’Onofrio pointed to the scattergram results for the samples, which would indicate if cells had been broken and there is no such indication. Mr. Scott expressed the view that such samples should not be considered unless the “critical defects” can be resolved. He accepted that the scattergram results adduced by the Expert Panel showed that there was no gross impact on the samples but said that it cannot be said that possible variations in temperature had no impact and expressed the view that, in theory, the result could be affected, for example by partial haemolysis. Professor d’Onofrio agreed that the scattergram did not show that there was no effect at all but maintained that there was no sign of degradation and said that he was “100% sure” of this or he would have asked to invalidate the samples. Mr. Scott accepted that the results were not invalid but still relied upon such possibilities to reinforce his contention that they should be taken into account in the uncertainties affecting conclusions from the adaptive model, in that they represent an element of error.

137. In its Expert Panel Opinion of 31 January 2018, the Expert Panel gives further explanation as to the transport of the samples by reference to the storage and transportation data available. It concludes from those data that the temperature for Sample 1 had not gone below 0 degrees Celsius at any time during transportation and that there was nothing in the provided documentation that gave reason to believe that the analysis result for Sample 1 should be disregarded. It also concludes that there was nothing in the data for Samples 2, 5, 9 and 12, despite the absence of temperature logger data, to indicate pre-analytical issues such as haemolysis. Further, regarding Sample 3, the 10-hour collection time from collection to analysis led them to conclude that any suboptimal temperature conditions would potentially have had only a very minor impact on the analysis result. Further, the storage and transportation conditions in Samples 1 and 6 were in accordance with current WADA recommendations and, based on scattergrams, they found it “highly unlikely” that any pre-analytical issues had any impact on the analysis results in Samples 2, 3, 5, 9 or 12.

138. RUSADA agrees that if the temperature did affect the samples, Mr. Ivanov's assertion is correct that those samples should be ignored. However, it points out that the guidelines as to collection and transport are structured to ensure that sample integrity is maintained and that temperature ranges are included so that the risk to the sample is lessened. It submits that the temperature logger is a measurement tool with no intrinsic value; that is, the temperature of the sample is not determined by the logger, nor is the absence of a logger determinative of incorrect temperature during collection and transport. Rather, the data for the sample indicate whether integrity has been maintained and, in this case, the data did not indicate any such concerns.
139. The first matter to note is that the 2011 WADA Blood Sample Guidelines do not mandate a temperature logger. It is recommended but not mandated. Accordingly, the mere absence of such a device does not invalidate the use of the samples. It does raise, however, the fact that there is no proof from such a device that the temperature was maintained within the required range during transport.
140. It is then necessary to turn to the available evidence to ascertain whether there was temperature induced degradation that affected the integrity of the sample. There is no evidence that this occurred; there is evidence from the available documentation and the scattergrams that led the Expert Panel to conclude that it was highly unlikely that there had been any pre-analytical issues that had any impact on the analytical results. This has not been contradicted. The Athlete has not established facts to demonstrate that any departure from the Guidelines caused the OFF Scores in the ABP, nor that there is a plausible link between any such departure and the OFF Scores, nor that such a link could reasonably or rationally be inferred.
141. In view of the aforesaid, the Sole Arbitrator concludes that there is no evidence to find an assertion that the integrity of the samples had been affected during transportation such that they should have been rejected for analysis.

iii. Conclusion

142. Mr. Scott is of the opinion that when the sample results are adjusted for the possible 2% adjustment to haemoglobin to account for altitude training and for the use of the second test results instead of the first test results, and those results are fed into the model, the profile looks "very normal". Mr. Scott concludes that the certainty of the conclusion that the ABP shows that a prohibited substance or prohibited method were used is unwarranted. He accepts that this is a possible explanation of, and consistent with, the "low-normal" reticulocytes and "high-normal" haemoglobin concentration of Sample 1 and Sample 6, resulting in unusually high OFF Scores. However, he explains that the altitude training also provides a reasonable explanation and that this, together with normal biological and analytical variability, could also explain the ABP.
143. RUSADA submits that the results of the Athlete's ABP are not only consistent with the use of a prohibited substance or method but also that, as the Expert Panel found, the conclusion is that such use is highly likely to have occurred.

144. As to the factors raised by Mr. Scott, they were dealt with by the Expert Panel in its Reports. Further, Professor d’Onofrio dealt with each asserted variable and explained why it either should not be taken into account (the second instrument reading) or does not explain the results (the time at altitude). He also explained that the ADAMS model takes individual athlete variability into account and that the coincidence of the OFF Score readings and competitions should be taken into account by experts examining an athlete’s ABP.
145. When all of the evidence is considered, the Sole Arbitrator is comfortably satisfied that RUSADA has established that the conclusion to be drawn from Mr. Ivanov’s ABP is that he used a prohibited substance or prohibited method. In its Expert Panel Opinion, the Expert Panel asserted that this was “*highly likely*” and that any alternative explanation was “*highly unlikely*”. This conclusion, which the Sole Arbitrator accepts, establishes the ADRV to the requisite standard, greater than a mere balance of probabilities.
146. Therefore, the Sole Arbitrator concludes that Mr. Ivanov had used a prohibited substance or method which resulted in the OFF Scores in Samples 1 and 6, which samples were valid for analysis. Thus, Mr. Ivanov did violate Rule 32.2 of the 2012-2013 IAAF ADR.

b) What sanctions shall be imposed on Mr. Ivanov?

147. Having concluded that Mr. Ivanov has committed an ADRV pursuant to Rule 32.2 of the 2012-2013 IAAF ADR, the Sole Arbitrator now turns to the sanction applicable to the Mr. Ivanov’s offense, in particular: (i) the period of ineligibility; (ii) the start date of the period of Ineligibility; and (iii) results disqualification.

i. Period of Ineligibility

148. It is not in dispute that an ADRV contrary to Article 32.2 of the 2012-2013 IAAF ADR attracts a mandatory sanction of a two-year period of ineligibility by reason of Article 40.2.
149. RUSADA contends, and the Athlete disputes, that there exist aggravating circumstances which should result in an increased period of up to two years, that is, four years in total.
150. In this respect, Mr. Ivanov submits that the submission that a period of sanction beyond the three years imposed by the Anti-Doping Committee should not be entertained in the absence of a cross-appeal, citing CAS authority, in particular CAS 2016/A/4371 and CAS 2011/A/2495/2496/2497/2498, para. 8.12.
151. In response, RUSADA acknowledged at the hearing that there was no cross-appeal filed but submitted that it was not required, given that the review of this case is *de novo*.
152. The Sole Arbitrator observes that this is an appeal to an arbitral body from the decision of the Anti-Doping Committee. While it is a hearing *de novo* as to the facts and applicable law, the Sole Arbitrator is bound by the position that the parties have taken in the pleadings. The Appellant has set out in his appeal the orders that he seeks and the basis of his appeal, including as to the

sanction imposed. The Respondent has submitted that a longer period of sanction should be imposed but has not challenged the decision. The Sole Arbitrator cannot impose a sanction greater than that provided for in the Appealed Decision.

153. The Sole Arbitrator notes that the Anti-Doping Committee found aggravated circumstances and increased the period of Mr. Ivanov's Ineligibility by a period of one year, resulting in a three-year period of Ineligibility. Mr. Ivanov submits that the facts do not support a finding of aggravated circumstances and that no additional period of sanction should be imposed.
154. RUSADA relies upon the repeated use of a prohibited substance, which was over a period of time. It submits that this demonstrates the participation in a doping scheme or plan. In that regard, it relies upon the fact that Mr. Ivanov trained with Mr. Chegin at the Centre of Olympic Preparation of the Republic of Mordovia and the fact that numerous other athletes of that centre were found to have participated in such a scheme, constituting aggravated circumstances. It also points out that it can be assumed that Mr. Ivanov benefited from his actions in that he won a significant number of major events or won medals at them over the relevant period of time.
155. As to Mr. Chegin, RUSADA points to the fact that he was found to have committed numerous ADRVs. Mr. Chegin has been banned for life from involvement in sport. Further, a large number of athletes who worked with Mr. Chegin at the Olympic Training Centre have also been found to have committed ADRVs, including a significant number of athletes who compete in race walking. RUSADA relies on the evidence that Mr. Ivanov has publicly identified himself as being associated with that Centre and with Mr. Chegin. In that regard, RUSADA points to Mr. Ivanov's association with Mr. Chegin and submits that there is a reasonable inference to be drawn that Mr. Ivanov's conduct was part of a "*doping plan or scheme*".
156. As mentioned above, Mr. Ivanov gave evidence. He said that he had been a race walker since 2010 and was trained by Mr. Chegin between 2011 and 2014. He had been tested around 100 times. He had never had a positive drug test. He denied having been given any prohibited substances by Mr. Chegin and denied having seen Mr. Chegin give such substances to other athletes. This evidence was not the subject of cross-examination.
157. Mr. Ivanov has not challenged the asserted facts about Mr. Chegin or other athletes who had trained with him. Mr. Ivanov says that he was supportive of Mr. Chegin in 2014, two years before he was banned, because he was thankful to, and loyal to, Mr. Chegin as his coach.
158. According to Mr. Ivanov, the primary assertion for aggravating circumstances raised by RUSADA is simply the fact of the Chegin relationship. Mr. Ivanov notes that the sanction in most ABP cases prior to the enactment of the 2015 WADC resulted in two-year suspensions (see TAS 2010/A/2178; TAS 2010/A/2335; CAS 2011/A/2612; CAS 2011/A/2353). He further submits that these cases should not be ignored by the Sole Arbitrator.
159. In addition, Mr. Ivanov points out, relevantly to Article 10.6 of the 2009 WADC, that there is no suggestion of the use by him of multiple substances, or of a doping plan of which he was

part. He also says that he was not likely to have enjoyed the effects of any prohibited substance beyond the two-year period and that there was no suggestion of deceptive conduct. The evidence only points to two occasions, with Samples 1 and 6, where a prohibited substance may have been used and he submits that this does not amount to a case of aggravation.

160. Both Parties referred to CAS authority on what constitutes aggravating circumstances. Mr. Ivanov refers to CAS 2010/A/2235, where the panel found that two values indicative of blood doping and therefore of blood manipulation, both in connection with major competitions, did not equate to aggravated circumstances. The panel there observed that *“it is the circumstances of the offence not the commission of the offence itself which may aggravate”*.
161. RUSADA submits that two occasions over a period of time is sufficient to constitute aggravated circumstances. RUSADA cites several CAS cases in which aggravated circumstances were found and submits that this is such a case. For instance, in CAS 2013/A/3080, a two-years and nine months’ period of Ineligibility was imposed on athletes for ABP violations. In CAS 2016/O/4481, an athlete was sanctioned with a period of Ineligibility of four years for having been engaged in doping for more than three years. In CAS 2016/O/4883, the sole arbitrator found that the commission of a doping plan or scheme, where the evidence indicated blood manipulation in proximity to competitions spaced nearly four years apart constituted aggravating circumstances and in CAS 2017/O/4980, the sole arbitrator ruled that, in that case, repetitive blood doping over a five-year period amounted to aggravating circumstances.
162. An examination of the cases cited by the Parties makes it apparent to the Sole Arbitrator that it is necessary to consider each case on its own facts.
163. In the present case, RUSADA relies on Mr. Ivanov’s association with Mr. Chegin. However, there is no evidence of the methodology that Mr. Ivanov used, nor that he was aware of any doping scheme that may have been conducted by Mr. Chegin on Mr. Ivanov and/or on other athletes.
164. RUSADA relies on what it submits is a reasonable inference to be drawn from the numbers of athletes in the same discipline with the same coach and in the same time frame, to infer some collusion or collaboration on the part of Mr. Ivanov.
165. While Mr. Ivanov acknowledges that he was coached by Mr. Chegin, he points to the lack of evidence of other athletes, or their competition or their OFF Scores; the only evidence, he says, is the name “Viktor Chegin”. The Sole Arbitrator agrees.
166. The mere fact that Mr. Ivanov was trained by Mr. Chegin, without more, and in the face of Mr. Ivanov’s unchallenged denial as to the application or knowledge of Mr. Chegin’s methods, is not enough to support a finding of aggravated circumstances applicable to Mr. Ivanov.
167. The Sole Arbitrator finds that the circumstances of the offence are not sufficient to support a finding of aggravated circumstances. The commission of the offence, demonstrated by the

ABP, relied upon the samples for which there were high OFF scores, close to competition, and this constituted the offence for which the penalty applies.

168. Accordingly, the period of suspension is two years.

ii. Start Date for Period of Ineligibility

169. Rule 40.10 of the 2012-2013 IAAF ADR stipulates, in the relevant parts, as follows:

“Except as provided below, the period of Ineligibility shall start on the date of the hearing decision providing for Ineligibility or, if the hearing is waived, on the date the Ineligibility is accepted or otherwise imposed. Any period of Provisional Suspension (whether imposed or voluntarily accepted) shall be credited against the total period of Ineligibility to be served. (...)

(b) If a Provisional Suspension is imposed and respected by the Athlete, then the Athlete shall receive a credit for such period of Provisional Suspension against any period of Ineligibility which may ultimately be imposed”.

170. Mr. Ivanov was subject to a provisional suspension which commenced on 2 May 2017. There is no evidence that Mr. Ivanov has breached his provisional suspension.

171. However, Mr. Ivanov submits that in this case, where there have been substantial delays not attributable to the Athlete, and where RUSADA only commenced this proceeding in April 2017, consideration should be given to any sanction starting on the date of the last relevant sample collection, being 12 August 2014.

172. As to the date from which the period of Ineligibility should start, RUSADA submits that the date chosen by the Anti-Doping Committee, namely 2 May 2017, should be the relevant date. RUSADA does not accept that there have been substantial delays that warrant the period of ineligibility being backdated to an earlier date.

173. The Sole Arbitrator does not accept that the evidence is sufficient to establish that there have been substantial delays so as to warrant the period of Ineligibility being backdated to a date earlier than 2 May 2017, the period of the commencement of the provisional suspension. In any event, this question is not currently of practical relevance where the provisional suspension was served and has expired. The Sole Arbitrator determines that the start date for Mr. Ivanov’s two-year period of Ineligibility is 2 May 2017.

iii. Disqualification of the results

174. Rule 40.8 of the 2012-2013 IAAF ADR reads as follows:

“In addition to the automatic disqualification of the results in the Competition which produced the positive sample under Rules 39 and 40, all other competitive results obtained from the date the positive Sample was collected (whether In-Competition or Out-of-Competition) or other anti-doping rule violation occurred through to the commencement of any Provisional Suspension or Ineligibility period shall be Disqualified with all of the resulting

Consequences for the Athlete including the forfeiture of any titles, awards, medals, points and prize and appearance money”.

175. Mr. Ivanov submits that there should be no disqualification of results prior to 12 August 2014. This submission is based on the asserted invalidity of Sample 1 (no disqualification from 9 July 2012) and the lack of temperature monitoring of Sample 3 (no disqualification from 18 May 2013). Mr. Ivanov has not established a that either of these results should be invalidated. It follows that those samples cannot be disregarded regarding results disqualification.
176. RUSADA submits that all results from the date of the first sample (9 July 2012) to the commencement of provisional suspension should be disqualified or, in the alternative and taking account of the delay from the taking of the last sample to the commencement of the provisional suspension, which was not the fault of the athlete, for the period of proven use, culminating in his participation in the European Championships from 12 to 17 August 2014 after Sample 6. This would also take into account the fact that the ABP shows that Mr. Ivanov has not used any prohibited substances from September 2015.
177. This approach seems to the Sole Arbitrator to have merit. It is not in dispute that from September 2015, the Athlete’s ABP has shown no questionable variability.
178. The Sole Arbitrator concludes that the disqualification period should be from 9 July 2012 to 17 August 2014, which is coincident with the period of proven use.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Alexander Ivanov on 12 April 2019 is partially upheld.
2. A period of Ineligibility of two (2) years is imposed on Alexander Ivanov starting from 2 May 2017.
3. All competitive results of Alexander Ivanov from 9 July 2012 to 17 August 2014 are disqualified, with all resulting consequences (including forfeiture of any titles, awards, medals, profits, prizes, and appearance money).
4. (...).
5. (...).
6. All other motions or prayers for relief are dismissed.