

UCI Anti-Doping Tribunal

Judgment

case ADT 04.2023

UCI v. Ms Iryna Popova

Single Judge:

Mr Jordi López Batet (Spain)

Aigle, 20 September 2024

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 (hereinafter referred to as “the ADT Rules”) in order to decide upon violations of the UCI Anti-Doping Rules (hereinafter referred to as “the UCI ADR”) committed by Ms. Iryna Popova (hereinafter referred to as “the Rider” or “Ms. Popova”), as alleged by the UCI (hereinafter collectively referred to as “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 his reasoning.

A. The Rider

3. The Rider is a professional cyclist of Ukrainian nationality who at the time of the alleged anti-doping rule violation (hereinafter referred to as “the ADRV”), was affiliated to the Ukrainian Cycling Federation (hereinafter referred to as “the UCF”) and was hence a Licence-Holder within the meaning of the UCI ADR.

B. The UCI

4. The UCI is the association of national cycling federations and a non-governmental international association with a non-profit-making purpose of international interest, having legal personality in accordance with Articles 60 ff. of the Swiss Civil Code according to Articles 1.1 and 1.2 of the UCI Constitution.

C. The ABP

5. The Rider was part of the UCI’s Athlete Biological Passport (hereinafter referred to as the “ABP”) Program. The ABP Program is based on the longitudinal monitoring of an athlete’s haematological values and is designed to be an “indirect” method of doping detection. It focuses on the effect of prohibited substances and methods on the athlete’s blood values rather than on the identification of a specific substance or method in an athlete’s specimen. The ABP Program is administered and managed by an Athlete Passport Management Unit (hereinafter referred to as the “APMU”).
6. An ABP is monitored by the Adaptive Model. The Adaptive Model is a mathematical model designed to identify unusual longitudinal results in an ABP or profiles that warrant further investigation. It predicts for an individual an expected range within which a series of marker values falls assuming a normal physiological condition.
7. The Adaptive Model flags haematological data as atypical if (i) a haemoglobin (hereinafter referred to as “HGB”) and/or OFF-score marker value falls outside the expected intra-individual ranges, with outliers corresponding to values out of the 99%-range (0,5 – 99,5 percentiles) or (ii) when sequence deviations (a longitudinal profile of marker values) are present at specificity of

99,9%. The OFF-score value is a haematological marker which is a combination of HGB and the percentage of reticulocytes (hereinafter referred to as "RET%").

D. The alleged ADRV

8. The UCI alleges that the Rider committed a violation of Article 2.2 UCI ADR based on abnormalities detected in the haematological values contained in the Rider's ABP.
9. The samples considered in the Rider's ABP are the following:

#	Sample code	Collection date	Collection time	Test Type	Analysis date	Analysis time	Lab	Analyzer
1	302908	17.08.2016	19.40	OOC	18.08.2016	09.23	Rio	XT
2	316091	01.08.2019	09.02	OOC	02.08.2019	18.51	Lausanne	XN
3	1057610	14.05.2022	19.56	INC	15.05.2022	15.23	Seibersdorf	XN
4	916924	31.05.2022	21.32	OOC	02.06.2022	13.20	Seibersdorf	XN
5	916894	19.06.2022	21.25	OOC	21.06.2022	12.33	Seibersdorf	XN
6	917567	14.08.2022	22.54	OOC	16.08.2022	12.01	Cologne	XN
7	1035452	24.08.2022	22.57	OOC	26.08.2022	15.30	Cologne	XN
8	914388	11.09.2022	8.36	OOC	13.09.2022	13.42	Seibersdorf	XN

10. The haematological results of these samples are the following:

#	Sample code	HGB	RET%	OFF-score	HCT	RET#	IRF
1	302908	13.2	0.33	97.5	40.4	0.0141	2.6
2	316091	12.8	1.11	64.8	39.3	0.0457	6.8
3	1057610	16.1	0.39	123.53	48.5	0.0195	1.3
4	916924	14.2	0.30	109.14	41.8	0.0134	2.9
5	916894	11.8	0.65	69.63	34.8	0.0242	4.3
6	917567	10.9	1.80	28.5	33.8	0.0608	9.4
7	1035452	11.8	1.56	43.06	35.6	0.0558	8.5
8	914388	13.1	0.74	79.39	38.8	0.0296	1.8

#	Sample code	RBC	MCH	MCHC	MCV	RDW-SD	PLT	WBC
1	302908	4.26	31.0	32.7	94.8	43.0		
2	316091	4.12	31.1	32.6	95.4	41.0	177	6.38
3	1057610	5.00	32.2	33.2	97.0	45.3	231	7.84
4	916924	4.47	31.8	34.0	93.5	43.5	182	6.02
5	916894	3.72	31.7	33.9	93.5	43.7	222	9.76
6	917567	3.38	32.2	32.2	100.0	48.7	209	7.25
7	1035452	3.58	33.0	33.1	99.4	42.5	225	11.81
8	914388	4.00	32.8	33.8	97.0	39.8	193	4.37

11. In the case at stake, the Rider's ABP was flagged with abnormalities at a specificity of 99.0% for HGB and OFF-score as well as RET%.
12. In particular, the following samples of the Rider's ABP were flagged:
 1. Sample 1 was flagged with lower limit RET%;
 2. Sample 3 was flagged with upper limit HGB, upper limit OFF-score and lower limit RET%;
 3. Sample 4 was flagged with upper limit OFF-score and lower limit RET%;
 4. Sample 5 was flagged with lower limit HGB;
 5. Sample 6 was flagged with lower limit HGB, lower limit OFF-score and upper limit RET%;
 6. Sample 7 was flagged with lower limit HGB, lower limit OFF-score and upper limit RET%.
13. The APMU submitted this Rider's profile to an expert for initial review. In the opinion of this expert, the Rider's ABP was the result of the use of a Prohibited Substance or Prohibited Method. As regards of it, the profile was submitted to 2 other experts for evaluation.
14. On 10 February 2023, these 2 experts together with the first one, who all together constituted the Expert Panel (as defined in the WADA ABP Operating Guidelines), concluded that the Rider's profile contained several abnormalities, found it highly likely that a Prohibited Substance or Prohibited Method had been used and considered it unlikely that the ABP was the result of any other cause (hereinafter referred to as the "Initial Opinion"). This Initial Opinion, in the pertinent part, reads as follows:

We refer to your request to give a joint expert statement on a haematological profile obtained from a female cyclist (MTB XC) in the context of the "Athlete's 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 accordance with the WADA Athlete Biological Passport Operating Guidelines in force.

*Access to the profile coded **BP91BU18821W102E22** was granted in ADAMS and documents summarising the data in tables and graphs were available in pdf format. The documentation packages/certificates of analysis for the 8 valid samples of the profile were evaluated. The samples were obtained between 2016 and 2022. With the profile, we received a summary of the perianalytical/ analytical information contained in the documentation packages (ABP documentation*

package). In addition to the blood data, the competition schedule from 2016 to 2022 and altitude information for May to November 2022 were reviewed.

Sample Quality

All samples included in the initial analysis were scrutinized for their analytical details outlined in the documentation packages for samples 1, 3-7 and certificates of analysis for samples 2 and 8. 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 influence the analytical result to the disadvantage of the athlete.

Quantitative analysis

The passport was flagged with abnormalities at 99.0% specificity for Haemoglobin concentration in samples 3 (upper limit), 5,6 and 7 (lower limit), OFF score in samples 3,4 (upper limit) and 6,7 (lower limit) as well as for reticulocyte% in samples 6,7 (upper limit) and samples 1,3 and 4 (lower limit). The sequence for all markers is abnormal at >99.9%.

Qualitative analysis

In our view, the data of the athlete bears the main abnormal feature of a typical OFF constellation in samples 3 and 4. These tests have been taken during and after the MTB World Cups in the spring of 2022. In sample 1 taken prior to the 2016 Olympic Games, a very low reticulocyte value (0.33%) is measured, albeit paired with normal haemoglobin concentration. This pattern nevertheless also suggests erythropoietic suppression.

An OFF constellation illustrative of erythropoietic suppression typically develops when the red cell mass of the organism has been artificially increased to supraphysiological levels (high haemoglobin) and the body's own red cell production is progressively reduced (low reticulocytes) to downregulate the excess in red blood cells. This constellation is pathognomonic for the use and recent discontinuation of an erythropoiesis stimulating agent (ESA) or the application of a blood transfusion (1,2).

Secondary features of reduced erythropoietic activity such as a trend to smaller (older) red cells during the mentioned periods (samples 1,3-5) (3) support this hypothesis.

It is of note that the described pattern is in large contrast to other periods of the profile, where the athlete displays low, borderline anaemic values (see sample 6).

In the available documentation, there is no mention of any confounders that could cause the picture described above.

In summary, the profile bears features of blood manipulation for the MTB World Cups in spring 2022. We therefore conclude that it is highly likely that a prohibited substance or prohibited method has been used and that it is unlikely that the passport is the result of any other cause.

15. On 8 March 2023, the Rider was informed of the potential commission of an ADRV. A copy of the Initial Opinion and of the relevant documentation (Documentation Package of samples 1, 3, 4, 5, 6, and 7 of her ABP, a Certificate of Analysis for the two other valid samples of her ABP, the APMU Documentation Package, and the Adverse Passport Finding (hereinafter, "APF") was made available to the Rider. The UCI further invited the Rider to provide an explanation regarding his haematological profile.
16. On 5 and 12 April 2023, the Rider sent her explanation to the UCI. In this explanation, the Rider alleged that the following factors may have influenced her blood values and/or may support the fact that she did not take any Prohibited Substances:

- i. She contracted COVID-19 in October 2020.
 - ii. The Rider trained for the Mountain Bike World Cup following her recovery from COVID-19. She alleged that the combination of COVID-19 and her rigorous training could have affected her blood markers.
 - iii. She always tested negative for Prohibited Substances.
 - iv. She comes from a war-torn region in Ukraine and is therefore under considerable emotional stress. This might have influenced her profile.
 - v. It is extremely unlikely for the Rider to obtain doping substances, given that her hometown [REDACTED] and her town of residence [REDACTED] are under occupation and/ or constant attacks as regards of the Ukraine War.
17. On 19 May 2023, the Expert Panel, after having reviewed the Rider’s explanation, issued a new report (hereinafter referred to as the “Second Opinion”), in which it concluded that none of the arguments of the Rider explained the abnormalities observed in her profile and confirmed the views of the Initial Opinion. The final conclusion of the Second Opinion reads as follows:
- Based on the data available at this stage, we conclude that the arguments provided by the athlete do not explain the abnormalities in her profile. We maintain our previous assessment that the likelihood of the profile considering COVID19, the absence of positive urine test, training or emotional stress (alone or in combination) is low, whereas its likelihood considering the use of a prohibited substance or method, namely an erythropoietic stimulant or a blood transfusion, is high.*
18. On 20 June 2023, the Rider was provided a copy of the Second Opinion and was notified of her provisional suspension. Additionally, she was offered an Acceptance of Consequences according to Article 8.2 UCI ADR.
19. On 21 June 2023, the Rider answered the UCI by alleging in essence that (i) the ADRV was not established to the required standard of proof, (ii) the Expert Panel neither considered the “ethical component” nor COVID-19 consequences in a comprehensive manner, (iii) there were contradictions in the logical constructions of the Expert Opinion, and (iv) requested to be given a deadline to provide an expert opinion.
20. On 25 June 2023, although she was provisionally suspended, the Rider participated in the 2023 European Games.
21. On 3 July 2023, the Rider requested the case be transferred to the Tribunal for resolution.
22. On 7 July 2023, the UCI confirmed that the case would be referred to the Tribunal.
23. On 9 November 2023 the UCI filed its petition to the Tribunal (hereinafter, the “Petition”), requesting an award be issued in the following terms:
- *Declaring that Ms. Popova has committed an Anti-Doping Rule Violation.*
 - *Imposing a period of ineligibility of four years on Ms. Popova, starting on the date of notification of the Tribunal’s decision.*
 - *Disqualifying all the results obtained by Ms. Popova from the date of collection of Sample 1 (i.e. on 17 August 2016) until the date of the Tribunal’s decision.*

- *Ordering Ms. Popova to pay the costs of results management by the UCI (CHF 2'500.-) and the costs incurred for the documentation packages of the blood samples analysed for the Biological Passport (EUR 1'515.-).*

III. PROCEDURE BEFORE THE TRIBUNAL

24. As mentioned above, in accordance with Article 13.1 ADT Rules, the UCI initiated proceedings before this Tribunal through the filing of the Petition to the Secretariat on 9 November 2023.
25. The President of the Tribunal appointed Mr. Jordi López Batet to act as Single Judge in the proceedings in application of Article 14.1 ADT Rules.
26. On 17 November 2023 the Rider was informed that disciplinary proceedings had been initiated against her before the Tribunal and was invited to file her answer to the Petition.
27. On 24 November 2023, the Rider confirmed that she did not challenge appointment of the Single Judge.
28. On 13 December 2023, the Rider submitted her answer to the UCI Petition (hereinafter referred to as the "Answer").
29. In her Answer, the Rider requested the Single Judge to (i) "*acknowledge significant violations of Ms. Iryna Popova's human rights during the process of Athlete Biological Passport Investigation*", (ii) recognize that the Expert Report provided by UCI on Ms. Iryna Popova's ADRV does not meet the UCI's burden of proof, (iii) declare that Ms. Iryna Popova did not commit an ADRV, and (iv) "*assign the costs of the Athlete Biological Passport Investigation and Tribunal process to the UCI*".
30. On 21 December 2023, the Single Judge informed the Parties that a second round of submissions was granted and invited the UCI to provide its final comments in relation to the Rider's Answer.
31. On 1 February 2024, the UCI provided its comments on the Answer and its exhibits (hereinafter referred to as the "Reply"). The UCI enclosed to its Reply a new report issued by the Expert Panel addressing some issues contained in the Answer filed by the Rider (the "Third Opinion").
32. On 2 February 2024, the Tribunal invited the Rider to provide her final written comments on the UCI's Reply, which she did on 11 March 2024.
33. On 14 March 2024, the Tribunal invited the Parties to clarify their intentions regarding the possible holding of an oral hearing under Article 23 ADT Rules.
34. On 20 March 2024, the Rider informed the Tribunal of her wish to hold an oral hearing. However, she stated that due to the difficult political and economic circumstances arising from the war in Ukraine, she lacked the financial resources to cover the additional costs associated with conducting an oral hearing with expert participation, as required by Article 23 ADT Rules.
35. On 8 April 2024, the Tribunal communicated to the Parties that the Single Judge had decided to hold a hearing in this case, provided some dates on which the Single Judge would be available for a hearing and informed the Parties that the experts Ms. Laura Lewis, Mr. Giuseppe d'Onofrio and Mr. Yorck Olaf Schumacher had to be present at the hearing.
36. On 19 April 2024, the Tribunal informed the Parties that the hearing would be held via videoconference on 20 June 2024.

37. On 25 April 2024, the Rider communicated to the Tribunal that she would not be able to have any experts present at the hearing due to financial constraints, and requested that her former coach, Mr. Roman Korobov, and her current coach, Mr. Andrii Sarazhynskyi, be allowed to attend the hearing as witnesses.
38. On 7 May 2024, the Tribunal requested the Rider to submit witness statements from Mr. Roman Korobov and Mr. Andrii Sarazhynskyi by 17 May 2024 for the Single Judge, in order to assess their admissibility and relevance to the hearing.
39. On 27 May 2024, the Tribunal acknowledged receipt of the Rider's correspondence of 16 May 2024, including the witness statements of Mr. Roman Korobov and Mr. Andrii Sarazhynskyi. In the same correspondence, the Tribunal invited the UCI to provide its comments on the admissibility and/or content of such witness statements.
40. On 4 June 2024, the UCI informed the Tribunal that it did not oppose to the admissibility of the aforementioned witness statements, and it did not intend to prevent the Rider from having Mr. Roman Korobov and Mr. Andrii Sarazhynskyi examined at the hearing.
41. On 7 June 2024, the Tribunal informed the Parties that the Single Judge had decided to admit the witness statements of Mr. Roman Korobov and Mr. Andrii Sarazhynskyi to the case file, and that they would be examined at the hearing. In the same letter, the Parties were informed of the hearing schedule.
42. On 7 June 2024, the Rider sent a letter to the Tribunal opposing to the examination of the experts Ms. Lewis, Mr. D'Onofrio and Mr. Schumacher in hot tub format as it resulted from the hearing schedule circulated to the Parties, and requesting the experts be examined separately.
43. On 10 June 2024, the Tribunal invited the UCI to comment on the Rider's request for the experts to be examined individually.
44. On 14 June 2024, the UCI invited the Tribunal to keep the original hearing schedule and examine the experts "*as originally contemplated by the Single Judge*".
45. On 18 June 2024, the Tribunal informed the Parties, *inter alia*, that after having heard the Parties on the method to be used for the examination of the experts, the Single Judge decided to hear such experts individually, one after the other. The hearing schedule was amended accordingly.
46. A hearing by videoconference was held on 20 June 2024. The Parties were represented at the hearing by their respective counsels (Mr. Antonio Rigozzi and Ms. Marie-Christin Bareuther on behalf of the UCI, and Mr. Borys Boguslavskyy and Ms. Ganna Gnizdovska on behalf of the Rider). The hearing started with the Parties' opening statements, after which the experts Ms. Lewis, Mr. D'Onofrio and Mr. Schumacher were heard. After the examination of the experts, Mr. Roman Korobov and Mr. Andrii Sarazhynskyi were examined as witnesses. Subsequently, the Parties made their final pleadings. Before ending the hearing and in accordance with Article 23.20 ADT Rules, the Rider, who was present at the hearing, was given the final opportunity to speak. At the end of the hearing, both Parties expressly confirmed that they did not have any objection as to how the proceedings were conducted.

IV. JURISDICTION

47. Article 8.3.2 UCI ADR 2021 (and also Article 8.2 UCI ADR 2015) and Article 3.1 ADT Rules provide that "*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”.

48. The Rider is a license-holder within the meaning of the UCI ADR and, thus, bound by the UCI ADR.
49. This case concerns an ADRV that would have been committed by the Rider based on a results management process under Article 7 UCI ADR 2021.
50. Furthermore, Article 3.2 ADT Rules provides that *“Any objection to the jurisdiction of the Tribunal shall be brought to the Tribunal’s attention within 7 days of 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.”*
51. The Rider did not challenge the jurisdiction of the Tribunal.
52. Therefore, the Single Judge has jurisdiction to decide the present matter.

V. APPLICABLE RULES

53. In accordance with Article 26 ADT Rules, in rendering this Judgment, 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.

54. The relevant samples of the Rider’s ABP were collected between 2016 and 2022.

55. Article 27.1 UCI ADR 2021 provides that:

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

56. Article 27.2 UCI ADR 2021 stipulates that:

“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 these 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. For these purposes, the retrospective periods in which prior violations can be considered for purposes of multiple violations under Article 10.9.4 and the statute of limitations set forth in Article 17 are procedural rules, not substantive rules, and should be applied retroactively along with all of the other procedural rules in these Anti-Doping Rules or the Code (provided, however, that Article 17 shall only be applied retroactively if the statute of limitations period has not already expired by the Effective Date).”

57. In accordance with Article 36 ADT Rules in force in 2021:

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

58. The case at hand concerns an alleged ADRV established on the basis of an ABP with abnormal features detected under two different set of rules, i.e. under the UCI ADR 2015 for the abnormal features identified in 2016, and under the UCI ADR 2021 for the abnormal features identified in 2022.

59. The Court of Arbitration for Sport (“CAS”) has determined in this kind of cases the following:

“The Sole Arbitrator notes that the matter concerning rules applicable to ABP cases has been addressed in CAS case law. According to the prevailing doctrine, the rules in force at the time of the first sample taken shall be applied (see e.g. TAS 2010/A/2178 and, in particular, CAS 2016/O/4464, in which the relevant facts were similar to those of the matter at hand).

The applicability of the rules in force at the time of the first relevant sample taken has also been confirmed in legal literature in the following manner: “[i]n general, the legal principle of tempus regit actum applies, i.e. the Panel shall apply the regulations in force at the moment that the violation occurred. In a case related to the ABP (since the ABP is based on the longitudinal profiling of the athlete’s sample) [sic] should coincide with the first sample taken” (MAVROMATI D., The Athlete’s Biological Passport (ABP) Program, Bulletin TAS – CAS Bulletin, 2/2011 p. 39.)”¹

60. With the above in mind and taking into account the Second Opinion according to which “*in brief, the key feature is a pattern of erythropoietic suppression illustrated by a typical OFF constellation in samples 3 and 4 (obtained prior to and during the MTB World Cups in Spring 2022). We also highlighted a similar abnormality in sample 1 (taken prior to the 2016 Olympic Games)*”, the Single Judge finds that the substantive rules applicable at that time, i.e. the UCI ADR 2015, are applicable to the matter at hand, subject to the possible application of the principle of *lex mitior*.

VI. THE FINDINGS OF THE SINGLE JUDGE

61. Considering the submissions filed by the Parties in these proceedings, the main issues to be addressed and decided by the Single Judge are the following:

- (1) whether the Rider committed an ADRV within the meaning of Article 2.2 UCI ADR 2015; and if so,
- (2) the consequences of such an ADRV.

A. The ADRV

62. The UCI submits that the Rider committed an ADRV within the meaning of Article 2.2 UCI ADR 2015 as regards of the abnormalities detected in the haematological values contained in her ABP, while the Rider objects to this conclusion based on the arguments that will be set out below.

1. The relevant legal framework

63. The relevant legal provisions with respect to the establishment of the ADRV claimed by the UCI read as follows:

“2.2 Use or Attempted Use by a Rider of a Prohibited Substance or a Prohibited Method

2.2.1 *It is each Rider’s personal duty to ensure that no Prohibited Substance enters his or her body 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.*

¹ CAS 2017/O/4980 IAAF v. RUSAF & Svetlana Vasilyeva, para. 50 and 51; also CAS 2016/O/4464 IAAF v. ARAF & Ekaterina Sharmina.

- 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.*

[Comment to Article 2.2: It has always been the case that Use or Attempted Use of a Prohibited Substance or Prohibited Method may be established by any reliable means. As noted in the Comment to Article 3.2, unlike the proof required to establish an anti-doping rule violation under Article 2.1, Use or Attempted Use may also be established by other reliable means such as admissions by the Rider, witness statements, documentary evidence, conclusions drawn from longitudinal profiling, including data collected as part of the Rider Biological Passport, or other analytical which does not otherwise satisfy all the requirements to establish 'Presence' of a Prohibited Substance under Article 2.1. For example, Use may be established based upon reliable analytical data from the analysis of an A Sample (without confirmation from an analysis of a B Sample) or from the analysis of a B Sample alone where the Anti-Doping Organization provides a satisfactory explanation for the lack of confirmation in the other Sample.]

[Comment to Article 2.2.2: Demonstrating the 'Attempted Use' of a Prohibited Substance or a Prohibited Method requires proof of intent on the Rider's part. The fact that intent may be required to prove this particular anti-doping rule violation does not undermine the Strict Liability principle established for violations of Article 2.1 and violations of Article 2.2 in respect of Use of a Prohibited Substance or Prohibited Method. A Rider's 'Use' of a Prohibited Substance constitutes an anti-doping rule violation unless such substance is not prohibited Out-of-Competition and the Rider's Use takes place Out-of-Competition. (However, the presence of a Prohibited Substance or its Metabolites or Markers in a Sample collected In-Competition is a violation of Article 2.1 regardless of when that substance might have been administered)]".

64. As to the burden and standard of proof, Article 3.1 UCI ADR 2015 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, the standard of proof shall be by a balance of probability. ...".

65. As to the methods of establishing facts and presumptions, Article 3.2 UCI ADR 2015 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:

[Comment to Article 3.2: For example, the UCI may establish an anti-doping rule violation under Article 2.2 based on the Rider's admissions, the credible testimony of third Persons, reliable documentary evidence, reliable analytical data from either an A or B Sample as provided in the Comments to Article 2.2, or conclusions drawn from the profile of a series of the Rider's blood or urine Samples, such as data from the Athlete Biological Passport.]

- 3.2.1 *Analytical methods or decision limits approved by WADA after consultation within the relevant scientific community and which have been the subject of peer review are presumed to be scientifically valid. Any Rider or other Person seeking 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.*

CAS on its own initiative may also inform WADA of any such challenge. At WADA's request, the CAS panel shall appoint an appropriate scientific expert to assist the panel in its evaluation of the challenge. Within 10 days of WADA's receipt of such notice, and WADA's receipt of the CAS file, WADA shall also have the right to intervene as a party, appear amicus curiae, or otherwise provide evidence in such proceeding.

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.

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.

[Comment to Article 3.2.2: The burden is on the Rider or other Person to establish, by a balance of probability, a departure from the International Standard for Laboratories that could reasonably have caused the Adverse Analytical Finding. If the Rider or other Person does so, the burden shifts to the UCI to prove to the comfortable satisfaction of the hearing panel that the departure did not cause the Adverse Analytical Finding.]

3.2.3 Departures from any other rule set forth in these Anti-Doping Rules, or any International Standard or UCI Regulation incorporated in these Anti-Doping Rules which did not cause an Adverse Analytical Finding or other anti-doping rule violation shall not invalidate such evidence or results. If the Rider or other Person establishes a departure from any other rule set forth in these Anti-Doping Rules, or any International Standard or UCI Regulation incorporated in these Anti-Doping Rules which could reasonably have caused an anti-doping rule violation based on an Adverse Analytical Finding or other anti-doping rule violation, then the UCI shall have the burden to establish that such departure did not cause the Adverse Analytical Finding or the factual basis for the anti-doping rule violation.

(...)"

2. In casu

66. In accordance with the aforementioned provisions, (i) the burden of proof to establish that the Rider committed an ADRV under Article 2.2 UCI ADR 2015 (Use or Attempted Use by a Rider of a Prohibited Substance or a Prohibited Method) rests with the UCI (Article 3.1 UCI ADR 2015), (ii) the standard of proof is that of the "comfortable satisfaction" as set out in Article 3.1 in fine UCI ADR 2015, and (iii) facts related to ADRVs may be established "by any reliable means" (Article 3.2 UCI ADR 2015).
67. The comment to Article 2.2 UCI ADR 2015 establishes that Use or Attempted Use of a Prohibited Substance or a Prohibited Method may be established by "[...] conclusions drawn from longitudinal profiling, including data collected as part of the Rider Biological Passport, or other analytical which does not otherwise satisfy all the requirements to establish 'Presence' of a Prohibited Substance under Article 2.1".
68. In addition, the comment to Article 3.2 UCI ADR 2015 acknowledges that the UCI may establish an ADRV under Article 2.2 UCI ADR based on "conclusions drawn from the profile of a series of the Rider's blood or urine Samples, such as data from the Athlete's Biological Passport".

69. Furthermore, the reliability of the ABP as means of evidence to establish an ADRV has been confirmed by several decisions of the Tribunal (*inter alia*, ADT 06.2017 UCI vs Alex Correia Diniz, ADT 03.2020 UCI vs. Domingos Gonçalves, ADT 01.2020 UCI vs. Raúl Alarcón García or ADT 1.2021 UCI vs. Edgar Miguel Lemos Pinto) and numerous CAS awards (*inter alia*, CAS 2010/2174, CAS 2010/A/2308 & 2335, CAS 2012/A/2773, CAS 2015/A/4006 or CAS 2021/A/7833).
70. Taking into account the above, the Single Judge accepts that the ABP may serve as a reliable means of evidence to establish an ADRV.
71. The UCI submits having established that the Rider has committed an ADRV pursuant to Article 2.2. UCI ADR 2015 based on the abnormalities detected in the Rider's haematological profile resulting from her ABP. In support of this, various expert reports have been produced by the UCI.
72. On the contrary, the Rider contends that no ADRV has taken place and no sanction is to be imposed on her, based on several arguments: (i) lack of independence of the members of the Expert Panel, (ii) infringement of WADA's International Standards, WADA ABP requirements and other applicable rules, (iii) violation of the Rider's right to be heard, and (iv) the explanations given by the Rider on her haematological profile exclude a doping scenario.
73. The Single Judge will address the Rider's contentions below.

2.1 The Expert Panel members' lack of independence

74. The Rider claims in this respect that:
- The fact that the Expert Panel did not consider the Rider's explanations on the influence of COVID-19 and her [REDACTED] pathology reveals their lack of independence.
 - The Expert Panel members have affiliations with each other in a way that contravene the ABP Operating Guidelines, Part 3, section 3.8, subsection 6.3, which states in the pertinent part that "[a]ll three (3) Experts forming an Expert panel assigned to review a particular Passport shall not be of one and the same nationality and no two (2) Experts shall have a primary affiliation with the same organization, institution or company, including, but not limited to, universities, hospitals and research institutes."
75. Concerning the first contention, the Single Judge observes that in the successive reports produced to the file, the Expert Panel indeed took into account the fact that the Rider had contracted COVID-19 and the [REDACTED] she alleges to suffer. The fact that the Expert Panel's inferences from this do not match with the Rider's interest does not imply that the members of such panel are not independent.
76. With regard to the second contention, the Rider's arguments are based on two main points. First, the three experts attended the USADA Annual Symposium in Paris in October 2023. Second, Ms. Lewis and Mr. Schumacher made in due time some research work together.
77. In this respect, the Single Judge shall firstly stress that the WADA Guidelines are not mandatory (see *inter alia*, CAS 2020/A/6763), so the Rider cannot invoke these Guidelines to assert that there was a breach of procedural rules in any manner or to infer any detrimental consequences. In any event, the Single Judge notes that the ABP Operating Guidelines refer to a "primary affiliation" and further clarify that this would be, "with the same organization, institution, or company, including, but not limited to, universities, hospitals, and research institutes." Accordingly, the Single Judge concurs with the UCI's position that attending a same industry

event and conducting a joint research work do not constitute an affiliation event as described in the Guidelines.

78. Consequently, the Rider's allegations on the Expert Panel's lack of independence are of no avail.

2.2 The alleged infringement of WADA International Standards, WADA ABP requirements and other applicable rules

79. The Rider alleges that irregularities or departures from applicable regulations have occurred. In essence, it refers to violations of the WADA International Standard for Testing and Investigations, as the Doping Control Forms do not indicate the gender of the Rider and the possible [REDACTED] diseases on females. The Rider also mentions that the laboratories that analysed the Rider's samples, even if in some cases they reflected her gender in the analysis, did not reflect her pathology and/or other extreme environmental conditions. The same happened with the haematological module and the ABP Report: they reflected the Rider's gender, but not data on the Rider's pathology and/or other extreme environmental conditions.

80. In this respect, the Single Judge shall recall that Article 3.2.3 UCI ADR 2015 reads as follows:

"Departures from any other rule set forth in these Anti-Doping Rules, or any International Standard or UCI Regulation incorporated in these Anti-Doping Rules which did not cause an Adverse Analytical Finding or other anti-doping rule violation shall not invalidate such evidence or results. If the Rider or other Person establishes a departure from any other rule set forth in these Anti-Doping Rules, or any International Standard or UCI Regulation incorporated in these Anti-Doping Rules which could reasonably have caused an anti-doping rule violation based on an Adverse Analytical Finding or other anti-doping rule violation, then the UCI shall have the burden to establish that such departure did not cause the Adverse Analytical Finding or the factual basis for the anti-doping rule violation."

81. In accordance with this article, the Rider shall establish (i) that a departure from the relevant International Standard or regulations occurred and (ii) that such a departure could have reasonably caused the ADRV.

82. The Single Judge, after analysing the submissions made by the Rider and the evidence brought to the proceedings, shall conclude that any of the aforementioned prerequisites have been established by the Rider.

83. The Single Judge considers that the Rider failed to identify the specific infringements or departures that would have taken place and how they could have reasonably caused the ADRV *in casu*. The general allegations described in para. 79 above do not suffice: the Rider did not sufficiently identify, substantiate and explain how the WADA International Standards or regulations were breached and how they could have led to the ADRVs.

84. Consequently, the Single Judge rejects the Rider's contention in this respect.

2.3. The alleged violation of the Rider's right to be heard

85. The Rider submitted that her right to be heard was breached, as the UCI neither gave her the opportunity to consult an independent scientific expert nor granted her sufficient time to adequately respond to the Expert Panel's Second Opinion.

86. In this regard, the Single Judge observes that following the notification of the Expert Initial Report on 8 March 2023, the Rider was granted an initial deadline until 22 March 2023 to provide an alternative explanation for the abnormalities detected in her blood profile, which was further extended upon her request.

87. The Single Judge also notices that on 5 and 12 April 2023 the Rider provided her explanations on the findings communicated to her by the UCI, to which the Rider could have attached an expert opinion holding her position.
88. It is also noted that two months later (21 June 2023), the Rider provided further allegations, to which no expert report was attached.
89. Therefore, it is the Single Judge view that there is no basis for the Rider's complaint and finds that there is no breach of the Rider's right to be heard. The Rider had ample opportunity to seek independent expert advice for a very long time and failed to do it: she could have provided such expert opinion within her initial deadline to provide explanations and even afterwards before the case was requested to be sent to the Tribunal, which happened on 3 July 2023. For some reason the Rider decided not to do it, and thus cannot claim that her right to be heard has been violated for that.
90. Needless to say, the Rider has also had in the proceedings before the Tribunal sufficient opportunities to present her case and to provide all the evidence (including expert evidence, that was indeed provided by her) to substantiate her case.
91. Therefore, the Rider's contentions about an alleged violation of her right to be heard are dismissed.

2.4. The abnormalities in the Rider's ABP

92. The UCI submits having established that the Rider has committed an ADRV pursuant to Article 2.2 UCI ADR 2015 based on the abnormalities detected in the Rider's haematological profile resulting from her ABP.
93. However, as stated in the CAS award 2021/A/7833 and in other CAS and UCI decisions in the same line, "*abnormalities are not sufficient to conclude to an ADRV; one must establish that doping is the plausible cause of the abnormality, to the comfortable satisfaction of the Panel*".
94. The UCI contends that the Rider's ABP was flagged with sequence abnormalities at a specificity of 99% for HGB in samples 3 (upper limit), 5, 6, and 7 (lower limit); for the OFF-score in samples 3 and 4 (upper limit) and 6 and 7 (lower limit); and for reticulocyte percentage in samples 6 and 7 (upper limit) and samples 1, 3, and 4 (lower limit). These abnormalities, in accordance with the Expert Panel's Initial Opinion, subsequently confirmed by its Second and Third Opinions, reveal in the UCI's view a doping scenario of the Rider.
95. On the other hand, the Rider has adduced some reasons and explanations on her haematological profile which in her opinion, would exclude a doping explanation for the abnormalities detected by the Expert Panel in her ABP. Such reasons can be summarized as follows:
 - The abnormalities in the Rider's ABP can be explained by the Rider suffering [REDACTED]. The laboratory tests that were the basis of the experts' reports, and such reports themselves, are based on the assumption that the samples were taken from an individual without pathologies.
 - The Rider contracted COVID-19 in October 2020 and intensively trained after it, which can have influenced her blood parameters and profile.
 - Emotional stress, particularly due to the war in Ukraine, could have contributed to the abnormalities observed in her ABP profile.

96. It is the Rider's opinion that the combination of the aforementioned issues could have influenced the results and that such issues were not considered by the Expert Panel. Thus, the Expert Panel's opinions do not allow the UCI to achieve the required standard of proof to establish the ADRV.
97. In addition, the Rider also contends that she was never tested positive for presence of a prohibited substance and that due to the situation of war in Ukraine, she did not have access to Prohibited Substances or Prohibited Methods.
98. The Single Judge has carefully reviewed all the allegations, arguments and evidence brought to the proceedings by the Parties and is comfortably satisfied that the abnormalities in the Rider's haematological profile are highly likely to be the result of the Use of a Prohibited Substance or Prohibited Method and that there is no other plausible explanation for the referred abnormalities.
99. The Initial Opinion's reasoning and in particular its conclusions are clear and straight-forward, leaving no room to doubt or interpretation:
- "We therefore conclude that it is highly likely that a prohibited substance or prohibited method has been used and that it is unlikely that the passport is the result of any other cause."*
100. The Second Opinion's findings are also flawless and consistent with those of the Initial Opinion. In this Second Opinion, the Expert Panel asserts, after analysing the explanations and arguments raised by the Rider on the exclusion of a doping scenario, that *"we conclude that the arguments provided by the athlete do not explain the abnormalities in her profile. We maintain our previous assessment that the likelihood of the profile considering COVID19, the absence of positive urine test, training or emotional stress (alone or in combination) is low, whereas its likelihood considering the use of a prohibited substance or method, namely an erythropoietic stimulant or a blood transfusion, is high."*
101. The Third Opinion reaches the same conclusion in an uncontroversial manner: *"we conclude that the additional arguments provided by the athlete do not explain the abnormalities in her profile. The likelihood of the profile considering the influence of [REDACTED] on the red blood cell system is low. We therefore maintain our previous assessment that the likelihood of the profile considering the use of a prohibited substance or method, namely an erythropoietic stimulant or a blood transfusion in 2016 and 2022, is very high"*.
102. The fact that as stated in the Initial Opinion, *"the profile bears features of blood manipulation for the MTB World Cups in spring 2022"* comes to reinforce the Single Judge conviction about the solidness and truthfulness of the Initial Opinion, the Second Opinion and the Third Opinion's conclusions, as well as the declarations made by Ms. Lewis, Mr. D'Onofrio and Mr. Schumacher at the hearing. The experts' testimony was highly convincing and consistent with their statements in the aforementioned three opinions.
103. It also noted that the Rider had the opportunity to bring her experts to the hearing to rebut the findings, explanations and conclusions of Ms. Lewis, Mr. D'Onofrio and Mr. Schumacher, but she failed to do so.
104. On the contrary, the Single Judge is not persuaded by the arguments and explanations raised by the Rider to exclude a doping scenario, for the following reasons:
- Concerning the allegation that the impact of the [REDACTED] suffered by the Rider can explain the abnormalities in her profile and exclude a doping scenario, after examining the evidence

brought to the proceedings, the Single Judge did not become comfortably satisfied of such an assertion.

On the contrary, the Third Opinion issued by the Expert Panel which deals with this matter reveals the opposite and is found conclusive and convincing. The conclusions reached by the Expert Panel therein and their declarations at the hearing in this respect leave no room to hesitation. The Summary of the Third Opinion reads as follows:

Based on the data available at this stage, we conclude that the additional arguments provided by the athlete do not explain the abnormalities in her profile. The likelihood of the profile considering the influence of ██████████ on the red blood cell system is low. We therefore maintain our previous assessment that the likelihood of the profile considering the use of a prohibited substance or method, namely an erythropoietic stimulant or a blood transfusion in 2016 and 2022, is very high.

In addition, the following considerations made in the Third Opinion are to be highlighted in this respect:

Based on the submitted documents, it is highly likely that the athlete indeed suffers of ██████ as she fulfills the key diagnostic criteria (2) ██████████ ██████████).

Relating these facts to the profile, the abnormalities in samples 3 and 4 described in our joint report were high OFF scores (high haemoglobin concentration combined with low reticulocyte percentages), indicating a supraphysiologically increased red cell mass with a suppressed erythropoiesis (the production of red blood cells in the bone marrow).

As mentioned above, ██████ often causes ██████████ involving heavy and prolonged bleeding, which will result in anaemia (3), i.e. the opposite of what is seen in samples 3 and 4 of the profile. For large parts of the profile, indices of anaemia are indeed visible, as already outlined in our joint expert opinion dated 10.2.2023 (page 2): The overall haemoglobin average of the athlete is rather low, likely ranging around 12g/dl, with some values being borderline anaemic (see for example sample 6). These haemoglobin levels reported in the profile are also confirmed the athlete's own submission, see the blood tests compiled in exhibit 30, pages 34 and 35. ██████████ are also reported by the athlete for several of her exams, see for example the report by Dr Kalashnikova, dated 30.11.2023 (exhibit 31) "██████████". The presence of these symptoms is further ascertained by the use of ██████████ ██████████ and ██████████ (see exhibit 32), which are the treatment of choice and help to regulate the ██████████ in such situations.

On the other hand, the excess of male hormones (androgens) in females with ██████ can increase red blood cell mass as androgens have a stimulating effect on erythropoiesis. Conversely, ██████ patients have been found to have slightly higher average haemoglobin levels compared to normal healthy controls in some studies, the difference ranging between ~0.2g/dl to 1.3g/dl (4–6). In the same context, studies using pharmaceutical means to suppress the high androgen levels have shown a reduction of 0.8g/dl in ██████ patients (7).

In the current profile however, the haemoglobin levels of the athlete in samples 3 and 4 are 3-5g/dl higher than in the remaining samples, far beyond what can be expected from the androgen effect in ██████. It is also of note that the timeline of the changes observed in the profile does not support androgen induced erythrocytosis associated to ██████: Both in the profile and in the data made available by the athlete (see pages 34 and 35 of exhibit 30), the abnormalities (including the high haemoglobin) are mainly visible during the periods of important competitions, as already outlined in our joint expert opinion. ██████ was obviously present during the entire time and it is unlikely that

the increased red cell mass triggered by the supposedly increased androgen level in [REDACTED] only occurred during these critical periods.

As a side note, we wish to highlight the abnormality in sample 1 of the profile, taken prior the Olympic Games in Rio de Janeiro 2016 on 17.8.2016 and showing a very low reticulocyte%, suggesting a suppressed red cell production (see joint expert report dated 10.2.2023, page 2). Unfortunately, no other passport samples during this period were available. While data from private blood tests are usually not considered in procedures of the Athlete's biological passport for obvious reasons (analytical standardisation, identification of samples etc.), it is nevertheless interesting to see that the athlete tested herself four times within one month (13.6.2016 and 18.7.2016) with a Hb around 16g/dl (Exhibit 30, page 34). This is much higher than her normal level of 12g/dl, which, 1 month prior to the Games, confirms the suspicion of increased red cell mass during this period, the lead up to the 2016 Olympics.

In summary, the type of the haematological abnormalities observed in the passport and the potential effects of [REDACTED] on the haematological system of the athlete do not match. [REDACTED] is therefore highly unlikely to have caused the abnormalities of the profile.

The Single Judge finds these considerations and conclusions convincing and notes that the Rider neither provided a specific report to rebut the Third Opinion nor brought an expert to the hearing to challenge such considerations and conclusions.

It shall also be highlighted that both Mr. D'Onofrio and Mr. Schumacher declared at the hearing that there was no need to submit the Rider's ABP results to the assessment of a [REDACTED], as contended by the Rider. This was not contradicted by any expertise from the Rider, who failed to call the experts to attend the hearing.

- With regard to the Rider having contracted COVID-19 in October 2020 and having intensively trained for the 2022 Mountain Bike World Cup after that as a cause of alteration of the Rider's blood markers, the Single Judge shall refer *inter alia* to the Second Opinion's following assertions:
 - *"the type of abnormalities observed in the passport and the timeline of the SarS CoV2 infection in relation to the abnormalities makes COVID19 as an explanation for the profile highly unlikely"*
 - *"the abnormalities highlighted in our joint report are highly unlikely to be caused by an infection with SarS CoV2: The athlete was diagnosed on 3.10.2020. The abnormalities in her profile have been observed more than 1.5 years later (samples 3 and 4, obtained on 14 and 31.5.2022). As referenced above, any (rare) influence of SarS CoV2 on the haematological system usually occurs within the acute phase of the disease and not 1.5 years later"*
 - *"for exercise induced changes, such as speculated by the lawyers, reticulocytes will therefore not be altered significantly, whereas plasma volume (and thus haemoglobin concentration) can change significantly. This is what has been observed in the cited study. Relating these physiological pathways to the profile, the abnormalities highlighted in samples 3 and 4 of the athlete's profile concern both haemoglobin concentration (increased) and reticulocyte% (decreased), a typical constellation indicating a downregulated bone marrow activity due to a supraphysiological increase in red cell mass. Such constellation is highly unlikely to be caused by exercise and highly likely induced by a supraphysiological increase of red cell mass"*

These very clear findings have not been convincingly rebutted with solid evidence by the Rider.

- Concerning the emotional stress provoked by the Ukraine War on the Rider as a factor of alteration of production of haemoglobin, the Second Opinion is unequivocal when asserting

that even if the impact of emotional stress has been scientifically investigated, *“there is no scientific evidence to support any relevant impact of emotional or psychological stress on the markers of the ABP in the profile of the athlete”*. In addition, the Single Judge shall stress that in accordance with the Second Opinion, *“the haemoglobin abnormality in sample 3 is therefore much too large in magnitude to be caused by emotional stress alone. Further, given that the changes are related to shifts in plasma volume and not true changes in red cell mass, the erythropoietic system remains unaffected and reticulocyte% unchanged*. These conclusions have not been scientifically contested by the Rider.

- The absence of doping in the Rider’s urine tests is no avail in this case. As mentioned above, the ABP Program is designed to be an “indirect” method of doping detection, focused on the effect of prohibited substances and methods on the athlete’s blood values rather than on the identification of a specific substance or method in an athlete’s specimen. Therefore, the fact that the urine control passed by the Rider tested negative have no influence in the finding of this decision that an ADRV under Article 2.2 UCI ADR has taken place. This is in any event also confirmed by the experts in the Second Opinion (*“the fact that urine tests are negative does not prove that no manipulation has taken place”*).
- The same is to be said with regard to the alleged low probability of using any prohibited substances or methods by the Rider as regards of the poor state of the medical system in Ukraine as a result of the war: apart from being irrelevant to the case, it has been proven that the Rider competed and spent time out of Ukraine in May and June 2022.
- Finally, and contrary to the Rider’s contention in this respect, the Single Judge notes that the Expert Panel indeed took into account the Rider’s gender. The relevant part of the Initial Opinion could not be clearer: *“we refer to your request to give a joint expert statement on a haematological profile obtained from a female cyclist [...]”*

105. In conclusion, the Single Judge considers that the Rider did not provide a credible alternative explanation for the abnormalities observed in her ABP profile, and the UCI has discharged its burden of proof with respect to the ADRV as alleged.

106. The Single Judge is therefore comfortably satisfied that the Rider committed a violation of Article 2.2 UCI ADR 2015 in the form of Use of a Prohibited Substance or Prohibited Method. The explanations provided by the Rider were thoroughly reviewed and found insufficient to account for the abnormalities. Consequently, in the Single Judge’s view, the evidence supports the finding that the abnormalities are due to the Use of a Prohibited Substance or Prohibited Method.

B. The Consequences of the ADRV

107. The UCI ADR 2015 provides for different types of consequences in case of an ADRV.

108. The UCI is requesting the Tribunal to sanction the Rider with a period of ineligibility, to disqualify her results and to order her to bear the costs of the results management and the costs incurred for the documentation packages of the blood samples analysed for the ABP.

1. Period of Ineligibility

109. If the Rider’s ADRV constitutes a first violation (as it is the case herein), Article 10.2 UCI ADR 2015 applies, which reads as follows:

“The period of Ineligibility for a violation of Articles 2.1, 2.2 or 2.6 shall be as follows, subject to potential reduction or suspension pursuant to Articles 10.4, 10.5 or 10.6:

10.2.1 *The period of Ineligibility shall be four years where:*

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

10.2.2 *If Article 10.2.1 does not apply, the period of Ineligibility shall be two years.*

10.2.3 *As used in Articles 10.2 and 10.3, the term ‘intentional’ is meant to identify those Riders who cheat. The term therefore requires that the Rider or other Person engaged in conduct which he or she 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. [...].”*

110. Pursuant to this article, the standard period of ineligibility is 4 years, if the ADRV does not involve a Specified Substance and the Rider cannot establish that the ADRV was not intentional.
111. In the case at hand, Article 10.2.1.1. UCI ADR 2015 shall apply given that blood manipulation by Use of a Prohibited Substance or Prohibited Method is not a Specified Substance, being for the Rider to prove (by a balance of probability, as per Article 3.1. UCI ADR 2015) that the violation was not intentional if she intends to reduce the standard period of ineligibility set out above.
112. After analysing the submissions and evidence brought to the proceedings by the Parties, the Single Judge concludes that the Rider failed to establish that the ADRV was not intentional. In fact, the Rider’s allegations were rather focused on demonstrating that no ADRV existed and did not devote specific efforts or made concrete submissions addressed to establish and prove her lack of intentionality in the ADRV.
113. In this respect, it shall be recalled that in accordance with this Tribunal’s precedent, the simple denial of use of doping do not discharge the burden of proof on the Rider’s lack of intentionality. For instance, in UCI ADT 09.2019 UCI vs Nicola Ruffoni, the Tribunal asserted that *“it is not sufficient for the Athlete to deny the use of doping. It is well established in CAS case law (See e.g. CAS 2014/A/3615, WADA v. Daiders, Award of 30 January 2015, para 51.) and confirmed on multiple occasions by this Tribunal (See e.g. ADT 02.2016, UCI v. Fabio Taborre, Judgment of 25 May 2016, para 85, ADT 03.2017, UCI v. Ms. Isabella Moreira Lacerda, Judgment of 17 August 2017, para 105 and ADT 05.2017, UCI v. Josemburg Nunes Pinho, Judgment of 15 August 2017, para 122) that a simple denial without any supporting evidence should be afforded at most limited evidentiary weight. Likewise, the Tribunal in the case at hand affords the Rider’s denial only limited evidentiary weight”*.
114. Therefore, the Single Judge finds that the standard period of ineligibility of 4 years shall apply to the Rider.
115. This being said, it shall be also noted that in accordance with the UCI ADR 2015, the Rider may be entitled to the elimination or to the reduction of the period of ineligibility, if the prerequisites of Articles 10.4 (No Fault or Negligence) or 10.5 (No Significant Fault or Negligence) UCI ADR 2015 are met. For this elimination or reduction to apply, the Rider shall establish how the Prohibited Substance entered her system. Additionally, it shall be also taken into account that Article 10.6 UCI ADR 2015 sets out conditions under which a period of ineligibility may be eliminated, reduced or suspended for reasons other than fault.

116. In the case at stake, the Rider has not expressly requested the elimination or reduction of the sanction based on the aforementioned articles, and in any event, the Single Judge, after analysing the facts and evidence on file, does not find that the Rider can qualify for such an elimination or reduction of the standard period of ineligibility. In consequence, it is reiterated that the period of ineligibility to be imposed on the Rider is of 4 years.
117. In relation to the commencement of the period of ineligibility, Article 10.11 UCI ADR 2015 stipulates in the pertinent part that:
- “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. [...]*
- 10.11.3.1 If a Provisional Suspension is imposed and 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. If a period of Ineligibility is served pursuant to a decision that is subsequently appealed, then the Rider or other Person shall receive a credit for such period of Ineligibility served against any period of Ineligibility which may ultimately be imposed on appeal. [...]*”.
118. In accordance with this article, 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 is respected by the Rider.
119. In the case at stake, on 20 June 2023 the Rider was informed of a mandatory provisional suspension imposed on her.
120. Nevertheless, on 25 June 2023 the Rider, in spite of being provisionally suspended, participated in the 2023 European Games.
121. Therefore, the Rider cannot benefit from any credit as per Article 10.11.3.1 UCI ADR 2015 as she did not respect the provisional suspension imposed on her. Accordingly, the Rider’s four-year period of ineligibility will commence from the date of this Judgment.

2. Disqualification of results

122. The UCI requests the Single Judge to disqualify all the results obtained by the Rider between 17 August 2016 and the day of the Tribunal’s decision.
123. Article 10.8 UCI ADR 2015 provides 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.”*
124. The aforementioned provision stipulates the Disqualification of all results from the date the ADRV occurred until the date the Provisional Suspension was imposed, unless *“fairness requires otherwise”*.
125. Considering that (i) the Rider’s defense has been rejected, (ii) no specific allegations have been made by the Rider on the potential existence of reasons of fairness enabling to deviate from the effects foreseen in Article 10.8 UCI ADR 2015 or on the start date of the results’ disqualification,

and (iii) the Single Judge does not see a reason that would justify a derogation from the principle set forth in the aforementioned article, the Single Judge finds that the Athlete's results from 17 August 2016 until the day of the Tribunal's decision shall be disqualified.

3. Liability for Costs of the Procedures

126. In relation to the Liability for Costs of the Procedures, Article 10.10.2 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.*

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

127. The UCI is requesting the Tribunal to condemn the Rider to pay the following amounts in this respect:

- CHF 2'500.- for costs of the results management;
- EUR 1'515.- for costs of the documentation packages of the blood samples analysed for the ABP.

128. The costs for the results management claimed by the UCI are in line with those foreseen in Article 10.10.2 UCI ADR, and the costs of the documentation packages have not been contested by the Rider.

129. In light of the aforementioned, the Single Judge considers that the Rider shall pay the amounts claimed by the UCI for the costs and condemns the Rider to pay them.

VII. COSTS OF THE PROCEEDINGS

130. Article 29 ADT Rules provides as follows:

- 1. The Tribunal shall determine in its judgment the costs of the proceedings as provided under Article 10.10.2 para. 1 ADR.*
- 2. As a matter of principle, the Judgment is rendered without costs.*

3. *Notwithstanding para. 1 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.*

131. In light of all the circumstances of this case, the Single Judge decides that the present Judgment is rendered without costs and that each party shall bear its own costs in these proceedings.

VIII. RULING

132. In the light of the above, the Tribunal decides as follows:

1. **Ms. Iryna Popova has committed an Anti-Doping Rule Violation (Article 2.2 UCI ADR 2015).**
2. **Ms. Iryna Popova is suspended for a period of Ineligibility of 4 years. The period of Ineligibility shall commence on the date of the decision, i.e., 20 September 2024.**
3. **The results obtained by Ms. Iryna Popova from the date of collection of Sample 1 (17 August 2016) until the day of the decision (20 September 2024) are disqualified.**
4. **Ms. Iryna Popova is ordered to pay to the UCI the amount of CHF 2'500 for the costs of results management, and the amount of EUR 1'515 for costs incurred for the documentation packages of the blood samples analysed for the Biological Passport.**
5. **All other and/or further-reaching requests are dismissed.**
6. **This judgment is final and will be notified to:**
 - a) **Ms. Iryna Popova;**
 - b) **National Anti-Doping Center Ukraine (NADC) ;**
 - c) **UCI ; and**
 - d) **WADA.**

133. This Judgment may be appealed before the CAS pursuant Article 31.2 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 UCI ADR.



Jordi López Batet
Single Judge