

**IN THE MATTER OF PROCEEDINGS BROUGHT UNDER THE ANTI-DOPING RULES  
OF THE INTERNATIONAL ASSOCIATION OF ATHLETICS FEDERATIONS**

*Before:*

*Conny Jörneklint (Chair)*

*David Grace QC*

*Amit Sibal SA*

**BETWEEN:**

**International Association of Athletics Federations**

***Anti-Doping Organisation***

**and**

**Ms Yekaterina Medvedeva Ryzhova**

***Respondent***

---

**DECISION OF THE DISCIPLINARY TRIBUNAL**

---

**I. THE PARTIES**

1. The Claimant, the International Association of Athletics Federations ("IAAF"), is the international federation governing the sport of Athletics worldwide. It has its registered seat in Monaco. In these proceedings the IAAF is represented by the Athletics Integrity Unit (the "AIU").

2. The Respondent, Ms. Yekaterina Medvedeva Ryzhova ("Ms Ryzhova" or "the Athlete") is a 25-year old racewalker from Russia. The Athlete is an International-Level Athlete for the purposes of the IAAF Anti-Doping Rules. The Athlete is represented in these proceedings before the IAAF Disciplinary Tribunal ("the Tribunal") pro bono.
3. The Appellant and the Respondent are each referred to individually as a "Party" and collectively as the "Parties".

## **II. FACTUAL BACKGROUND**

### **A. Blood Doping and the Athlete Biological Passport (ABP)**

4. There are three widely known substances or methods used for blood doping, namely: (i) administering recombinant human erythropoietin ("rEPO") (administered by injection to trigger erythropoiesis, the stimulation of red blood cells); (ii) synthetic oxygen carriers (i.e. infusing blood substitutes such as a haemoglobin-based oxygen carrier ("HBOC") or perfluorocarbons ("PFC") to increase haemoglobin concentrations ("HGB") well above normal levels; and (iii) blood transfusions (i.e. infusing a matching donor's or the athlete's own (previously extracted) red blood cells to increase the haemoglobin well above normal).
5. rEPO is a Prohibited Substance and included in class "S2. Hormones and related substances" on the World Anti-Doping Code Prohibited List. Synthetic oxygen carriers and blood transfusions are Prohibited Methods under class "M1. Enhancement of oxygen transfer" on the World-Anti Doping Code Prohibited List.
6. The World Anti-Doping Agency ("WADA") developed and refined the concept of the ABP, which the IAAF formally introduced to its blood testing programme in 2009.
7. The ABP consists of an electronic record that compiles and collates a specific athlete's test results and other data over time, and is unique to that particular athlete. The haematological module of the ABP records the values in an athlete's

blood samples of haematological parameters that are known to be sensitive to changes in red blood cell production.

8. The values collected and recorded include HGB and percentage of immature red blood cells viz. reticulocytes ("RET%"). The ratio of the HGB and the RET% values is also used to calculate a further value, known as the OFF-score, which is sensitive to changes in erythropoiesis.
9. For example, if an athlete takes rEPO (thereby artificially simulating erythropoiesis) in the lead-up to a competition, there is an increase in the percentage of reticulocytes and then a rapid increase in the level of HGB. However, when the athlete suddenly stops taking the rEPO a number of days before the event to avoid detection at an in-competition doping control, the stimulation of erythropoiesis will stop abruptly and, as a consequence, this will lead to a significant decrease of RET%. The combination of the high HGB and low RET% causes a high OFF-score.
10. By way of further example, if an athlete extracts and then re-infuses his or her own blood, first the HGB decreases and the RET% increases, and then (when the blood is re-infused), the HGB increases and the RET% decreases.
11. The marker values from the blood samples collected in the ABP programme are fed into a statistical model, known as the "Adaptive Model". The Adaptive Model uses an algorithm that takes into account both (i) variability of such values within the population generally (i.e. blood values reported in a large population of non-doped athletes) and (ii) factors affecting the variability of the athlete's individual values (including, gender, ethnic origin, age, altitude, type of sport, and instrument related technology).
12. The selected biological markers are monitored over a period of time and a longitudinal profile that establishes an athlete's upper and lower limits within which the athlete's values would be expected to fall, assuming normal physiological conditions (i.e. the athlete is healthy and has not been doping) is created.

13. The upper and lower limits have been calculated (as per the WADA ABP Operating Guidelines) with a “specificity” of 99%. The Adaptive Model also calculates the probability of abnormality of the sequence of values in the ABP profile.
14. The athlete becomes his/her own point of reference and each time a blood sample is recorded, the Adaptive Model calculates where the reported HGB, RET% and OFF-score values fall within the athlete’s expected distribution. After each new test, a new range of expected results for the athlete is determined.
15. The main goal of assessing the ABP data is to differentiate between normal and abnormal profiles and assess possible causes for abnormalities. The assessment is performed by an automated software system that provides a probability for each ABP profile to be normal (i.e. a profile found in a healthy, undoped population of athletes). If the Adaptive Model determines that an athlete’s values fall outside his or her expected individual range, the results are considered to be atypical and require further investigation and/or analysis. The “specificity” of the limits generated by the Adaptive Model (i.e. the software’s ability to identify clean athletes) is 99%, in accordance with the WADA ABP Operating Guidelines (i.e., at most, only one in 100 athletes who are not doping and with normal physiological conditions would produce values outside the range by chance). The further the value lies outside the limits of the range predicted by the Adaptive Model, the less likely it is that the value reflects normal physiological conditions. Under the IAAF ADR, an ABP profile is considered atypical if the athlete’s HGB and/or OFF-score values are beyond the 99.9 percentile (i.e. there is less than one chance in 1,000 that the abnormal values and variations observed in an athlete’s ABP profile could be explained by a normal physiological or pathological cause).
16. The IAAF implements the ABP through a 4-step procedure designed to safeguard an athlete’s due process in establishing whether the doping regulations were violated: (1) assessment by the Adaptive Model to determine whether the athlete’s blood profile is normal or abnormal; (2) if abnormal, analysis of the athlete’s ABP together with other pertinent information (e.g. athlete’s whereabouts and competition schedule) by three scientific experts on an anonymous basis; (3) the opportunity for the athlete to challenge the IAAF’s expert panel’s conclusions if the

experts find strong indications of prohibited doping; and (4) a finding of a violation and the imposition of sanctions only if the experts conclude unanimously on the basis of the entire record (including the athlete's submissions) that there is an overwhelming likelihood that the athlete engaged in prohibited doping.

## **B. Review of Ms Yekaterina Ryzhova's ABP by the Expert Panel**

### **1. Period of Sample Collection**

17. The following is common ground between the Parties.
18. The Athlete was banned for two years from 13 June 2013 to 12 June 2015 for the presence of EPO in a sample collected In-competition at the European Race Walking Junior Cup in Slovakia on 19 May 2013. The IAAF added Ms Ryzhova to its registered testing pool for inclusion in the ABP programme on 18 May 2015. In the period from 13 October 2016 to 20 July 2018 the IAAF collected from her 11 blood samples. Below is a summary of Ms Ryzhova's ABP.

**Table 1**

<b>No.</b>	<b>Date of Sample</b>	<b>HGB (g/dL)</b>	<b>RET%</b>	<b>Off-score</b>
1.	13 October 2016	12.60	0.68	76.50
2.	30 November 2016	13.80	0.55	93.50
3.	11 January 2017	12.70	1.05	65.50
4.	4 September 2017	14.90	0.77	96.40
5.	22 October 2017	13.30	0.94	74.80

No.	Date of Sample	HGB (g/dL)	RET%	Off-score
6.	31 January 2018	11.80	0.93	60.10
7.	13 February 2018	12.40	1.20	58.30
8.	20 March 2018	15.00	0.53	106.30
9.	31 May 2018	13.10	1.04	69.80
10.	13 June 2018	13.90	0.77	86.40
11.	20 July 2018	14.40	0.59	97.90

19. Each of the samples was analyzed by a WADA-accredited laboratory and logged in ADAMS (Anti-Doping Administration and Management System) using the Adaptive Model. The Athlete's ABP was submitted to a panel of experts for review on an anonymous basis.

## **2. Initial Review by the Expert Panel**

20. The expert panel was comprised of three experts with knowledge in the field of clinical haematology (diagnosis of blood pathological conditions), laboratory medicine and haematology (assessment of quality control data, analytical and biological variability and instrument calibration) and sports medicine and exercise physiology: Professor Giuseppe d'Onofrio, Dr. Laura Garvican-Lewis and Dr. Paulo Paixão (together the "Expert Panel").

21. The Expert Panel examined the Athlete's ABP (which was anonymised and identified by the code "BP72GEP5") and produced a joint opinion dated 5 December 2018.

22. The Expert Panel made the following observations:

We have received your request to provide a joint expert opinion on a hematological profile obtained from a female athlete (sport: Athletics; Race walk) in the context of the "Athlete Biological Passport (ABP)". Each of us had previously evaluated the profile individually and delivered an independent initial review. This report constitutes the joint evaluation of the Expert Panel in the above referenced case in accordance with the current WADA regulations. Access to the blood profile coded BP72GEP5 was granted in ADAMS to examine the ABP data. In addition, we have reviewed the following documents, available in pdf format:

- ABP profile summary prepared by the APMU;
- Laboratory documentation packages (LDPs) for all samples 3, 4, 6, 7 and 8, with Certificates of Analysis (CAs) for all remaining samples
- Competition schedule of the athlete
- Whereabouts information of the athlete

The athlete is a 24-year old female, long distance athlete primarily competing in 20km race walk. The blood profile consists of eleven valid samples collected between October 2016 and July 2018. The samples were collected in the years 2016 (two), 2017 (three) and 2018 (six). All samples were obtained out of competition.

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 probability of sequence abnormality is greater than 99.9% for the OFF-score. At the 99.0% specificity level, the intra-individual upper or lower limits of the profile are flagged with abnormalities for the following samples:

- Sample 4 (high haemoglobin concentration (HB), breaching the upper ABP threshold value);
- Sample 6 (low HB, breaching the lower ABP threshold value);

- Sample 8 (high HB and high OFF-score, breaching the upper ABP threshold value).

### Hematological evaluation

The profile is characterized by large variation in all three parameters, with repeated breaches of the individual reference limits at 99.0% specificity. Specifically, HB ranges from 11.8 g/dL (sample 6, Jan 2018) to 15.0 g/dL (sample 8, March 2018); OFF-score from 58.3 (sample 7, Feb 2018) to 106.3 (sample 8, March 2018) and reticulocyte percentage (%ret) from 0.53% (sample 8, March 2018) to 1.2% (sample 7, Feb 2018).

More specifically, the main abnormal feature of the profile occurs in samples 6 to 8. Sample 6 and 7 display features of blood loss and subsequent bone marrow regeneration, with HB dropping below the individual reference limit, accompanied by increasing %ret. Recent blood loss is not declared on the Doping Control Form. Further, the red cell indices do not indicate an iron deficiency. By contrast, sample 8 was obtained one month after competing in the 2018 National 20km race walk championships. Here, the sample shows a very typical "OFF" scenario, with markedly increased HB (+2.6 g/dL increase from sample 7 obtained approximately 5 weeks prior), the lowest %ret of the profile (0.53%) indicating suppressed erythropoiesis, and an OFF-score of 106.3 which exceeds the upper threshold at 99.0% specificity. A high OFF-score is characteristic of the erythropoietic suppression produced by a supraphysiologically increased circulating red cell mass, as it is observed in athletes who have suspended injections of erythropoietic stimulating agents (ESAs) or have transfused autologous or homologous blood. The probability of a female athlete to have such a high OFF-score at sea level is typically 1/1,000, and between 1/100 and 1/1000 in the worst-case scenario. No confounding factors (e.g. altitude exposure) were declared on the Doping Control Forms. Therefore, no normal physiological explanation is apparent for the large increase in HB between samples 7 and 8. A similar pattern is observed in samples 3 and 4, with HB increasing from 12.7 to 14.9 g/dL, %ret decreasing from 1.05% to 0.77% and OFF-score rising from 65.5 to 96.4. Sample 3 was obtained one month prior to the 2017 National 20km race walk championships. Thus, it is our opinion that the pattern observed in the profile, and specifically in samples 7 and 8, is not compatible with normal physiology, and is unlikely caused by any

known disease. On the other hand, the variation is indicative of the use of prohibited substances or methods, such as artificial blood manipulation.

#### Quality of hematological laboratory results

All samples were scrutinized for their analytical details outlined in the LDPs or CA. In the available documentation, there is no indication that any analytical or pre-analytical issues might have influenced the results in a way that would explain the abnormalities in the profile or alter the analytical data to disadvantage the athlete.

#### Conclusion

Based on these facts and the information available to date, it is our unanimous opinion that, in the absence of an appropriate explanation, the likelihood of the abnormalities described above in the BP72GEP5 profile being due to artificial blood manipulation is very 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 and/or method has been used and that it is unlikely that the passport is the result of any other cause.

### **3. Ms Yekaterina Ryzhova's Explanation of her Abnormal ABP Profile**

23. On 19 February 2019, the AIU wrote to the Athlete on behalf of the IAAF notifying her of the abnormalities detected in her ABP profile and that the AIU was considering bringing charges against her. The Athlete was invited to provide explanations for the abnormalities and was informed that any explanations would be sent to the Expert Panel for review before any charges were brought. The Athlete was permitted until 5 March 2019 to provide her explanations.
24. On 5 March 2019, the Athlete sent an e-mail to the AIU enclosing her explanation (the "Athlete Explanation") including that:
  - (i) the high HGB values in Sample 4 and Sample 8 were due to sustained periods of inactivity from 10 June 2017 viz. Sample 4 and from 19 February 2018 viz. Sample 8; and

- (ii) that the Athlete has been diagnosed with polycystic ovary disorder for which she is prescribed hormone medication.

#### **4. Review of the Athlete Explanation by the Expert Panel**

- 25. On 19 March 2019, the Expert Panel issued a joint report that considered the explanations set out in the Athlete Explanation (the "Second Expert Panel Joint Opinion").
- 26. The Expert Panel found the following.

In our Joint Expert Opinion, dated 05.12.2018, we indicated that this passport is highly suspicious of blood manipulation due to the high haemoglobin concentration (Hb) outlier in sample 4, the decreased Hb with relatively increased reticulocytes (%ret) in samples 6 and 7, and the clear OFF picture in sample 8.

The issues raised in the Athlete's explanations were the following and will be addressed point by point in this report:

1. The high Hb in sample 4 (14.9 g/dL) and sample 8 (15.0 g/dL) was due sustained periods of inactivity
2. The athlete has been diagnosed with a polycystic ovary for which she is prescribed hormone medication

##### **1. Effect of inactivity due cessation of training**

The athlete argues her 2017 season ceased in June 2017 following the All Russia Race walking Championship and that she did not resume training until October 2017. She states that sample 4 (04.09.2017), showing high Hb, was therefore preceded by two months of complete rest. Further, sample 8 (20.03.2018) was obtained one month after an unsatisfactory competitive performance, after which the athlete was recommended to cease training in order to conceive a child. The athlete states that samples 9, 10 and 11 were obtained during a period in which the athlete did not formally train.

It is well-known that changes in training load can cause plasma volume changes. Periods of repeated intensive endurance activities result in acute fluid losses during training bouts, which are overcompensated by fluid shifts towards the intravascular space, resulting in increased plasma volume and hence a decrease in Hb. Conversely, a decreased training load following an intense period of training results in plasma volume contraction and hence an increase in Hb back to 'baseline'. Nevertheless, the occurrence of unusually low hemoglobin values and the magnitude of increase (2.2 g/dL from Sample 3 to 4, and 2.6 g/dL from sample 7 to 8) observed in the current profile is indeed beyond the normal hematological response caused by changes in work load. In addition, significant decreases in exercise activity e.g. cessation of formal training and subsequent detraining (as is the case in this profile) could even suggest a pronounced reduction in Hbmass which would result in a decrease, rather than increase, in Hb. Additionally, reticulocytes tend to be slightly lower mainly during periods of intensive exercise. Again, this contrasts the abnormality observed in the %ret pattern in Sample 4 (0.77%) and 8 (0.53%) where a lower %ret is observed during complete rest compared to the elevated %ret in the period of intense training (sample 3, 1.05% and sample 7, 1.2%). Therefore, the observed changes from sample 3 to 5 and sample 7 to 9 are not compatible with the provided explanation of changes in work load due to inactivity.

## **2. Treatment for Polycystic ovary with hormone medication**

The athlete also states that she was diagnosed with "polycystic ovary, disorder of the menstrual-ovarian cycle and ectopic of the cervix" in 2013. An extract from the athlete's outpatient card is included in as an appendix to the Athlete's explanation, which states the diagnosis and confirms the athlete was prescribed "Kok-Jess" and "Kok-Chloe" medication in 2017 and 2018, respectively. Ovarian polycystic syndrome is not associated with any known change in hemoglobin and reticulocyte values...

## **Conclusion**

Therefore, considering the points raised in the document 'Athlete's Explanation BPID BP72GEP5' related to the ABP haematological profile BP72GEP5, we confirm

our previous opinion that the features of the profile, especially the pattern observed in samples 4, 6, 7 and 8, are typical of blood doping, e.g. the withdrawal and reinfusion of blood. On the other hand, we find it highly unlikely that the profile is the result of analytical or confounding factors such reduced training load or medication.

### **C. Notice of Charge and Initiation of Disciplinary Proceedings**

27. On 27 March 2019, the AIU issued the Athlete with a Notice of Charge. The Notice of Charge informed the Athlete that the Expert Panel had maintained its unanimous opinion that it was highly likely that a Prohibited Substance or Prohibited Method had been used and highly unlikely that the abnormal variations in the Athlete's ABP were the result of any other cause.
28. The Notice of Charge confirmed the imposition of a Provisional Suspension from 27 March 2019 upon the Athlete pending the determination of the charge for alleged violations of the IAAF Anti-Doping Rules and notified the Athlete of her right to admit the charges and/or to request a hearing before the Tribunal within 10 days.
29. On 3 April 2019, the Athlete sent an e-mail to the AIU enclosing results from a blood test undertaken by the Athlete on 12 March 2019. The Athlete indicated that these results showed an HGB value of 160g/L (i.e., 16.0g/dL), higher than any value reported in her ABP profile.
30. On 9 April 2019, the AIU confirmed receipt of the e-mail and enclosures from the Athlete and invited the Athlete to confirm how she wished to proceed with the matter by no later than Monday 15 April 2019.
31. On 15 April 2019, the Athlete sent an e-mail to the AIU including a response to the email from the AIU of 9 April 2019. The Athlete stated that she believed that the Expert Panel had not seen her explanations and maintained that "they [her doctors] believe that the treatment I was prescribed and my diseases affect the change in blood counts." The Athlete requested a hearing before the Tribunal.

### **III. THE TRIBUNAL'S PROCEEDINGS**

32. These proceedings started on 27 March 2019 when the Athlete was charged with committing an Anti-Doping Rule Violation (an "ADRV") for the use of a Prohibited Substance or Prohibited Method on the basis of an abnormal ABP, under Article 2.2. of the IAAF Anti-Doping Rules. The Panel shall later on decide which of the IAAF Anti-Doping Rules that have been in force from time to time shall be applied. On 15 April 2019 the Athlete requested a hearing before the Tribunal.
33. Mr Conny Jörneklint, Former Chief Judge of Kalmar District Court, was appointed as Chairman of these proceedings.
34. On 10 May 2019 the Chairman held a preliminary meeting by conference call. In attendance for the AIU was Mr Tony Jackson and for the Athlete, Mr Christopher Burrows. The Athlete maintained her request for a hearing. After the meeting the Chairman issued Directions for the AIU to submit its Brief on 31 May 2019, for the Athlete to submit her Answer Brief on 28 June 2019 and for the AIU to submit a Reply Brief on 19 July 2019 if it wished to do so. A preliminary date for the hearing was set and it was decided that the case should be adjudicated by a full, three-person panel.
35. After a short respite the AIU provided its Brief on 3 June 2019. The Athlete was given a short respite and provided her Answer Brief on 1 July 2019 along with her written witness statement. The AIU informed the Panel that it did not wish to submit any Reply Brief.
36. Mr David Grace QC and Mr Amit Sibal SA were appointed Panel Members.
37. A hearing was held in London on 2 August 2019, where the two Panel Members, Mr Grace and Mr Sibal, and the Athlete were present via video conference. Two expert witnesses were heard on request of the IAAF: Professor Giuseppe d'Onofrio and Dr. Laura Garvican-Lewis, both present via video conference.

#### **IV. THE PARTIES' SUBMISSIONS**

##### **A. The IAAF**

38. On 3 June 2019 in its Brief the IAAF made the following requests for relief. These requests were maintained at the hearing.

- (i) to rule that the Tribunal has jurisdiction to decide on the subject matter of this dispute;
- (ii) to find that the Athlete has committed an anti-doping rule violation pursuant to Article 2.2 of the 2017 IAAF Rules and the 2018 IAAF Rules for abnormalities in her ABP;
- (iii) to impose a period of ineligibility of eight (8) years upon the Athlete for this, her second anti-doping rule violation, commencing on the date of the Tribunal's Award;
- (iv) to give credit for the period of provisional suspension imposed on the Athlete from 27 March 2019 until the date of the Tribunal's Award against the total period of ineligibility, provided that it has been effectively served by the Athlete;
- (v) to order the disqualification of any results obtained by the Athlete between 31 January 2018 and 27 March 2019 with all resulting consequences including the forfeiture of any titles, awards, medals, points and prize and appearance money pursuant to Article 10.8 of the 2018 IAAF Rules;
- (vi) to award the IAAF a contribution to its legal costs.

39. The IAAF's submissions in support of its request concerning the merits of the case can be summarized essentially as follows:

40. The Athlete is an International-Level Athlete.

41. Even though the Expert Panel also identified abnormalities in Samples 3 and 4, the IAAF has decided, in favor of the Athlete, to consider Sample 6 as the first evidence of doping in the Athlete's ABP profile.

42. The IAAF's position is that the Athlete's ABP profile constitutes clear evidence that the Athlete has committed an ADRV in breach of Article 2.2 of the 2017 IAAF Rules and the 2018 IAAF Rules. In particular:

- (i) the large increase in HGB and decrease in reticulocytes between Sample 7 and Sample 8 (collected around the time of the 2018 Sochi Russian Winter Race Walking Championships). The Expert Panel considered that these features of the profile were characteristic of erythropoietic suppression produced by a supraphysiological increased circulating red-cell mass as observed in athletes who have suspended injections of erythropoietic stimulating agents ("ESA's") (such as EPO) or have transfused autologous or homologous blood;
- (ii) the multiple outliers for HGB at 99% specificity (see Sample 3, Sample 6 and Sample 8) and the sequence for the OFF-score is abnormal at 99% specificity.

43. The Athlete has provided explanations for these variations in her profile, *viz.* reduced training/competition load after the Sochi Russian Winter Race Walking Championships in February 2018 and hormone medication used to treat ovarian polycystic syndrome.

44. As to the cessation/reduction of activity causing the variations in the profile, the Expert Panel observed that:

- (i) the unusually low HGB values and the magnitude of increase (2.6g/dL from sample 7 to sample 8) is beyond the normal haematological response caused by changes in workload;
- (ii) significant decreases in activity, i.e., cessation of training as asserted by the Athlete, could even result in a reduction in HGB rather than an increase as observed in the Athlete's profile; and
- (iii) the Athlete's profile shows lower RET% values during periods of alleged inactivity or reduced workload (sample 8, 0.53%) compared to the periods of intensive exercise (sample 7, 1.20%), which is opposite to

what would be expected (i.e., lower RET% values during periods of intense exercise).

45. As to the use of hormone medication to treat ovarian polycystic ovary syndrome, the Expert Panel noted that this is not associated with any known change in haemoglobin or reticulocyte values.
46. In view of the foregoing and, in particular, on the basis of the First Expert Panel Joint Opinion and the Second Expert Panel Joint Opinion, the IAAF submits that the ABP profile of the Athlete constitutes reliable evidence of blood doping.

## **B. The Athlete**

47. On 1 July 2019 in her Answer Brief the Athlete made the following requests for relief. These requests were maintained at the hearing.
  - (i) to rule that the Tribunal has jurisdiction to decide on the subject matter of this dispute;
  - (ii) to find that the Athlete has not committed an anti-doping rule violation pursuant to Article 2.2 of the 2017 IAAF Rules and the 2018 IAAF Rules for abnormalities in her ABP;
  - (iii) in the event of an adverse finding on (ii) above, to find that No Fault or Negligence or No Significant Fault or Negligence attaches to the Athlete and to impose no period of Ineligibility or the minimum period at the Tribunal's discretion consistent with its function under the 2017 IAAF Rules and the 2018 IAAF Rules;
  - (iv) in the event of the imposition of a period of Ineligibility under (iii) above, to give credit for the period of provisional suspension imposed on the Athlete from 27 March 2019 until the date of the Tribunal's Award against the total period of Ineligibility, as this has been effectively served by the Athlete; and
  - (v) given the Athlete's limited means, to award a nil contribution to the IAAF's legal costs.

48. The Athlete's submissions in support of her request concerning the merits of the case can be summarized essentially as follows:
49. The IAAF's role in governing the sport of athletics worldwide is not disputed, nor is the authority delegated by it to the AIU to bring these proceedings.
50. The Athlete does not dispute her status as an International Level Athlete under the ADR, nor the fact that this comes before the Tribunal as an asserted second ADRV.
51. The Athlete acknowledges the issues raised by some of the results shown in the haematological module of her ABP. The Athlete's only challenge in respect of the accuracy of the data in Samples 1-11 is that Sample 6 spent 24 hours below 2° C, and even fell below 0° C, which could have resulted in incorrect data. She denies that her abnormal findings result from the use of any prohibited substances or methods, whether intentionally or otherwise.
52. The Athlete is represented in the proceedings pro bono and she has been unable to secure the services of an expert on that basis.
53. The explanations provided by the IAAF in respect of the underlying scientific and technical steps regarding how blood doping is conducted and detected, and the function of the ABP in the detection process, is clear.
54. Nonetheless, the Athlete contends that in her particular case the haematological module of the ABP and the algorithm on which the Adaptive Method is based, are not sufficiently reliable to permit the Tribunal to make the findings sought by the IAAF.
55. For the avoidance of doubt, and in the absence of expertise to support the Athlete's contention, this should not be read as a challenge to the presumption of scientific validity of the ABP and the Adaptive Model requiring prior notification to WADA under Article 3.2.1, but rather an indication by the Athlete of the fact that outliers occur in all contexts and that the pool of data on which both the above were based and against which they have been peer-reviewed may not have been sufficiently broad to cater reliably for her specific circumstances.

56. The Athlete does not dispute the collection and analysis of samples provided by her in accordance with the ADR.
57. The Athlete takes issue with the implicit criticism by the IAAF in respect of Samples 3 and 4.
58. She notes in particular that these samples date from January and September 2017 respectively, and are therefore explicable by virtue of natural variation during the intervening eight months, even in the absence of explanation by virtue of her specific medical conditions and the steps taken to treat it.
59. The Athlete further notes that the temperature data recorder for Sample 3 clearly shows that the sample fell below the minimum temperature for a period of almost 19 hours between 12 and 13 January 2017, such that the evidential value of Sample 3 is compromised in any event.
60. The Athlete notes that, in correspondence with the AIU generally, and in responding to the notification of abnormalities in her ABP profile in particular, she was reliant on the assistance of a Mr Astradamov.
61. The Athlete submitted the medical information she had to hand when she received the initial notification from the IAAF.
62. Without conceding anything in respect of the explanation proffered, it is accepted that the language in which it was couched will not have made the Expert Panel's task straightforward, and that the medical evidence may not appear to bear directly on the issues raised.
63. In considering the Athlete's explanation, the Expert Panel accepted that an increase in HGB levels could result from a decreased training load. The Athlete makes it clear in her response that she has not detrained completely, albeit her focus is completely off representative sport.
64. In considering the samples, the Expert Panel does not appear to consider the values in Samples 9 – 11 which are key to the Athlete's explanation, namely that she shows higher than average HGB levels even with a significantly reduced training load and/or complete detraining.

65. The Athlete lacks the necessary medical or physiological expertise to present a clear mechanism for this but maintains that this provides an appropriate explanation. In circumstances where the Athlete has a number of health issues, of which she was already aware and which centered on her general reproductive health, it is entirely possible that there is a linked or underlying condition which also affects her haemoglobin and reticulocyte production.

### **C. The Athlete's Written Statement**

66. The Athlete has provided a written statement dated 1 July 2019 with the following wording:

1. I have competed as a race walker both as a junior and in senior competition at distances of between 5km and 20km.

2. In 2013, I was diagnosed with polycystic ovary syndrome, disorder of the menstrual cycle and ectopy (or erosion) of the cervix. I remain under the care of the Saransk Centre for Reproductive Health ('S-CRH').

3. As recommended by the healthcare professionals at S-CRH, I have since this time used a variety of drugs and treatments to address my symptoms. These have been indicated as appropriate on the doping control forms I have completed and are, for the avoidance of doubt:

a. Qlaira (translated as 'Klayra' in my original response to the Expert panel)

b. Yaz (translated as 'Jess' in my original response to the Expert panel)

c. Chloe

d. Cyclodynol (translated as 'Cyclodenon' in my original response to the Expert panel)

4. S-CRH also conducted a test procedure involving at least on [sic] intramuscular injection of progesterone at 2.5% concentration, the date of which I cannot recall.

5. Where relevant, I have also always indicated periods of training at altitude or simulated altitude on the doping control forms.

6. In June 2017, I participated in the All-Russian Championship Race Walking event and then started a significant period of holiday and rest from training, particularly as I got married in August that year. The sample dated 4 September 2017 was preceded by 2 months of complete rest. I did not start training again until October 2017.

7. On 19 February 2018, I competed in the 20km event in the Russian Winter Race Walking Championships held at Sochi. I completed this event in fourth place in a time of 1:29:08. This is my second slowest recorded time in this event since in four years of competition, and nearly four minutes slower than my time of 1:25:22 in the same event the previous year.

8. Prior to this competition, my gynaecologist had recommended that I stop training because of the difficulties I was experiencing conceiving a child with my husband.

9. After such a disappointing result and a further consultation with my gynaecologist, I decided to stop training completely and focus entirely on having a child.

10. I therefore stopped training after the 2018 Russian Winter Race Walking Championships. At most I completed one training session after this event. With the exception of occasional light runs, I am concentrating on my treatment and having a child.

11. Given the long-standing concerns over my reproductive health, I have not used erythropoietin or synthetic oxygen carriers. I have not received transfused blood, whether my own or a matched donor's. To do either of these things would be foolish, both on a personal level and within the context of the sport to which I am dedicated.

12. Even though I have effectively retired from race walking for the time being, I continued to make myself available for testing, and three further samples were taken from me on 31 May, 13 June and 20 July 2018. These were all taken during a time when I was effectively completely detrained and had not been at altitude.

13. On receiving the Notification of Charge from the IAAF, I also arranged for a further blood test at a reputable laboratory, the results of which I provided to the IAAF. I believe that these results indicate a more complex underlying problem.

14. I understand the abnormal scores for my tests are of concern to the IAAF but believe these to be a result of my health issues and the attempts to treat them. I reiterate that I have not used any prohibited substances or methods under the anti-doping rules.

## **V. THE HEARING**

67. On 2 August 2019 a hearing was held at the offices of Sport Resolutions before Conny Jörneklint, Chair, and Panel Members David Grace QC, and Amit Sibal SA. The parties were represented as follows; for the IAAF Ross Wenzel, Counsel, Tony Jackson, Case Manager of the AIU; for the Athlete Christopher Burrows, Counsel, pro bono, and the Athlete's interpreter Mr Denis Chesnokov, attending via video conference. Brett Clothier, Head of the AIU, attended as an observer.

68. The Athlete gave evidence by video from Saransk, Russia. Heard on the IAAF's behalf were Professor Giuseppe d'Onofrio and Dr. Laura Garvican-Lewis, expert witnesses, by video. Dr. Paulo Paixão was not available for the hearing.

69. The hearing logistics were efficiently arranged by Sport Resolutions.

70. The parties had the opportunity to present their case, comment on the evidence, submit their arguments and answer the questions posed by the Panel. The parties stated that they did not have any objection in respect of their right to be heard, their right to be treated equally or the conduct of the proceedings.

### **A. The Athlete's Testimony**

71. In her testimony, on being examined by her counsel, counsel for the IAAF and later, in answer to some questions by the Panel, the Athlete stated that:

- She can confirm that everything in her written statement is correct. She has read a Russian version of that text.
- She has never been involved in doping and she has never taken EPO intentionally. She has never received any injection or oral medicine from her coach, trainer, doctor or anyone else in her team. She can recall that she did not have any injections in the time before 19 May 2013. She has no explanation as to why EPO was found in her testing samples in 2013.
- She did not challenge the result of the analysis of her sample in 2013 as she found it was no use to deny the findings when the B Sample confirmed the findings in the A Sample.
- After the Russian Winter Race Walking Championships in February 2018 she stopped training completely. Now her focus is on having a baby. She had already decided before that competition to halt her career.
- She lives in Saransk, Russia, and used to train in the Race Walking Center in Saransk. She knows that her former trainer Viktor Chegin is banned for life from all sport-related activities for his involvement in doping. It is correct that her husband Mikhail Ryzhov has recently served a two year sanction for doping. She has never been aware of any talk about doping among the athletes in Saransk.
- She had no medical follow up after the high HGB value was found in her blood on 12 March 2019. This blood test had nothing to do with the IAAF notifying her on 19 February 2019 of the abnormalities detected in her ABP profile. It was taken for treatment of her health problems. She undergoes blood testing nearly every month. She cannot explain why she has not provided any other blood test. The doctors she has been discussing the results of her ABP testing with are the doctors of her clinic. They believed that the treatment she was prescribed and her health problems could affect the change in blood counts. She did not know that she could ask these doctors to testify or make a written statement in these proceedings.

- Her treatment with hormones is in cycles of three months with one month intervals.

## **B. The Expert Evidence**

72. The Expert evidence has been considered by the Panel under two broad heads. First, their evidence has a bearing on the abnormalities in the ABP indicating, in the IAAF's submission, a strong likelihood of doping; and in particular, an autologous blood transfusion doping scenario. The abnormalities in the ABP form the crux of the IAAF's case, as the burden of proof lies on the IAAF to prove to the comfortable satisfaction of the Panel that an ADRV has occurred.
73. Second, the Expert evidence is relevant to assess the credibility of the Athlete's defence, i.e. that the abnormalities in her ABP were due to detraining, her underlying medical conditions including polycystic ovarian syndrome, and the treatment she was receiving for her medical conditions, i.e. oral contraceptives and one progesterone injection during the relevant testing period. The Athlete also relied on blood analysis from a private laboratory which also indicated elevated haemoglobin levels to support her defence that the abnormal ABP was on account of her underlying, as-yet-unidentified medical condition. The Panel notes that so far as the abnormalities in the ABP are sought to be explained through the Athlete's defence, the burden of proving that the abnormalities were caused due to the factors mentioned above lies on the Athlete.

### *Abnormalities in the Athlete's Biological Profile*

74. Professor d'Onofrio testified as to the abnormalities in the ABP being consistent with an Anti-Doping Rule Violation. Several samples were flagged by the statistical software for abnormality of sequence, showing data points which are outside the ABP threshold limits.

75. According to Professor d'Onofrio, the threshold limits in a particular ABP are based on statistical probability theory, and formulated on the basis of several samples collected from a particular individual.
76. Quantitatively, Samples 4, 6, and 8 show haemoglobin levels outside the ABP threshold value, with Sample 8 also indicating a high OFF-score outside the ABP threshold value.
77. Qualitatively, the sequence of Samples 6 to 8 was flagged as suspicious from the point of view of a doping scenario.
78. Sample 6 taken on 31 January 2018 shows a dip in haemoglobin to 11.8 g/dL from 13.3 g/dL in Sample 5, which Professor d'Onofrio described as being so low as to be below the threshold for anaemia. The haemoglobin in Sample 6 is also below the ABP threshold of haemoglobin, being 11.9 g/dL, indicating abnormality at 99% specificity. According to Professor d'Onofrio, in the absence of serious blood loss, Sample 6 could be the result of withdrawal of blood for storage. There was no blood loss disclosed by the Athlete on the doping control forms.
79. Professor d'Onofrio also stated that there is a rise in the reticulocyte percentage of the Athlete in Sample 7, taken two weeks later on 13 February 2018, accompanied by a steady rise in haemoglobin to 12.4 g/dL, the second lowest haemoglobin value in the ABP, which indicates bone marrow stimulation in response to anaemia.
80. Sample 8 was taken over a month later, and a month after the Athlete competed in the National 20km race walk championships in Russia on 19 February 2018. Sample 8, taken on 20 March 2018, indicates a high value of haemoglobin at 15g/dL, above the ABP threshold of 14.5g/dL indicating abnormality at 99% specificity. This was accompanied by reticulocyte suppression, i.e. a drop from 1.2% in Sample 7 to 0.53% in Sample 8. Professor d'Onofrio noted that the human body self-regulates the number of red blood cells based on the body's oxygen requirement, and thus a sudden increase in mature red blood cells would be accompanied by suppressed erythropoiesis.

81. The combination of high haemoglobin and low reticulocyte percentage in Sample 8 resulted in an OFF-score of 106.3, above the ABP threshold of 97.66, indicating sequence abnormality at 99.0% specificity.
82. According to Professor d'Onofrio, the sequence of Samples 6 to 8 is consistent with an autologous blood transfusion blood-doping scenario, indicating that the Athlete would have withdrawn at least two bags of her own blood around the time Samples 6 and 7 were collected, and re-infused the blood sometime after Sample 7 was collected, likely around 19 February 2018, when she participated in the 20km race-walk event. He also testified that the data in Sample 8 was consistent with this scenario, as elevated haemoglobin levels and suppressed reticulocyte percentage would persist four weeks after transfusion.
83. Since re-infused red blood cells do not survive as long as naturally occurring red blood cells, the decrease in haemoglobin and spike in reticulocyte percentage in Sample 9 are consistent with a reinfusion blood-doping scenario.
84. On being asked by Counsel for the Athlete on his opinion as to the Athlete's likely haemoglobin concentration on 19 February 2018, when she competed in the 20km race-walk event, Professor d'Onofrio referred to a 2009 study by Mark Veng published in the International Journal of Sports Medicine. In this study, the average haemoglobin levels in males were 15 g/dL, which decreased to 13 after withdrawal. After reinfusion of three bags of blood, the haemoglobin levels went up to 16 g/dL, above the preceding value of 15.7 g/dL, and stayed at that level. The reticulocyte levels were also depressed, starting at 1.2% and then dropping to 0.65-0.7% after four weeks. Therefore, he concluded that the readings in the present ABP were consistent with an autologous blood transfusion scenario, which had likely taken place one month prior to the collection of Sample 8. Professor d'Onofrio conceded that the study had been carried out with male athletes only.
85. The Counsel for the Athlete asked Dr. Garvican-Lewis about whether a haemoglobin concentration of 16 g/dL was excessive for an athlete, from both a sports and health perspective. Dr. Garvican-Lewis stated that a high haemoglobin concentration would be advantageous to the athlete from a sports perspective, as race-walking is an aerobic sport, and having a higher amount of haemoglobin

would improve performance. From a health perspective, Dr. Garvican-Lewis stated that female athletes in high altitude nations may have even higher haemoglobin levels, so high haemoglobin levels would not be excessive from a health perspective. While it is unlikely that a person from the general population walking into a clinic would have a haemoglobin concentration of 16 g/dL, an athlete with the same haemoglobin concentration would be at an advantage in terms of endurance capacity.

86. The Panel asked Professor d'Onofrio about the uniqueness of each athlete's biological passport, and the bell-curve for natural haemoglobin levels in females. Professor d'Onofrio stated that the bell-curve for haemoglobin levels in healthy adult women ranges from 12-16 g/dL, and that 95% of the population would sit within that range, with the average being around 14-14.5 g/dL. He stated that 16 g/dL is the high extreme for a normal population, but for a person with previous results in a different range, it is an abnormal result.
87. On being asked by the Panel, Professor d'Onofrio also stated that it was far more likely that the abnormal ABP is a result of autologous blood transfusion than of the use of EPO or other ESAs. While both autologous blood transfusion and use of an ESA could explain the data seen in Sample 8, the low value of haemoglobin in Sample 6 is likely a result of blood withdrawal.
88. The Panel also asked Professor d'Onofrio as to whether menstrual bleeding could explain the low haemoglobin levels in Sample 6, as the Athlete had been taking contraceptive pill, Qlaira, which is used to prevent pregnancy or to treat heavy menstrual bleeding. According to Professor d'Onofrio, the data in Sample 6 could be the result of bleeding, but this would make the ABP even more suspicious as it would not be possible to have an increase of more than 20% in haemoglobin in two months after blood loss.
89. The Panel also asked Professor d'Onofrio about how long before a competition an athlete would be able to effectively transfuse blood so as to have a substantial impact on performance. Professor d'Onofrio stated that earlier, 24-48 hours was considered to be the normal time frame. Recently, however, athletes had been caught transfusing blood as little as two hours before a race. He stated that if

blood were to be reinfused too early, it would decrease production of new red blood cells, which would be detrimental to an athlete's performance.

90. The Panel asked the expert witnesses about whether the increase in haemoglobin and decrease in reticulocyte percentage in Sample 11 was consistent with the likely doping scenario or the Athlete's defence of detraining.
91. Professor d'Onofrio noted that as per the Athlete's Whereabouts information, she had recently returned from Indonesia before Sample 11 was collected, and that this may have had some effect on haemoglobin concentration. He also referred to another case where an athlete had tried to explain an abnormal ABP by saying that she had been flying at high altitudes multiple times in the weeks prior to her sample being collected, however he stated that he was not convinced by the explanation in that case, and that the effect of travelling at high altitudes on blood values is not well known.
92. Professor d'Onofrio also stated that the effect of change in plasma volume should not affect reticulocyte levels, and that he did not have an explanation for the low reticulocyte percentage in Sample 11.
93. Dr. Garvican-Lewis also stated that Sample 11 appeared abnormal, given its isolation, but that she did not have an explanation for it.

#### *Storage Conditions for Sample 6*

94. The Athlete's only specific challenge in respect of the accuracy of the data in Samples 1-11 is that Sample 6 spent 24 hours below 2° C, and even fell below 0° C, which could have resulted in incorrect data. Professor d'Onofrio testified that Sample 6 was stored below 0° C for 34 minutes, and the lowest temperature was - 0.4° C, meaning thereby that the sample was never frozen, and the red blood cells in Sample 6 would not have ruptured.
95. Professor d'Onofrio stated that samples with temperature flags are often revalidated; as ADAMS, the adaptive model system, automatically invalidates a sample when the temperature falls below zero degrees Celsius. Blood Stability

Score (BSS); the index of the temperature, storage temperature and time of storage is also not calculated when the temperature of the sample falls below zero degrees Celsius. In such scenarios, as per the guidelines, experts and the Athlete Passport Management Unit can revalidate samples if they consider that the sample is reliable.

96. Professor d'Onofrio referred to the scatter grams for Sample 6 and noted that the BSS index was not calculated, and that in this case, Sample 6 had been revalidated. He indicated that asterisks are present on certain readings that may have been compromised on account of poor storage conditions, e.g. white blood cell count. Had the storage conditions affected the haemoglobin levels, red blood cell count, or reticulocyte percentage, there would have been an asterisk indicating that these values are not reliable.
97. Professor d'Onofrio also stated that in any event, the method of testing for haemoglobin involves a reagent that ruptures red blood cells, so even if the sample had been frozen, it would not result in an incorrect haemoglobin reading.

#### *The Athlete's Defence of Detraining*

98. Dr. Garvican-Lewis testified as to the Athlete's defence that she had detrained immediately after participating in the 20km race-walk event on 19 February 2018.
99. Dr. Garvican-Lewis agreed that in principle, haemoglobin levels can be elevated after a sudden cessation of endurance training, on account of a phenomenon known as "plasma contraction", i.e. a reduction in blood/tissue plasma levels resulting in an increased concentration of haemoglobin. She referred to "sports-anaemia" or "pseudo-anaemia", a condition brought on by an increase in plasma volume during endurance exercise and training; and stated that when an athlete stops training, the reduction in plasma volume results in an increase in haemoglobin concentration. However, a cessation in endurance training would also reduce the body's red blood cell production as well, as body tissues would require less oxygen with a decrease in training load. Therefore, according to Dr. Garvican-Lewis, elevated haemoglobin levels on account of plasma contraction would not be

observable after about one week of a complete cessation of training, whereas in the present ABP, the elevated haemoglobin levels in Sample 8 are observed four weeks after the Athlete allegedly detrained and did not resume training.

100. Dr. Garvican-Lewis also testified that based on studies, the increase in haemoglobin concentration on account of plasma contraction would typically be around 10%, which would not explain the Athlete's increase in haemoglobin of about 27% from Sample 7 to Sample 8. Dr. Garvican-Lewis also observed that the difference in magnitude between Samples 6 and 7 on the one hand and Sample 8 on the other makes it highly unlikely that the high OFF-score in Sample 8 was a result of plasma contraction.
101. Dr. Garvican-Lewis noted that the low haemoglobin and high reticulocyte percentage in Samples 9 to 10 is inconsistent with plasma contraction. The haemoglobin concentration would have dropped only if the Athlete was training again at the time Samples 9 to 10 were collected; and if Sample 9 was truly the result of detraining, then Sample 10 would imply that the Athlete had begun training again. Moreover, the theory of detraining does not explain the elevated reticulocyte percentage; which is consistent with an autologous blood transfusion scenario.
102. Dr. Garvican-Lewis also rejected the Athlete's suggestion that the combination of detraining along with change in medication (cessation of Panangin and starting Qlaira) could explain the abnormal ABP.
103. On being asked by the Panel as to whether there was literature to support the figure of 10% increase in haemoglobin due to plasma contraction, Dr. Garvican-Lewis cited a Danish study where athletes increased their training load by 250%, and then reduced their training loads to original levels. In this study, the mean change in haemoglobin levels was just under 8%. Dr. Garvican-Lewis also stated that there were a number of studies on plasma contraction, none of which would explain a 27% increase in haemoglobin concentration on account of plasma contraction.

*The Athlete's Defence of her underlying medical conditions and hormonal treatment*

104. Professor d'Onofrio, though admittedly not an expert on the human reproductive system, testified that polycystic ovary disorder, female contraceptive pills, and female hormones in therapeutic doses do not have any known effect on haemoglobin and reticulocyte levels.
105. The Panel asked Professor d'Onofrio about two references (number 8 and number 9) in the Second Expert Panel Joint Opinion dated 19 March 2019 in the context of the Expert Panel's finding that "Ovarian polycystic syndrome is not associated with any known change in hemoglobin [sic] and reticulocyte values".
106. Professor d'Onofrio was asked how the study referred to at endnote 8 in the Second Expert Panel Joint Opinion dated 19 March 2019, which examined haematological differences between obese adolescents with and without polycystic ovary disorder was relevant in the athlete's context, entitled "*Ucakturk A, Demirel F, Tayfun M, et al. Complete Blood Count Parameters in Girls with Polycystic Ovary Syndrome (abstract). Hormone Research in Paediatrics Volume 82 Supplement 1ESPE Abstracts (2014) 82 P-D-3-3-804*". Professor d'Onofrio agreed that it was "not a great reference", but stated that the study concludes that the haematological differences between the obese adolescents with and without polycystic ovary syndrome were "null".
107. Professor d'Onofrio was also asked about the relevance of citing the study referred to at endnote 9 in the Second Expert Panel Joint Opinion dated 19 March 2019, examining white blood cell count in women suffering from polycystic ovary syndrome, entitled "*Herlihy AC, Kelly RE, Hogan JL, O'Connor N, Farah N, Turner MJ. Polycystic ovary syndrome and the peripheral blood white cell count, Journal of Obstetrics and Gynaecology, 2011, 31:3, 242-244*". Professor D'Onofrio admitted that this reference was made in error, and that the Expert Panel intended to rely on a different study entitled "Association between red blood cell distribution and polycystic ovary syndrome", only the abstract of which was available at the time.

108. Professor d’Onofrio maintained that while it is known that blood values are affected by pregnancy, polycystic ovary syndrome has nothing to do with blood values, which is why it has not been studied.

*The Athlete’s Private Sample*

109. The Athlete also relied on a blood report from a private laboratory, of a blood test taken on 12 March 2019. The blood sample indicated a haemoglobin concentration of 16 g/dL.
110. On being asked with regard to the private sample report dated 12 March 2019, Professor d’Onofrio and Dr. Garvican-Lewis expressed serious doubt over the accuracy and reliability of the report, as the pre-analytical and analytical standards such as collection, conditions of transport, conditions of storage, and testing process are unknown. Professor d’Onofrio also stated that private samples have never been admitted as evidence in any of the cases of which he has been part.
111. Dr. Garvican-Lewis testified that it would be highly unlikely that a person whose previous haemoglobin values were around 13-14 g/dL would experience a sudden increase in their haemoglobin concentration to 16 g/dL after nearly a year of detraining.
112. On being asked by the Panel, Professor d’Onofrio suggested that such an unnatural increase in haemoglobin concentration could be the result of erythrocytosis, on account of very serious medical conditions such as polycythaemia vera (a type of blood cancer), or severe heart, lung, or kidney disorders. The Athlete’s private sample report dated 12 March 2019 indicates that she suffers from erythrocytosis and leukopenia. According to Professor d’Onofrio, the first response to such a reading would be to perform specific haematological tests to try to find out the cause and explore possible signs of pathology. He also stated that if the elevated haemoglobin levels were caused by a congenital condition, then the Athlete would have had high values of haemoglobin which would have been stable over time.

113. Professor d’Onofrio also stated that the low concentration of neutrophils indicating mild leukopenia, as seen in the Athlete’s private sample report dated 12 March 2019, is not associated with haemoglobin levels and reticulocyte percentage.

*Erythropoiesis-stimulating agents (ESAs)*

114. Upon being asked by the Counsel for the AIU, Professor d’Onofrio stated that ESAs are typically injected, and taken as a course of injections, depending on the half-life of the drug. A singular injection is unlikely to result in an increase in haemoglobin levels, which is why ESAs are usually taken as a course.

**IV. LEGAL ANALYSIS**

115. The Panel confirms that it carefully took into account in this decision all of the submissions, evidence, and arguments presented by the parties, even if they have not been specifically summarised or referred to specifically.

**A. Jurisdiction and Applicable Rules**

*Jurisdiction*

116. Article 1.2 in 2017 IAAF Rules states as follows:

In accordance with Article 16.1 of the IAAF Constitution, the IAAF has established an Athletics Integrity Unit (“Integrity Unit”) with effect from 3 April 2017 whose role is to protect the Integrity of Athletics, including fulfilling the IAAF’s obligations as a Signatory to the Code. The IAAF has delegated implementation of these Anti-Doping Rules to the Integrity Unit, including, but not limited to the following activities in respect of International-Level Athletes and Athlete Support Personnel: Education, Testing, Investigations, Results Management, Hearings, Sanction and Appeals. The references in these Anti-

Doping Rules to the IAAF shall, where applicable, be references to the Integrity Unit (or to the relevant person, body or functional area within the Unit).

117. The IAAF Anti-Doping Rules, which were in force between 6 March 2018 and 1 January 2019 (the "2018 IAAF Rules"), had the same rule. The current IAAF Anti-Doping Rules (the "2019 IAAF Rules"), effective from 1 January 2019, also has the same Articles. According to Rules of Procedure it is competent to apply the Rules in force when the proceedings occur.
118. The application of the IAAF Anti-Doping Rules to Athletes, Athlete Support Personnel and other Persons is set out in Article 1.7 of the Rules (the same wording in the three versions which we have to deal with but in the current version the rule is in Article 1.6), including the following:
  - 1.7 These Anti-Doping Rules also apply to the following Athletes, Athlete Support Personnel and other Persons, each of whom is deemed, by condition of his membership, accreditation and/or participation in the sport, to have agreed to be bound by these Anti-Doping Rules, and to have submitted to the authority of the Integrity Unit to enforce these Anti-Doping Rules:
    - a) all Athletes, Athlete Support Personnel and other Persons who are members of a National Federation or of any affiliate organisation of a National Federation (including any clubs, teams associations or leagues);
    - b) all Athletes, Athlete Support Personnel and other Persons participating in such capacity in Competitions and other activities organized, convened, authorized or recognized by (i) the IAAF (ii) any National Federation or any member or affiliate organization of any National Federation (including any clubs, teams, associations or leagues) or (iii) any Area Association, wherever held;
    - c) all Athlete Support Personnel and other Persons working with, treating or assisting an Athlete participating in his sporting capacity; and
    - d) any other Athlete, Athlete Support Person or other Person who, by virtue of an accreditation, licence or other contractual arrangement, or otherwise, is subject to the jurisdiction of the IAAF, of any National

federation (or any member or affiliate organization of any National Federation, including any clubs, teams, associations or leagues) or of any Area Association, for purposes of anti-doping.

119. The applicable rules are the IAAF Anti-Doping Rules, which apply to all athletes who are members of a National Federation and to all athletes participating in competitions organised, convened, authorised or recognised by the IAAF.
120. During the time the samples that formed the basis of the Adverse Analytical Findings were collected, the Athlete competed in the Russian Winter Race Walking Championships as a member of the Russian Federation. This means that the Athlete was bound by the IAAF Anti-Doping Rules.
121. Article 7.2 in the 2017 IAAF Anti-Doping Rules (“the 2017 IAAF Rules”) and the 2018 IAAF Rules confers jurisdiction for results management on the AIU in certain circumstances, including:
  - 7.2 The Integrity Unit shall have results management responsibility under these Anti-Doping Rules in the following circumstances:  
  
-----
    - 7.2.4 For potential violations arising in connection with any Testing conducted on an International-Level Athlete by a National Anti-Doping Organisation (or other relevant Testing authority).
122. This rule is the same in the 2019 IAAF Rules.
123. Article 1.9 of the 2017 IAAF Rules defines International-Level Athletes among others as an athlete who is in the International Registered Testing Pool. This rule was the same in Article 1.9 in the 2018 IAAF Rules and can also be found in Article 1.8 in the 2019 IAAF Rules.
124. The Athlete was added to the International Registered Testing Pool on 18 May 2015. The Athlete has not contested that she is an International-Level Athlete. The AIU therefore has jurisdiction for results management in this matter.

123. The IAAF has established the Disciplinary Tribunal in accordance with Article 1.5 of the 2017 IAAF Rules, which provides that the Tribunal shall determine Anti-Doping Rule Violations committed under the rules. The 2018 IAAF Rules had the same rule as do the 2019 IAAF Rules.
124. Article 8.2(a) of the 2017 IAAF Rules sets out that the Tribunal shall have jurisdiction – among others – over all matters in which:
- i. An Anti-Doping Rule Violation is asserted by the Integrity Unit against an International-Level Athlete or Athlete Support Person in accordance with these Anti-Doping Rules;
125. This Article had the same wording in the 2018 IAAF Rules, in Article 8.1, which is also replicated in the 2019 IAAF Rules.
126. The Panel has already defined the Athlete as an International-Level Athlete. Therefore, the Disciplinary Tribunal has the jurisdiction to hear and determine the ADRV alleged against her, pursuant to Article 8.1(a) of the 2019 IAAF Rules.

#### *Applicable Rules*

127. The IAAF submits that the Athlete's ABP is evidence of an ADRV committed in 2018 between the times of Samples 6 and 8. The relevant IAAF Anti-Doping Rules in force at the time when these samples were collected were with respect to Samples 6 and 7 (taken on 31 January 2018 and 13 February 2018 respectively), the 2017 IAAF Rules in force between 3 April 2017 and 6 March 2018, and with respect to Sample 8 (taken on 20 March 2018), the 2018 IAAF Rules, which came into force on 6 March 2018.
128. The Panel has to apply both these Anti-Doping Rules, but, as will be seen later in this decision, these rules are identical in all material respects.

## **B. Burdens and Standards of Proof**

129. Article 3.1 of the 2017 IAAF Rules states as follows:

### **3.1 Burdens and Standards of Proof**

The IAAF or other Anti-Doping Organisation shall have the burden of establishing that an Anti-Doping Rule Violation has been committed. The standard of proof shall be whether the IAAF has established the commission of the alleged Anti-Doping Rule Violation to the comfortable satisfaction of the hearing panel, bearing in mind the seriousness of the allegation that is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt. Where these Anti-Doping Rules places the burden of proof upon the Athlete or other Person alleged to have committed an Anti-Doping Rule Violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability.

130. This rule is the same in the 2018 IAAF Rules and in the current 2019 IAAF Rules. This rule shall be applied in this case.

## **C. The Anti-Doping Rule Violation**

### *Expert Panel*

131. Given the complexity of issues raised, the Panel wishes to make the following observations regarding the IAAF's experts. Although these observations are by no means determinative of the Panel's analysis and findings on each of the key issues to be decided, the Panel took them into account when considering the reliability and credibility of the experts' evidence. The experts – Professor d'Onofrio, Dr. Garvican-Lewis, and Dr. Paixão – are renowned and leading experts (with numerous publications) specifically on the relevant issues. The Panel has had the benefit of oral testimony of Professor d'Onofrio and Dr. Garvican-Lewis, who considered the ABP and the Athlete's Explanation. The three-member Expert Panel also produced individual and joint reports well prior to the hearing.

### *The Athlete's Credibility*

132. In this context it is important to note that the Athlete has not given any explanation for the finding of EPO in her testing samples in 2013. The Athlete in her testimony maintained that she had never taken any injections from her doctor, coach, or any other person prior to her suspension. During his testimony Professor d'Onofrio stated that ESAs are typically injected, and taken as a course of injections, depending on the half-life of the drug. A singular injection is unlikely to result in an increase in haemoglobin levels, which is why ESAs are usually taken as a course.
133. The conclusion is that an athlete who has EPO in her body must have been aware of how it entered to her body. In the Panel's view, the Athlete's statements in this regard significantly lower the Athlete's general credibility.

### *Blood Report from a Private Laboratory*

134. The Athlete also relied on a blood report from a private laboratory, taken on 12 March 2019. The Panel accepts that this blood test was taken as part of her ongoing treatment for polycystic ovary disorder, and part of her ongoing efforts to have a child. The blood sample indicated a haemoglobin concentration of 16 g/dL, and was relied on to support the Athlete's theory that her abnormal ABP was a result of her underlying, as-yet-unidentified medical conditions.
135. The AIU has strongly argued that this evidence ought not to be given any weight in the evaluation of evidence.
136. The Panel finds that this evidence is admissible and that the main issue is what evidential weight the private sample can have.
137. Both Professor d'Onofrio and Dr. Garvican-Lewis expressed serious doubt over the accuracy and reliability of the report. There is no information about the pre-analytical and analytical standards around the sample such as collection,

conditions of transport, conditions of storage, and testing process. Professor d'Onofrio also stated that private samples never have been admitted as evidence in any of the cases he has been a part of.

138. According to the result of the blood report, Dr. Garvican-Lewis stated that it would be highly unlikely that a person whose previous haemoglobin values were around 13-14 g/dL would experience a sudden increase in her haemoglobin concentration to 16 g/dL after not having been training for nearly a year. As explained at paragraph 112 above, Professor d'Onofrio suggested that such an unnatural increase in haemoglobin concentration could be the result of erythrocytosis, on account of very serious medical conditions such as polycythaemia vera (a type of blood cancer), or severe heart, lung, or kidney disorders. According to Professor d'Onofrio, the first response to such a reading would be to perform specific haematological tests to try to find out the cause and explore possible signs of pathology. The Athlete has testified that she had no medical follow up after the high haemoglobin concentration was found in her blood on 12 March 2019. Professor d'Onofrio also stated that if the elevated haemoglobin levels were caused by a congenital condition, then the Athlete would have had high values of haemoglobin which would have been stable over time. According to Professor d'Onofrio the low concentration of neutrophils indicating mild leukopenia, as seen in the Athlete's private sample report dated 12 March 2019, is not associated with haemoglobin levels and reticulocyte percentage.
139. The Athlete has not provided any other blood test analysis from all the tests she has undergone during the period when she has been treated for polycystic ovary disorder. According to the Athlete she has taken blood tests nearly every month. This leaves no possibility to compare tests over time.
140. The Counsel for the AIU also rightly submitted in his closing arguments that a private blood sample, unlike samples collected by WADA-accredited laboratories, may not be screened for the presence of ESAs, and will not have a simultaneous urine sample collected to test for the presence of rEPO or other ESAs.
141. CAS jurisprudence has established that samples voluntarily provided by an athlete can only be added to his ABP if the athlete proves the circumstances under which

the samples were taken from him or her and that such processes complied with the applicable standards, see for example CAS 2016/O/4469 *IAAF v. ARAF & Tatyana Chernova*.

142. In this case the Athlete relies on the private test to prove that the haemoglobin concentration in her blood generally is high due to her medical problems. If such a test is to be given any importance in the evaluation of evidence the athlete must prove the circumstances under which this sample was taken. The Athlete has not given any detailed information about the testing, such as collection, conditions of transport, conditions of storage, and testing process. The athlete has also not produced any of her doctors, or any person connected with the laboratory that tested the private sample.

143. The Athlete stated in evidence, when asked why she did not produce any of the doctors on whose advice she relies in her defence, that she did not know that she could ask her doctors to testify in these proceedings. The Panel notes that the Notice of Charge dated 27 March 2019 clearly stated at para 4.7 that:

4.7. If this matter proceeds to a hearing, the AIU will have the burden of proving the Charge to the comfortable satisfaction of the Tribunal. **You will have the opportunity to challenge the evidence put forward by the AIU and/or to introduce evidence of your own that you believe shows the AIU cannot meet/has not met its burden of proof.** (emphasis added)

144. The Panel further notes that it is not the Athlete's case that she was unaware in advance of the hearing that the AIU was relying on evidence of experts, nor did her counsel argue that she was unaware of her rights in respect of the hearing. The Panel's conclusion is that the blood report from the private laboratory cannot be given any weight in the evaluation of evidence.

#### *Storage Conditions for Sample 6*

145. The Athlete has challenged the accuracy of the data in Samples 1-11 in that Sample 6 spent 24 hours below 2° C, and even fell below 0° C, which according to the Athlete could have resulted in incorrect data. Professor d'Onofrio testified that

Sample 6 was stored below 0° C for 34 minutes, and that the lowest temperature was minus 0.4° C. Professor d'Onofrio was of the opinion that the sample was never frozen, and the red blood cells in Sample 6 would not have ruptured. Professor d'Onofrio also stated that in any event, the method of testing for haemoglobin involves a reagent that ruptures red blood cells, so even if the sample had been frozen, it would not have resulted in an incorrect haemoglobin reading.

146. The Panel's conclusion is that the storage conditions for Sample 6 cannot invalidate the given data emerging from the analysis of that sample.

#### *Comparison with the Samples 9 - 11*

147. Dr. Garvican-Lewis noted that the low haemoglobin and high reticulocyte percentage in Samples 9 to 10 is inconsistent with plasma contraction. The haemoglobin concentration would have dropped only if the Athlete was training again at the time Samples 9 to 10 were collected; and if Sample 9 was truly the result of detraining, then Sample 10 would imply that the Athlete had begun training again. Moreover, the theory of detraining does not explain the elevated reticulocyte percentage; which is consistent with an autologous blood transfusion scenario.
148. The experts were asked whether the increase in haemoglobin and decrease in reticulocyte percentage in Sample 11 was consistent with the likely doping scenario or the Athlete's defence of detraining. Professor d'Onofrio noted that as per the Athlete's Whereabouts information, she had recently returned from Indonesia before Sample 11 was collected, and that this may have had some effect on haemoglobin concentration. He also said that the effect of travelling at high altitudes on blood values is not well known and that the effect of change in plasma volume should not affect reticulocyte levels, and that he did not have an explanation for the low reticulocyte percentage in Sample 11. Dr. Garvican-Lewis stated that Sample 11 appeared abnormal, given its isolation, but that she did not have an explanation for it.

149. The Panel's conclusion is that the observations concerning Samples 9 to 11 do not compromise the atypical results found in Samples 6 to 8.

*The Validity of the ABP and the Adaptive Model*

150. The Panel makes reference to the CAS award in *Valjavec (CAS 2010/A/2235 UCI v Tadej Valjavec & Olympic Committee of Slovenia)* which confirmed the validity and reliability of the ABP. The Panel notes many more cases in which the panel has accepted this model as reliable, see among others CAS 2014/A/3614 & 3561, *IAAF & WADA v RFEA & Ms. Marta Dominguez*, CAS 2016/O/4464, *IAAF v ARAF & Sharmina*; CAS 2016/O/4463, *IAAF v ARAF & Ugarova*; CAS 2016/O/4469 *IAAF v ARAF*, CAS 2016/O/4481, *Chernova & IAAF v ARAF & Savinova-Farnosova* and CAS 2018/O/5822, *IAAF v RUSAF & Mariya Ponomareva*.
151. The Athlete has not contested the validity of the ABP and the Adaptive Model. In light of this, and considering the written and oral testimonies of the experts, the Panel is comfortably satisfied that the ABP model is a reliable and valid means of establishing an ADRV.
152. Furthermore, the Panel has noted the unanimous conclusions of the Expert Panel, in its initial review.
153. Accordingly, the Panel is comfortably satisfied that atypical results were detected in the Athlete's ABP profile. In turn, the Panel discusses below each of the explanations for detected abnormalities put forward by the Athlete.

*Period of inactivity/detraining*

154. The Athlete produced no evidence apart from her own testimony to support her theory that the abnormal ABP could have been a result of detraining.
155. To the sustained period of inactivity the Expert Panel in its Second Expert Panel Joint Opinion dated 19 March 2019 observed that the occurrence of unusually low

haemoglobin values and the magnitude of increase of 2.6 g/dL from Sample 7 to 8 found in the Athlete's profile is beyond the normal haematological response caused by changes in work load. The Expert Panel added that significant decreases in exercise activity e.g. cessation of formal training and subsequent detraining could even suggest a pronounced reduction in Hbmass which would result in a decrease, rather than increase, in HGB. Furthermore, the Expert Panel found that reticulocytes tend to be slightly lower mainly during periods of intensive exercise. Again, this contrasts the abnormality observed in the RET% pattern in Sample 8, at 0.53%, which should mean that a lower RET% is observed during complete rest, compared to the elevated RET% in the period of intense training, i.e. Sample 7, at 1.2%. Therefore, the Expert Panel concluded that the observed changes from Samples 7 to 8 are not compatible with the explanation offered by the Athlete of changes in work load due to inactivity.

156. During her testimony, Dr. Garvican-Lewis stated that, in principle, haemoglobin levels can be elevated after a sudden cessation of endurance training, on account of a phenomenon known as "plasma contraction", i.e. a reduction in blood/tissue plasma levels resulting in an increased concentration of haemoglobin. Dr Garvican-Lewis further stated, on the other hand, that haemoglobin levels on account of plasma contraction would not be observable after about one week of a complete cessation of training, whereas in the present ABP, the elevated haemoglobin levels in Sample 8 are observed four weeks after the Athlete allegedly detrained and did not resume training. Dr. Garvican-Lewis also testified that based on studies, the increase in haemoglobin concentration on account of plasma contraction would typically be around 10%, which would not explain the Athlete's increase in haemoglobin of about 27% from Sample 7 to Sample 8. Dr. Garvican-Lewis also observed that the difference in magnitude between Samples 6 and 7 on the one hand and Sample 8 on the other makes it highly unlikely that the high OFF-score in Sample 8 was a result of plasma contraction. Dr. Garvican-Lewis also stated that there were a number of studies on plasma contraction, none of which would explain a 27% increase in haemoglobin concentration on account of plasma contraction.

157. The Panel concludes that the expert evidence provides a sound basis to conclude that the Athlete has failed to prove her defence of inactivity or detraining. Accordingly, the Panel is comfortably satisfied that the alleged period of inactivity or detraining does not explain the abnormal values detected in the Athlete's ABP and the Athlete has failed to prove this defence.

*Medical conditions*

158. The Athlete has not produced any of the doctors who treated her or any expert witnesses to support her theory that her underlying medical condition resulted in her abnormal ABP. Her testimony has been vague as to the nature of her medical condition. In particular, the Panel notes that despite an abnormally high haemoglobin concentration of 16 g/dL in the report dated 12 March 2019, the Athlete denied having sought any follow up medical examination or treatment for possible pathology. The Athlete maintained that the report dated 12 March 2019 was forwarded from her fertility clinic to the private laboratory without her knowledge, and was not procured by her after she first became aware of the investigation into a potential ADRV by the AIU's email dated 19 February 2019.

159. Professor d'Onofrio testified that polycystic ovary disorder, female contraceptive pills, and female hormones in therapeutic doses do not have any known effect on haemoglobin and reticulocyte levels. He maintained that while it is known that blood values are affected by pregnancy, polycystic ovary syndrome has nothing to do with blood values, which is why it has not been studied.

160. In the Second Expert Panel Joint Opinion dated 19 March 2019 the Expert Panel opined that neither this syndrome, nor the medication which the Athlete was prescribed, are associated with any known change in haemoglobin and reticulocyte values. There is an error in endnote 9 to the said opinion, as conceded by Professor d'Onofrio at the hearing. Nonetheless, the Athlete, whose burden it is to prove her defence, has not adduced any material to support a conclusion that her medical condition or her medication could explain the abnormalities in her ABP. In light of her failure to discharge her burden, and the positive evidence of the

experts during the hearing, the error in the endnote is not material and does not detract from the general credibility and reliability of the experts' evidence.

161. From this evidence, the Panel is comfortably satisfied that the medical conditions and drugs listed by the Athlete cannot explain the detected abnormalities at issue, and the Athlete has failed to prove her defence that her abnormal ABP was the result of ovarian polycystic syndrome or her prescribed medication.
162. In the 2017 IAAF Rules Doping is defined as the occurrence of one or more of the following (each an "Anti-Doping Rule Violation")

-----

**2.2 Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method**

2.2.1 It is each Athlete's personal duty to ensure that no Prohibited Substance enters his body and that no Prohibited Method is Used. Accordingly, it is not necessary that intent, Fault, negligence or knowing Use on the Athlete's part be demonstrated in order to establish an Anti-Doping Rule Violation for Use of a Prohibited Substance or a Prohibited Method.

2.2.2 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.

163. In the 2018 and 2019 IAAF Rules this regulation is exactly the same.
164. The testimony of the experts, unshaken in cross-examination, is that the sequence of the Athlete's Samples 6 to 8 manifests abnormalities which are highly likely to be due to artificial blood manipulation, consistent with an autologous blood transfusion blood-doping scenario. Based on the evidence, the Panel is comfortably satisfied that the findings of the Athlete's ABP cannot be explained in any way other than that the Athlete has used a Prohibited Method. She has therefore committed an Anti-Doping Rule Violation.

## **D. Sanction**

### *Period of Ineligibility*

165. Article 10.2 of the 2017 IAAF Rules, which is the same in the 2018 IAAF Rules, states the following.

#### **10.2 Ineligibility for Presence, Use or Attempted Use, or Possession of a Prohibited Substance or Prohibited Method**

The period of Ineligibility imposed for an Anti-Doping Rule Violation under Article 2.1, 2.2 or 2.6 that is the Athlete or other Person's first anti-doping offence shall be as follows, subject to potential reduction or suspension pursuant to Article 10.4, 10.5 or 10.6:

10.2.1 The period of Ineligibility shall be four years where: (a) The Anti-Doping Rule Violation does not involve a Specified Substance, unless the Athlete or other Person establishes that the Anti-Doping Rule Violation was not intentional.

-----

10.2.3 As used in Articles 10.2 and 10.3, the term "intentional" is meant to identify those Athletes or other Persons who cheat. The term, therefore, requires that the Athlete or other Person engaged in conduct that he knew constituted an Anti-Doping Rule Violation or knew that there was a significant risk that the conduct might constitute or result in an Anti-Doping Rule Violation and manifestly disregarded that risk. An Anti-Doping Rule Violation resulting from an Adverse Analytical Finding for a substance that is only prohibited In-Competition (a) shall be rebuttably presumed to be not "intentional" if the substance is a Specified Substance and the Athlete can establish that it was Used Out-of-Competition; and (b) shall not be considered "intentional" if the Substance is not a Specified Substance and the Athlete can establish that it was Used Out-of-Competition in a context unrelated to sport performance.

-----

#### **10.7 Multiple Violations**

10.7.1 For an Anti-Doping Rule Violation that is the second anti-doping offence of the Athlete or other Person, the period of Ineligibility shall be the greater of:

- (a) six months;
- (b) one-half of the period of Ineligibility imposed for the first anti-doping offence without taking into account any reduction under Article 10.6;  
or
- (c) twice the period of Ineligibility that would be applicable to the second Anti-Doping Rule Violation if it were a first Anti-Doping Rule Violation, without taking into account any reduction under Article 10.6.

The period of Ineligibility established above may then be further reduced by the application of Article 10.6.

- 166. The Athlete has admitted that she has served a two year period of Ineligibility for an ADRV which included the use of EPO. This sanction was served between 13 June 2013 and 12 June 2015. This means that the Athlete has now committed a second anti-doping offence.
- 167. According to Article 10.2 the period of Ineligibility for a first offence is four years. But as it is a second anti-doping offence the period of Ineligibility according to Article 10.7.1 shall be the greater of the alternatives (a) – (c), which in this case means twice the period of Ineligibility that would be applicable to the second ADRV if it were a first ADRV. This results in an eight year period of Ineligibility.
- 168. The Athlete has been found to have committed an ADRV including the use of blood doping and regardless of which method she has used, it must have been intentional as it involves blood transfusions and/or injections. This also means that Articles 10.4 and 10.5, which provide for reduction of the period of Ineligibility in case of No Fault or Negligence or No Significant Fault or Negligence, respectively, do not apply. In any event the athlete has not only denied blood doping, she has not given any evidence that the ADRV has been caused by no Fault or by no Significant Fault on her part. There is also no reason to reduce the sanction under Article 10.6. Article 10.6 provides for elimination, reduction or suspension of the period of Ineligibility for reasons other than Fault, e.g. substantial assistance in

discovering or establishing ADRVs, admission of an ARDV in the absence of other evidence or prompt admission of an ADRV after being confronted with a violation sanctionable under Article 10.2.1 or Article 10.3.1. None of these conditions is fulfilled in the present case.

169. The Athlete has argued that no sanction should be imposed as she has retired from competitive sport. According to Article 5.7.3 in the 2017, 2018 and 2019 IAAF Rules an athlete in the International Registered Testing Pool shall continue to be subject to the obligation to comply with the whereabouts requirements of Annex I to the International Standard for Testing and Investigations unless and until (a) the Athlete gives written notice to the IAAF that he or she has retired or (b) the IAAF has informed him or her that he or she no longer satisfies the criteria for inclusion in the International Registered Testing Pool. The Athlete has not alleged that she has given written notice to the IAAF that she has retired. Therefore the Athlete cannot be considered to be retired. The Panel also notes that Article 5.8 in the 2019 IAAF Rules applies to a situation when an athlete retires from sport while subject to a period of Ineligibility.

#### *Commencement of the Period of Ineligibility*

170. According to Article 10.10 in the 2017 IAAF Rules, which is unchanged in the 2018 and 2019 IAAF Rules, commencement of Ineligibility shall come into force and effect on the date that the decision imposing the consequences is issued and the provisional suspension served by the Athlete shall be credited.

#### *Ancillary orders*

171. Pursuant to Article 10.8 in the 2017 IAAF Rules, in this respect the same as in the 2018 and 2019 IAAF Rules, the Panel concludes that all competitive results obtained by the Athlete from the date Sample 6 was collected (31 January 2018) through to the commencement of her provisional suspension (27 March 2019)

shall be disqualified, with all of the resulting consequences, including the forfeiture of any titles, awards, medals, points, prizes, and appearance money.

## **E. Costs**

172. Article 8.9.3 in the 2017, 2018 and 2019 IAAF Rules states the following.

The Disciplinary Tribunal has the power to make a costs order against any party, where it is proportionate to do so. If it does not exercise that power, each party shall bear its own costs, legal, expert and otherwise. No recovery of costs may be considered a basis for reducing the period of Ineligibility or other sanction that would otherwise be applicable.

173. The usual order is for the unsuccessful party to make a contribution to the costs incurred by the successful party. The Athlete claims lack of means or impecuniosity and accordingly submits that an order for a costs contribution ought not be made against her.

174. It is noted that the Athlete had pro bono representation at the hearing.

175. An award of costs is discretionary. The discretion should not be exercised against making an order for costs simply because the lack of means may indicate that there is no ability to recover the costs and it may be suggested that such an order would be futile.

176. The issue of recovery of costs pursuant to an order should be treated as a separate issue. There has been nothing demonstrated in the conduct of the case by the IAAF that would disentitle it to a costs order in its favour and the Athlete has not provided any substantial or credible evidence in support of her defence. Moreover it could not be said that this case is a "test case".

177. Accordingly in the Panel's opinion the IAAF should receive the benefit of a costs order.

178. The Panel has determined that the Athlete should contribute the sum of 2,000 GBP to the costs incurred by the IAAF and it is so ordered.

## **V. DECISION AND ORDERS**

179. The Disciplinary Tribunal has jurisdiction to decide on the subject matter of this dispute.
180. The Athlete has committed an ADRV under Articles 2.2 of the IAAF Anti-Doping Rules.
181. A period of Ineligibility of eight years is imposed upon the Athlete commencing on the date of the Disciplinary Tribunal award. The period of provisional suspension imposed on the Athlete from 27 March 2019 until the date of the Tribunal Award shall be credited against the total period of Ineligibility.
182. The Athlete's results from 31 January 2018 until the date of the provisional suspension on 27 March 2019 shall be disqualified with all resulting consequences including the forfeiture of any titles, awards, medals, points and prize and appearance money.
183. The Athlete shall contribute the sum of 2,000 GBP to the costs incurred by the IAAF.

## **VI. THE RIGHT OF APPEAL**

184. Article 8.9.2 of the IAAF Anti-Doping Rules requires the Panel to set out and explain in its decision the rights of appeal applicable pursuant to Article 13 of the ADR.
185. As this proceeding involves an International Level Athlete, the decision may be appealed exclusively to CAS (see Article 13.2.2 of the IAAF Anti-Doping Rules and Article 16.2 of the IAAF Disciplinary Tribunal Rules). 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" (see Article 13.1.1 of the IAAF Anti-Doping Rules). The deadline for filing an appeal to CAS is 21 days from the date

of receipt of the decision by the appealing party (see Article 16.4 of the IAAF Disciplinary Tribunal Rules). In making its decision, CAS need not give deference to the discretion exercised by the Disciplinary Tribunal (see Article 13.1.2 of the ADR).



A handwritten signature in black ink, which appears to read 'Conny Jörneklint', is positioned below the large circular logo.

Conny Jörneklint (Chair on behalf of the Panel)  
London, UK  
29 August 2019



Sport Resolutions (UK)  
1 Salisbury Square  
London EC4Y 8AE

T: +44 (0)20 7036 1966

Email: [resolve@sportresolutions.co.uk](mailto:resolve@sportresolutions.co.uk)  
Website: [www.sportresolutions.co.uk](http://www.sportresolutions.co.uk)

Sport Resolutions (UK) is the trading name of The Sports Dispute Resolution Panel Limited