



Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2013/A/3373 International Association of Athletics Federations (IAAF) v. Turkish Athletics Federation (TAF) and Nevin Yanit

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: The Honourable L. Yves Fortier, PC, CC, OQ, QC, barrister-at-law,
Montréal, Québec, Canada

Arbitrators: Mr. Romano F. Subiotto QC, Solicitor-Advocate in Brussels, Belgium and
London, United Kingdom
Mr. Michele A.R. Bernasconi, attorney-at-law, Zurich, Switzerland

Ad hoc Clerk: Ms. Annie Lespérance, attorney-at-law in Montréal, Québec, Canada

in the arbitration between

INTERNATIONAL ASSOCIATION OF ATHLETICS FEDERATIONS, Monaco
Represented by Mr. Jonathan Taylor and Ms. Elizabeth Riley, attorneys-at-law in London,
United Kingdom

Appellant

vs.

TURKISH ATHLETICS FEDERATION, Ankara, Turkey
Represented by Mr. Fatih Cintimar, President, Ankara, Turkey

First Respondent

And

NEVIN YANIT, Istanbul, Turkey
Represented by Mr. Howard L. Jacobs, attorney-at-law in Westlake Village, California, USA

Second Respondent

I. PARTIES

1. The International Association of Athletics Federations (the “**Appellant**” or “**IAAF**”) is the international federation governing the sport of athletics worldwide. It has its registered office in Monaco.
2. The Turkish Athletics Federation (the “**First Respondent**” or “**TAF**”) is an association incorporated under Turkish law with its headquarters in Ankara, Turkey. It is the national governing body for athletics in Turkey. The TAF is a member of the IAAF.
3. Ms. Nevin Yanit (the “**Second Respondent**” or “**Ms. Yanit**” or “**Athlete**”) is an athlete of Turkish nationality born on 16 February 1986, and specializes in the 60m and 100m hurdles events.

II. FACTUAL BACKGROUND

A. Background Facts

4. Below is a summary of the main relevant facts and allegations based on the parties’ written submissions and adduced evidence. Additional facts and allegations may be set out, where relevant, in connection with the discussion of law and merits that follows. Although the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.
5. In August 2009, the IAAF introduced the concept of the “Athlete Biological Passport” (“**ABP**”) to its standard blood testing programme.
6. On 31 July 2010, the Athlete became European champion in the Women’s 100m hurdles at the European Outdoor Championships held in Göteborg, Sweden.
7. In September 2010, the IAAF received what it describes as a “tip-off” from an anonymous source warning the IAAF that a number of elite Turkish athletes were engaged in doping practices, including the Athlete.
8. As a result of this information, the IAAF started monitoring the Athlete more closely. Under the auspices of the ABP programme, the IAAF collected, on an advance notice basis, a blood and serum sample from the Athlete at the 2011 World Championships in Daegu, South Korea. The Athlete’s blood and serum samples returned results within the normal expected range for females.
9. In June 2012, the IAAF was advised of an incident relating to an attempt by the Turkish Anti-Doping Commission (TAC) to conduct an unannounced doping control test on the Athlete at the Turkish Athletics Super League competition in Ankara, Turkey on 5 June 2012. The IAAF was informed that the mission had proven unsuccessful because Mr. Muharrem Or, the TAF’s head coach, had intervened to prevent TAC testers from notifying the Athlete and thereby prevented a sample from being collected from her. Mr. Or was dismissed a year later after 43 Turkish athletes in his charge tested positive for anabolic steroids immediately before leaving to compete at the Mediterranean Games in June 2013.

10. As a result of this incident, the IAAF began to target the Athlete for testing. On 28 June 2012, at the European Outdoor Championships held in Helsinki, the IAAF collected an unannounced pre-competition blood and serum sample from her as part of its ABP programme. While her serum sample raised no specific concern, her ABP blood sample returned a different (which the IAAF regarded as “highly suspicious”) set of results to her previous ABP blood sample in Daegu in August 2011, notably showing an increase in the level of her haemoglobin and a reduction in reticulocytes.
11. On 30 June 2012, the Athlete retained her European title in the 100m hurdles at the European Outdoor Championships in Helsinki.
12. Just over a month after the European Championships, the Athlete was due to represent Turkey at the 2012 Olympic Games in London and the IAAF took this further opportunity to collect a pre-competition blood and serum sample from the Athlete under its ABP Programme.
13. In respect of the blood sample, the results showed a similarly elevated HGB value to the sample collected at the European Championships but also an abrupt increase in the level of reticulocytes.
14. In respect of the serum sample, the athlete’s total testosterone value was outside the normal female range, and in fact, fell within the normal male range.
15. The Athlete finished in 5th place in the Olympic 100m hurdles final in London.
16. On 10 September 2012, the IAAF received a further anonymous “tip-off” that the elite Turkish athletes were engaged in doping, including the Athlete. As a result, the IAAF continued to target test the Athlete.
17. On 17 October 2012, the IAAF collected an out-of-competition blood and serum sample from the Athlete in Istanbul as part of a mass ABP screening of Turkish athletes. The Athlete’s out-of-competition blood values proved to be lower in all relevant parameters compared to the in-competition high seen at the Olympic Games. Her serum values were also lower in the main, although the total testosterone value still remained elevated compared to the normal range of values for females.
18. The IAAF continued to target test the Athlete into 2013 and, on 7 February 2013, it conducted an unannounced and targeted out-of-competition test on her on the eve of a lower level indoor meeting in Dusseldorf, Germany.
19. The next day, on 8 February 2013, the Athlete was targeted by the IAAF for a further in-competition urine test at the meeting in Dusseldorf. While a urine sample was collected from the Athlete, it was reported to the IAAF that she had appeared to deliberately false start in the first round of her event that day and, following her disqualification, had sought to leave the competition arena via a side exit rather than using the normal departure point via the mixed zone.
20. Following this report, at the IAAF’s request, a third targeted and unannounced out-of-competition urine test was conducted on the Athlete on 14 February 2013 in Istanbul, Turkey.

21. On 1 March 2013, the Athlete became European Indoor Champion in the Women's 60m hurdles event at the European Indoor Championships held in Göteborg, Sweden.
22. On 4 March 2013, the IAAF was notified by the WADA-accredited Laboratory in Cologne that the Athlete's sample collected in-competition in Dusseldorf on 8 February had tested positive for the prohibited substances stanozolol and testosterone.
23. On 5 March 2013, the IAAF charged the Athlete with violations of IAAF Anti-Doping Rules (the "Rules") 32.2(a) and (b) and the Athlete was asked to provide an explanation by 12 March 2013.
24. On 8 March 2013, the IAAF was notified that the Athlete's sample collected in Turkey on 14 February 2013 had also tested positive for stanozolol and that the T/E ratio of the sample had been recorded as being 8.44 in excess of WADA Guidelines. The IAAF notified the TAF of this result the same day.
25. On 11 March 2013, the IAAF was further notified that the Athlete's sample collected out-of-competition in Dusseldorf on 7 February 2013 had also tested positive for stanozolol and testosterone. On 15 March 2013, the IAAF forwarded those results to the TAF and confirmed that the Athlete therefore had three positive samples. This information was transmitted by the TAF to the Athlete.
26. The Athlete did not provide the IAAF with an explanation for her 8 February 2013 findings within the deadline and, on 22 March 2013, the IAAF provisionally suspended the Athlete from competition pending the outcome of her disciplinary hearing before the relevant tribunal of the TAF.
27. On 3 April 2013, the Athlete asked for the B sample analysis of the 8 February sample. The B sample analysis confirmed the A sample result.
28. The Athlete declined to accept the anti-doping rule violation with which she had been charged under the IAAF Rules and defended her case at a hearing before the TAF Disciplinary Board.
29. The Athlete's hearing before the TAF Disciplinary Board took place on 25 June 2013 following which the Board decided that the Athlete was guilty of an anti-doping violation for the presence of two prohibited substances in her sample provided on 8 February 2013 and imposed a 2-year sanction on her. The Athlete chose not to exercise her right of appeal against the decision.

B. Proceedings before the TAF Disciplinary Panel

30. In material part, the TAF Disciplinary Board's decision dated 10 September 2014 states as follows:

EVALUATION

Examining the doping control form, it was understood that the athlete went to the doping control station on 08.02.2013 at 20.40 and provided urine sample. The so said form was signed by the observer, DCO and the athlete.

According to the report of the Cologne laboratory dated 04.03.2013 and number S2013 0677-1, the athlete's sample contained the metabolites of stanozolol and testosterone under S.1.1 anabolic agent category.

As Nevin YANIT asked her B sample analysed, Cologne laboratory analysed her B sample on 09 April 2013 and informed in their report dated 15/04.2013 that the same substances were detected. It was also mentioned that these substances were exogenous.

Nevin YANIT claimed in her defense that the substances would be originated from the product she used, namely methoxy-7-test. But in Cologne laboratory's analysis report dated 23.04.2013 number S2013 2257 it was stated that the product did not contain such substances. As the laboratory's report complied with the report of Turkish NOC Anti-Doping Commission, the athlete's defense was disregarded in this respect.

The athlete is responsible for all substances entered in her body. Analyzing her A and B samples the athlete was determined to have used prohibited substance which is against the TAF Disciplinary Regulation article 36/1-a-i. It was considered appropriate to impose a penalty of 2 year ineligibility from the competitions.

RESULT AND DECISION

Under the above mentioned grounds, it was decided with unanimity on 27.08.2013 that Nevin YANIT is imposed a penalty of 2 year ineligibility in accordance with TAF Disciplinary Regulation article 36/1-a-i. Her penalty starts from 06.03.2013.

III. PROCEDURAL HISTORY

31. By a statement of appeal dated 24 October 2013, the IAAF appealed to the Court of Arbitration for Sport ("CAS") against the decision of the TAF Disciplinary Board dated 27 August 2013, seeking an increased sanction of 4 years in accordance with the aggravating circumstances provisions of IAAF Rule 40.6, and naming the TAF and Ms. Yanit as the Respondents pursuant to Article R48 of the Code of Sports-related Arbitration (the "Code").
32. In its statement of appeal, the IAAF nominated Mr. Romano Subiotto as arbitrator.
33. On 25 November 2013, (after having been given an extension of time) the IAAF filed its appeal brief pursuant to Article R51 of the Code. The IAAF sought to set aside the sanction of a two-year period of ineligibility imposed by the TAF Disciplinary Board and to substitute it with a period of four years due to aggravating circumstances within the meaning of IAAF Rule 40.6.
34. On the same date, the IAAF notified the CAS that it considered bringing further charges against the Athlete based on abnormalities in her Athlete Biological Passport in the period between 2011 and 2013. The IAAF acknowledged in doing so that any further charge(s) would not be considered as a second (or third) violation for purposes of IAAF Rules

Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2013/A/3373 IAAF v. TAF and Nevin Yanit - Page 6

- because the Athlete had not committed the violation(s) after notification of the first violation, namely, after the charge notified to her by letter of 5 March 2013. The IAAF nevertheless submitted that any further violation(s) would still be relevant to the current appeal because, in accordance with IAAF Rule 40.7(d)(ii), if proven, multiple violations constitute a further factor in assessing aggravating circumstances for the purposes of determining the sanction for the Second Respondent's first violation which is the object of the current appeal.
35. In the circumstances, the parties agreed to stay the proceeding pending the outcome of an investigation by the IAAF into any further violations of IAAF Rules by the Athlete. The IAAF reserved its right to amend its Appeal Brief to include all matters relating to the outcome of this investigation.
 36. On 2 December 2013, the Athlete, through her counsel, indicated that she nominated Mr. Michele A.R. Bernasconi as arbitrator.
 37. On 16 December 2013, the Athlete, through her counsel, provided an initial explanation for her ABP profile in which she denied ever using EPO or any banned blood transfusions or blood manipulation and requested full documentation of all the samples in the profile so as to be able to determine if the samples had been properly collected and stored.
 38. After having received the requested documentation from the IAAF, the Athlete submitted a further explanation on 31 January 2014 in which she repeated her previous denial and submitted that abnormalities in her menstrual cycle during the relevant time periods could account for any atypical variations in her blood profile.
 39. In accordance with the IAAF Anti-Doping Regulations, the Athlete's explanation was referred to an expert panel. On 28 February 2014, the IAAF wrote to the Athlete to advise that the expert panel had rejected the Athlete's explanation. The IAAF confirmed in the circumstances that it intended to proceed with an anti-doping rule violation (to be treated as aggravating circumstances) which would fall to be determined as part of the current appeal.
 40. On 26 March 2014, the IAAF filed its Amended Appeal Brief, along with related exhibits.
 41. By letter of 18 April 2014 to the CAS, the Athlete, through her counsel, requested that the deadline to submit her Answer Brief be extended until 30 days after the IAAF responded to her document request submitted after her receipt of the Amended Appeal Brief. This request was granted by the Panel on 23 April 2014.
 42. On 6 August 2014, the IAAF responded to the Second Respondent's document request and appended further exhibits to its Amended Appeal Brief.
 43. On 26 September 2014, after having been granted a short extension, the Second Respondent filed her Answer pursuant to Article R55 of the Code, along with related exhibits. The First Respondent did not file an Answer.
 44. On 4 December 2014, the Appellant submitted a Skeleton Argument with the consent of the Athlete, subject to the Athlete's right to respond as necessary at the hearing.

Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2013/A/3373 IAAF v. TAF and Nevin Yanit - Page 7

IV. CONSTITUTION OF THE PANEL AND THE HEARING

45. On 15 January 2014, the parties were notified of the constitution of the Panel to decide this appeal as follows:

President: The Honourable L. Yves Fortier, PC, CC, OQ, QC

Arbitrators: Mr. Romano F. Subiotto QC

Mr. Michele A.R. Bernasconi

46. The parties did not raise any objections as to the constitution and composition of the Panel then or at the hearing.

47. On 24 November 2014, an Order of Procedure was made. The Athlete signed the Order on 26 November 2014 and the Appellant on 2 December 2014. The First Respondent did not sign the Order of Procedure.

48. On 11 December 2014, a hearing was duly held at the law office of Cleary Gottlieb Steen & Hamilton LLP in London, UK.

49. In addition to the Panel, the following persons attended the hearing:

For the Appellant: Mr. Jonathan Taylor, Ms. Elizabeth Riley, and Ms. Jenny Stone, counsel for the Appellant

Mr. Thomas Capdevielle, IAAF

Prof. Martial Saugy, expert

Prof. Olaf Schumacher, expert (by video conference)

For the Second Respondent: Mr. Howard L. Jacobs and Mr. Koray Akalp, counsel for the Second Respondent

Ms. Nevin Yanit

Mr. Serkan Baltaci, husband of Ms. Yanit

Mr. Paul Scott, expert (by videoconference)

The First Respondent did not attend the hearing.

50. The Panel was assisted by Brent J. Nowicki, Legal Counsel to the CAS. Ms. Annie Lespérance, *ad hoc* clerk to the Panel, listened to the audio-recording of the hearing when it was made available to her by the CAS Secretariat on 15 December 2014.

51. At the hearing, the Panel heard the detailed submissions of counsel as well as the evidence of the following witnesses:

51.1 Professor York Olaf Schumacher, an expert in sports medicine and member of the expert panel that reviewed the Athlete's ABP profile, who testified about

the Athlete's further violation of IAAF Rules based on the ABP.

51.2 Professor Martial Saugy, a WADA-accredited Laboratory Director and an expert in the science of doping, who testified about, inter alia, whether the repeated use of anabolic agents may give a performance enhancing effect beyond a 2-year period;

51.3 Ms. Yanit, who testified about her background and experience as an elite athletics athlete, her drug testing history, the circumstances surrounding her positive drug test and issues related to her alleged biological passport issues.

51.4 Paul Scott, who testified about his review of the analytical reports and documentation of the urine and blood testing produced in these proceedings, as well as his review of the Expert Statements provided by the Appellant in the present case and his response to those Statements.

52. At the conclusion of the hearing the IAAF and Ms. Yanit expressed that they were satisfied as to how the hearing and proceedings had been conducted, and that their right to be heard had been fully respected.

V. JURISDICTION OF THE CAS AND ADMISSIBILITY

53. The CAS has jurisdiction to decide the present dispute between the parties. This jurisdiction is not disputed by the parties and has been confirmed by the signing of the Order of Procedure. In addition, it is contemplated by Article R47 of the Code that:

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

54. By Article 42.3 of the IAAF Competition Rules that:

Appeals Involving International-Level Athletes: in cases involving International-Level Athletes or their Athlete Support Personnel, the first instance decision of the relevant body of the Member shall not be subject to further review or appeal at national level and shall be appealed only to CAS in accordance with the provisions set out below.

55. It follows, therefore, that the CAS has jurisdiction to hear this appeal.

56. Moreover, the Panel notes that by virtue of IAAF Rule 42.13, the IAAF had forty-five (45) days in which to file a statement of appeal, beginning on the date the written reasoning of the underlying decision was provided to it. In this regard, the Panel notes that the reasoned underlying decision was notified to the IAAF on 10 September 2013. The filing of the statement of appeal on 24 October 2013 is, therefore, timely and consequently the appeal is admissible.

Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2013/A/3373 IAAF v. TAF and Nevin Yanit - Page 9

VI. APPLICABLE LAW

57. By Article R57 of the Code and IAAF Competition Rule 42.20, the Panel has full power to review the facts and the law.
58. Article R58 of the Code provides as follows:

The Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.

59. By Rule 42.23 of the IAAF Competition Rules in all CAS appeals involving the IAAF, the governing law shall be Monegasque law and the arbitration shall be conducted in English, unless the parties agree otherwise. The relevant IAAF Rules and subsidiarily Monegasque law shall therefore be applied.

VII. THE RELEVANT COMPETITION RULES

60. The following IAAF Competition Rules are material to this appeal and are set forth below, where relevant, as the framework for this award.
61. By Rule 32.2 of the IAAF Competition Rules:

2. Athletes or other Persons shall be responsible for knowing what constitutes an anti-doping rule violation and the substances and methods which have been included on the Prohibited List. The following constitute anti-doping rule violations:

[...]

(b) Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method.

(i) it is each Athlete's personal duty to ensure that no Prohibited Substance enters his body. Accordingly, it is not necessary that intent, fault, negligence or knowing Use on the Athlete's part be demonstrated in order to establish an anti-doping rule violation for Use of a Prohibited Substance or a Prohibited Method.

(ii) the success or failure of the Use or Attempted Use of a Prohibited Substance or Prohibited Method is not material. It is sufficient that the Prohibited Substance or Prohibited Method was Used, or Attempted to be Used, for an anti-doping rule violation to be committed.

62. By Rule 33.1 and 2:

1. *The IAAF, the Member or other prosecuting authority shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether the IAAF, the Member or other prosecuting authority has established an anti-doping rule violation to the comfortable satisfaction of the relevant hearing panel, bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt.*
2. *Where these Anti-Doping Rules place the burden of proof upon the Athlete or other Person alleged to have committed an anti-doping violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability, except as provided in Rules 40.4 (Specified Substances) and 40.6 (aggravating circumstances) where the Athlete must satisfy a higher burden of proof."*

63. By Rule 40.2:

The period of Ineligibility imposed for a violation of Rules 32.2(a) (Presence of a Prohibited Substance or its Metabolites or Markers), 32.2(b) (Use or Attempted Use of a Prohibited Substances or Prohibited Method) or 32.2(f) (Possession of Prohibited Substances and Prohibited Methods), unless the conditions for eliminating or reducing the period of Ineligibility as provided in Rules 40.4 and 40.5, or the conditions for increasing the period of Ineligibility as provided in Rule 40.6 are met, shall be as follows: First Violation: Two (2) years' Ineligibility.

64. By Rule 40.6:

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

- (a) *Examples of aggravating circumstances which may justify the imposition of a period of Ineligibility greater than the standard sanction are: the Athlete or other Person committed the anti-doping rule violation as part of a doping plan or scheme, either individually or involving a conspiracy or common enterprise to commit anti-doping rule violations; the Athlete or other Person used or possessed multiple Prohibited Substances or Prohibited Methods or used or possessed a Prohibited Substance or Prohibited Method on multiple occasions; a normal individual would be likely to enjoy performance-enhancing effects of the anti-doping rule violation(s) beyond the otherwise applicable period of Ineligibility; the Athlete or other Person engaged in deceptive or obstructing conduct to avoid the detection or adjudication of an anti-doping rule violation. For the avoidance of doubt, the examples of*

aggravating circumstances referred to above are not exclusive and other aggravating factors may also justify the imposition of a longer period of Ineligibility.

- (b) *An Athlete or other Person can avoid the application of this Rule by admitting the anti-doping rule violation as asserted promptly after being confronted with the anti-doping rule violation (which means no later than the date of the deadline given to provide a written explanation in accordance with Rule 37.4(c) and, in all events, before the Athlete competes again).*

65. By Rule 40.7(d)(i):

For the purposes of imposing sanctions under Rule 40.7, an anti-doping rule violation will only be considered a second violation if it can be established that the Athlete or other Person committed the second anti-doping rule violation after the Athlete or other Person perceived notice pursuant to Rule 37 (Results Management) or after reasonable efforts were made to give notice of the first anti-doping rule violation; if this cannot be established, 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 serious sanction; however, the occurrence of multiple violations may be considered as a factor in determining aggravating circumstances (Rule 40.6).

VIII. THE PARTIES' SUBMISSIONS

A. IAAF

66. In its appeal brief, as amended, the IAAF seeks the following relief:

- (i) *The IAAF appeal is admissible;*
- (ii) *The decision of the TAF Disciplinary Board of 10 September 2013 to find the Athlete guilty of an anti-doping rule violation be upheld;*
- (iii) *Multiple further violations of IAAF Rules were committed by the Athlete in breach of Rule 32.2(b) which cannot be taken into account as second or third violations under IAAF Rules but which count as an aggravating factor for the purposes of determining the Athlete's sanction;*
- (iv) *There are overall aggravating circumstances in the Athlete's case warranting the imposition of a 4-year period of Ineligibility in accordance with IAAF Rule 40.6;*
- (v) *The period of Ineligibility in the Athlete's case be increased from 2 years to 4 years in accordance with Rules 40.6 and 40.20, such 4-year period to start on the date of the CAS decision, with any period of provisional suspension and/or Ineligibility previously served to be credited against the total period of Ineligibility to be imposed;*
- (vi) *All competitive results obtained by the Athlete from the date of commission of the anti-doping rule violation on 28 June 2012 through to the*

commencement of her provisional suspension be disqualified, with all resulting consequences in accordance with IAAF Rule 40.8; and

(vii) The IAAF be awarded its costs in the appeal (including CAS costs), such costs to be assessed.

67. More specifically, the IAAF submits that there were multiple aggravating circumstances pursuant to Rule 40.6 which justify the increase of the penalty up to a four-year period of ineligibility.
68. First, the Athlete used multiple Prohibited Substances. An analysis of the Athlete's urine samples collected in February 2013 disclosed the administration of not one but two distinct exogenous anabolic steroids (stanozolol and testosterone). The Athlete's argument that they came from a supplement called "methoxy-7-test" was rejected by the TAF panel because the lab tested the supplement and found no steroids. The Athlete has not appealed that ruling.
69. Second, the Athlete used those prohibited anabolic steroids on multiple occasions. In this respect the IAAF relies upon the expert evidence and reports of Professors François Pralong and Saugy, who both note that while the total testosterone concentrations in serum samples collected from the Athlete on 24 August 2011 and 28 June 2012 are both within the normal female range (0-2.5 nmol/L), the total testosterone concentrations in serum samples collected from the Athlete on 5 August 2012 and 17 October 2012 (14.7 nmol/L and 4.26 nmol/L respectively) are both well outside that range, and cannot be the result of normal physiology and cannot be explained by a pathology.
70. Third, in addition to steroid use, the Athlete also committed an entirely separate and distinct anti-doping rule violation under IAAF Rule 32.2(b), namely blood doping, either by using a prohibited method such as blood transfusions or by an erythropoiesis-stimulating agent such as rEPO, in the period starting before 28 June 2012 and continuing through February 2013. The IAAF accepts that this separate anti-doping rule violation cannot be treated as a second violation because the Athlete was not formally notified of the steroid anti-doping rule violation before she committed the blood doping offence. However, Rule 40.7(d)(i) provides that the latter offence may be treated as an aggravating circumstance under Rule 40.6.
71. The IAAF's ABP system is summarized in *Kokkinariou*, CAS 2012/A/2773 at paras 12-20. The IAAF submits that in respect of an ABP offence, the applicable standard is the normal 'comfortable satisfaction' standard set out in Rule 33.1. The IAAF argues that the evidence in the present case meets that standard.
72. The Athlete's haematological profile is based on six blood samples collected from her between 24 August 2011 and 28 February 2013. The biomarker values taken from those samples were outside the expected range in each of sample 2, sample 3 and sample 5. The three independent experts who analysed the Athlete's profile, Messrs. Schumacher, d'Onofrio and Michel Audran, concluded that the values in the profile were not physiological; rather, it is highly likely that the Athlete was blood-doping (most likely by using an erythropoiesis-inducing agent, such as rEPO) in the period starting before 28 June 2012 and continuing until February 2013. They also confirmed that the menstrual issues advanced by the Athlete as an explanation could not cause "the magnitude and the directional changes observed in the profile".

73. Fourth, the Athlete committed the anti-doping rule violations as part of a doping plan or scheme. This is evidenced by the fact that the Athlete was organizing her doping in a repetitive and sophisticated manner designed to boost her performance in key competitions while avoiding detection by in-competition testing. The hematological profile shows that she took rEPO or similar in June 2012, just before the IAAF European Championships, and in February 2013, just before the start of the indoor season. Similarly, the endocrine profile and steroid urinary profile shows that she was at the end of the excretion phase of a previous intake of testosterone in both early August 2012 just before the Olympic Games and February 2013 at the beginning of the indoor season. This is also evidenced by the fact that there is increasing evidence of widespread doping among elite athletes in Turkey that is specifically tailored towards the achievement of national success for Turkey at international competitions. This is evidenced by the various tip-offs received as well as the dismissal of the TAF Head Coach, Mr. Or, after 43 Turkish athletes under his charge tested positive for steroids immediately prior to the 2013 Mediterranean Games.
74. Fifth, the Athlete engaged in deceptive or obstructive conduct to avoid detection of the violations. This is evidenced by the fact that Mr. Or blocked the testing team from testing the Athlete at an event in Ankara in June 2012. A video recording shows that she was with the coach when he blocked the testers from notifying her and she did nothing, then or later, to submit to testing. In addition, the Athlete false-started and attempted to leave the arena in Dusseldorf on 8 February 2013 without presenting herself for testing. The fact that she was not successful in avoiding the test does not undermine the point.
75. Sixth, the Athlete is likely to enjoy the effects of the anti-doping rule violation(s) beyond the otherwise applicable period of ineligibility. A recent study in Norway has shown that the benefits of even episodic drug use (testosterone) might be long lasting in athletes, if not permanent. The Athlete's repeated steroid use thus might have effects beyond the otherwise applicable period of ineligibility.
76. Due to these multiple aggravating circumstances, the IAAF submits that the standard two-year ban be increased to the maximum of four years. While the IAAF accepts that the decision on the length of a ban should depend on the specific facts and circumstances of the case in question, it also submits that similar cases in athletics should be treated in a similar manner. The IAAF points to Panel, *inter alia*, the following relevant cases:
- *UK Anti-Doping v Edwards*, NADP Tribunal decision dated 7 June 2011 – the tribunal found that the presence of two prohibited steroids in the athlete's urine sample (as in the Athlete's case) constituted an aggravating factor under Rule 40.6 that warranted on its own an increased sanction from 2 to 3 years.
 - *UK Anti-Doping v Berenice Wilson* dated September 2011 – the panel increased the athlete's sanction for a first offence from 2 to 4 years based on aggravating factors that included (i) the presence of two anabolic agents, (ii) evidence of repeated use of at least one of those substances and (iii) the fact that the athlete was a senior and experienced athlete who acted as a role model to younger athletes. These aggravating factors are present in the Athlete's case.
 - *Portuguese Athletics Federation v Ornelas* Case 4/2011 – the tribunal increased the ineligibility to be imposed on an athlete from 2 to 4 years on the basis that the evidence showed that the athlete had used a prohibited substance or method repeatedly over a

Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2013/A/3373 IAAF v. TAF and Nevin Yanit - Page 14

period of about a year. In the present case, the Athlete was repeatedly doping over the same period.

- *Alemitu Bekele v Turkish Athletics Federation & the IAAF* (CAS 2013/A/3080) – the panel found that the athlete’s use of blood doping as part of a doping scheme were two aggravating factors and increased the sanction from 2 years to 2 years 9 months. The IAAF submits that the Athlete’s case is more serious than that of Ms. Bekele in which the panel found that her doping has been restricted to two competitions in the course of a single year. In the Athlete’s case, the evidence is that she doped in more major competitions, including the Olympic Games, and in competitions spanning over two years (2012 (outdoors) and 2013 (indoors)). Moreover, there are other aggravating factors present in the Athlete’s case that were not present in that of Ms. Bekele (*inter alia*, the Athlete used multiple Prohibited Substances, as part of an individual and common doping plan, and was engaged in deliberate conduct to avoid testing).

B. The TAF

77. The TAF did not make any submissions in the present case.

C. Ms. Yanit

78. In her answer, Ms. Yanit seeks the following relief:

- (i) *That the IAAF’s appeal should be denied;*
- (ii) *That the two-year sanction issued by TAF be maintained;*
- (iii) *That Ms. Yanit be declared immediately eligible upon the completion of her suspension period;*
- (iv) *That the IAAF be ordered to pay all of the costs of this arbitration pursuant to CAS Art. R64.5;*
- (v) *That this Panel decline to assess any of the costs of this arbitration upon Respondent Nevin Yanit; and*
- (vi) *That Respondent Nevin Yanit be awarded a contribution toward her costs in connection with this appeal, pursuant to CAS Art. R64.5.*
- (vii) *The IAAF be awarded its costs in the appeal (including CAS costs), such costs to be confirmed.*

79. More specifically, the Athlete submits that while, she has no objection to the presentation of evidence that is specific to her case, she considers that the suggestion that all elite Turkish athletes are doping or that there is a coordinated effort at a national level by Turkey to dope its athletes to achieve national success is discriminatory towards all Turkish citizens and should not be tolerated.

80. The Athlete submits that the Appellant fails to adequately establish aggravating circumstances sufficient to justify the requested sanction of four years.

81. First, the February 2013 positive tests do not constitute “aggravating circumstances” pursuant to Rule 40.6. The Athlete tested positive for testosterone and stanozolol three times in a seven-day period. In past situations where athletes have tested positive for multiple substances, the standard sanction has been two years. See *WADA v Nilforushan* CAS 2012/A/2959; *WADA v Krylov & FIG* CAS 2013/A/3050; *WADA v FCP & Bermudez* CAS 2011/A/2522. In any event, the Athlete reminds the Panel that, as noted by the tribunal in *Defga v. TAF & IAAF*, Rule 40.6 provides for a sanction up to a maximum of four (4) years, and thus “[t]hese words impose a maximum. They do not mean that in every case in which there are aggravated circumstances a period of ineligibility of four years must be imposed.”
82. Second, the IAAF has failed to establish additional violations that are unrelated to the February 2013 positive tests, namely the alleged blood manipulation and the alleged further use of steroids. The Athlete contends that since these allegations are not based on any adverse analytical findings (i.e. positive tests), but rather on the Athlete’s biological passport, the IAAF carries a high burden of establishing the use of a prohibited substance. See *UKAD v Tiernan-Locke*, Decision of 15 July 2014.
83. In respect of the alleged blood manipulation, the Athlete explains that for biological passport cases, each blood sample is analyzed and then applied against a statistical model to compare the individual sample against the athlete’s historical values. If there are fluctuations in the athlete’s biological parameters that exceed the thresholds set by the statistical model, an assumption is made that the athlete is likely to have committed a doping violation. The IAAF’s analysis is based on 6 blood samples collected between 24 August 2011 and 28 February 2013. The IAAF contends that the samples collected on 28 June 2012, 5 August 2012 and 7 February 2013 are indicative of blood manipulation.
84. The Athlete notes that many of the conclusions drawn by the Appellant’s experts are based on the disparity between sample 1 (collected on 24 August 2011) and sample 2 (collected on 28 June 2012) through sample 6 (collected on 28 February 2013). Rather than assuming that sample 2 through 6 are all evidence of doping, one must question, she avers, whether there are inaccuracies in the values reported on sample 1 which was collected a few years ago.
85. The testing of sample 1 appears to have been conducted in Daegu, South Korea on 24 August 2011. However, the appropriate WADA-accredited laboratory should have been Lausanne and the quality control values obtained in Daegu were different from those obtained in Lausanne and in other WADA-accredited laboratories. Therefore a comparison between sample 1 and the other samples is questionable.
86. Furthermore, samples 2 through 6 are relatively stable in their haemoglobin and haematocrit values, such that the opinions offered that the fluctuations in these values are only explainable by the use of prohibited substances or methods cannot be sustained if the reported values from sample 1 are flawed or are otherwise eliminated from consideration.
87. In addition, it is inappropriate to use sample 5 collected on 7 February 2013 as part of any biological passport analysis because it is already known that the Athlete tested positive for anabolic steroids on that same date. If the biological passport is intended to provide reference data against which abnormalities in samples can be assessed by the adaptive model, then it would be counter-intuitive to include in that analysis samples which are known to be affected by use of banned substances.

Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2013/A/3373 IAAF v. TAF and Nevin Yanit - Page 16

88. Finally, the Appellant's experts contend that "sample 5" is indicative of blood manipulation, specifically of recent use of recombinant EPO. However, this is contradicted by the testing of the Athlete's urine sample of 8 February 2013, a day later, which showed no recombinant EPO.
89. The Athlete further argues that the fact that the 8 February 2013 sample contained no recombinant EPO lends further support to the Athlete's explanation that the variability suggested by the IAAF in her biological passport was caused by abnormalities in her menstrual cycle.
90. Based on the foregoing, the Athlete submits that the Appellant has failed to prove to the requisite standard of comfortable satisfaction any blood manipulation.
91. In respect of the alleged use of steroids, the Athlete submits that the contentions based upon the Athlete's biological passport endocrine profile should be disregarded since the mandatory procedures of IAAF Anti-Doping Regulations 6.11-6.17 (presentation of the endocrine profile and steroid urinary profile to an Expert Panel for assessment on an anonymous basis, followed by the giving of an opportunity to the Athlete to explain any values that the Expert Panel considers abnormal) in respect of that evidence were not followed by the IAAF.
92. Moreover, the IRMS analysis of her urine samples collected on 5 and 7 August 2012 tested negative for exogenous anabolic steroids. Therefore the Athlete could not have used steroids in 2012, including in the lead-up to the Olympic Games in London in August 2012.
93. Third, there is no evidence of a doping plan or scheme. The Appellant could not have carefully planned a doping scheme since she tested positive on three occasions in February 2013. Moreover, as stated above, the IAAF's allegation that there was a common enterprise to dope elite Turkish athletes is discriminatory.
94. Fourth, there is no evidence of deceptive or obstructive conduct to avoid detection. In respect of the Ankara incident in June 2012, there is no evidence to suggest that Mr. Or was acting in concert with Ms. Yanit. In respect of the Dusseldorf incident in February 2013, it is hard to follow the IAAF's logic since the Athlete was in fact tested on both 7 and 8 February 2013.
95. Fifth, a single research paper suggesting possible long term benefits of steroids is not a basis to increase the sanction beyond two years. There is a significant difference between a single study on mice that suggests that steroid use *might* lead to an increased ability to regain muscle mass as the study concludes, and the requirement of Rule 40.6 that the steroid use *likely* provided performance-enhancing benefits beyond two years from the date of their use.
96. In any event, the Athlete submits that a four-year sanction in the present case would be disproportionate. Under Swiss law, a penalty is valid only if it is consistent with the fundamental principle of proportionality. CAS case law has consistently held that it is a widely accepted general principle of sports law that the severity of a penalty must be in proportion with the seriousness of the infringement. The Athlete argues that in the vast majority of cases that are consistent with the allegations of the present case, the sanction imposed was one of two years. See *Caucchioli v CONI & UCI CAS 2010/A/2178*;

Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2013/A/3373 IAAF v. TAF and Nevin Yanit - Page 17

Pellizotti v COM & UCI CAS 2010/A/2308; De Bonis v. COM & UCI CAS 2010/A/2174; UCI v Valjavec & Olympic Committee of Slovenia CAS 2010/A/2235; and Pechstein v International Skating Union CAS 2009/A/1912. The Athlete thus submits that the 2-year sanction issued by the TAF be maintained in the present case.

97. The Athlete requests that any delay in reinstatement testing that is not attributable to the Athlete should not delay her return to competition. Rule 40.12(c) provides for reinstatement testing for International-Level athletes who were rendered ineligible for one year or longer and requires that “a minimum of four (4) reinstatement tests must be conducted, three (3) Out-of-Competition tests and one (1) for the full range of Prohibited Substances and Prohibited Methods immediately prior to the end of the ineligibility Period”. The rule requires that the tests be conducted at least 3 months apart, which means that reinstatement testing effectively must be started at least 9 months prior to the end of a sanction to be completed in a timely fashion. The rule also provides that the IAAF shall be responsible for the conduct of the reinstatement tests. However, no tests have been carried out so far and these delays are not attributable to the Athlete. The Athlete thus submits that if the reinstatement testing is not completed before the end of the suspension period, then the Athlete must nonetheless be declared eligible to compete upon the completion of her suspension period.
98. The Athlete further requests that, since she does not have the financial ability to pay any significant portion of the CAS costs in the present case, she should not be ordered to pay any costs.

IX. MERITS OF THE APPEAL

99. As noted above, relying on Rule 40.6 of the IAAF Competition Rules, the IAAF submits that six aggravating circumstances militate in favour of a decision by the Panel that the two-year sanction imposed by the TAF Disciplinary Board on the Athlete be increased to the maximum of four (4) years.
100. Having heard and considered the evidence, the Panel will review, in turn, each circumstance to determine whether the IAAF has discharged its burden of proof in respect of one or more of them.
101. Firstly, the IAAF avers that the Athlete used multiple Prohibited Substances, which is one example in the non-exhaustive list of aggravating circumstances set out in Rule 40.6.
102. The clear evidence before the Panel is that the Athlete tested positive for testosterone and stanozolol, two distinct exogenous anabolic steroids, three times in a seven-day period in February 2013.
103. This evidence was not seriously contested by the Athlete. Indeed, the Panel notes that the Athlete has not appealed the ruling of the TAF which found that the Athlete’s urine samples collected in February 2013 disclosed the administration of two distinct exogenous anabolic steroids.
104. In the circumstances, the Panel has no hesitation in finding that the detection of two Prohibited Substances in the Athlete’s sample, on its own, amounts to the aggravating circumstances of multiple use under Rule 40.6.

105. Secondly, the IAAF argues that the Athlete used those prohibited anabolic steroids not only in February 2013 but on multiple other occasions which is another specific example of aggravating circumstances set out in Rule 40.6.
106. Professor Saugy, both in his written report and when he gave evidence before the Panel, was absolutely categorical. In answer to the question put to him as to whether “*the blood endocrinal profile reference BPK 298T24 (Exhibit 18.5) was consistent with a normal physiological profile*”, he said “*clearly no*”. The Panel has no reason to discredit this testimony or come to any other conclusion.
107. The total Testosterone Concentrations in the serum samples collected from the Athlete on 5 August 2012 (Value 3) and 17 October 2012 (Value 4), according to Professor Saugy, were both higher than the highest values in the female reference range and “*very strongly suggest that the Athlete was using anabolic steroids at the time*” as she was found to have done later on 7 February 2013.
108. Professor François Pralong, a Swiss endocrinologist, in his written report, after having reviewed the Athlete’s biological profile, concluded as follows:
- This profile is clearly not compatible with physiology, and cannot be explained by a pathological condition. In the absence of a convincing explanation by the subject, there is no other explanation in my opinion than the use of anabolic steroids to explain values 3 and 4 of the profile, knowing that value 5 is associated with an adverse analytical finding of stanozolol and testosterone.*
109. Mr. Paul Scott who gave evidence on behalf of the Athlete admitted that Values 3, 4 and 5 were “out of range” and “completely abnormal”.
110. The Panel notes that the Athlete raises a procedural and a substantive objection with respect to the IAAF submission of an aggravating circumstance resulting from the multiple use by the Athlete of Prohibited Substances based upon her Biological Passport Endocrine Profile. The Panel will now address these two objections.
111. As for the procedural objection, the Athlete contends, principally in her Answer Brief, that this “new evidence” had to be submitted to an Expert Review Panel in accordance with IAAF Regulation 6.11 – 6.17 in order to afford the Athlete an opportunity to explain any value that the Expert Panel considered abnormal. (See para 6.14 of the Answer Brief). The Panel notes that in his oral submissions, the Athlete’s counsel, while not withdrawing this objection, chose not to pursue it.
112. The IAAF disagrees with the Athlete’s procedural objection. In its Skeleton Argument, it submits that it is not charging the Athlete with an anti-doping rule violation (“**ADRV**”) by using these anabolic steroids, but that “*it simply relies on that evidence in support of its plea that the use was over an extended period and so warrants a greater sanction than the standard two years*”.
113. The Panel agrees with the IAAF. The only issue is whether that “new evidence” is reliable, which the Panel considers that it clearly is based upon the virtually uncontroverted testimony of the IAAF’s experts. The Athlete has provided no exonerating explanations for that evidence, despite numerous opportunities to do so.

Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2013/A/3373 IAAF v. TAF and Nevin Yanit - Page 19

114. The Athlete's procedural objection is accordingly dismissed.
115. As for the Athlete's substantive response to the IAAF's allegation that she used steroids in 2012, she asserts that the IRMS analysis of her urine samples collected on 5 and 7 August 2012 "tested negative" for exogenous anabolic steroids. (See Answer Brief at para. 6.15.)
116. The IAAF disagrees that the IRMS test was "negative". In the words of its expert, Professor Saugy, the IRMS Test was "inconclusive" which does not mean that it was "negative" and that the testosterone present in the urine was endogenous.
117. In any event, the Panel is satisfied that even though the IRMS test was, to use the term submitted by Prof. Saugy, inconclusive, when considering the existence of aggravating circumstances it is reasonable to deem the samples collected from the Athlete on 5 August 2012 (value 3) and 17 October 2012 (value 4) as an indication that the Athlete was using anabolic steroids at that time and that she has therefore used Prohibited Substances on multiple occasions.
118. Thirdly, in addition to the use of steroids, the IAAF says that the Athlete also committed an entirely separate and distinct anti-doping rule violation under IAAF Rule 32.2, to wit blood-doping in the period starting before 28 June 2012 and continuing through February 2013.
119. The IAAF stresses that a second ADRV would normally lead to a sanction of eight years to life but that, in the present case, "*because the Athlete was not formally notified of the steroid ADRV before she committed the blood doping ADRV, she cannot now be sanctioned for the blood doping ADRV as a second offence*". (See IAAF Rule 40.7(c) and IAAF Skeleton Argument at para 2.3).
120. However, the IAAF submits that, in such circumstances, IAAF Rule 40.7(d)(i) specifically provides that the blood doping ADRV may be treated as an aggravating circumstance under IAAF Rule 40.6.
121. In order to prove that the Athlete committed the blood doping violation, the IAAF relies on her blood haematological profile referenced in her ABP (BPK298T24) based on six blood samples collected from the Athlete between 24 August 2011 and 28 February 2013 (see Exhibit 7) and the opinion of five experts, Prof. Martial Saugy and Prof. Y. O. Schumacher, who also gave evidence at the hearing, and Dr. Giuseppe d'Onofrio, Dr. Michael Audran and Prof. François Prolong, who provided written statements in support of their testimony and who were not cross-examined..
122. All five experts, who analyzed the Athlete's profile in her ABP, concluded that the values in the profile were not physiological and that it was highly likely that the Athlete was blood doping in the period starting before 28 June 2012 and continuing until February 2013.
123. Professor Schumacher, who confirmed his written opinion when he was cross-examined at the hearing by counsel for the Athlete, affirmed that "all samples were suspect" and concluded his opinion in the following words:

I therefore conclude that the profile is highly suspicious for manipulation. It is highly unlikely that the longitudinal profile is the result of a normal physiological or

pathological condition but might in contrast be caused by the use of a prohibited substance or prohibited method.

124. Mr. Paul Scott testified on behalf of the Athlete. The Panel observes that, when he was cross-examined, although Mr. Scott expressed “some doubts” with respect to the conclusion of the IAAF experts based on the Athlete’s urinary and blood profiles and referred to some “real tension” between the results of the two different analysis of the same data, Mr. Scott recognized that the serum profile of samples 3, 4 and 5 was “abnormal” and that the hematological profile in the Athlete’s ABP, although it could be explained by the steroids, was “suspect”.
125. The Panel has considered carefully all the Athlete’s submissions that the IAAF “*has failed to prove to the requisite ‘comfortable satisfaction’ standard, based upon the Athlete Biological Passport, any blood manipulation (i.e. use of EPO or blood transfusions) in violation of the IAAF ADR*”. (Para. 6.12 of the Answer Brief. See also paras 6.7 to 6.11 of the Answer Brief).
126. Having considered Professor Schumacher’s evidence in reply to the Athlete’s submissions, and the testimony of Mr. Scott, the Panel is comfortably satisfied that the IAAF has discharged its burden of proof and that the Athlete was blood doping in the period starting before 28 June 2012 and continuing until February 2013.
127. Before leaving the blood doping facet of this case, the Panel will address two specific arguments submitted by the Athlete namely that, in establishing “use of a prohibited substance” in violation of IAAF, ADR 32.2(b), the IAAF carries a higher standard of proof than in a normal AAF case and that the atypical variations in the values revealed in her ABP was caused by “abnormalities in her menstrual cycle”. (See Answer Brief paras. 6.5 and 6.11.6).
128. With respect to the applicable standard of proof in an ABP case, the Panel agrees with the IAAF that it is the “comfortable satisfaction” standard. This is consistent with the decisions of *UCI v Valjavec & Olympic Committee of Slovenia* CAS 2010/A/2235 and *Pechstein v International Skating Union* CAS 2009/A/1912. The decision referred to by the Athlete’s Counsel in his Answer Brief, namely *UKAD v Tiernan-Locke*, is not an authority which supports in any way the Athlete’s submission that a higher burden of proof is required in an ABP case. As noted earlier, the Athlete did rely on Mr. Scott in her defence and the Panel has considered his evidence.
129. As for the Athlete’s alleged abnormalities in her menstrual cycle, the Panel notes, as argued by the IAAF, that she has provided no medical or other evidence to prove any such abnormalities. In addition, Professor Schumacher’s opinion, which the Panel accepts, is categorical: he opines that “*the magnitude and the directional changes observed in the profile [...] do not explain the irregularities*” (See Exhibit 15 at pp 4-5.). This submission of the Athlete is therefore dismissed.
130. Fourthly, as an additional aggravating circumstance, the IAAF submits that the Athlete “was organizing her blood doping and her use of anabolic steroids in a repetitive and sophisticated manner designed to boost her performance in key competitions while avoiding detection by in-competition testing” thus committing an ADRV as part of a doping plan or scheme to avoid detection at major competitions at which she knew it was

likely she would be tested, which is another specific example of aggravating circumstances set out in IAAF Rule 40.6. (See IAAF Skeleton Argument at para. 2.4.1).

131. As evidence of the Athlete's doping plans, counsel for the IAAF, in his closing statement, submitted the following to the Panel:

- Relying on the Athlete's haematological profile in her Biological Passport, he argued:

(i) In June 2012 (Value 2) she was blood doping immediately before the IAAF European Championships in Helsinki.

(ii) In February 2013 (Value 5), she was blood doping immediately before the start of the indoor season.

- Relying on the Athlete's endocrine profile and her steroid urinary profile and the opinion of Prof. Saugy (see Exhibit 18, Answer to Question 3 at p.3), he argued:

(i) In early August 2012 (Value 3), she was at the end of the excretion phase of a previous intake of testosterone just before the Olympic Games in London.

(ii) In February 2013 (Value 5), she was also at the end of the excretion phase of a previous intake of testosterone immediately before the start of the indoor season.

132. In his Answer Brief, the Athlete's counsel submitted that, with respect to this allegation, the IAAF had failed to meet its burden of proof. (See Answer Brief at para. 6.18.)

133. More specifically, the Athlete's counsel submitted the following:

133.1 It is hard to square the contention that Ms. Yanit carefully planned a doping scheme to avoid detection with the fact that she tested positive 3 times in February 2013.

133.2. Furthermore, as stated above, the Appellant's contention that Ms. Yanit carefully planned a doping scheme to avoid detection of a positive steroid test at the 2012 Olympic Games ignores the fact that her 5 August 2012 and 7 August 2012 samples – which both had high T/E ratios which would have triggered GC-IRMS testing – were apparently negative on that GC-IRMS testing. If Ms. Yanit had carefully planned a doping scheme to avoid detection of a positive steroid test at the 2012 Olympic Games, as the IAAF now claims, then why did she have T/E ratios of 8:1 and 11:1 during her Olympic Games testing?

134. In his reply to the Athlete's argument, the IAAF counsel submitted that the fact that she did not succeed in avoiding detection in February 2013 “does not undermine that fact: due to the dilute urine she produced, her August 2012 urine samples did not test positive for steroids, and due to the limitations of the test for rEPO in urine (e.g., short detection window), rEPO was not detected in her 8 February sample. Furthermore, she would not have expected testing to be conducted at the low-level indoor event in February 2013 where she tested positive” (See IAAF Skeleton Argument at para. 2.4.1).

Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2013/A/3373 IAAF v. TAF and Nevin Yanit - Page 22

135. Having considered the totality of the evidence on this issue and informed principally by the opinion Professor Saugy, the Panel is comfortably satisfied that the Athlete did organize her blood doping and her use of anabolic steroids in a repetitive and sophisticated manner designed to boost her performance in major competitions in which she knew it was likely she would be tested, thus committing an ADRV as part of a doping plan or scheme. This constitutes another aggravating circumstance.
136. Fifthly, although in its Amended Appeal Brief the IAAF contends that the Athlete's doping was "part of a common enterprise to dope elite Turkish athletes in an attempt to maximise the country's chances of success in international competitions on the world stage" (see Amended Appeal Brief at para. 94(vii)), the Panel finds no evidence in the record supporting this allegation.
137. Finally, the IAAF contends that the Athlete, on two occasions "engaged in deceptive or obstructive conduct to avoid the detection of an anti-doping rule violation in June 2012 [in Ankara] immediately before the European Championships and in February 2013 during an indoor meeting in Dusseldorf, Germany" and that this is another aggravating circumstance mentioned as an example in IAAF Rule 40.6. (see Amended Appeal Brief at para. 94(viii)).
138. Having seen the video of the event in Ankara produced by the IAAF, considered the evidence of the Athlete in respect of these two incidents and also considered the written and oral submissions of counsel for the IAAF and the Athlete, the Panel is not persuaded to its comfortable satisfaction that the IAAF has discharged its burden of proof in so far as these two incidents are concerned.
139. Testimony of Ms. Yanit. The Panel recalls that the Athlete did not appeal the Decision of the Turkish Disciplinary Board which, after having heard her evidence and considered the reports of the Cologne laboratory with respect to the analysis of Athlete's urine in the A and B samples provided after she had competed on 8 February 2013, concluded that she had committed an ADRV since both samples contained stanozolol and testosterone. The Board imposed a sanction of two year ineligibility.
140. Whereas, before the Turkish Disciplinary Board, the Athlete claimed that the substances detected in her urine could have originated from a supplement called methaxy-7, when she testified before the Panel, she blamed her coach of some 15 years, Mr. Cüneyt Yüksel, who, before she was tested on 8 February 2013, "had given her some pills which looked different from other supplements" she had been taking.
141. After she had been found to have tested positive, Ms. Yanit testified that she asked her coach about these new pills and he allegedly told her that "it was none of your business".
142. In the circumstances, the Athlete told the Panel that she had fired her coach and accepted the sanction imposed by the Board.
143. The Panel has considered very carefully the evidence of the Athlete. Her evidence does not change or modify in any way the conclusions which the Panel reached earlier with respect to the presence of four aggravating circumstances. In addition, the Panel notes that the substance found in her body (EPO) could only have been administered by injection.

Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2013/A/3373 IAAF v. TAF and Nevin Yanit - Page 23

144. In the circumstances, pursuant to IAAF Rule 40.6, the Panel is of the view that the imposition of a period of ineligibility in excess of the two (2) year imposed by the Turkish Athletic Federation Disciplinary Board up to a maximum of four (4) years is justified.
145. The Panel will now determine the appropriate sanction, which should be imposed on the Athlete in excess of two (2) years in the circumstances of the present case.
146. The Panel considers that although consistency of sanctions is a virtue, correctness remains a higher one: otherwise unduly lenient (or, indeed, unduly severe) sanctions may set a wrong benchmark inimical to the interest of sport.
147. The Panel starts from the premise that the words “shall be increased up to a maximum of four (4) years” in Rule 40.6 do not mean that in every case in which aggravating circumstances are found a period of ineligibility of four years must be imposed. These words only impose a maximum.
148. The Panel will now review the sanctions imposed in relevant cases cited by the Athlete and the IAAF:
 - 148.1 In the following three decisions, a sanction of 2 years was imposed on the basis that the athlete had tested positive for multiple substances: *WADA v Nilforushan CAS 2012/A/2959*; *WADA v Krylov & FIG CAS 2013/A/3050*; and *WADA v FCP & Bermudez CAS 2011/A/2522*. Although the rules in those cases were not those of the IAAF, the Panel is of the view that these cases should be considered. The substantive part of each rule is the same and comes from a common source, the WADA Code. In addition, the examples of aggravating circumstances set out in the WADA Comments and the IAAF Rules are expressly said not to be exclusive.
 - 148.2 In *UK Anti-Doping v Edwards* NADP Tribunal decision dated 7 June 2011, the first-instance tribunal found that the presence of two prohibited steroids in the athlete’s urine sample warranted a sanction of 3 years.
 - 148.3 In *Portuguese Athletics Federation v. Ornelas* Case 4/2011, the tribunal imposed a period of ineligibility of 4 years on the basis that the evidence showed that the athlete had used a prohibited substance or method repeatedly over a period of about a year.
 - 148.4 In *UK Anti-Doping v Berenice Wilson* dated September 2011, the panel imposed a sanction of 4 years based on the following aggravating factors: (i) the presence of two prohibited substances, (ii) evidence of repeated use of at least one of those substances, (iii) the fact that the athlete was a senior and experienced athlete who acted as a role model to younger athletes.
 - 148.5 In *UK Anti-Doping v Ian Burns* case no. SR/0000120067, the panel imposed a 4-year ban based on the fact the athlete used seven prohibited substances over an extended period of time “pursuant to a sophisticated doping cycle”.
 - 148.6 In *IAAF v. the Greek Athletics Federation (SEGAS) & Ms Irimi Kokkinariou CAS 2012/A/2773*, the panel issued a 4-year sanction on the finding that the athlete had used prohibited substances or methods on multiple occasions over a protracted period of time as part of a doping scheme or plan.

148.7 In *Alemitu Bekele v Turkish Athletics Federation & the IAAF* CAS 2013/A/3080, the panel determined that the appropriate sanction was 2 years and 9 months on the basis that Ms. Bekele repeatedly used a Prohibited Substance for approximately one year as part of a doping plan or scheme. In distinguishing *Kokkinariou*, the Panel stated the following:

In the present case, the established culpability of the athlete related only to a single year and to the targeting of two compounds within that year, though by the repeated use of a Prohibited Substance or method. This is offending on a substantially lesser scale than that of Ms. Kokkinariou whose career over five or six years appears to have been built on blood doping. It is also true that although Ms. Bekele has been shown to have used a Prohibited Substance or Method repeatedly in targeting two competitions, in the great majority of cases in which an athlete tests positive for a Prohibited Substance, the athlete will not have indulged in a single one-off breach of the rules and in many cases will have been targeting a specific competition or series of competitions.

149. While these decisions are not binding precedents, they do offer helpful guidance to the Panel and will inform its decision as to the appropriate level of the sanction to be imposed on the Athlete in the present case.
150. The Panel recalls that, in the present case, it has found that the following constituted aggravating circumstances:
- 150.1 The Athlete used two Prohibited Substances, namely testosterone and stanozolol.
- 150.2 The Athlete used those Prohibited Substances on multiple occasions between August 2012 and February 2013, i.e. for a period of approximately 6 months.
- 150.3 The Athlete committed a distinct anti-doping rule violation, namely blood doping, between June 2012 and February 2013, i.e. for a period of approximately 7 months.
- 150.4 The Athlete committed the violations listed at paragraphs 148.1 and 148.3 as part of a doping scheme.
151. The Panel considers that the aggravating circumstances found to exist in the *Alemitu Bekele v Turkish Athletics Federation & the IAAF* decision, while somewhat similar to those which the Panel has found in the present case, were however on a lesser scale than those of Ms. Yanit.
152. Accordingly, having regard to the circumstances of this case, the Panel is of the view that a just and proportionate sanction would be a period of ineligibility of 3 years, being one year more than the penalty imposed by the TAF.
153. As to the starting day of this period of ineligibility, the Panel notes that the TAF Tribunal has determined in its Decision that it should commence on 6 March 2013 and the Panel, considering the circumstances of this case and the requests made by the parties, does not see any reason to set the starting period on another date.

154. Accordingly, the Athlete's period of ineligibility will start on 6 March 2013.

X. CONCLUSION

155. The result is that the appeal of the IAAF is allowed to the extent that the period of ineligibility which Ms. Nevin Yanit must serve is increased from two to three years as of the date of this Award but credit will be given to the Athlete for the period of ineligibility already served, which commenced on 6 March 2013. All other requests of the parties shall be rejected.

XI. COSTS

156. Article R64.4 of the Code provides:

"At the end of the proceedings, the CAS Court Office shall determine the final amount of the cost of arbitration, which shall include: the CAS Court Office fee, the administrative costs of the CAS calculated in accordance with the CAS scale, the costs and fees of the arbitrators, the fees of the ad hoc clerk, if any, calculated in accordance with the CAS fee scale, a contribution towards the expenses of the CAS, and the costs of witnesses, experts and interpreters. The final account of the arbitration costs may either be included in the award or communicated separately to the parties."

157. Article R64.5 of the CAS Code provides:

"In the arbitral award, the Panel shall determine which party shall bear the arbitration costs or in which proportion the parties shall share them. As a general rule, the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such contribution, the Panel shall take into account the outcome of the proceedings, as well as the conduct and the financial resources of the parties."

158. Based upon the final outcome of the appeal which has been partially successful, the Panel determines that each party shall bear one third of the costs of the arbitration, such costs to be determined by the CAS Court Office in accordance with Article R64.4 of the Code.

159. Moreover, by Article R64.5 of the Code, the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses. In this case, the IAAF has been the prevailing party to the limited extent that it has succeeded in having the length of Ms. Yanit's period of ineligibility increased by one year. Additionally, the Panel has taken account of the asserted impecuniosity of Ms. Yanit and the fact that she has obviously incurred significant costs to prepare her defence. In all the circumstances, the Panel is of the view that it should not direct any party to contribute to the legal fees and other expenses of any other party.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal of the International Association of Athletics Federations is partially upheld.
2. The decision of the Turkish Athletics Federation dated 10 September 2014 is modified to the extent that Ms. Yanit's period of ineligibility shall be for a period of three years commencing on the date of this award but giving credit for the period of ineligibility already served from 6 March 2013.
3. Each party shall pay one third of the costs of the arbitration, such costs to be determined by the CAS Court Office and noticed to the parties under separate correspondence.
4. Each of the parties shall bear their own legal costs and other expenses incurred in connection with this arbitration.
5. All other claims are dismissed.

Lausanne, 6 March 2015

THE COURT OF ARBITRATION FOR SPORT


L. Yves Fortier C.C., Q.C.

President of the Panel



Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2013/A/3373 International Association of Athletics Federations (IAAF) v. Turkish Athletics Federation (TAF) and Nevin Yanit

ORDER ON REQUEST FOR INTERPRETATION

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: The Honourable L. Yves Fortier, PC, CC, OQ, QC, barrister-at-law, Montréal, Québec, Canada

Arbitrators: Mr. Romano F. Subiotto QC, Solicitor-Advocate in Brussels, Belgium and London, United Kingdom
Mr. Michele A.R. Bernasconi, attorney-at-law, Zurich, Switzerland

Ad hoc Clerk: Ms. Annie Lespérance, attorney-at-law in Montréal, Québec, Canada

in the arbitration between

INTERNATIONAL ASSOCIATION OF ATHLETICS FEDERATIONS, Monaco
Represented by Mr. Jonathan Taylor and Ms. Elizabeth Riley, attorneys-at-law in London, United Kingdom

Appellant

vs.

TURKISH ATHLETICS FEDERATION, Ankara, Turkey
Represented by Mr. Fatih Cintimar, President, Ankara, Turkey

First Respondent

And

NEVIN YANIT, Istanbul, Turkey
Represented by Mr. Howard L. Jacobs, attorney-at-law in Westlake Village, California, USA

Second Respondent

WHEREAS the Panel, having duly considered the Parties' evidence as well as their written and oral submissions, issued a Final Award on 6 March 2015;

WHEREAS the Appellant filed a request for interpretation pursuant to Article R63 on 15 April 2015 (the "Request") wherein it asserts that "*given the mandatory terms of IAAF Rule 40.8 it would be 'self-contradictory or contrary to the reasons' [...] not to order the disqualification of all results obtained by Ms Yanit after 28 June 2012*" and requests that "*the CAS Panel amend the Award to clarify this point*";

WHEREAS on 23 April 2015, the President of the CAS Appeals Arbitration Division accepted the IAAF's Request and ordered that such Request be submitted to the Panel in accordance with Article R63 of the Code;

WHEREAS the Second Respondent, following the Panel's invitation, filed a response on 30 April 2015 wherein she requested that the Request be denied;

WHEREAS the First Respondent did not file any response following the Panel's invitation;

WHEREAS the Panel has read and considered the Parties' contentions in respect of the Request and has deliberated;

CONSIDERING, that in view of the foregoing, the Panel decides the following:

1. The Appellant's Request for Interpretation is denied.
2. The operative part of the Award is clear and not self-contradictory or contrary to the reasons.
3. In paragraph 5 of the operative part of the Award, the Panel clearly stated that "*All other claims are dismissed.*"
4. The Panel took note of and accepted IAAF's clear acknowledgement that "*any further charge(s) would not be considered as a second (or third) violation for purposes of IAAF Rules [...]*" and its submission, which the Panel also accepted, that "*in accordance with IAAF Rule 40.7(d)(i), if proven, multiple violations constitute a further factor in assessing aggravating circumstances for the purposes of determining the sanction for the Second Respondent's first violation which is the object of the current appeal*" (see paragraphs 34, 70 and 120 of the Award).
5. The TAF Disciplinary Board's decision did not address the issue of the applicability of IAAF Rule 40.8, neither party argued in writing or orally this issue before the Panel and, consequently, the Panel was unable to make a finding as to the applicability of IAAF Rule 40.8 in the present case.
6. The disqualification of all results earned by Ms. Yanit as of 28 June 2012 is a matter of enforcement by the IAAF based upon its own application of IAAF Rule 40.8.

Dated: 29 May 2015

THE COURT OF ARBITRATION FOR SPORT


L. Yves Fortier C.C., Q.C.

President of the Panel