

**Arbitration Committee of the Czech Olympic Committee
Ref. No. 3/2014**

The Arbitration Committee of the Czech Olympic Committee composed of Mgr. Martin Procházka, as the chairman, and JUDr. Vladimír Balaš and Mgr. Jan Morávek, as members,

rendered in the following case:

The Parties:

Roman Kreuzlger
date of birth: 6 May 1986
residing at
represented in legal matters by JUDr. Jan Šťovíček, attorney-at-law
KŠD Legal advokátní kancelář, s.r.o. (Law Office)
with its registered office at Hvězdova 1716/2b, 140 00 Prague 4

The Czech Cycling Federation
Id. No.: 49626281
with seat at Nad Hliníkem 4, 150 00 Prague 5 – Motol
represented by JUDr. Marlán Štětina, President of the Federation

this

ARBITRAL AWARD:

- 1. Roman Kreuzlger has not committed any violation of the UCI Anti-Doping Rules (UCI ADR).**
- 2. Each of the Parties shall bear its own costs.**

Reasoning

1. Jurisdiction and Composition of the Arbitration Committee

- 1.1 The jurisdiction of the Arbitration Committee (hereinafter the "Committee") was established by the Arbitration Agreement dated 20 August 2014 among Roman Kreuziger, the Czech Cycling Federation and the Czech Olympic Committee (hereinafter the "Arbitration Agreement") in conformity with Art. 7.2.1 of the Statute of the Arbitration Committee; at the same time, the possibility of referral of the case by the Czech Cycling Federation to an external hearing panel is also envisaged by the Anti-Doping Rules of the International Cycling Union (hereinafter the "UCI ADR") in their Article 257. In this respect, the UCI ADR stipulate that by accepting to hear the case, the external hearing panel agrees to resolve the case under the UCI ADR, where the procedure before the external hearing panel shall be in accordance with the procedural rules of that hearing panel, whilst taking account of certain provisions of the UCI ADR. The International Cycling Union acknowledged the jurisdiction of the Arbitration Committee.
- 1.2 Both Parties, i.e. Roman Kreuziger and the Czech Cycling Federation, actively participated in the proceedings before the Committee without pleading a lack of its jurisdiction. The Parties to the dispute, i.e. Roman Kreuziger and the Czech Cycling Federation, were present at the oral hearing in the case, which took place on 11 September 2014; at this oral hearing, the two Parties explicitly acknowledged the Committee's jurisdiction to hear Roman Kreuziger's case and did not plead bias of any of the Committee's members.
- 1.3 The Committee's jurisdiction to hear the case and decide on the alleged violation of anti-doping rules by Roman Kreuziger, in the composition specified above in this Award, is therefore established beyond any doubt.

2. Applicable Regulations

- 2.1 As stated above, the possibility of referral of the case by the national federation (in this case, the Czech Cycling Federation) to an external hearing panel is envisaged by the Anti-Doping Rules of the International Cycling Union (hereinafter the "UCI ADR") in their Article 257. In this respect, the UCI ADR stipulate that by accepting to hear the case, the external hearing panel agrees to resolve the case under the UCI ADR, where the procedure before the external hearing panel shall be in accordance with the procedural rules of that hearing panel, whilst taking account of certain provisions of the UCI ADR. Furthermore, Article 258 *et seq.* UCI ADR stipulate certain rules applicable in this case.
- 2.2 The Arbitration Agreement stipulates in Art. III (2) that, in terms of procedure, the Committee shall also follow in these proceedings, in addition to the UCI ADR, the Committee's Statute and especially its Rules of Procedure, i.e. the regulations governing

the position of the Committee and the course of the proceedings before the Committee, respectively, and the regulations of the Czech Cycling Federation.

2.3 Consequently, in conformity with the UCI ADR, the Committee had to substantially modify the procedure, especially in view of the following provisions of the UCI ADR:

- The entire proceedings had to be completed within one month of the dispatch of the notice of initiation of the proceedings to the Parties, i.e. in this case by 22 September 2014 (Art. 280 UCI ADR);
- Although the UCI was not a party to the proceedings before the Committee, it had substantial procedural rights based on the UCI ADR. These rights included, in particular, the right to be provided by the Committee with a copy of the documentation of the case (Art. 262 UCI ADR); the right to give an opinion and demand that a sanction be imposed, either in writing or at the hearing (Art. 263 UCI ADR); the right to request that an oral hearing is not held before the UCI has received the complete case file (Art. 264 UCI ADR), etc.

2.4 Furthermore, the Committee took into account that the present proceedings were, in substance, disciplinary proceedings that originally should have taken place before the disciplinary bodies of the Czech Cycling Federation.

3. Facts of the Case

3.1 Roman Kreuziger (hereinafter also as the "Athlete") is a professional cyclist and holder of a licence issued by the Czech Cycling Federation. The Athlete is currently a member of the Tinkoff Saxo professional cycling team.

3.2 The International Cycling Union (hereinafter also as the "UCI") is an international non-governmental organisation associating national cycling federations. The UCI engages, in particular, in promotion of cycling throughout the world and organisation of international cycling races. The UCI associates national cycling federations. The UCI is seated in Aigue, Switzerland.

3.3 The Czech Cycling Federation (hereinafter also the "CCF") is the national cycling federation of the Czech Republic. The CCF is a member of the UCI and also a member of the Czech Olympic Committee.

3.4 In its letter dated 28 June 2013, UCI notified the Athlete that it had received a unanimous opinion of a three-member expert panel composed of G. d'Onofrio, R. Parisotto and Y.O. Schumacher (hereinafter also the "Expert Panel") pertaining to the Athlete's haematological profile, stating that it was highly likely that the Athlete had used a prohibited substance or a prohibited method. The Expert Panel reached this conclusion based on assessment of blood samples taken from the Athlete in the period from

27 November 2007 to 9 April 2013 within Athlete's ABP (athlete biological passport) code No. BPY2524M36 (hereinafter the "ABP"). Furthermore, the UCI notified the Athlete that it was considering the option of initiating proceedings against him on the grounds of violation of anti-doping rules. The Athlete was then requested to provide his explanation of the nature of his haematological profile by 12 August 2013.

- 3.5 By an e-mail message sent to the UCI on 4 August 2013, the Athlete asked the UCI to postpone the deadline for presenting the said explanation. The UCI notified the Athlete that the deadline would be postponed until 16 September 2013.
- 3.6 With a view to explaining the nature of his haematological profile, the Athlete presented to the UCI expert reports drawn up by Dr. Locatelli and Dr. D. de Boer.
- 3.7 On 12 May 2014, the Expert Panel issued a statement in which it rejected the explanations of the nature of the haematological profile presented by the Athlete; Indeed, in the opinion of the Expert Panel, the expert reports by Dr. Locatelli and Dr. D. de Boer did not clarify the doubts related to the Athlete's haematological profile. The Expert Panel confirmed its previous unanimous opinion that it was highly likely that the Athlete had used a prohibited substance or a prohibited method, probably blood transfusion or a dose of EPO, and that it was unlikely that the irregularities in the Athlete's biological passport could be caused by any other reason.
- 3.8 By a letter dated 30 May 2014, the UCI notified the Athlete that the Expert Panel had not accepted the Athlete's explanation provided in the expert reports by Dr. Locatelli and Dr. D. de Boer and that it considered, based on the conclusions of the Expert Panel, that the Athlete had violated anti-doping rules, specifically Art. 21.2 of the UCI ADR, by using a prohibited substance or a prohibited method. At the same time, the UCI notified the Athlete that, absent an agreement in the sense of Art. 250 of the UCI ADR, it would initiate disciplinary proceedings against the Athlete. The UCI also specified the terms under which it would be willing to enter into such an agreement: (i) admission of violation of anti-doping rules by the Athlete; (ii) a 2-year ineligibility; (iii) disqualification of the results achieved by the Athlete in the periods from 1 March 2011 to 31 August 2011 and from 1 April 2012 to 31 May 2012; (iv) payment of a fine of EUR 770,000; and (v) payment of the costs of management of results in the amount of CHF 2,500 and payment of the costs related to the analysis of blood samples in the amount of EUR 13,000. The Athlete was invited to provide his statement by 9 June 2014.
- 3.9 On 2 June 2014, the Athlete asked for postponement of the deadline for his statement. On 3 June 2014, the UCI agreed to postpone the deadline to 30 June 2014.
- 3.10 On 16 June 2014, the Athlete asked for another postponement of the deadline with a view to presenting a further expert report by Dr. Hampton. On 20 June 2014, the UCI rejected the request. On 26 June 2014, the Athlete presented to the UCI an expert report prepared by Dr. Hampton.

- 3.11 On 28 June 2014, the Athlete announced, together with his professional team, Tinkoff Saxo, that the Athlete would not participate in the 2014 Tour de France.
- 3.12 In a letter dated 2 August 2014, the UCI notified the Athlete that he was provisionally suspended from any Competition until (i) the UCI Anti-Doping Committee lifted the provisional suspension following a review proposed by the Athlete; (ii) the Court of Arbitration for Sport in Lausanne (hereinafter also as the "CAS") cancelled the decision; or (iii) a final decision was adopted on the merits of the case pursuant to Chapter IX. UCI ADR.
- 3.13 On 5 August 2014, the Athlete appealed against the provisional suspension from any Competition to the CAS.
- 3.14 By a letter of 8 August 2014, the UCI requested the CCF to initiate disciplinary proceedings against the Athlete in conformity with Art. 234 of the UCI ADR.
- 3.15 On 20 August 2014, the CAS issued a decision in which it dismissed the Athlete's appeal and confirmed the provisional suspension from any Competition imposed on the Athlete by the UCI.

4. Proceedings before the COC Arbitration Committee

- 4.1 The Committee initiated the proceedings in the case on 22 August 2014 and set the oral hearing for 11 September 2014; it informed both Parties to the proceedings, i.e. the Athlete and the CCF, of the date of the hearing. Furthermore, it invited the two Parties to submit their statements to the Committee not later than by 5 September 2014. Furthermore, on 22 August 2014, the Committee informed the UCI that proceedings before the Committee had been initiated and presented the UCI with the procedural regulations that were to apply subsidiarily in the case, i.e. especially the Statute of the Committee, the Rules of Procedure of the Committee and the Disciplinary Rules of the CCF. The Committee subsequently informed the UCI that a date had been set for an oral hearing in the case and that the Parties had been requested to submit their respective statements by 5 September 2014 at the latest.
- 4.2 On 5 September 2014, the Athlete presented his statement to the Commission, including, in particular:
- he noted that he did not question the ABP as a method capable of proving doping; however, when evaluating the results from the ABP, consideration must be taken of a great many factors pertaining both to the given sport and especially to the specific functioning of the Athlete's organism;
 - he stated that since the individual characteristics of the Athlete, his health problems and medication used had not been taken into account, it had not been proven that the Athlete had violated anti-doping rules;

- he stated that, in view of the high number of samples, the conditions of storing such samples stipulated in Annex B to the WADA Guidelines had not been complied with, especially as regards the use of a data logger and non-compliance with the set temperature in the transport and storage of the samples, which could have affected the probative value of the samples;
- he stated that, in evaluation of the Athlete's ABP, the Expert Panel took inadequate account of the Athlete's medical condition and especially his hypothyroidism, which the Athlete had been treating by a "substitution therapy", using gradually increasing doses of L-thyroxin, which, in the Athlete's opinion, could have caused a change in the values in the Athlete's ABP, specifically in respect of samples No. 48 and No. 49, taken on 20 May 2012 and 24 May 2012 respectively, i.e. during the 2012 Giro d'Italia;
- he questioned the literature referred to in the conclusions of the Expert Panel, stating that the presented studies did not take account of the individual physiological and pathological conditions of athletes and were not relevant for the Athlete, because (i) the literature was a mere letter to editor; (ii) the literature represented mere summaries without any new conclusions; (iii) the studies were based on examination of a small sample of athletes under conditions not corresponding to a long-term cycling race; (iv) the studies were based on examination of short races, although the given case turned on assessment of the level of haemoglobin during a three-week stage event;
- he emphasised that, as regards the haemoglobin values, neither the lower or upper level (baseline values) had been exceeded in the ABP by any of the assessed samples and that the values had not even come close to the lower and upper levels, and it therefore could not be considered that these were abnormalities indicating the use of a prohibited substance or prohibited method;
- he referred to alleged breach of the Athlete's procedural rights by the UCI, specifically to delays in the examination of the ABP indicators and breach of the principle of confidentiality of the proceedings. Furthermore, he stated that not a single control sample was taken from the Athlete after the testing on 20 June 2012, although this had precisely been the period from which the increased haemoglobin values had originated;
- he proposed that Dr. Kingsley Kevin Hampton be examined as witness by telephone during the oral hearing set for 11 September 2014.

4.3 On 10 September 2014, the CCF submitted its statement in which it suggested that the Committee make its decision based on the underlying documents and materials provided by the UCI, and stated that it would not adduce any further evidence or call witnesses in the case at hand.

- 4.4 The UCI submitted its statement to the Committee on 10 September 2014 and stated especially the following:
- it emphasised that in spite of all the explanations provided by the Athlete, the experts in the Expert Panel had nonetheless remained convinced that the Athlete had committed one or several violations of an anti-doping rule;
 - referring to the case-law of the CAS and WADA regulations, it rejected the Athlete's assertions that the probative value of the samples could have been reduced owing to the conditions under which the samples had been transported and stored, and the Athlete had not proven that this had indeed occurred;
 - It rejected the Athlete's assertions that, in evaluation of his ABP, account had not been taken of the Athlete's medical condition, including especially his hypothyroidism, and stated that the Expert Panel had taken the Athlete's medical condition sufficiently into account as mentioned in the final statement of the Expert Panel dated 12 May 2014;
 - it stated that, in view of the circumstances of the case, it was clear that the Athlete had violated an anti-doping rule and it therefore believed that it had successfully borne the burden of proof in respect of this assertion, since the Athlete's ABP showed irregularities and the Expert Panel had stated that violation of an anti-doping rule by the athlete was highly likely;
 - it commented on the alleged breach of the Athlete's procedural rights by the UCI and stated that the alleged breaches of the procedural rights had no effect on the question of whether the Athlete had violated an anti-doping rule;
 - in conformity with Art. 263 UCI ADR, the UCI stated that it demanded the imposition of the following sanction on the Athlete: (i) ineligibility for up to 4 years pursuant to Art. 305 UCI ADR beginning on the date of the Committee's decision; (ii) disqualification of the results in conformity with Art. 288 and Art. 313 UCI ADR; (iii) imposition of a fine pursuant to Art. 326 (1)(a) UCI ADR in the amount of EUR 770,000.
- 4.5 On 10 September 2014, the Committee was contacted by Prof. Olaf Yorck Schumacher and Dr. Giuseppe d'Onofrio, members of the Expert Panel, who stated that they intended to exercise their right pursuant to Art. 265 UCI ADR to be heard during the oral hearing.
- 4.6 On 11 September 2014, an oral hearing was held at the seat of the COC. All the members of the chamber of the Committee, the Athlete together with his attorneys, JUDr. Šťovíček and JUDr. Janák, and the CFC represented by its General Secretary, Stanislav Kozubek, participated in the oral hearing. On 10 September 2014, the UCI informed the Committee that it would not exercise its right to participate in the hearing in conformity with Art. 263

UCI ADR and an UCI representative therefore did not participate in the meeting. Furthermore, RNDr. Jan Chlumský, Head of the Doping Control and Monitoring Section of the Czech Anti-Doping Committee, took part in the oral hearing as an observer; both the CCF and the Athlete agreed with this at the beginning of the oral hearing.

The following persons were examined as witnesses during the oral hearing:

- Prof. Olaf Yorck Schumacher on his request made in conformity with Art. 265 UCI ADR, by means of a telephone call;
- Dr. Giuseppe d'Onofrio on his request made in conformity with Art. 265 UCI ADR, by means of a telephone call;
- Dr. Kingsley Kevin Hampton on request of the Athlete, by means of a telephone call;
- the observer, RNDr. Jan Chlumský, Head of the Doping Control and Monitoring Section of the Czech Anti-Doping Committee, presented his statement at the end of the oral hearing with the consent of the CCF, the Athlete and the Committee.

At the end of the oral hearing, the Parties were invited to present their final motions to the Committee by 17 September 2014, where such motions could also include evidence and expert statements, if appropriate. The UCI was also informed by the Committee of this fact.

4.7 On 17 September 2014, the Athlete presented to the Committee his final motion, in which he referred to his previous statement of 5 September 2014 and stated, in particular, as follows:

- he repeatedly noted that the conditions of storage of samples stipulated by Annex B to the WADA Guidelines had not been complied with in respect of a high number of samples, which he specifically identified, where such non-compliance might have caused damage to these samples and they should therefore not be taken into account;
- he stated that when assessing the elevated reticulocyte level in the Athlete's ABP, the Expert Panel had neglected the overt hypothyroidism which had developed in the Athlete and had thus failed to take account of the Athlete's medical condition when assessing his ABP, and referred to Prof. Dr. d'Onofrio's statement made during the oral hearing and the scientific study by Dr. Kim et al.¹, which had also been referred to by Dr. Hampton in his previous reports;

¹ Kim et al, 2010; „Effects of Thyroid Hormone on A1C and Glycated Albumin Levels in Nondiabetic Subjects With Overt Hypothyroidism”

- he stated that when assessing the raised haemoglobin levels during the 2012 Giro d'Italia in the Athlete's ABP, the Expert Panel had failed to take into account the individual characteristics of the Athlete and neglected his health problems, and had reached incorrect conclusions based on the median values;
- he repeatedly stated that the haemoglobin and reticulocyte values in the Athlete's ABP had never exceeded the baseline values; the Athlete had never been tested positive for doping; the long-term trends in the haemoglobin and reticulocyte concentrations were absolutely clearly explainable by his medical condition and treatment; and the changes in the haemoglobin and reticulocyte concentrations during the 2012 Giro d'Italia were in line with the conclusions of scientific works and the Athlete's individual profile; in view of these facts, the UCI could not have borne the burden of proof as to the assertion that the Athlete had violated an anti-doping rule;
- furthermore, he claimed that the Athlete be acquitted of all accusations or, in alternative, should the Committee establish violation of an anti-doping rule by the Athlete, that the penalty of Ineligibility Imposed on the Athlete be reduced by at least one half of the two-year period.

4.8 On 17 September 2014, the UCI presented its final statement to the Committee, where it referred to its statement of 10 September 2014 and stated that it insisted on penalising the Athlete in the manner specified in the said statement, i.e. (i) Ineligibility for up to 4 years pursuant to Art. 305 UCI ADR beginning on the date of the Committee's decision; (ii) disqualification of the results in conformity with Art. 288 and Art. 313 UCI ADR; (iii) imposition of a fine pursuant to Art. 326 (1)(a) UCI ADR in the amount of EUR 770,000. Furthermore, it presented the Expert Panel's evaluation of 16 September 2014 of expert evidence adduced by the Athlete.

4.9 The CCF did not send its final motion to the Committee.

4.10 During the proceedings and at the oral hearing on 11 September 2014, the Athlete repeatedly pleaded breach of his right to a fair trial, stating that he had insufficient time to properly prepare and to respond to the statements sent to the Committee by the UCI. The Athlete repeatedly claimed that the statements and evidence sent by the UCI not be taken into consideration by the Committee.

The UCI repeatedly pleaded in its statements sent to the Committee that it had not enough time to respond to the Athlete's statements because they were in the Czech language and the deadlines in the proceedings were too short. The UCI claimed that the new evidence adduced and statements made by the Athlete in its final motion sent to the Committee not be taken into consideration by the Committee.

The Committee decided that in view of the very short duration of the proceedings held in conformity with the UCI ADR, it would accept all the statements and evidence adduced by the Parties, precisely with a view to assessing the case in the best and most fair manner possible.

- 4.11 The Committee was advised by UCI's legal counsel, for various reasons, repeatedly and in relatively strong terms, that it should proceed strictly according to the UCI ADR and repeated concerns were indicated as to its impartiality and independence. At the same time, UCI's remarks that it was necessary to conduct the disciplinary proceedings according to the principles of fair trial appeared rather hypocritical. However, the Committee is convinced that a procedure that unambiguously accepts UCI's case or favours UCI in procedural terms cannot be considered a fair trial. It is more than obvious that such a procedure would have little in common with a fair trial and such a process would thus have to be rather regarded a caricature of fair trial. This is the more so if we analyse the UCI ADR. The Committee considers that these rules are not entirely suitable for proceedings held in the case at hand. The said rules suffer from excessively short deadlines for rendering the decision, entirely absent basic procedures, unilateral preference for UCI's procedural position (although it is not a party to the proceedings) and further serious shortcomings of the rules that the Committee was forced to follow. In no case could such rules stand when confronted with rules according to which a fair procedure can actually be ensured. It is outrageous to adopt rules according to which a fair decision cannot be made and then criticise the members of the Committee who are forced to follow them in hearing the case. However, the Committee understands the specificity of sports rules and, fortunately, is familiar with the standards of fair trial, and therefore followed them in its decision-making.

Furthermore, the Committee would also like to make a few marginal comments on the possible bias of its members implied by the UCI. The individual members of the Committee had to deal with a series of shortcomings in the UCI ADR. For this reason, in a number of aspects, they proceeded according to the arbitration standards applied in international commercial arbitration. The documents followed by the Committee also included the IBA Guidelines on Conflict of Interest in International Arbitration. Not a single member of the Committee has been or is in a conflict of interests that would exclude his participation in hearing the case according to the standards embodied in the cited document. All three members of the Committee are absolutely impartial and independent. Doubts raised by the UCI without any proof can thus be considered entirely unjustified and unfounded.

Nonetheless, the Committee would like to emphasise that, in spite of the UCI's statements which it considers inappropriate, its members made their decision impartially and independently; moreover, being aware that the UCI was not a party to the dispute, they took no offence from the UCI's communication. In every stage of its decision-making, the Committee honoured the principles of fair trial and provided both parties with an

appropriate space for adducing their respective evidence and presenting their respective positions.

5. Evidence Taken

- 5.1 The Committee took as evidence all the documents available and presented to the Committee as well as further means, specifically:
- the file submitted to the CCF by the UCI (via <https://webshare.uci.ch>) to initiate disciplinary proceedings against the Athlete, containing the following documents: (i) the valid and effective version of the UCI ADR; (ii) correspondence between the Athlete and the UCI in the given case; (iii) documentation of the Athlete's biological passport (ABP); (iv) explanation provided to the UCI by the Athlete and the related expert reports; and (v) documents related to the proposal for accepting a sanction, presented to the Athlete by the UCI (hereinafter the "UCI File");
 - written expert opinions included in the UCI File:
 - report of the UCI Expert Panel (dated 14 June 2012);
 - final statement of the UCI Expert Panel dated 12 May 2014;
 - report of Dr. De Boer of 25 August 2013 presented by the Athlete;
 - report of Dr. Locatelli of 24 June 2014 presented by the Athlete;
 - report of Dr. Hampton (undated – dated June 2014 In the UCI File) presented by the Athlete;
 - written expert opinions presented during the proceedings before the Arbitration Committee:
 - response of the UCI Expert Panel to Dr. Hampton's report of 5 September 2014, presented by the UCI with its opinion of 10 September 2014;
 - additional report of Dr. Hampton (undated) presented by the Athlete together with his statement on the case of 10 September 2014;
 - evaluation by the Expert Panel of expert evidence adduced by the Athlete of 16 September 2014, presented by the UCI to the Committee on 17 September 2014.
 - written statements of the Athlete of 5 September 2014, 9 September 2014 and 10 September 2014 and the Athlete's final motion of 17 September 2014;
 - written statement of the CCF of 10 September 2014, referring to the materials and statements presented by the UCI;

- written statements of the UCI of 10 September 2014 and 17 September 2014;
- further documentary evidence adduced by the Athlete during the proceedings:
 - charts illustrating a general example of the ABP of an athlete who has not violated an anti-doping rule – Annex 1 to the Athlete's statement of 5 September 2014;
 - charts illustrating a general example of the ABP of an athlete who has violated an anti-doping rule – Annex 2 to the Athlete's statement of 5 September 2014;
 - two-part document "Executive summary: Mr. Kreuziger thyroid disease" by Dr. Cristobal Belda Iniesta, Director of the National School of Health, Madrid, Spain – Annexes 10 and 11 to the Athlete's statement of 5 September 2014;
 - document "Effects of thyroid hormone on A1C and glycated albumin levels in nondiabetic subjects with overt hypothyroidism" by Dr. Kim et al. – presented in the English original as Annex 12 to the Athlete's statement of 5 September 2014 and its translation as Annex 3 to the Athlete's final motion of 17 September 2014;
 - document "Recommendation of the Czech Haematology Society under the Czech Medical Association of J.E.Purkyne on the stability and transport of primary samples of biological material to a haematology laboratory" presented as Annex 1 to the Athlete's final motion of 17 September 2014;
 - medical report by MUDr. Pavel Fiala of 16 September 2014 presented as Annex 2 to the Athlete's final motion of 17 September 2014.

5.2 The following expert reports were presented to the Committee in the case at hand:

- report of the UCI Expert Panel (the original dated 14 June 2012), where it is stated that the Athlete's ABP contains abnormalities, especially raised haemoglobin level during the 2012 Giro d'Italia and raised reticulocyte level in the period from March to August 2011 and from April 2012 to the end of the 2012 Giro d'Italia, and concluded that it is highly likely that these abnormalities are a result of blood doping, e.g. blood transfusions;
- report by Dr. Douwe De Boer of 25 August 2013 presented by the Athlete, where it is stated that the abnormalities in the Athlete's ABP could be the result of hypothyroidism with which the Athlete was diagnosed and the subsequent attempts at treating the disease by administering doses of L-thyroxin, and further concluded that the fact that small differences in the functioning of the thyroid could cause major differences in the values of erythrocytes explains the deviations in the Athlete's haemoglobin and reticulocyte levels, e.g. in 2012, compared to the previous years;

- report by Dr. Locatelli of 24 June 2014 presented by the Athlete, where it is stated that the changes observed (alleged abnormalities) in the haematology parameters of the Athlete's ABP are not related to doping practices, but rather that these changes are a manifestation of biological deviations or special situations when the examinations used to determine the Athlete's ABP were carried out;
- final statement of the UCI Expert Panel of 12 May 2014, where the conclusions of Dr. de Boer's expert report are rejected as not having any basis in the available scientific literature and not explaining the increase in the Athlete's haemoglobin levels during the 2012 Giro d'Italia, which the Expert Panel considers one of the main abnormalities in the Athlete's ABP. In the said statement, the UCI Expert Panel also rejects the conclusions of Dr. Locatelli's expert report on the grounds that they are not supported by available scientific data and notes in conclusion that the substantiation presented by the Athlete does not explain the abnormalities in the Athlete's ABP, and the Expert Panel thus maintains its opinion that it is highly likely that the Athlete used a prohibited substance or a prohibited method;
- report by Dr. Hampton presented by the Athlete, where the author referred to the Corsetti paper² and stated, in conclusion, that it was not possible to be unambiguously satisfied that the athlete's increase in haemoglobin in the ABP was due to the use of a prohibited method or a prohibited substance as there was generally considerable variation among athletes in similar indicators, related to various factors, such as primarily the race strategy, exertion, etc. Furthermore, he stated that the increase in the reticulocyte count considered an abnormality in the Athlete's ABP was accompanied by simultaneous fall in haemoglobin, which is not usual in case of use of a prohibited substance or method;
- response of the UCI Expert Panel to Dr. Hampton's report of 5 September 2014, presented by the UCI, where the conclusions made in Dr. Hampton's report are rejected and, in view of the Athlete's raised haemoglobin levels, it is stated that the actual trend of increasing haemoglobin levels during a race, rather than the measured values themselves, is what is problematic, as the Athlete's haemoglobin values had dropped in a majority of other races, as could be expected. As regards the elevated reticulocyte levels in the Athlete's ABP, the Expert Panel judged Dr. Hampton's arguments as misleading and maintained that it was highly likely that this was a result of use of a prohibited substance or a prohibited method by the Athlete;

² Roberto Corsetti, Giovanni Lobardi, Patrizia Lanteri, Alessandra Columbini, Rosella Graziani and Giuseppe Banfi. Haematological and iron metabolism parameters in professional cyclists during the Giro d'Italia 3-weeks stage race. Liquidas Cannondale Medical Board, Sesto al Reghena, Italy.

- Dr. Hampton's additional report (undated) presented by the Athlete on 10 September 2014, in which Dr. Hampton emphasised that the baseline values had never been exceeded in the Athlete's ABP, stated that he was uncertain whether the Expert Panel had reflected in its opinions the Athlete's overt hypothyroidism and increased doses of L-thyroxin, and further stated that there was clear evidence (cf., e.g., Kim et al.) that the treatment of overt hypothyroidism by corresponding doses of thyroxin could result in a substantial elevation of the reticulocyte value without a substantial elevation of the haemoglobin value, i.e. corresponding to the Athlete's blood count apparent in 2011 and 2012; as regards the raised haemoglobin level during the 2012 Giro d'Italia, he stated with reference to the Corsetti paper that although it generally applied that haemoglobin levels dropped during a race, the individual variations were significant and the haemoglobin levels increased in certain riders during a race, which was confirmed, in his opinion, by the Corsetti paper, while in its evaluation, the Expert Panel had merely taken account of the general trend, which however, did not admit the demonstrably existing individual deviations, and further stated that the raised haemoglobin levels had already been detected in the Athlete during the 2011 Tour de France, which indicated that the Athlete's haemoglobin values did not always fall during a race; furthermore, Dr. Hampton stated that the treatment of overt hypothyroidism had also affected the Athlete's haemoglobin level;
- evaluation by the Expert Panel of expert evidence adduced by the Athlete of 16 September 2014, presented by the UCI to the Committee on 17 September 2014, where the Expert Panel rejects Dr. Hampton's assertions that the probative value of the Athlete's samples could have been reduced as a result of their unsuitable storage, and further denies that the treatment of overt hypothyroidism by thyroxin could result in abnormalities in the Athlete's ABP, while questioning that the report by Dr. Kim et al. could actually be applied to the Athlete's case, and states that the Corsetti paper was taken into due account in the preparation of the Expert Panel's statement.

5.3 The following witness examinations were made by telephone during the oral hearing on 11 September 2014:

- witness examination by telephone of a member of the Expert Panel, Prof. Y.O. Schumacher;
- witness examination by telephone of a member of the Expert Panel, Dr. G. d'Onofrio;
- witness examination by telephone of Dr. K.K. Hampton.

6. Evaluation of Evidence

6.1 The Athlete adduced extensive evidence in the proceedings before the Committee. As noted above, the Athlete and the CCF were in the position of parties to the proceedings. The International Cycling Union (UCI), to which the UCI ADR guaranteed certain procedural rights in the proceedings, was not actually a party to the proceedings and it therefore did not have the right to propose the examination of witnesses or taking of evidence in the proceedings. Given that the CCF suggested in its statement of

10 September 2014 presented to the Committee that the Committee make a decision in the proceedings based on materials and underlying documents supplied by the International Cycling Union (UCI), the Committee decided that it would accept UCI's statements including annexes and supplements to expert reports as if they were presented by the CCF.

- 6.2 It is clear that expert reports with contradictory conclusions were presented to the Committee in the case at hand. The expert reports of the Expert Panel maintained that it was highly likely that the Athlete had used a prohibited substance or a prohibited method. The expert reports by Dr. Locatelli, Dr. de Boer and Dr. Hampton, presented by the Athlete, provided various explanations of the abnormalities in the Athlete's ABP. Moreover, the experts contested not only the conclusions of one another's expert reports in the present case, but Dr. Hampton also questioned the references used by the Expert Panel in the preparation of its report of 14 June 2013. Differences were also in interpretation of the conclusions of the expert studies to which the individual experts referred in their expert reports; cf., e.g., the Corsetti paper.

However, in that case, as indicated by the CAS case-law, the Committee had to deal with the situation in line with the Roman-law principle of *"iudex peritus peritorum"* ("the judge is the expert of the experts") and, in view of the rules concerning the burden of proof, deal especially with the question of whether the experts' evaluation followed from the basic facts of the case and whether the experts' conclusions following from the basic facts of the case were comparably logical and reasonable.

- 6.3 Under the present circumstances, the Committee would therefore normally proceed by commissioning a review expert report from an impartial expert unprejudiced by the course of the dispute between the UCI and the Athlete to date, where the expert would evaluate the validity of the conclusions reached in the reports presented by the Expert Panel and in the expert reports of Dr. de Boer, Dr. Locatelli and Dr. Hampton, presented by the Athlete. However, in view of the one-month deadline stipulated by the UCI ADR for completing the proceedings, the Committee was forced to conclude that there was insufficient time to proceed in this way. The Committee thus focused on thorough assessment of the existing expert reports and the related additional reports and statements made by the experts who already had been acquainted with the case.
- 6.4 The Committee took into account that none of the mentioned indicators in the Athlete's ABP, i.e. haemoglobin, reticulocytes and the OFF-Score indicator, were beyond the baseline values specified in the Athlete's ABP in this case and it therefore was not possible, like in the previous cases of doping established with the use of the ABP, to follow from the assumption used in those previous cases that the likelihood of violation of an anti-doping rule by the athlete was 99.9 %. In this case, the Athlete's haemoglobin and reticulocyte indicators did not even come close to the baseline values set in the Athlete's ABP. In case of the biggest drop and lowest value of the OFF-Score indicator, the baseline value was not even set in the Athlete's ABP— according to explanation provided by Dr. d'Onofrio

during the oral hearing in the case, this was because samples taken during a race in respect of haemoglobin values are not taken into account in the statistical calculation, because the lower limit could be breached due to the decreasing trend.

The Committee states that since the mentioned indicators in the Athlete's ABP, i.e. haemoglobin, reticulocytes and OFF-Score, did not go beyond the baseline values in the present case, the Athlete's ABP as such cannot be considered a proof that the Athlete used a prohibited substance or a prohibited method (violated an anti-doping rule), as would be the case if a baseline value in the Athlete's ABP was exceeded. Indeed, in the latter case, it would be possible to use the aforesaid assumption that the likelihood of violation of an anti-doping rule by the athlete is 99.9 % and thus so high that this fact can be considered proven to the Committee's "comfortable satisfaction".

- 6.5 Under these circumstances, the Committee reached the conclusion that evaluation of the likelihood that the abnormalities in the Athlete's ABP (specifically the raised haemoglobin level during the 2012 Giro d'Italia and the raised reticulocyte level in the period from March to August 2011 and from April 2012 to the end of the 2012 Giro d'Italia) had been caused by use of a prohibited substance or a prohibited method (violation of an anti-doping rule) by the Athlete could not be based only on the Athlete's ABP, which in itself did not prove this fact, but it was necessary to focus on the presented expert reports and experts' statements in the case at hand.
- 6.6 The Expert Panel repeatedly stated that the use of a prohibited substance or a prohibited method (violation of an anti-doping rule) by the Athlete was highly likely and rejected explanations of possible reasons for the abnormalities in the Athlete's ABP presented gradually by the Athlete in expert reports by Dr. de Boer, Dr. Locatelli and Dr. Hampton.
- 6.7 As regards the first abnormality in the Athlete's ABP, i.e. the raised haemoglobin level during the 2012 Giro d'Italia, the Expert Panel stated on page 2 of its statement of 5 September 2014, *inter alia*: *"In the present case, it is, however, not a question of magnitude of the changes, but of direction, i.e. athletes in all studies show a consistent decrease in haemoglobin after physical effort of sufficient duration and intensity due to plasma volume expansion. However, the athlete in question displays an increase, which is against these physiological principles. Moreover, during other stage races, the athlete actually shows the expected decrease (see for example Tour de France 2009, Vuelta 2009, Tour de France 2010, Giro 2011)..."*

In his additional report presented to the Committee on 10 September 2014, Dr. Hampton rejects this contention made by the Expert Panel, refers to the Corsetti paper and states

(translated from the Czech translation – trans.) "...Although it is true that there was a reduction in the median value of haemoglobin from day -1 to day 12 and again as of day 22, the chart indicates that the same count was not found in all riders and a further decrease in the haemoglobin value occurred in some riders on day 22. There was a minor increase in certain riders compared to day 12 and a marked increase in certain riders compared to day 12, back to the values that were similar to the values measured at the beginning of the race. CADF (the Expert Panel) builds its case exclusively on what happens to median values or averages; there are marked differences in the population, which in my opinion CADF (the Expert Panel) did not take into consideration...". He then states: "... Further, it is stated that the count in case of Giro differs from the other results for Grand Tours, but during the 2011 Tour de France the value of Hb on day -1 was 14.7 g/dl and on days 15 and 20 it was 15g/dl, which clearly shows that the haemoglobin values do not always drop in this rider...".

The Committee considered proven the possible individual deviations from the general trend of decreasing haemoglobin for riders during long stage races, where the presented charts (e.g. the Corsetti paper) showed cases where the haemoglobin levels rose in some riders during the second half of a stage race. The Committee further notes that an increase in the haemoglobin levels already occurred in the Athlete's ABP during the 2011 Tour de France. In view of these facts, the Committee reached the conclusion that it had not been proven to the Committee's comfortable satisfaction that the elevated haemoglobin level during the 2012 Giro d'Italia in the Athlete's ABP had been a consequence of use of a prohibited substance or prohibited method (violation of an anti-doping rule) by the Athlete.

- 6.8 As regards the second abnormality in the Athlete's ABP, i.e. the raised reticulocyte level in the period from March to August 2011 and from April 2012 to the end of the 2012 Giro d'Italia, which the Expert Panel referred to in its reports, the Athlete repeatedly claimed during the proceedings before the Committee that there was a relationship with the Athlete's overt hypothyroidism and increased doses of L-thyroxin used by the Athlete for treatment. In his additional report, Dr. Hampton stated *(translated from the Czech translation – trans.): "... there is clear evidence, e.g. Kim et al., that the treatment of overt hypothyroidism by thyroxin in corresponding doses can result in a substantial increase in the value of reticulocytes without a marked increase in the haemoglobin level, i.e. the Athlete's blood count apparent during 2011/2012...".* In its evaluation of expert evidence adduced by the Athlete of 16 September 2014, the Expert Panel states that the conclusions of Kim et al. should be completely disregarded in the Athlete's case, especially because the said study did not examine athletes, but rather focused on patients (especially women) who survived cancer and suffered from overt hypothyroidism due to the treatment they had undergone.

The Committee states that assessment whether the conclusions of a specific scientific study (in this case, the study by Kim et al.) can be applied to the Athlete's case, where some experts claim that it can while others that it cannot, should again be preferably the subject of a review expert report drawn up by an expert in the given area.

The Committee considered it proven in the proceedings that the Athlete's, originally subclinical, hypothyroidism had developed into overt hypothyroidism and that the Athlete had been administered increased doses of L-thyroxin, specifically 75 milligrams and later 100 milligrams. The witness examination of Dr. d'Onofrio performed during the oral hearing on 11 September 2014 indicated that, in the preparation of its statements, the Expert Panel had assumed that the Athlete was suffering from subclinical hypothyroidism, i.e. hypothyroidism not manifested in the Athlete's organism. The Expert Panel claimed, in particular, that the doses of L-thyroxin administered to the Athlete had not influenced the Athlete's reticulocyte and haemoglobin levels; nonetheless, the Committee considers that the Expert Panel failed to take into account that the Athlete's hypothyroidism had gradually developed into its overt form.

Given that the Athlete had adduced specific evidence that overt hypothyroidism can influence the patient's reticulocyte level, the Committee reached the conclusion that it could not be ruled out that the abnormality in the Athlete's ABP consisting in the elevated reticulocyte level in the period from March to August 2011 and from April 2012 to the end of the 2012 Giro d'Italia could be related to the Athlete's overt hypothyroidism and increased doses of L-thyroxin used by the Athlete, and that the fact that this abnormality in the Athlete's ABP had been caused by use of a prohibited substance or a prohibited method (violation of an anti-doping rule) by the Athlete had not been proven to the Committee's comfortable satisfaction.

- 6.9 In the proceedings before the Committee, the Athlete repeatedly objected that a majority of the samples taken from the Athlete over the years that had served as a basis for compilation of the Athlete's ABP (specifically, he stated that this applied to 49 of the total number of 62 samples) had been treated at variance with the WADA regulations, which could have damaged these samples, and they should therefore not be taken into consideration. The Athlete contended that, in respect of the specific samples, in particular, (i) a data logger had not been used; (ii) the set temperature had not been complied with during the transport and acceptance of the samples; and (iii) the temperature during the transport and acceptance of the samples was unknown.

In respect of the above, the Committee notes that the Athlete had in no way proven that the specific circumstances of the transport and storage of the specific samples had affected the probative value of the samples, or that the values obtained by the analysis of these samples had been in any way distorted.

7. Legal Basis and Assessment

- 7.1 In conformity with the above, the Committee assessed the case according to the Anti-Doping Rules of the International Cycling Union (UCI ADR). The Committee also proceeded in conformity with the established case-law of the Court of Arbitration for Sport in Lausanne (CAS).
- 7.2 The Committee dealt especially with the question of whether the Athlete had violated the UCI ADR, in this case used a prohibited method or prohibited substance pursuant to Art. 21.2 UCI ADR. This assessment appeared to turn on the question of whether the UCI and CCF had proven the violation of the UCI ADR by the Athlete, i.e. whether the UCI and CCF had borne the burden of proof in respect of this assertion.

Art. 22 UCI ADR stipulates: The UCI and its National Federations shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether the UCI or its National Federation 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.

For reasons described above, the Committee reached, through a majority of its members, the conclusion that neither the CCF (as a party to the proceedings before the Committee) nor the UCI (to whose underlying documents and statements the CCF referred) had borne the burden of proof as to the assertion that the Athlete had violated an anti-doping rule, i.e. that the Athlete had used a prohibited method or prohibited substance in this case in the sense of Art. 21.2 UCI ADR.

- 7.3 In consideration of all the reasons specified above, the Committee made the decision specified in the operative part of this Award.

8. Costs.

- 8.1 Article 274 UCI ADR stipulates that in case (*in the absence – trans.*) of a specifically justified decision, each party shall bear the costs which it incurs. Given that the Committee had reached the decision that the Athlete had not violated an anti-doping rule by a majority of its members, the Committee decided that each of the Parties would bear the costs it incurred.

Advice:

In accordance with Art. 330 UCI ADR, an appeal against this decision may be filed with the CAS in Lausanne by the Athlete, the CCF, the UCI, the Czech Anti-Doping Committee and the World Anti-Doping Agency (WADA).

In addition to the Parties, the Award shall be delivered to the International Cycling Union (UCI), which shall further deliver it, in conformity with Art. 277 UCI ADR, to the Czech Anti-Doping Committee and the World Anti-Doping Agency (WADA).

According to Art. 333 UCI ADR, the Athlete and the CCF must submit the statement of appeal within one month of delivery of this Award.

According to Art. 334 UCI ADR, the UCI, the Czech Anti-Doping Committee and the World Anti-Doping Agency (WADA) must submit the statement of appeal within one month of delivery of the full case file by the COC. Should the appellant not request the complete case file within fifteen days of receiving this Award as specified in Article 277 UCI ADR, the time limit for appeals shall be one month from the reception of this Award.

In Prague, on 22 September 2014

Signature illegible

Mgr. Martin Procházka

Vice-Chairman of the Committee

Round stamp:

Czech Olympic Committee

Arbitration Committee

Signature illegible

Vladimír Balaš

Member of the Committee

Signature illegible

Mgr. Jan Morávek

Member of the Committee

TLUMOČNICKÁ DOLOŽKA

Jako tlumočnick jazyka anglického jmenovaný rozhodnutím Krajského soudu v Praze ze dne 11. 12. 2008, č.j. Spr. 4104/2008, stvrzuji, že překlad souhlasí doslovně s textem připojené listiny sestávající z listu/listů.

V překladu jsem provedla tyto opravy:

Tlumočnický úkon je zapsán pod poř. čís.: tlumočnického deníku.

Certificate of Interpreter

I, the undersigned interpreter of the English language, appointed by Resolution of the Regional Court in Prague Ref. No.: Spr. 4104/2008 of December 11, 2008, hereby certify that the translation conforms to the attached document consisting of 10 sheet/sheets.

I made the following corrections in the translation:

The translation is entered in my Journal under number: 3773/SGG/11a

Otisk kulaté pečetě/Round Stamp



Podpis tlumočnicka/Signature of the interpreter

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