

UCI Anti-Doping Tribunal

Judgment

case ADT 02.2022

UCI v. Mr. Hossein Mohammadiha

Single Judge:

Mr. Ulrich Haas (Germany / Switzerland)

Aigle, 12 January 2023

I. INTRODUCTION

1. The present Judgment is issued by the UCI Anti-Doping Tribunal (hereinafter referred to as “the Tribunal”) in application of the UCI Anti-Doping Procedural Rules in force in 2021 (hereinafter referred to as “the ADT Rules”) in order to decide whether Mr. Hossein Mohammadiha (hereinafter referred to as “the Rider”) has violated the UCI Anti-Doping Rules as alleged by the Union Cycliste Internationale (hereinafter referred to as “the UCI” and, together with the Rider, “the Parties”).

II. FACTUAL BACKGROUND

2. The circumstances stated below are a summary of the main relevant facts, as submitted by the Parties. Additional facts may be set out, where relevant, in connection with the legal discussion that follows. While the Single Judge has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, the Judgment refers only to the necessary submissions and evidence to explain its reasoning.

A. The UCI

3. The UCI is the association of national cycling federations and a non-governmental international association with a non-profit-making purpose of international interest, with a legal personality in accordance with Articles 60 et seq. Swiss Civil Code and according to Articles 1(1) and 1(2) of the UCI Constitution.

B. The Rider

4. The Rider is of Iranian nationality. At the time of the alleged anti-doping rule violation (hereinafter referred to as “ADRV”) the Rider was affiliated to the Cycling Federation of the Islamic Republic of Iran (hereinafter referred to as “CFI”). He was, thus, a License-Holder within the meaning of the UCI ADR.

C. The alleged Anti-Doping Rule Violation

1. The Facts and the Collection of the Sample

5. On 1 August 2021, the Rider participated in the UCI MTB marathon Series – Sakarya – Cross-Country Marathon XCM (hereinafter referred to as “Event”) and provided a urine sample (Sample Number 4539882).
6. The chaperone, Mr Okan Kars (hereinafter referred to as the “Chaperone”), described the circumstances of the taking of the sample in the Supplementary Report Form as follows:

WHILE THE RACE CONTINUE THE RIDER NAMED HOSSEIN MOHAMMADIA QUIT THE RACE WITHOUT COMPLETE IT. AFTER HE LEFT THE RACE I NOTIFIED HIM AND I WANTED FROM HIM SIGN THE NOTIFICATION FORM. AFTER HE SIGNED THE FORM I SAID THAT I NEED TO HIS ID. HE TOLD ME HE NEEDS TO GO TO A FRIEND OF HIM FOR GETTING HIS PASSPORT. UPON THIS I TOLD HIM WE SHOULD GO TOGETHER AND THAT'S WHY I ASKED HIM WALK WITH ME INSTEAD OF RIDING HIS BICYCLE BUT HE DID NOT LISTEN TO ME. THEN I ASKED HIM IF HE CAN RIDE SLOWLY AT LEAST BUT HE DID NOT ACCEPT MY THIS REQUEST TOO. I TRIED TO WARN HIM MULTIPLE TIMES BUT HE JUST MOVED ON AND I STARTED TO RUN AFTER HIM. AFTER HE SPEEDED UP I COULDN'T SEE HIM FOR A WHILE. I GUESSED WHERE IS HE GONNA GO AND HEADED THERE, SO THAT I COULD SEE HIM AGAIN BUT HE ALSO SAW ME AT THE MOMENT AND HE CHANGED HIS WAY AND HE DISAPPEAR AGAIN. I GOT AWAY FROM THERE FOR A WHILE AND THEN I RETURN. I FOUND THE RIDER AND STARTED TALK TO HIM. HE PRETENDED AS IF SOMEONE ELSE AND TOLD ME A DIFFERENT NAME AS HIS NAME. I TOLD HIM I CAN REMEMBER HIM VERY WELL AND I SHOWED HIM HIS SIGNATURE ON THE NOTIFICATION FORM. AFTER THAT HE WANTED FROM ME TO LET HIM GO MULTIPLE TIMES BUT OF COURSE I DIDN'T ACCEPT THIS. THEN WE BOTH TOGETHER WENT TO DOPING CONTROL STATION. WE NEEDED TO EVENT COMMISSAR'S APPROVAL FOR TO BE SURE, BECAUSE HE DIDN'T HAVE ANY KIND OF ID. AFTER ALL, WE COMPLETED HIS TEST.

7. The Doping Control Officer, Mr. Murat Gunduz (hereinafter referred to as the "DCO"), who had been assigned as leader DCO to the Event made the following supplementary statement in relation to the taking of the sample:

ONE OF THE RIDERS HOSSEIN MOHAMMADIA HAS BEEN NOTIFIED AFTER HE QUIT THE RACE (HE DID NOT COMPLETE THE RACE). THE RIDER SIGNED TO NOTIFICATION FORM AND THEN HE SAID HE NEEDS TO GET HIS PASSPORT ONE OF HIS FRIEND. THE CHAPERON REQUESTED FROM RIDER TO WALK INSTEAD OF RIDE BUT HE DID NOT ACCEPT AND HE MOVED ON WITH HIS BICYCLE. THE RIDER BECAME DISTANCE FROM THE CHAPERONE AND DID NOT LISTEN TO CHAPERONE'S WARNINGS. HE SPEEDED UP AND THE CHAPERONE STARTED TO RUN TO CATCH HIM BUT HE COULDN'T. THE RIDER HAS BEEN DISAPPEARED FOR A WHILE. THE CHAPERON FOUND HIM AGAIN BUT HE CHANGED HIS WAY WHEN SAW THE CHAPERON. THEN THE RIDER DISAPPEARED AGAIN. THE CHAPERON LOCATED TO RIDER AFTER A WHILE. THIS TIME THE RIDER DENIED HIS NAME AND HE SAID HE WAS NOT HIM BUT THE CHAPERON SHOWED THE RIDER NOTIFICATION FORM AND HIS SIGNATURE. AFTER THAT HE REQUESTED FROM THE CHAPERON TO IGNORE HIM, BECAUSE THE CHAPERONE DID NOT ACCEPT HIS REQUEST. THEN HE CAME TO THE DOPING CONTROL STATION WITH CHAPERON. WE VERIFIED HIS ID WITH THE EVENT COMMISSAR DUE TO HE HAS NOT ANY KIND OF ID WITH HIM. AFTER THAT WE COMPLETED HIS TEST.

8. At the doping control station, the Rider underwent a doping control. The Rider confirmed on his Doping Control Form (hereinafter referred to as "DCF") that the sample had been taken in accordance with the applicable regulations and signed it. The comment section of the DCF states as follows:

3. ÖRNEK ALIM İŞLEMLERİNİN ONAYLANMASI CONFIRMATION OF PROCEDURE FOR URINE	
AÇIKLAMA: HERHANGİ BİR AÇIKLAMA BURAYA YAPILMALIDIR. EĞER GEREKİRSE EK RAPOR FORMUNA DEVAM EDİLEBİLİR. COMMENTS: ANY COMMENTS SHOULD BE NOTED HERE. IF NECESSARY CONTINUE ON A SUPPLEMENTARY REPORT FORM.	EK RAPOR FORMU SUPPLEMENTARY REPORT FORM
NO COMMENTS	NUMARA NUMBER

2. The Analysis of the Sample

9. The analysis of the Rider's sample was conducted by the World Anti-Doping Agency (hereinafter referred to as "WADA") accredited Laboratory of Seibersdorf, Austria (hereinafter referred to as "the Laboratory"). The latter acknowledged receipt of the sample on 3 August 2021.
10. On 29 September 2021 the Laboratory reported the Rider's A-Sample as an Adverse Analytical Finding (hereinafter referred to as "AAF"):

Results / Résultats: The analysis of the sample identified above has shown the presence of / L'analyse de l'échantillon mentionné ci-dessus par les méthodes du laboratoire a révélé la présence de: AAF - Adverse Analytical Finding
- S2. Peptide Hormones, Growth Factors, Related Substances and Mimetics/erythropoietin (EPO).
Details concerning Finding: The presence of recombinant erythropoietin was confirmed.
- S7. Narcotics/oxycodone.
Details concerning Finding: The presence of the narcotic agent oxycodone was confirmed.

3. The UCI Results Management Procedure

11. Upon receipt of the AAF, the International Testing Agency (hereinafter referred to as "ITA") conducted its initial review according to Article 5.1.1 of the UCI Results Management Regulations and confirmed that the AAF had been correctly reported.
12. On 13 December 2021, the ITA reported the AAF to the UCI to initiate results management.
13. On 15 December 2021, the UCI sent a letter to the CFI that reads inter alia as follows:

"The UCI kindly requests the Cycling Federation of Islamic Republic of Iran (CFI) to ensure that Mr. Mohammadiha (the Rider) has duly received our letter of today – enclosed to this correspondence. Equally, the UCI hereby requests to be informed immediately by the CFI once the rider has been duly notified. ..."

The opening and analysis of the B Sample will be arranged, if requested by the rider, at the WADA accredited laboratory in Seibersdorf, Austria. If the B Sample confirms the presence of one of the Prohibited Substance or if the rider waives his right to have the B Sample analyzed, the ADRV will be asserted and the UCI will initiate disciplinary proceedings against Mr. Mohammadiha. More specifically, upon assertion of the ADRV and review of Mr. Mohammadiha's explanation, the UCI will propose him an Acceptance of Consequences as provided under Article 8.2.1 of the UCI ADR. Such agreement would prevent disciplinary proceedings before the UCI Anti-Doping Tribunal and hence reduce further costs and time-treatment. In the event that an agreement cannot be reached on the consequences and costs of the ADRV, disciplinary proceedings shall be pursued before the UCI Anti-Doping Tribunal as per Article 8.3 of the UCI ADR. ..."

The rider is hence provisionally suspended with immediate effect. ..."

The provisional suspension will remain in force until it is determined whether or not the rider has committed an ADRV. Under Articles 6.4 and 6.5 of the UCI RMR, the rider has the right to request the lifting of his provisional suspension. ..."

Attached to the above letter was the following information that reads inter alia as follows:

Dear Mr. Mohammadiha,

The UCI received notification of an Adverse Analytical Finding (AAF)¹ from a A-Sample that you provided, as detailed below:

Sample Number & Date of Sample Collection	4539882 – 1 August 2021
Event at which Sample was collected	UCI MTB Marathon Series – Sakarya – XCM, Turkey
Prohibited Substances	Erythropoietin (EPO) & Oxycodone
WADA accredited laboratory at which the analysis was conducted	Seibersdorf, Austria

EPO is a Prohibited Substance listed under class S2 (Peptide Hormones, Growth Factors, Related Substances, and Mimetics) of the 2021 World Anti-Doping Agency (WADA) Prohibited List, which is maintained by WADA and adopted by the UCI (the Prohibited List).

Oxycodone is a Prohibited Substance listed under class S7 (Narcotics) of the 2021 Prohibited List.

After an initial investigation, it appears that you may have violated Articles 2.1 and/or 2.2 of the UCI ADR².

...

B Sample analysis

You now have the right to request the opening and analysis of the B Sample which was collected at the same time as your A Sample.

In accordance with Article 7.2 of the UCI ADR in combination with Articles 5.1.2.1 and 5.1.2.3 of the UCI Regulations for Results Management (UCI RMR)³, if you decide to have your B Sample opened and analysed, it will be arranged accordingly:

Date of analyses	To be determined if requested
Time of opening	To be determined if requested
Address of opening and analysis	Seibersdorf Labor GmbH 2444 Seibersdorf Seibersdorf Niederösterreich Austria

You and/or your representative have the right to attend the opening and analysis of the B Sample. Should you wish to have your B Sample analysed but decline to be present in person and/or through a representative, the Laboratory will appoint an independent witness to verify that the B Sample container shows no signs of Tampering and that the identifying numbers match that on the collection documentation.

You also have the right to request copy of the A Sample Laboratory Documentation Package (LDP). Please note that the costs of the B Sample analysis (3000 Euros) and/or the A Sample LDP (to be confirmed) are requested to be paid in advance.

Please complete and return the **Appendix A** attached to this letter to confirm your intentions with respect to the B Sample and the A Sample LDP.

The form must be returned to me (email: wallis.delattre@uci.ch) **within seven (7) days of receipt of this notification** if your request is to be respected. If you fail to provide instructions by this date, the UCI will assume that you have irrevocably waived your right to the analysis of the B Sample. In such circumstances, the UCI maintains the right to request the analysis of the B Sample but is not obliged to carry out the same (as per Comment to Article 2.1.2 of the UCI ADR).

...

ADRV Assertion - Admission or Opportunity to Provide Explanations

If the B Sample confirms the presence of one of the Prohibited Substances or if the UCI is informed of your decision to waive the B analysis, the ADRV will be asserted.

You of course also already have the opportunity: i) to immediately admit the ADRV and potentially benefit from a one-year reduction in the Period of Ineligibility under Article 10.8.1 of the UCI ADR; and/or ii) to explain how the Prohibited Substances, **EPO** and **Oxycodone**, entered your body. In any case, please note that an early admission could favourably impact the final sanction and consequences imposed on you.

14. The UCI also informed the Iran National Anti-Doping Authority and WADA of the alleged ADRV.
15. On 17 December 2021, the CFI informed the UCI as follows:

Dear Sir/ Madam,
This is to notify you that The aforementioned rider has been notified on December 15 as agreed.
Please let us know the proceedings.
Best Regards
Ali

Ali A. ABDOLZADE
Int'l Affairs Director
+989123606938
whatsapp:+989142204620

The email also enclosed WhatsApp screenshots showing that the rider had been notified.

16. On 19 December 2021, Mr Ali Abolzade, the International Affairs Director of the CFI, forwarded to the UCI the Appendix A duly filled out by the Rider. Therein the Rider accepted the AAF for rEPO and Oxycodone and waived the right to request the analysis of the B-sample.

Appendix A

Potential Anti-Doping Rule Violation (ADRV) - UCI File 018.21

Receipt of Potential ADRV Notice and Arrangements for Opening and Analysis of B Sample

I confirm that I have received a letter from the UCI dated 15 December 2021 informing me of a potential ADRV for the presence of the Prohibited Substances **EPO** and **Oxycodone** in Sample A-4539882.

I request the opening and analysis of Sample B-4539882 at the WADA accredited laboratory in Seibersdorf, Austria

I wish to be present at the opening and analysis of the B Sample

Yes No

I wish to appoint the following representative to attend the opening and analysis of the B Sample. Name of Representative: _____

Yes No

NB: If I decline to be present in person and/or through a representative at the opening and analysis of the B Sample, an independent witness will be appointed by the Laboratory to verify that the B Sample container shows no signs of Tampering and that the identifying numbers match that on the collection documentation.

I wish to receive the documentation package of the Sample A-4539882

Yes No

I accept the Adverse Analytical Findings for the presence of **EPO** and **Oxycodone**, Prohibited Substances that were found present in my body, at the occasion of an in-competition doping control at the UCI MTB Marathon Series – Sakarya – XCM

Yes No

Rider's Signature: _____

Rider's Name: Mohammadiha

Date: 2022/12/19

Please return this form to the UCI within seven (7) days of the receipt of this notification to ensure your request is respected.

Please indicate clearly your preferred options. It is reminded that you shall pay the costs of the B Sample Analysis and of the A Laboratory Documentation Package in advance.

Email : wallis.delattre@uci.ch

17. On 21 December 2021, the UCI – via the CFI – informed the Rider as follows:

Reference is made to the letter of 15 December 2021 whereby the UCI notified the Cycling Federation of Islamic Republic of Iran (CFI) of Mr. Mohammadiha's (the Rider) Adverse Analytical Finding (AAF) for Erythropoietin and Oxycodone (Sample A-4539882) as well as the CFI's reply from 19 December 2021 by way of which it transmitted Mr. Mohammadiha's position.

From said communication, the Rider waived his right to have his B-Sample analysed and accepted the AAF.

Consequently, the UCI asserts that Mr. Mohammadiha has committed an ADRV under Articles 2.1 and/or 2.2 of the UCI Anti-Doping Rules (UCI ADR). Please find attached to this correspondence a letter from today addressed to the Rider in that respect.

The UCI kindly requests the CFI to ensure that Mr. Mohammadiha duly receives our letter of today – enclosed to this correspondence together with its attachment. Equally, the UCI hereby requests to be informed immediately by the CFI once the rider has received said correspondence.

Before referring the case to the UCI Anti-Doping Tribunal in accordance with Article 8.3 of the UCI ADR, the Rider is invited to provide his explanation about the ADRV as well as the circumstances surrounding his potential attempt to **Evade Sample Collection** in order to potentially put an end to the matter by an Acceptance of Consequences. Such agreement can be established in accordance with Article 8.2 of the UCI ADR and shall replace the decision of the UCI Anti-Doping Tribunal.

18. On the same day, the CFI informed the UCI as follows:

“Please be advised that Your email has been received and Hossein MOHAMMIDHA is going to be informed within hours through official Channels.”

19. On 5 January 2022, the UCI inquired with the CFI whether the Rider had been duly notified of its letter dated 21 December 2021.
20. On 11 January 2022, the CFI confirmed that the 21 December 2021 letter had been forwarded to the Rider, provided screenshots of the WhatsApp correspondence with the Rider and informed that the CFI will forward the Rider’s explanations immediately once they have been received.
21. On the same day, the UCI reminded the CFI that the Rider’s deadline to provide his explanations was until 14 January 2022.
22. On 14 January 2022, the CFI sent an email to the UCI that stated as follows:

Dear Sir/Madam,
With Reference to your kind email I'd like to draw your attention to the point concluded after conversation with Hossein MOHAMMADIHA:

- OXYCODONE: He declares that after a heavy injury which I had during the XCO race, I had to take Pain Killer medicines which I UNKNOWINGLY got from one of my friends.
- EPO: I'm using an eligible EPO BOOSTER supplementary which you will find a photo of it enclosed with this email. Now after Testing Positive, this proves it had forbidden substances in it in contrast to advertisements.

Hope all these would help
Best Wishes,
Ali
Ali A. ABDOLZADE
Int'l Affairs Director
+989123606938
whatsapp:+989142204620

Attached to the email were three pictures of the supplement “EPO Booster” (hereinafter referred to as the “Supplement”) referred to in the above email.

23. On 8 February 2022, the UCI – again through the CFI – requested the Rider to provide further information. The letter reads as follows:

Reference is made to the letter of 21 December 2021 whereby the UCI informed the Cycling Federation of Islamic Republic of Iran (CFI) that an Anti-Doping Rule Violation under Articles 2.1 and/or 2.2 of the UCI Anti-Doping Rules (UCI ADR) was asserted against Mr. Mohammadiha (the Rider) for Erythropoietin (EPO) and Oxycodone (Sample A-4539882) as well as the CFI’s reply from 14 January 2022 by way of which it transmitted the Rider’s explanations.

After having carefully considered the Rider’s explanations, the UCI hereby request him to provide **by 14 February 2022 at the latest** additional clarifications on:

- **His alleged intake of Oxycodone through a painkiller**: in particular the UCI requests the Rider to provide the exact name of said painkiller, pictures of the package of the medication and of its components.
- **His potential attempt to Evade Sample Collection on 1 August 2021**: in particular the UCI requests the Rider to submit his explanations on the circumstances reported by the Chaperone in the Supplementary Report Forms.

Please find attached to this correspondence a letter from today addressed to the Rider in that respect.

The UCI kindly requests the CFI to ensure that Mr. Mohammadiha duly receives our letter of today and provide his reply within the set deadline (i.e. 14 February 2022).

24. Still on 8 February 2022, the CFI confirmed that the Rider had received the above letter and provided screenshot from the WhatsApp correspondence.
25. On 15 February 2022, the UCI inquired with the CFI whether it had received any information from the Rider.
26. On 16 February 2022, Mr Ali Abdolzade sent an email to the UCI stating that:

Dear Sir/ Madam,
I took a very good note on your email. I'll chase the rider to provide you an reasonable answer.
Best Wishes,
Ali

27. On 22 February 2022, the UCI followed up on the CFI requesting news from the Rider.
28. On 28 February 202, the CFI submitted a signed statement from the Rider in Persian. According to the CFI the statement says as follows:

Dear Sir / Madam,
REplying your email on 08 Feb 2022 Hossein MOHAMMADIHA, you will find enclosed with this email his explanations on the case. He writes, AS I told you I never used EPO and I never know the Pain Killer tablet - which was given by a Friend - includes OXYCODONE which I took unknowingly to treat my injured leg.
These are all written in Persian which is translated by NF.
Hope all these would help
Best Regards
Ali

29. On 25 May 2022, the UCI – through the CFI – offered the Rider the following Acceptance of Consequences pursuant to Article 8.2 UCI ADR:

Reference is made to the letter of 21 December 2021 whereby the UCI informed the Cycling Federation of Islamic Republic of Iran (CFI) that an Anti-Doping Rule Violation (ADRV) under Articles 2.1 and/or 2.2 of the UCI Anti-Doping Rules (UCI ADR) was asserted against Mr. Mohammadiha (the Rider) for Erythropoietin and Oxycodone (Sample A-4539882) as well as the CFI's replies from 14 January and 28 February 2022 by way of which it transmitted the Rider's explanations on the presence of said substances.

The UCI hereby affords the opportunity to the Rider to put an end to this matter by means of an Acceptance of Consequences in accordance with Article 8.2 of the UCI ADR **valid for a period of twenty (20) days** starting from the notification by e-mail of this letter, i.e. **until 14 June 2022**. Please find attached to this correspondence a letter from today addressed to the Rider in that respect.

The UCI kindly requests the CFI to ensure that Mr. Mohammadiha duly receives our letter of today. Equally, the UCI hereby requests **to be informed immediately** by the CFI once the rider has received said correspondence.

30. On 27 May 2022, the UCI inquired with the CFI whether the Rider had received the proposed Acceptance of Consequences.
31. On 28 May 2022, the CFI responded to the UCI as follows:

Dear Sir/Madam,
I took a very good note on your email. We will back you within the determined time (20 days).
Best Regards
Ali

32. On 30 May 2022, the UCI again contacted the CFI to inquire whether the Rider had been notified of the proposed Acceptance of Consequences.
33. On 8 and 13 June 2022, the UCI reminded the CFI of the expiry of the validity of the proposed Acceptance of Consequences on 14 June 2022.
34. On 14 June 2022, the CFI forwarded a signed statement of the Rider in Persian. According to the CFI the Rider in his statement declared as follows:

Dear Sir / Madam,
Enclosed with This email You will find A handwritten letter from Hossein MOHAMMADIHA aforementioned MTB rider. Please be informed that in spite of a couple of phone conversations he is not persuaded to Sign The Acceptance of Consequences and send The attached letter. In his letter He says:" I never used EPO and The one I took was a Known Supplementary. In the case of OXYCODONE; I would say it was UNKNOWINGLY and I took it because I had severe pain.."
It is up to you to decide on the case.
Best Regards
Ali

35. On the same day, the UCI – through the CFI – wrote to the Rider *inter alia* as follows:

Since the source of EPO is not established, the rider cannot benefit from any elimination or reduction of his otherwise applicable period of Ineligibility for No Fault or Negligence or No Significant Fault or Negligence (Article 10.5 and 10.6 of the UCI ADR). Furthermore, Mr. Mohammadiha did not provide to date any substantial assistance in line with Article 10.7 of the UCI ADR and thus cannot benefit from a suspension of the period of ineligibility otherwise applicable.

Regarding the aggravating circumstances present in this matter (Article 10.4 of the UCI ADR), the rider did not provide any explanations at all (please see section "Aggravating circumstances" of the letter).

In view of the above, **the UCI cannot propose a lower sanction than the one proposed in this matter**, as :

- i) the rider's explanations regarding the presence of EPO and Oxycodone do not entail for any elimination, reduction or suspension of the period of ineligibility;
- ii) the rider did not submit any explanations on the aggravating circumstances present in this matter.

Notwithstanding the above and as mentioned in section "Possible 1-year reduction of the Period of Ineligibility" of our letter, Mr. Mohammadiha **may benefit from a 1-year reduction of the period of Ineligibility** on the basis of Article 10.8.1 of the UCI ADR (from 5 years to 4 years of suspension) if he accepts the consequences proposed to him **by tonight at the latest** and returns the Appendix A duly completed and signed (attached hereto).

Please, take note that the UCI is not bound by its proposed Acceptance of Consequences and reserves its right to seek for the maximal period of Ineligibility (4 years under Article 10.2.1 of the UCI ADR + 2 years for Aggravating circumstances under Article 10.4 of the UCI ADR) if Mr. Mohammadiha does not accept the proposed Acceptance of Consequences by tonight and the case is referred to the UCI Anti-Doping Tribunal.

We trust the above clarifies the rider's queries and invite you to provide the rider's final position **by tonight at the latest**. Please be aware that passed the aforementioned deadline, the case will be referred to the UCI Anti-Doping Tribunal for consideration and decision without further notice.

36. On 16 June 2022, the CFI advised the UCI as follows:

Dear Sir,
Reference is our Phone Conversation about Hossein MOHOMMADIHA 's allegations. As agreed and promised Me, General Secretary and Medical and Anti-Doping Committee's head (Mrs. GHANNADI) called him to persuade him to sign the consequences. The Penalties and Period of ineligibility warned him so many times. He repeated 'I'm disappointed now and He refused to cooperate with the National Federation.
Hope all these would help
Best Regards
Ali

Ali A. ABDOLZADE
Int'l Affairs Director
+989123606938
whatsapp:+989142204620

III. PROCEDURE BEFORE THE TRIBUNAL

37. In accordance with Article 13.1 of the ADT Rules, the UCI has initiated proceedings before this Tribunal through the filing of a Petition to the Secretariat of the Tribunal (hereinafter referred to as the "Secretariat") on 5 September 2022. In its Petition the UCI has filed the following requests:

- *Declaring that Mr. Hossein Mohammadiha has committed an Anti-Doping Rule Violation.*

- *Imposing on Mr. Hossein Mohammadiha a Period of Ineligibility of six (6) years, commencing on the date of the Tribunal's decision.*
 - *Holding that the period of provisional suspension served by Mr. Hossein Mohammadiha since 15 December 2021 shall be deducted from the Period of Ineligibility imposed by the Tribunal.*
 - *Disqualifying all results obtained by Mr. Hossein Mohammadiha at the MTB Marathon Series – Sakarya – XCM on 1 August 2021 and any other result obtained between 1 August 2021 and 15 December 2021.*
 - *Condemning Mr. Hossein Mohammadiha to pay the costs of results management by the UCI (CHF 2'500.00).*
38. On 22 September 2022, the President of the Tribunal, Prof. Ulrich Haas, decided to act as Single Judge in the proceedings in application of Article 14.1 and 14.2 of the of the ADT Rules.
39. On the same day, and in application of Article 14.4 of the ADT Rules, the Secretariat informed the Rider that disciplinary proceedings had been initiated against him and that Prof. Ulrich Haas had been appointed as Single Judge of the Tribunal. Furthermore, the Rider was informed that
- In case he wished to challenge the appointment of the Single Judge he would have to do so within 7 days of receipt of the present correspondence;
 - He would be granted a deadline until 14 October 2022 to submit his Statement of Defence in conformity with Articles 16.1 and 18 of the ADT Rules;
 - The language of the procedure in accordance with Article 8 of the ADT Rules is English and that all documents shall be remitted in said language.
 - Finally, the letter also advised the Rider that should he fail to submit an Answer within the set deadline, the Single Judge may nevertheless proceed with the case and render his Judgment.
40. The Secretariat notified the Rider of the above letter via the CFI and by sending the letter to the Rider's personal residence, via registered mail. The letter sent by post was returned to the UCI on 8 November 2022.
41. On 18 October 2022, the Secretariat wrote to the CFI as follows:
- "On 22 September 2022, the ADT notified the parties of the opening of the proceedings against the Defendant. As the Defendant does not have an email address, this Tribunal kindly requested the Cycling Federation of Iran to ensure that Mr Mohammadiha was duly notified of the letter and attachments sent. Furthermore, the ADT asked the federation to inform the ADT once the Rider had been duly notified. To issue this procedural instruction, the ADT noted that the interaction between the Defendant and the UCI legal Anti-Doping Services, before the case was transmitted to this Tribunal, was made possible by the involvement and assistance of the federation.*
- To this date, however, we have not had any confirmation from the Cycling Federation of Iran pertaining to the Defendant's notification.*
- I therefore request you to inform the ADT, by 22 October 2022, whether you have been able to notify the Defendant as required by the letter dated 22 September 2022 and the date of such notification."*
42. On 1 November 2022, the Secretariat sent a reminder by registered mail to the Rider's home address. This letter was received and delivered on 14 November 2022. Still on the same day, the reminder was also sent via mail to the CFI.

43. On 5 November 2022, the CFI acknowledged receipt of the Secretariat's letter and informed the latter that it is *"doing our best to persuade ... [the Rider] to defend BUT the problem is that He remains on his initial position and there is no change of his mind. We would inform him of your email."*
44. On 22 and 29 November 2022, the Secretariat once more inquired with the CFI whether it has been able to notify the Rider with UCI's letter.
45. On 5 December 2022, the CFI informed the UCI as follows:

Dear Mr. Jorge,
 Delighted to hear from you Please accept my great apologies for any delay in replying to your emails. I refer to my phone conversation with Mr. WALLIS on last Friday 2nd December 2022. As promised you will find enclosed with this email The proofs of WhatsApp communication with Mr. MOHAMMADIHA which The CFI's Medical and Anti-Doping head, Mrs. Shima GHANNADI, sent him directly.
 Please be informed that in these messages the communications has been sent to Mr. MOHAMMADIHA and The Probable consequences has been clearly explained to him:
 04 OCT:
 The Tribunal Communications has been sent to "him" He's "seen" both files.
 20 OCT:
 She writes:
 "Hi Mr. MOHAMMADIHA, I trust you are well. Yesterday, We received an email from UCI which mentioned that You were able to defend yourself by 18 OCT, If you'd had any objection or proof of anything which helps you. You did not send anything. By Oct 22, You will be given an opportunity to send legally proven documents otherwise The Tribunal recognizes UCI as a winner in this court. Further to 5-6 years suspension, you have to burden The financial expenses of the tribunal and ADR."
 6 November:
 She repeated all of these again.
 As I mentioned in my Phone conversation with Mr. Wallis, based on the news He Immigrated to Britain and We have no access to him right now. We will get his friends to give us new information on his new address. But His Cellular Phone which still uses Whatsapp is +989122631387.
 Hope all these will help
 Best Regards
 Ali
 Ali A. ABDOLZADE

Attached to this email were screenshots from WhatsApp showing that the Rider had been notified of the UCI's letters on 4 October 2022 and that a second message was received by the Rider on 20 October 2022. Furthermore, the screenshots show that three messages were sent by the CFI to the Rider on 6 November 2022.

46. On 12 December 2022, the Secretariat informed the parties of the closing of the proceedings. The CFI confirmed to the Secretariat on 14 December 2022 that the rider's brother had received this correspondence on 12 December and that they talked by phone on 13 December 2022.

IV. APPLICABLE RULES

47. Article 27 of the UCI ADR provides the following:

"27.1 These Anti-Doping Rules shall apply in full as of 1 January 2021 (the "Effective Date")."

27.2 Any anti-doping rule violation case which is pending as of the Effective Date and any anti-doping rule violation case brought after the Effective Date based on an anti-doping rule violation which occurred prior to the Effective Date shall be governed by the substantive anti-doping rules in effect at the time the alleged anti-doping rule violation occurred, and not by the substantive anti-doping rules set out in the Anti-Doping Rules or the Code, unless the panel hearing the case determines the principle of "lex mitior" appropriately applies under the circumstances of the case.[...]"

48. Considering that the Rider's sample was collected on 1 August 2021 the UCI ADR 2021 apply to the merits of the case at hand.

49. As for the procedural rules applicable before the Tribunal, Article 36 of the ADT Rules provides the following:

“These Rules come into force on 4 February 2021 and apply to all procedures initiated by the Tribunal on or after such date.”

50. Considering that the present proceeding has been initiated by the Tribunal on 5 September 2022, the ADT Rules in force in 2021 apply in this case.

V. PROCEDURAL ISSUES

51. The Petition filed by the UCI is admissible. Pursuant to Article 2 of the ADT Rules, the UCI offered the Rider an Acceptance of Consequences in accordance with Article 8.2.1 of the UCI ADR. Despite multiple opportunities granted, the Rider did not react to the UCI’s proposals to settle the dispute. Thus, the UCI was entitled to file the Petition that – in addition – conforms to the prerequisites of Article 13.2 of the ADT Rules.

52. The Rider did not file a Statement of Defence within the prescribed deadlines nor did he participate in any other way in these proceedings. The Single Judge verified whether the Rider was properly notified and notes that

- The Secretariat’s reminder of the letter initiating proceedings against the Rider was sent to the latter’s home address by registered mail on 1 November 2022 and was delivered to and received by the Rider on 14 November 2022.
- Furthermore, on 5 December 2022, the CFI acknowledged that the Rider had been notified of the relevant documents on 4 October 2022 via WhatsApp and that a second message was sent by it to the Rider on 20 October 2022 and received by the latter.

53. In view of the above, the Single Judge is satisfied that that the Rider was properly notified. Furthermore, the Single Judge notes that Article 16.2 of the ADT Rules provides as follows:

“If the Defendant fails to submit its answer within the set deadline, the Single Judge may nevertheless proceed with the case and render his Judgment.”

54. Consequently, the Single Judge proceeds with the case and decides the matter based on the submissions on file.

VI. JURISDICTION

55. The jurisdiction of the Tribunal follows from Article 8.3.2 of the UCI ADR and Article 3.1 of the ADT Rules according to which *“the Tribunal shall have jurisdiction over all matters in which an anti-doping rule violation is asserted by the UCI based on a results management or investigation process under Article 7 ADR”*.

56. Furthermore, Article 3.2 of the ADT Rules provides the following:

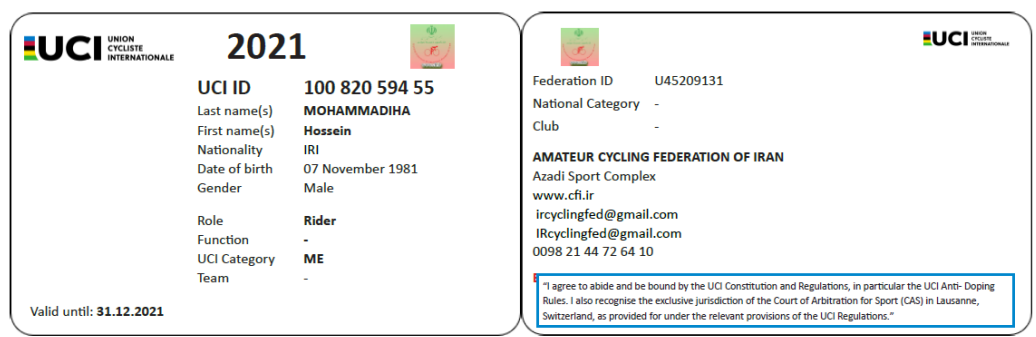
“Any objection to the jurisdiction of the Tribunal shall be brought to the Tribunal’s attention within 7 days upon notification of the initiation of the proceedings. If no objection is filed within this time limit, the Parties are deemed to have accepted the Tribunal’s jurisdiction.”

57. Neither party raised any objection to the jurisdiction of the Tribunal within said time limit, thus the Single Judge confirms the jurisdiction of the Tribunal.

58. Part C of the Introduction of the UCI ADR addresses its scope of application as follows:

“These Anti-Doping Rules shall apply to the UCI and to each of its National Federations. They shall apply to the following Riders, Rider Support personnel and other Persons: a) any License Holder, [...]”

59. Said conditions are fulfilled in the case at hand. The Rider was a UCI Cycling License Holder in 2021 within the meaning of the UCI ADR:



60. In view of the above, the Rider was bound by the UCI ADR at the relevant time.
61. According to Article 7.6 of the UCI ADR the UCI retains jurisdiction to complete the results management process despite a cyclist’s retirement:

“7.6 If a Rider or other Person retires while the UCI’s Results Management process is underway, the UCI retains authority to complete its Results Management process. If a Rider or other Person retires before any Results Management process has begun, and the UCI would have had Results Management authority over the Rider or other Person at the time the Rider or other Person committed an anti-doping rule violation, the UCI retains authority to conduct Results Management.”

62. The Rider is not a Recreational Rider as defined in the Appendix 1 of the UCI ADR. According thereto, a Recreational Rider is a

“... natural Person who is so defined by the relevant National Anti-Doping Organization; provided, however, the term shall not include any Person who within the five (5) years prior to committing any anti-doping rule violation, has been contracted to a UCI registered Team, has been an International-Level Rider (as defined by each International Federation consistent with the International Standard for Testing and Investigations) or National-Level Rider (as defined by each National Anti-Doping Organization consistent with the International Standard for Testing and Investigations), has represented any country in an International Event in an open category or has been included within any Registered Testing Pool or other whereabouts information pool maintained by any International Federation or National Anti-Doping Organization.

63. The CFI confirmed in its email to the UCI on 16 July 2022 as follows:

I trust this email finds you well, Please be advised that Mr. Mohamadiha the rider can not be regarded as a recreational rider since he participated in the international Grand Prix event in Turkey last year (03-11 July-2021), Also, he has a history of participation in many national championships events (Under the supervision and held by National Cycling federation) in Iran during the past 5 years.

VII. THE FINDINGS OF THE SINGLE JUDGE

64. The main issues for the Single Judge to decide are:

- A) Did the UCI establish that the Rider committed an ADRV within the meaning of Articles 2.1 and 2.2 of the UCI ADR? and, if so,

- B) Did the Rider act intentionally?
- C) What are the appropriate consequences of such an ADRV?

A. Did the UCI establish that the Rider committed an ADRV within the meaning of Articles 2.1 and 2.2 of the UCI ADR?

65. The relevant urine sample of the Rider (sample number 4539882) was collected during the Event on 1 August 2021.

1. The applicable provisions

66. Article 26 of the ADT Rules provides that “[...] the Single Judge shall apply the [UCI] ADR and the standards referenced therein as well as the UCI Constitution, the UCI Regulations and, subsidiarily, Swiss law”.
67. Article 2.1 of the UCI ADR defines the relevant ADRV as follows:

“2.1 Presence of a Prohibited Substance or its Metabolites or Markers in a Rider’s Sample

2.1.1 It is the Riders’ personal duty to ensure that no Prohibited Substance enters their bodies. Riders are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples. Accordingly, it is not necessary that intent, Fault, Negligence or knowing Use on the Rider’s part be demonstrated in order to establish an anti-doping rule violation under Article 2.1.

2.1.2 Sufficient proof of an anti-doping rule violation under Article 2.1 is established by any of the following: presence of a Prohibited Substance or its Metabolites or Markers in the Rider’s A Sample where the Rider waives analysis of the B Sample and the B Sample is not analyzed; or, where the Rider’s B Sample is analyzed and the analysis of the Rider’s B Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the Rider’s A Sample; or where the Rider’s A or B Sample is split into two (2) parts and the analysis of the confirmation part of the split Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the first part of the split Sample or the Rider waives analysis of the confirmation part of the split Sample.

2.1.3 Excepting those substances for which a Decision Limit is specifically identified in the Prohibited List or a Technical Document, the presence of any reported quantity of a Prohibited Substance or its Metabolites or Markers in a Rider’s Sample shall constitute an anti-doping rule violation.

2.1.4 As an exception to the general rule of Article 2.1, the Prohibited List, International Standards or Technical Documents may establish special criteria for reporting or the evaluation of certain Prohibited Substances.”

68. Article 2.2 of the UCI ADR qualifies the “Use or Attempted Use by a Rider of a Prohibited Substance or a Prohibited Method” as an ADRV. The term “Use” is defined in the Appendix 1 of the UCI ADR as follows:

“The utilization, application, ingestion, injection or consumption by any means whatsoever of any Prohibited Substance or Prohibited Method.”

69. Furthermore, Article 2.2 of the UCI ADR states as follows

“2.2.1 It is the Riders’ personal duty to ensure that no Prohibited Substance enters their bodies and that no Prohibited Method is Used. Accordingly, it is not necessary that intent, Fault, Negligence or knowing Use on the Rider’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.

70. As to the burden and standard of proof, Article 3.1 of the UCI ADR reads as follows:

“The UCI shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether the UCI has established an anti-doping rule violation to the comfortable satisfaction of the hearing panel, bearing in mind the seriousness of the allegation which 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 place the burden of proof upon the Rider or other Person alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, except as provided in Articles 3.2.2 and 3.2.3, the standard of proof shall be by a balance of probability.”

71. As to the methods of establishing facts and presumptions, Article 3.2 of the UCI ADR provides:

“Facts related to anti-doping rule violations may be established by any reliable means, including admissions. The following rules of proof shall be applicable in doping cases:

3.2.1 *Analytical methods or Decision Limits approved by WADA after consultation within the relevant scientific community or which have been the subject of peer review are presumed to be scientifically valid. Any Rider or other Person seeking to challenge whether the conditions for such presumption have been met or to rebut this presumption of scientific validity shall, as a condition precedent to any such challenge, first notify WADA of the challenge and the basis of the challenge. The initial hearing body, appellate body or CAS, on its own initiative, may also inform WADA of any such challenge. Within ten (10) days of WADA’s receipt of such notice and the case file related to such challenge, WADA shall also have the right to intervene as a party, appear as amicus curiae or otherwise provide evidence in such proceeding. In cases before CAS, at WADA’s request, the CAS panel shall appoint an appropriate scientific expert to assist the panel in its evaluation of the challenge.*

3.2.2 *WADA-accredited laboratories, and other laboratories approved by WADA, are presumed to have conducted Sample analysis and custodial procedures in accordance with the International Standard for Laboratories. The Rider or other Person may rebut this presumption by establishing that a departure from the International Standard for Laboratories occurred which could reasonably have caused the Adverse Analytical Finding.*

3.2.3 *If the Rider or other Person rebuts the preceding presumption by showing that a departure from the International Standard for Laboratories occurred which could reasonably have caused the Adverse Analytical Finding, then the UCI shall have the burden to establish that such departure did not cause the Adverse Analytical Finding.*

3.2.4 *Departures from any other rules set forth in these Anti-Doping Rules, UCI Regulations, any International Standard or other anti-doping rule or policy set forth in the Code shall not invalidate analytical results or other evidence of an anti-doping rule violation, and shall not constitute a defense to an anti-doping rule violation; provided, however, if the Rider or other Person establishes that a departure from one of the specific UCI Regulations or International Standard provisions listed below could reasonably have caused an anti-doping rule violation based on an Adverse Analytical Finding, an Adverse Passport Finding or whereabouts failure, then the UCI shall have the burden to establish that such departure did not cause the Adverse Analytical Finding or the whereabouts failure:*

(i) a departure from the UCI Testing & Investigation Regulations or International Standard for Testing and Investigations related to Sample collection or Sample handling which could reasonably have caused an anti-doping rule violation based on an Adverse Analytical Finding or an Adverse Passport Finding, in which case the UCI

shall have the burden to establish that such departure did not cause the Adverse Analytical Finding;

(ii) a departure from the UCI Results Management Regulations, UCI Testing & Investigations Regulations, International Standard for Results Management or International Standard for Testing and Investigations related to an Adverse Passport Finding which could reasonably have caused an anti-doping rule violation, in which case the UCI shall have the burden to establish that such departure did not cause the anti-doping rule violation;

(iii) a departure from the UCI Results Management Regulations or International Standard for Results Management related to the requirement to provide notice to the Rider of the B Sample opening which could reasonably have caused an anti-doping rule violation based on an Adverse Analytical Finding, in which case the UCI shall have the burden to establish that such departure did not cause the Adverse Analytical Finding;

(iv) a departure from the UCI Results Management Regulations or International Standard for Results Management related to Rider notification which could reasonably have caused an anti-doping rule violation based on a whereabouts failure, in which case the UCI shall have the burden to establish that such departure did not cause the whereabouts failure. ...”

2. The burden and standard of proof

72. It follows from Article 3.1 of the UCI ADR that the UCI bears the burden of proof to establish that the Rider committed an ADRV. The ADRV of the Rider must be established to the “comfortable satisfaction” of the Tribunal, bearing in mind the seriousness of the allegation, which is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof “beyond any reasonable doubt”.
73. According to Article 3.2.2 of the UCI ADR “WADA-accredited Laboratories [...] are presumed to have conducted sample analysis and custodial procedures in accordance with the International Standard for Laboratories”. The Rider or other Person may rebut this presumption of a valid analysis of the sample by establishing that a deviation from the International Standard for Laboratories (or other applicable regulations) occurred which could reasonably have caused the AAF (cf. Article 3.2.2 UCI ADR). “If the Rider or other Person rebuts the preceding presumption by showing that a departure from the International Standard for Laboratories occurred which could reasonably have caused the AAF, then the UCI shall have the burden to establish that such departure did not cause the Adverse Analytical Finding” (cf. Article 3.2.3 UCI ADR).

3. The Presence and Use of Prohibited Substance

74. Article 2.1 of the UCI ADR incorporates the principle of strict liability. According thereto (Appendix 1 of the UCI ADR) “it is not necessary that intent, Fault, Negligence, or knowing Use on the Rider’s part be demonstrated by the Anti- Doping Organization in order to establish an anti-doping rule violation”. Thus, sufficient proof of an ADRV is established – *inter alia* – by the “presence of a Prohibited Substance or its Metabolites or Markers in the Rider’s A Sample where the Rider waives the analysis of the B sample and the B Sample is not analyzed; or, where the Rider’s B Sample is analyzed and the analysis of the Rider’s B Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the Rider’s A Sample” (cf. Article 2.1.2 of the UCI ADR). According to Article 6.1 of the UCI ADR the analysis must be conducted by a WADA-accredited Laboratory or a Laboratory otherwise approved by WADA.
75. In the case at hand, the Sample collected from the Rider was analyzed by the Laboratory, which is WADA-accredited. The analysis of the A-Sample revealed the presence of exogenous rEPO and of

Oxycodone. The Rider on 19 December 2021 waived the analysis of the B-Sample. Consequently, according to Article 2.1.2 of the UCI ADR, there is sufficient proof of an ADRV under Article 2.1 UCI ADR. The evidence used to establish an ADRV under Article 2.1 of the UCI ADR may also be used to establish an ADRV under Article 2.2 UCI ADR for Use of a Prohibited Substance, since the presence of a Prohibited Substance in the bodily specimen of the Rider is not possible without prior use of such Prohibited Substance.

76. Thus, in the case at hand, the UCI has discharged its burden of proof that an ADRV for Articles 2.1 and 2.2 of the UCI ADR has been committed by the Rider by submitting the respective analyses reports. Consequently, the burden of proof shifts to the Rider to rebut this presumption by showing on a balance of probabilities that (i) there was a departure from the ISL or the other applicable provisions; and (ii) that such departure could have reasonably caused the AAF (see Article 3.2.3 and 3.2.4 of the UCI ADR).

4. No Challenge of the Analytical Methods or of the Analytical Results

77. In the case at hand the Rider neither challenged the scientific validity of the analytical method for detecting the presence rEPO and/or Oxycodone nor the analytical results of the Laboratory. Instead, in his letter of 14 January 2022 he accepted the AAF and provided an explanation for the presence of the Prohibited Substances.
78. In conclusion, the Single Judge is comfortably satisfied that the UCI has discharged its burden of proof to establish that the Rider has committed an ADRV pursuant to Article 2.1 and Article 2.2 of the UCI ADR.

5. A single ADRV

79. Article 10.9.3.1 of the UCI ADR provides as follows:

“For purposes of imposing sanctions under Article 10.9, except as provided in Articles 10.9.3.2 and 10.9.3.3, an anti-doping rule violation will only be considered a second violation if the UCI can establish that the Rider or other Person committed the additional anti-doping rule violation after the Rider or other Person received notice pursuant to Article 7, or after the UCI made reasonable efforts to give notice of the first anti-doping rule violation. If the UCI cannot establish this, the violations shall be considered together as one single first violation, and the sanction imposed shall be based on the violation that carries the more severe sanction, including the application of Aggravating Circumstances. Results in all Competitions dating back to the earlier anti-doping rule violation will be Disqualified as provided in Article 10.10.”

80. Consequently, both ADRV (Presence and Use) will be considered – legally – as one single ADRV and the sanction imposed shall be based on the violation that carries the more severe sanction. Since rEPO is a non-specified substance and Oxycodone is a Specified Substance the case at hand will apply the consequences based on the presence / use of rEPO.

B. Did the Rider commit the ADRV intentionally?

81. In case of a first violation, Article 10.2 of the UCI ADR differentiates between intentionally and non-intentionally committed ADRVs. The provision reads as follows:

10.2.1 The period of Ineligibility, subject to Article 10.2.4, shall be four (4) years where:

10.2.1.1 The anti-doping rule violation does not involve a Specified Substance or a Specified Method, unless the Rider or other Person can establish that the anti-doping rule violation was not intentional.

10.2.1.2 The anti-doping rule violation involves a Specified Substance, or a Specified Method and the UCI can establish that the anti-doping rule violation was intentional.

10.2.2 If Article 10.2.1 does not apply, subject to Article 10.2.4.1, the period of Ineligibility shall be two (2) years.

82. In the case at hand, rEPO is a non-specified substance. Accordingly, Article 10.2.1.1 of the UCI ADR provides that the standard period of ineligibility is four years, if the Rider cannot establish that the ADRV was not intentionally committed.

1. The term “intentional”

83. The term “intentional” is defined in Article 10.2.3 of the UCI ADR. The provision provides as follows:

“As used in Article 10.2, the term “intentional” is meant to identify those Riders or other Persons who engage in conduct which they 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 which is only prohibited In-Competition shall be rebuttably presumed to be not “intentional” if the substance is a Specified Substance and the Rider can establish that the Prohibited Substance was Used Out-of-Competition. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall not be considered “intentional” if the substance is not a Specified Substance and the Rider can establish that the Prohibited Substance was Used Out-of-Competition in a context unrelated to sport performance.”

2. The burden of proof and the standard of proof

84. The Rider bears the burden to prove that the ADRV was not committed intentionally pursuant to Article 10.2.1.1 of the UCI ADR.
85. The applicable standard of proof in relation to whether or not the ADRV (involving a non-specified substance) was committed not intentionally is the balance of probability (as per Article 3.1 of the UCI ADR). Accordingly, the Rider must convince the Single Judge that the version of events presented by him appears more likely than not. The Single Judge will accept that the Rider did not act intentionally, if he is persuaded by more than 50%.¹

3. The position of the Parties

86. With letter dated 14 January 2022 the Rider – during the results management proceedings – denied having used rEPO intentionally and claims that the presence of the Prohibited Substance was caused by the use of the Supplement that – contrary to the ingredients listed – contained rEPO. The Rider claims that he thought the Supplement was free of Prohibited Substances. In support of his submission the Rider sent also pictures of the Supplement’s container and the list of ingredients. The UCI submits that the above allegation is insufficient to meet the required standard of proof, since the Rider has failed to provide evidence that the Supplement actually contained rEPO. The Rider did not provide any laboratory analysis of the Supplement. Furthermore, the UCI relies on the opinion of Mr Neil Robinson who is ITA’s Head of Science and Medical. In his opinion, Mr Neil Robinson states – *inter alia* – as follows:

¹ CAS 2009/A/1926 & 1930, *ITF v. Richard Gasquet & WADA v. ITF & Richard Gasquet*, para. 31; CAS 2011/A/2384 & CAS 2011/A/2386, *UCI v. Alberto Contador & RFEC / WADA v. Alberto Contador & RFEC*, para. 55 et seq; Björn Hessert, «Fehlleistung des CAS im Dopingverfahren Jarrion Lawson», *Causa Sport*, 2020, 155 (158).

A. What is EPO and what are its routes of administration?

EPO is a glycoprotein which stimulates the production of red blood cells. It is mainly produced by the kidneys.

Exogenous erythropoietin, recombinant human erythropoietin (rhEPO), is produced by recombinant DNA technology in cell culture. Recombinant EPO can be administered via subcutaneous, intravenous or intramuscular injections. To the best of my knowledge, rhEPO is not administered orally.

B. Can an Adverse Analytical Finding (“AAF”) for EPO be triggered by the intake of a dietary supplement?

If the dietary supplement is taken orally, then it is highly likely that the urine sample will not trigger an AAF for EPO.

4. The position of the Single Judge

87. The Single Judge finds that the Rider’s submissions are not sufficiently substantiated. The Rider failed to establish the source of the AAF nor did he establish the existence of other circumstances which allow the Single Judge to conclude that the Rider acted without intent. It cannot be deduced from the pictures provided by the Rider that the Supplement is the source of the AAF, since it is unknown whether the Supplement contains rEPO. Furthermore, it appears from the evidence on file that an AAF for rEPO cannot be caused by an oral intake of EPO. In addition, the Rider failed to adduce any evidence that he bought and consumed the Supplement. Finally, there is no submission from the Rider when he took the Supplement and in what dosage.
88. The Single Judge further notes that – in view of the specificity of the prohibited substance in question – the chances of an inadvertent use of rEPO by the Rider are practically non-existent. The Single Judge is also aware of the constant jurisprudence of the CAS and the Tribunal according to which mere assertions or denials are, in principle, not sufficient to establish the lack of intention.²
89. Consequently, the Single Judge concludes that the Rider has failed to meet his burden of proof to establish a lack of intention. Thus, the Single Judge is of the view that the Rider committed the ADRV intentionally.

C. What are the appropriate consequences of such an ADRV?

1. The standard Period of Ineligibility

90. In the case at hand, the ADRV relating to rEPO constitutes the Rider’s first ADRV. The UCI ADR provide in case of presence or use of a non-specified substance a period of ineligibility of 4 years (cf. Article 10.2.1) unless the Rider can establish that the ADRV was committed unintentionally. In the case at hand the Rider acted intentionally. Furthermore, there are no grounds for reducing or suspending this standard period of ineligibility, since the Rider neither provided substantial assistance within the meaning of Article 10.7 UCI ADR nor is he a Recreational Rider as defined by the UCI ADR (see supra no. 62seq.).

2. Aggravating Circumstances

91. Article 10.4 UCI ADR allows for an increase of the standard period of ineligibility in case of Aggravating Circumstances, unless the Rider can establish that he did not knowingly commit the ADRV. In the present matter the Rider did not establish that he unknowingly consumed rEPO. In case Article 10.4 UCI ADR applies the standard period of ineligibility shall be increased by an additional period of up to

² CAS 2016/A/4377 WADA v. IWF and Yenny Fernance Alvarez Caicedo, § 52.

2 years depending on the seriousness of the violation and the nature of the aggravating circumstances. The UCI ADR define the term aggravating circumstances as follows:

“Circumstances involving, or actions by, a Rider or other Person which may justify the imposition of a period of Ineligibility greater than the standard sanction. Such circumstances and actions shall include, but are not limited to: the Rider or other Person Used or Possessed multiple Prohibited Substances or Prohibited Methods, Used or Possessed a Prohibited Substance or Prohibited Method on multiple occasions or committed multiple other anti-doping rule violations; a normal individual would be likely to enjoy the performance-enhancing effects of the anti-doping rule violation(s) beyond the otherwise applicable period of Ineligibility; the Rider or Person engaged in deceptive or obstructive conduct to avoid the detection or adjudication of an anti-doping rule violation; or the Rider or other Person engaged in Tampering during Results Management. For the avoidance of doubt, the examples of circumstances and conduct described herein are not exclusive and other similar circumstances or conduct may also justify the imposition of a longer period of Ineligibility.”

92. In the case at hand there are a number of facts that constitute aggravating circumstances within the above meaning. First, it must be noted that rEPO is a prohibited substance that only has performance enhancing effects if used repeatedly. Thus, there is a high likelihood that the Rider with an AAF for rEPO has used this Prohibited Substance over a longer period of time. Furthermore, the Rider tested positive at the Event for multiple substances, i.e. for rEPO and Oxycodone. In addition, the Rider displayed obstructive and deceptive conduct in order to prevent this case from being adjudicated. The Rider once he had been notified of the anti-doping test did not stay with the Chaperone, but rode away on his bike despite being warned several times. He thereby made it impossible for the Chaperone to fulfil his duty, i.e. to accompany and observe the Rider until arrival at the Doping Control Station. Such behaviour constitutes a breach of the Rider’s obligations according to Article 5.4.1 of the International Standard for Testing and Investigation (“ISTI”). According thereto the Rider is under the obligation to *“remain within continuous observation of the DCO/Chaperone at all times from the point initial contact is made by the DCO/Chaperone until the completion of the Sample collection procedure.”* Such behaviour qualifies at least as an attempt to tamper with any part of the Doping Control within the meaning of Article 2.5 UCI ADR. The Rider’s tampering attempt was initially successful, because the Chaperone lost contact with him. Later the Chaperone was able to locate the Rider again. The Rider then continued with his obstructive strategy and pretended now to be someone else by providing a false identity to the Chaperone. He also requested the latter *“to let him go”*. All of this constitutes an attempt to tamper with any part of the Doping control within the meaning of Article 2.5 UCI ADR.
93. In view of all of the above, the Single Judge finds that the Rider displayed a behaviour that warrants an increase of the standard sanction. When exercising his discretion the Single Judge finds that the Rider’s continued attempts to tamper with the doping control process is very serious and grave and – together with all the other circumstances mentioned above warrants the imposition of the maximum sanction, i.e. an additional period of 2 years. To conclude therefore, the Single Judge finds that the appropriate period of ineligibility for the Rider for the ADRV committed is – in line with Articles 10.2.1 and 10.4 UCI ADR 6 years.

3. Commencement date of the Period of Ineligibility and Credit for provisional Suspension

94. In relation to the commencement of the period of ineligibility, Article 10.13 of the UCI ADR provides as follows:

“... Otherwise, except as provided below, the period of Ineligibility shall start on the date of the final hearing decision providing for Ineligibility or, if the hearing is waived or there is no hearing, on the date Ineligibility is accepted or otherwise imposed.

10.13.1 Delays not Attributable to the Rider or other Person

Where there have been substantial delays in the hearing process or other aspects of Doping Control, and the Rider or other Person can establish that such delays are not attributable to the Rider or other Person, the UCI may start the period of Ineligibility at an

earlier date commencing as early as the date of Sample collection or the date on which another anti-doping rule violation last occurred. All competitive results achieved during the period of Ineligibility, including retroactive Ineligibility, shall be Disqualified.

10.13.2 Credit for Provisional Suspension or Period of Ineligibility Served

10.13.2.1 *If a Provisional Suspension is respected by the Rider or other Person, then the Rider or other Person shall receive a credit for such period of Provisional Suspension against any period of Ineligibility which may ultimately be imposed. [...]"*

95. Thus, as a general rule, the period of ineligibility shall start on the date of the final decision imposing such ineligibility, with credit given for the period of any provisional suspension if and to the extent it was respected by the Rider. On 15 December 2021, the Rider was informed of a mandatory provisional suspension imposed on him. There is no indication on file that the Rider did not observe the terms of such suspension. The Single Judge, thus, finds that the Rider must receive credit for the time so served.
96. The Single Judge further observes that there have been delays in the hearing process. However, these delays are attributable to the Rider, because he did not participate in the results management process and because notification of the necessary correspondence had to go through CFI.

4. Disqualification

97. According to Article 9 of the UCI ADR, an ADRV in Individual Sports in connection with an In-Competition test automatically leads to Disqualification of the result obtained in that Competition with all resulting Consequences, including forfeiture of any medals, points and prizes.
98. The term "Competition" is defined in the Appendix 1 of the UCI ADR as, inter alia, a "single race organized separately (for example [...] a stage in a stage race)". Thus, the Rider's results at the Event, i.e. the UCI Marathon Series – Sakarya – XCM held on 1 August 2021 shall automatically be disqualified.
99. Furthermore, Article 10.10 of the UCI ADR reads as follows:

In addition to the automatic Disqualification of the results in the Competition which produced the positive Sample under Article 9, all other competitive results of the Rider obtained from the date a positive Sample was collected (whether In-Competition or Out-of-Competition), or other anti-doping rule violation occurred, through the commencement of any Provisional Suspension or Ineligibility period, shall, unless fairness requires otherwise, be Disqualified with all of the resulting Consequences including forfeiture of any medals, points and prizes.

100. Therefore, all results obtained – if any – by the Rider between the date of the sample collection on 1 August 2021 until the date on which the Rider was provisionally suspended, i.e. 15 December 2021, are disqualified.

5. Mandatory Fine and Costs under the UCI ADR

101. Since the Rider is not exercising a professional activity in cycling, no fine shall be imposed on the Rider according to Article 10.12.1 UCI ADR.
102. The Single Judge notes that Article 10.12.2 of the UCI ADR reads as follows:

10.10.2 Liability for Costs of the Procedures

If the Rider or other Person is found to have committed an anti-doping rule violation, he or she shall bear, unless the UCI Anti-Doping Tribunal determines otherwise:

- 1. The cost of the proceedings as determined by the UCI Anti-Doping Tribunal, if any.*
- 2. The cost of the result management by the UCI; the amount of this cost shall be CHF 2'500, unless a higher amount is claimed by the UCI and determined by the UCI Anti-Doping Tribunal.*

3. *The cost of the B Sample analysis, where applicable.*
4. *The costs incurred for Out-of-Competition Testing; the amount of this cost shall be CHF 1'500, unless a higher amount is claimed by the UCI and determined by the UCI Anti-Doping Tribunal.*
5. *The cost for the A and/or B Sample laboratory documentation package where requested by the Rider.*
6. *The cost for the documentation package of Samples analyzed for the Biological Passport, where applicable.*

If the Rider or other Person admits the anti-doping rule violation in accordance with the requirements provided under Article 10.8, the UCI may waive the reimbursement of these costs in whole or in part. The factors listed under 10.12.1.3 may also be considered in relation to a possible reduction of costs under this provision.

The National Federation of the Rider or other Person shall be jointly and severally liable for its payment to the UCI.

103. In application of the above provisions, the Single Judge holds that the Rider shall reimburse to the UCI the following amount:

- CHF 2'500.00 for costs of the results management (Article 10.12.2(2) of the UCI ADR);

6. Costs of the proceedings

104. Article 29 of the ADT Rules provides as follows:

1. *The Tribunal shall determine in its judgment the costs of the proceedings as provided under Article 10.12.2 para. 1 ADR.*
2. *As a matter of principle the Judgment is rendered without costs.*
3. *Notwithstanding the above, the Tribunal may order the Defendant to pay a contribution toward the costs of the Tribunal. Whenever the hearing is held by videoconference, the maximum participation is CHF 7'500.*
4. *The Tribunal may also order the unsuccessful Party to pay a contribution toward the prevailing Party's costs and expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and experts. If the prevailing Party was represented by a legal representative the contribution shall also cover legal costs.*

105. In application of Article 29.2 of the ADT Rules, the Single Judge decides that the present Judgment is rendered without costs. In light of all of the circumstances of this case, the Single Judge finds it appropriate to not order the Rider (as the unsuccessful party) to pay a contribution towards the UCI's costs.

VIII. RULING

106. In consideration of all of the above, the Tribunal decides as follows:

1. **Mr. Hossein Mohammadiha has committed an Anti-Doping Rule Violation.**
2. **Mr. Hossein Mohammadiha is suspended for a period of ineligibility of 6 years. The period of Ineligibility shall commence on 15 December 2021, and shall end six years from this date, i.e. 14 December 2027.**
3. **The results obtained by Mr. Hossein Mohammadiha at the MTB Marathon Series – Sakarya – XCM on 1 August 2021 and any other result obtained from 1 August 2021 until 15 December 2021 are disqualified.**

4. **Mr. Hossein Mohammadiha is ordered to pay to the UCI:**
 - a) **the amount of CHF 2'500.00 for the costs of the results management.**
5. **All other and/or further-reaching requests are dismissed.**
6. **This judgment is final and will be notified to:**
 - a) **Mr. Hossein Mohammadiha, via the Cycling Federation of the Islamic Republic of Iran;**
 - b) **UCI**
 - c) **National Anti-Doping Agency of Iran; and**
 - d) **WADA**

107. This Judgment may be appealed before the CAS pursuant Article 31.2 of the ADT Rules and Article 74 of the UCI Constitution. The time limit to file the appeal is governed by the provisions in Article 13.2.5 of the UCI ADR.

Ulrich HAAS
Single Judge