CAS 2016/A/4458 Lisa Christina Nemec v. Croatian Institute for Toxicology and Anti-Doping (CITA) & International Association of Athletics Federations (IAAF)

ARBITRAL AWARD

delivered by

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President:	Mr Ulrich Haas, Professor of law in Zurich, Switzerland
Arbitrators:	Mr Jeffrey G. Benz, attorney-at-law in Los Angeles, USA and London, UK
	Mr Markus Manninen, attorney-at-law in Helsinki, Finland
Ad hoc Clerk:	Mr Karsten Hofmann, attorney-at-law in Bonn, Germany

in the arbitration between

LISA CHRISTINA NEMEC, Croatia
represented by Mr Paul J. Greene of Global Sports Advocates, LLC in Portland, Maine, USA & Mr Tomislav Grahovac and Mr Lovro Badzim of Grahovac, Horvat, Zaper in Zagreb, Croatia

-Appellant-

and

CROATIAN INSTITUTE FOR TOXICOLOGY AND ANTI-DOPING (CITA), Croatia
represented by Mr Marko Gasevic, attorney-at-law in Zagreb, Croatia

- First Respondent-

and

INTERNATIONAL ASSOCIATION OF ATHLETICS FEDERATIONS (IAAF), Monaco
represented by Ms Elizabeth Riley of Bird & Bird LLP in London, United Kingdom

- Second Respondent-

I. THE PARTIES

1. Ms Lisa Christina Nemec (the "Appellant" or "Athlete"), born in 1984, is a world-class, long-distance runner of Croatian nationality. She has competed at the elite level – *inter alia* – at the 2012 Olympic marathon. She is holding several national records and met the standard for the 2016 Olympic Games by running 2:27:57 at the Berlin Marathon on 27 September 2015. The Appellant is a member of the athletic club Svetice ("AC Svetice") and an International-Level Athlete within the meaning of the Croatian Institute for Toxicology and Anti-Doping ("CITA") Anti-Doping Rules ("CITA ADR") and the IAAF Competition Rules ("IAAF Rules").

2. The CITA (the "First Respondent" or "CITA") has been established by the Croatian Parliament with the objective of acting as the independent National Anti-Doping Organization for Croatia. The former Croatian Anti-Doping Agency ("CroADA") was adjoined to the Croatian Institute for Toxicology in 2010 and CITA assumed CroADA's activities. CITA consists of four departments, three toxicological departments and one department for anti-doping, and has its seat and headquarters in Zagreb, Croatia.

3. The International Association of Athletics Federations ("Second Respondent" or "IAAF") is the international governing body for the sport of athletics recognized as such by the International Olympic Committee. It has its seat and headquarters in Monaco.

II. FACTUAL BACKGROUND

4. Below is a brief summary of the main facts and allegations based on the Parties' written submissions, the CAS file and the content of the hearing that took place in Lausanne, Switzerland on 2 and 3 February 2017. Additional facts and allegations found in the Parties' submissions, pleadings and evidence may be set out, where relevant, in other parts of this award.

5. On 6 October 2015, the Appellant underwent an out-of-competition (the "OoC") doping test in her apartment in Zagreb, Croatia. The doping control officer in charge was Ms Snjezana Vusic-Kodvanj ("DCO"). She was supposed to be assisted by Ms Nikolina Otrzan ("Assistant DCO"). However, the Assistant DCO did not show up in the morning of 6 October 2015 at the sample collection location. The Parties are in dispute with respect to the reasons why the Assistant DCO did not take part in the sample collection procedure. Furthermore, the Parties are in dispute with respect to the circumstances surrounding the sample collection procedure.

6. On 28 October 2015, the WADA-accredited laboratory in Seibersdorf in Austria (Laboratory"), which conducted the analysis of the Appellant's urine samples, notified CITA of an adverse analytical finding ("AAF") for recombinant erythropoietin ("rEPO").

7. On 29 October 2015, CITA informed the Appellant of the AAF and invited her to submit a written explanation by 9 November 2015. In addition, the Appellant was provisionally suspended.

8. On 30 October 2015, the Appellant requested documents and information related to the doping test from CITA. Furthermore, the Appellant requested a meeting with the head of the CITA Department for Anti-Doping, Dr Zoran Manojlovic. Such meeting took place on 2 November 2015 – *inter alia* – in the presence of the Appellant's husband, Mr Dario Nemec.

9. On 9 November 2015, the Appellant submitted a written statement in which she provided an explanation for the events. Therein, she denied any violation of anti-doping rules and declared that she never used banned substances. In addition, she requested the analysis of the B sample.

10. The opening of the B sample was performed on 23 November 2015 in the Laboratory. Eleven persons attended the opening of the B sample, among others the Appellant, her husband and her legal counsel, Mr Tomislav Grahovac.

11. On 30 November 2015, the Laboratory notified CITA that the B sample analysis confirmed the analysis of the A sample.

12. On 1 December 2015, CITA informed the Appellant of the results of the B sample analysis. Furthermore, CITA advised the Appellant that it would initiate disciplinary proceedings against her.

13. On 5 January 2016, the Appellant filed a criminal complaint in Croatia against an unknown perpetrator for abuse of office and authority. On 4 March 2016, following the completion of the investigation, the criminal complaint was closed on the grounds that there was no reasonable suspicion that a crime had been committed.

14. On 7 December 2015, the CITA Disciplinary Panel ("CITA DP") invited the Appellant to a hearing on 16 December 2015 at 4 pm.

15. On 14 December 2015, the Appellant's counsel, Mr Grahovac, requested to postpone the hearing in order to be able to examine the complete laboratory documentation of the A and B samples received only on 7 December 2015. The CITA DP partially granted the request and rescheduled the hearing for 5 January 2016 at 4 pm.

16. Following a request by the CITA DP, the DCO submitted a written statement describing – *inter alia* – the facts surrounding the taking of the sample on 6 October 2015.

17. On 5 January 2016, the hearing before the CITA DP took place. At the hearing the Appellant – *inter alia* – submitted a report of a polygraph test dated 4 January 2016. The

report stated that the Appellant did not administer any prohibited substance. Furthermore, the Appellant questioned at the hearing the validity of the DCO's license.

18. Following a request by the CITA DP, the latter was provided with a copy of the DCO's identification card. The CITA DP forwarded the identification card to the Appellant and invited her to submit any comments within three days. On 28 January 2016, the Appellant replied by requesting further information and documents regarding the DCO.

19. On 1 February 2016, the CITA DP rendered its decision ("CITA Decision"). The CITA Decision reads – *inter alia* – as follows:

> *"The Panel unanimously concluded that the athlete ... has breached Article 2.1 of the CITA Anti-Doping Rules ... The Panel unanimously considers that the athlete acted deliberately and that she did not prove the violation of the anti-doping rules to be unintentional. ... Therefore, the athlete ..., for her first violation of the anti-doping rules ... is determined ineligible for the period of 4 (four) years, starting from 29 October 2015 to 28 October 2019."*

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

20. On 18 February 2016, the Appellant filed a statement of appeal with the Court of Arbitration for Sport ("CAS") against the First Respondent with respect to the CITA Decision in accordance with Article R47 et seq. of the Code of Sports-related Arbitration (the "Code"). In her statement of appeal, the Appellant nominated Mr Jeffrey G. Benz as arbitrator.

21. By letter of 3 March 2016, the IAAF informed the CAS Court Office that it wished to participate as a Respondent in these proceedings in accordance with IAAF Rule 42.21.

22. By letter of 3 March 2016, the First Respondent nominated Mr Markus Manninen as arbitrator.

23. Following a letter by the CAS Court Office, the First Respondent, on 7 March 2016, informed the CAS that it agreed to the participation of the IAAF as a party to the arbitration. The Appellant, however, remained silent.

24. By letter of 21 March 2016, the CAS Court Office informed the Parties that the President of the CAS Appeals Arbitration Division had granted the IAAF's request in accordance with Article R41.4 of the Code. Consequently, the IAAF became a party to these proceedings.

25. By letter of 30 March 2016, the Appellant timely filed her Appeal Brief. The Appeal Brief contained – *inter alia* – the following requests:

> *"Therefore, it is critical that Ms. Nemec be permitted to cross-examine Ms. Vusic-Kodvanj, Ms. Otrzan and Mr. Jakopovic in-person during a hearing. It is also critical that Ms. Vusic-Kodvanj turn over her fingerprints and DNA to allow for testing of the batteries preserved by Ms. Nemec to prove that Ms. Vusic-Kodvanj's fingerprints and DNA are on them."*

26. By letter of 15 April 2016, the CAS Court Office informed the Parties, on behalf of the President of the CAS Appeals Arbitration Division, that the Panel had been constituted as follows: Prof. Ulrich Haas, President of the Panel; Mr Jeffrey G. Benz and Mr Markus Manninen, arbitrators. The Parties did not raise any objection to the constitution and composition of the Panel.

27. On 27 April 2016, the First Respondent filed its answer.

28. By letter of 2 May 2016, the CAS Court Office advised the Parties that Dr Karsten Hofmann had been appointed *ad hoc* Clerk in this matter. The Parties did not raise any objection to his appointment.

29. On 20 May 2016, the Second Respondent filed its answer.

30. By letter of 3 June 2016, on behalf of the Panel, the CAS Court Office advised the Parties that the Panel deems a hearing to be necessary and invited the Appellant to clarify issues regarding her "anticipated witness list" and specifically state her evidentiary requests both within five days.

31. By letter of 8 June 2016, the Appellant replied – *inter alia* – as follows:

> *"Preliminary, Ms. Nemec seeks admission of attached Exhibits RR to UU under R56 since the Panel has permitted this response from Ms. Nemec and such admission is justified on the basis of exceptional circumstances for the reasons detailed below.*
>
> ***1. Witnesses:*** *To clarify, yes Ms. Nemec is requesting leave to cross-examine Ms. Vusic-Kodvanj, Ms. Otrzan and Mr. Jakopovic.* [...]
>
> ***2. Evidentiary Requests:*** *Ms. Nemec seeks the following evidentiary requests pursuant to R44.3 and explains the relevancy of each (i.e.: what she intends to prove with each evidentiary request and why the request is material to the outcome of her case)*
>
> ***A. DCO fingerprints and DNA*** *– Ms. Nemec seeks an Order compelling the production of Ms. Snjezana Vusic-Kodvanj's fingerprints and DNA and the appointment of an independent expert to test the batteries held by Ms. Nemec for evidence of Ms. Snjezana Vusic-Kodvanj's fingerprints and DNA on the batteries.* [...]
>
> ***B. Phone records of the two DCOs*** *– Ms. Nemec seeks an Order compelling the production of Ms. Snjezana Vusic-Kodvanj's and Ms. Nikolina Otrzan's phone records from 6 October 2015.* [...]"

32. By letter of 15 June 2016, CITA objected to the admission of the Appellant's further exhibits. Instead, it agreed to the Appellant's request for cross-examination of the three witnesses. However, CITA requested that the witnesses be heard by phone or videoconference.

33. By letter of 17 June 2016, the IAAF objected to the Appellant's request to analyse the DNA and fingerprints on the batteries. However, the IAAF consented to the Appellant's request for document production in relation to the phone records of the DCO and the Assistant DCO.

34. By letter of 22 June 2016, the CAS Court Office advised the Parties as follows:

> *"On behalf of the Panel, who has considered the Appellant's evidentiary requests, as well as the Respondent's objections thereto, the parties are advised as follows:*
>
> 1. ***Fingerprints and DNA**: The Appellant's request that Ms. Snjezana Vusic-Kodvanj ("DCO 1") provide her fingerprints such that an independent expert may conduct an examination of the batteries in the possession of Ms. Nemec is granted. The Panel will endeavour to identify an independent expert in Switzerland who will coordinate the taking of such fingerprints in order to conduct the relevant examination. The Appellant shall bear the cost of any fingerprint analysis. More information will follow in this regard in due course. Separately, the Appellant's request that DCO 1 provide a DNA sample is denied for the time being.*
> 2. ***Phone Records**: The Appellant's request that the telephone records of DCO 1 and Ms. Nikolina Otrzan ("DCO 2") (collectively, the "DCOs") from 6 October 2015 be produced is granted. The First Respondent is directed to liaise with the DCOs to ensure the production of such phone records. The records should indicate all in-coming and out-going calls on that day, as well as the time of such calls and, if possible, the geographical location of the parties making such in-coming call. Such phone records should be certified and/or notarized as the actual telephone records of the DCOs. The First Respondent is ordered to produce such records **within seven (7) days**.*
>
> *The above directions are made in accordance with Article R44.3 of the Code of Sports-related Arbitration. Moreover, the Second Respondent is asked to assist the First Respondent in gathering such evidence set forth above (in so far it is able to)."*

35. By email of 25 July 2016, the First Respondent filed a letter – obviously misdated 22 June 2016 – together with exhibits relating to the Appellant's request for the production of the phone records.

36. On 1 August 2016, the Appellant submitted her comments with regard to the phone records. According to the Appellant, the First Respondent had not fully complied with the Panel's order. Consequently, she requested the Panel to order the production of further documents by the First Respondent.

37. By letter of 26 August 2016, the CAS Court Office invited the First Respondent to comment on the Appellant's objections dated 1 August 2016 within five days. The First Respondent submitted its comments on 30 August 2016.

38. By letter of 13 October 2016, the CAS Court Office advised the Parties that the Panel upon consideration with experts in the field of fingerprint and DNA technology decided to have the batteries tested for DNA, as opposed to fingerprints, because of a strong likelihood of the derogation of fingerprints over time. Therefore, the Appellant was directed to send the batteries to the tribunal-appointed expert Dr Vincent Castella, PD, MER in Lausanne, Switzerland in charge to conduct and oversee the testing of the batteries for DNA. With regard to the Appellant's request for further production of phone records, the Parties were informed that the Panel found that no further document production was warranted at this stage of the proceedings.

39. By letter of 23 November 2016, the CAS Court Office forwarded a report of the tribunal-appointed expert regarding the analysis of the batteries. According to the report, only extremely low or no detectable amounts of DNA could be found on the batteries and that, therefore, no DNA testing could be conducted.

40. On 25 January 2017, the CAS Court Office sent to the Parties an Order of Procedure. The latter was signed and returned to the CAS Court Office by the Appellant's counsel, the First Respondent's counsel and by the Second Respondent's counsel on 26 January 2017.

41. On 2 and 3 February 2017, a hearing was held at the CAS Court Office in Lausanne, Switzerland. In addition to the members of the Panel, Mr Karsten Hofmann participated as *ad hoc* Clerk and Mr Brent J. Nowicki assisted as Managing Counsel to the CAS.

42. The following persons attended the hearing:

i. for the Appellant: Ms Lisa Nemec (Appellant), Mr Paul Green (counsel), Mr Tomislav Grahovac (counsel), Mr Lovro Badzim (counsel), Ms Branka Segvic (interpreter).

ii. for the First Respondent: Mr Marko Gasevic (counsel), Ms Nikolina Jurjevic Zirdum (interpreter).

iii. for the Second Respondent: Ms Elizabeth Riley (counsel).

43. At the hearing, the Parties made submissions in support of their respective cases. The following witnesses and experts were heard on behalf of the Appellant:

i. Mr Dario Nemec: the Appellant's husband (in person);
ii. Mr Slavko Petrovic: the Appellant's coach (by video);
iii. Mr Zoran Kljajic: the President of the Appellant's club AC Svetice (by video);
iv. Mr Ivan Brlecic: the Appellant's doctor (by video); and
v. Ms Natasa Antic: pharmacist and researcher-analyst (in person).

44. The following witnesses and experts were heard on behalf of the First and the Second Respondent:

i. Ms Snjezana Vusic-Kodvanj: the DCO (in person);
ii. Ms Snjezana Karlo: Head of CITA's department for testing (in person);
iii. Mr Zoran Manojlovic: Head of CITA's anti-doping department (in person);
iv. Mr Kyle Barber: Intelligence and OoC Coordinator at the IAAF (by phone);
v. Mr Marko Jakopovic: internist-pulmonologist at the University Hospital Centre Zagreb, assistant professor at the School of Medicine in Zagreb and – *inter alia* – president of the Health and Anti-Doping Commission of the Croatian Athletics Federation, president of the Zagreb Athletics Association and vice president of the club AC Agram (by video);
vi. Mr Mladen Katalinic: head coach of the Croatian Athletics Federation and of the club AC Agram (by video); and
vii. Mr Günter Gmeiner: chemist and Director of the WADA-accredited laboratory in Seibersdorf, Austria (by video).

45. Due to the non-availability of the Assistant DCO, Ms Nikolina Otrzan, at the hearing (called as witness by the First Respondent), the Appellant waived her right to cross-examine her. The Parties agreed that the Assistant DCO's (short) witness statement of 18 April 2016 submitted as exhibit to the First Respondent's Answer of 27 April 2016 remains on file. Furthermore, the Appellant acknowledged that all of her evidentiary requests for document production and her requests in relation to the investigation of the batteries had been dealt with by the Panel to her satisfaction. With the consent of the Respondents, the Appellant submitted a new exhibit at the hearing. The exhibit is entitled "Doping Control Officer (DCO) Instructions: Chain of Custody Form" and has been admitted on file by the Panel.

46. At the closing of the hearing, the Parties confirmed that they had no objections in respect to their right to be heard and that they had been given the opportunity to fully present their cases.

IV. THE POSITIONS OF THE PARTIES

47. The following is a summary of the Parties' submissions and does not purport to be comprehensive. However, the Panel has thoroughly considered in its discussion and deliberation all of the evidence and arguments submitted by the Parties, even if no specific or detailed reference has been made to those arguments in the following outline of their positions and in the ensuing discussion on the merits.

A. THE APPELLANT: MS NEMEC

48. The Appellant submits, in essence, the following:

(a) The DCO sabotaged the Appellant's sample by injecting rEPO into the unsealed urine samples on 6 October 2015. The DCO told the Appellant that the specific gravity analysis device had run out of power and asked the Appellant to get new batteries. The Appellant walked into the bedroom of her apartment in order to search for a new set of batteries. In the meantime, the DCO remained alone with the Appellant's unsealed urine samples. The Appellant's husband (Mr. Dario Nemec), who was sitting on a sofa in the bedroom, saw the sample bottles standing unsealed on the kitchen table. However, he could not see the DCO.

(b) Only a couple of minutes after the DCO had left the Appellant's apartment, the DCO decided on her own motion that the sample should also be analysed for recombinant erythropoietin (rEPO). The testing for rEPO is not included in the standard menu for doping analysis, but must be requested (and paid for) separately. The fact that the DCO requested the rEPO-analysis is – according to the Appellant – another proof that there was a masterplan to sabotage the Appellant's samples.

(c) The Appellant had kept the batteries. When she was notified of the AAF she remembered that she had kept the batteries and stored them in a bag so that they could be tested for fingerprints and DNA of the DCO in order to proof her account of facts.

(d) The motive for the sabotage – according to the Appellant – is of a financial and sportive nature. Since 2014, the Appellant and her athletic club, AC Svetice, are facing a "crusade" from a number of persons in Croatian athletics. Among these persons trying to discredit and harm the Appellant and her club are Mr Mladen Katalinic (*inter alia*, head coach of AC Svetice's rival club, AC Agram) and Mr Marko Jakopovic (*inter alia*, vice president of AC Agram and president of the Zagreb Athletics Association ("ZAA")).

(e) The ZAA owed the amount of HRK 220,000 (about USD 30,000) to AC Svetice. This amount had been paid by the City of Zagreb to the ZAA under the condition that the latter would forward the amount to AC Svetice. The ZAA, however, kept the money. On 5 October 2015, the Appellant had been invited to meet with the mayor of Zagreb,

Mr Milan Bandic. During that meeting, the Appellant complained that the money dedicated by the City of Zagreb to her club had been retained by the ZAA. Mr Bandic was furious when he heard about this incident and ordered Mr Jakopovic to come to his office immediately. About twenty minutes later, Mr Jakopovic appeared at the mayor's office and Mr Bandic imposed a deadline to Mr Jakopovic to transfer the money to the Appellant's club by 2 pm of the same day.

(f) Mr Jakopovic felt humiliated by this incident. He had told the Appellant's husband and the Appellant's coach, Mr Slavko Petrovic, that the Appellant's complaint to the mayor had been disrespectful. Mr Jakopovic is a pulmonologist who works in a clinic and has access to rEPO. The Appellant is convinced that Mr Katalinic and Mr Jakopovic have orchestrated the sabotage of her urine samples on 6 October 2015 (i.e. one day after the incident in the mayor's office) to take revenge on her for the humiliation suffered. Furthermore, according to the Appellant, Mr Jakopovic and the rival club AC Agram benefitted greatly from the Appellant's AAF.

(g) Further proof of the sabotage theory is that – as is evidenced by the respective documentation packages – the concentration of rEPO in the Appellant's samples varied greatly. A much higher concentration of rEPO was detected in the B sample compared to the A sample. The analysis of the latter showed hardly any rEPO at all. If the Appellant had taken rEPO, it would have been metabolized in her body. Consequently, the concentrations of rEPO would have shown up much more consistently and evenly in the A and B sample. Thus, the concentrations found in the A and B sample are clear indication that sabotage occurred.

(h) Furthermore, the Appellant submits that she provided clean urine samples in the days before and after 6 October 2015. In addition, the data of her biological passport show normal blood levels. The use of aspirin, iron and vitamin C, as declared in the doping control form on 6 October 2015 (and similarly at other doping tests) was for simple medical reasons. The results of a polygraph test taken by the Appellant on 4 January 2016 corroborate that the Appellant is telling the truth and never injected rEPO.

(i) The DCO's conduct on 6 October 2015 violated the International Standard for Testing and Investigations ("ISTI") of the World Anti-Doping Agency ("WADA") and caused the Appellant's AAF. Initially, the DCO and the Assistant DCO should have performed the doping control jointly. The DCO advised the Appellant at the beginning that the Assistant DCO would join later because of difficulties to find parking. Then, however, the DCO started with the sample collection procedure and the Assistant DCO never showed up. This was the one and only doping test during the Appellant's career administered by only one doping control officer and the first time that the equipment did not work properly. The above are all departures from Article 7.0 of the ISTI and its Annex D outlining the standard required for the proper collection of a urine sample, the WADA Guidelines for urine sample collection and the WADA Guidelines for sample collection personnel.

(j) It is true that the Appellant did not make any comments with respect to the omissions and failures of the doping control procedure on the doping control form. This, however, cannot be held against her because the only reason for not doing so was that the Appellant had always been controlled by the DCO and that the Appellant wanted to avoid animosity in the future. The Appellant submits that she wanted to stay on good terms with the DCO, because the latter would most likely be the doping control officer for future doping controls conducted by CITA.

(k) The Appellant's case has to be considered in light of CAS 2014/A/3487 (Veronica Campell-Brown v. JAAA & IAAF). The Appellant has established a credible possibility that the AAF was caused by a serious departure from the ISTI. The Respondents – on the contrary – have failed to produce persuasive evidence for the Panel to be comfortably satisfied that the AAF was not, in fact, caused by a deviation from the applicable standards.

49. In light of the above, the Appellant submits the following prayers for relief in her Appeal Brief:

"(1) Declare the CITA's 1 February 2016 decision null and void and/or overturn it;

(2) Declare that Ms. Nemec did not commit an anti-doping rules violation;

(3) Reinstate Ms. Nemec and annul her four-year period of ineligibility that began on 29 October 2015 and ends on 28 October 2019;

(4) Award Ms. Nemec all of her costs associated with this appeal including legal fees and all other relief that this Panel deems to be just and equitable."

B. THE FIRST RESPONDENT: CITA

50. The First Respondent submits, in essence, the following:

(a) The Appellant has not established by any means that a departure from the ISTI caused her AAF. The doping control carried out by the DCO as well as the analysis in the Laboratory complied with the applicable standards. The Appellant tries to create a story around speculative and false arguments to make her case look similar to the one of Veronica Campell-Brown (CAS 2014/A/3487). Both cases, however, have nothing in common.

(b) The DCO is an experienced doping control officer since 2008. She did not manipulate the Appellant's sample. The DCO only used the equipment she brought with her and did not ask the Appellant to provide her with new batteries. By signing the doping control form without any comments, the Appellant waived her right to question the process pursuant to CAS 2003/A/493 and CAS 2012/A/2779. Moreover, the

Appellant never referred to the existence of batteries with the alleged DCO's fingerprints before the CITA DP. Nor did the Appellant make any reference to the batteries in the context of the Croatian criminal complaint. The issue with the batteries was raised for the first time on 14 March 2016, i.e. after the CITA Decision had been issued and even after submitting the Statement of Appeal to the CAS.

(c) The DCO and the Appellant were the only two persons present during the doping control procedure. The DCO did not see the Appellant's husband during the entire doping control process. The Assistant DCO did not show up at the Appellant's apartment because of medical reasons. She was sick in the night from 5 to 6 October 2015, which prevented her from coming to the Appellant's apartment. The DCO informed the Appellant that the Assistant DCO would not join them and that she would perform the sample taking procedure alone. The Appellant had responded to this with "OK". In any event, the ISTI do not provide that an OoC test must be performed by two persons.

(d) The Appellant's accusations against Mr Katalinic and Mr Jakopovic are completely unfounded. Mr Katalinic has no motive to sabotage the Appellant. Instead, it is in his interest as national head coach to bring as many Croatian athletes to the Olympic Games 2016 as possible. Mr Jakopovic does not hold any position within CITA that would allow him to influence the CITA doping control programme or to manipulate or otherwise direct any specific doping control. The two clinics he works for never carried out treatments with rEPO. This drug has never been purchased nor used in either of the two institutions. Again, the First Respondent finds it noteworthy that the Appellant raised these accusations for the first time in her Appeal Brief. Furthermore, contrary to what the Appellant submits, the two clubs, AC Svetice and AC Agram, are not fierce rivals.

(e) The First Respondent submits that the analytical data of the Laboratory does not support the Appellant's sabotage theory either. The different data with respect of the A and the B analysis is no indication or proof that spiking occurred. Instead, the differences detected are within the expected dispersion range when taking into account the phenomenon known as "error propagation". The Appellant's test results from doping samples taken prior or after 6 October 2015 are of no relevance in relation to the analysis of the sample taken on 6 October 2015.

(f) The First Respondent finds the Appellant's declaration on the doping control form of the day of the test to be consistent with the administration of rEPO. The Appellant declared to have taken Aspirin (acetylsalicylic acid), iron and vitamin C in the days before 6 October 2015. The combination of these substances is indicative for the use of rEPO. Iron is needed to maximize the effects of erythropoietin (EPO). Vitamin C is used to improve gastrointensial absorption and the use of acetylsalicylic acid helps to avoid the – through the intake of rEPO – increased dangers of thromboembolic events.

(g) Contrary to what the Appellant submits, it is not unusual for long-distance runners to be tested for EPO. WADA's Testing Guide for Erythropoiesis Stimulating Agents

explicitly highlights long distance athletics as a high-risk discipline in relation to the use of rEPO.

51. The First Respondent submits the following requests for relief:

> *"1. Declare the appeal filed by Lisa Christina Nemec against the decision issued by CITA on 1 February 2016 is dismissed.*
>
> *2. Declare the decision of CITA imposing a period of ineligibility of 4 (four) years, from October 29, 2015 to October 28, 2019 on Lisa Christina Nemec is confirmed.*
>
> *3. Award CITA all of its costs associated with this appeal including legal fees and all other relief that this Panel deems to be just and equitable."*

C. THE SECOND RESPONDENT: IAAF

52. The Second Respondent submits, in essence and in addition to the First Respondent, the following:

(a) The Laboratory established the presence of rEPO in the Appellant's A and B sample. Consequently, the Respondents have met their burden of proof with respect to the Appellant's anti-doping rule violation. The Appellant, on the contrary, has failed to meet her burden of establishing any departure from the WADA standards that could reasonably have caused the AAF. The case law on spiking claims, for instance CAS 2006/A/1067, demands for a rigorous analysis and assessment because of the danger of collusion. In the present case, there is no direct evidence of the alleged spiking. On the contrary, the Appellant's AAF is entirely consistent with the taking of rEPO based on the supporting evidence, namely the high performance-enhancing effect of rEPO in long-distance athletics, the Appellant's admittance of the use of certain supplements commonly associated with the use of rEPO and her Athlete Biological Passport profile.

(b) Between 26 August 2011 and 25 September 2015, eight samples have been collected for the Appellant's Athlete Biological Passport profile. The computer-based program flagged the Athlete's Biological Passport profile as suspicious with respect to samples taken in 2012 and 2013. Consequently, on 7 May 2015, the Athlete Biological Passport Unit recommended to the Second Respondent to test the Appellant for erythropoiesis stimulating agents, such as rEPO. The Second Respondent contacted the First Respondent to discuss and coordinate joint OoC testing for the Appellant. Both Respondents agreed to target the Appellant's "off-season" after the Berlin Marathon on 27 September 2015. The first of those coordinated tests was carried out on 6 October 2015. A direct urine test for rEPO is, contrary to the Appellant's assertion, commonly used, in particular as part of intelligence-led target testing.

(c) The doping control of 6 October 2015 was planned by the head of the CITA testing department, Ms Snjezana Karlo, on the morning of 5 October 2015, i.e. prior to the alleged events at the mayor's office that day. The additional analysis for rEPO was ordered by Ms Karlo.

(d) The DCO carried out the doping control in accordance with the applicable rules. At no stage did she ask the Appellant for any batteries. The Appellant retained control of her samples at all times of the sample process until the samples were sealed. The DCO had no motive to sabotage the Appellant. Furthermore, the DCO did not know and had never before heard of Mr Jakopovic. The latter has confirmed the DCO's statement. In line with CAS jurisprudence a "presumption of credibility" should apply in respect of the declarations of a doping control officer (CAS 2010/A/2220). The absence of the Assistant DCO does not constitute a breach of any rule. For OoC testing it is entirely commonplace for the testing session to be carried out by a single doping control officer.

(e) The explanations provided by the Appellant and her husband for not objecting to the doping control process during the doping control session or on the doping control form are not persuasive. On the contrary, the absence of any such observation of a departure from the applicable standards on the doping control form is proof that the session was conducted in conformity with the applicable standards. This is all the more true considering that the Appellant failed to mention those departures from the ISTI until 5 January 2016. The accusations against Mr Jakopovic were voiced by the Appellant for the first time in the Appeal Brief on 18 February 2016. Spiking urine samples with rEPO needs in-depth knowledge and experience in the technology of detection of rEPO. Furthermore, even if the DCO had such knowledge, she would have had only very limited time (two to three minutes) to realise the sabotage scheme.

(f) With regard to the Appellant's polygraph test, the Second Respondent strongly questions the reliability of such evidence. It is true that the CAS has decided that polygraph evidence is not inadmissible as a matter of law (CAS 2011/A/2384 & 2386). However, the CAS has not decided on the reliability of such evidence. The Second Respondent refers in this regard to the fact that the former athlete Ms Marion Jones famously passed a polygraph test and was later forced to admit that her statement was simply untrue.

53. In its Answer, the Second Respondent submits the following requests for relief:

> *"75. For the reasons set out above, the IAAF respectfully requests that the CAS Panel dismiss the Athlete's appeal and:*
>
> *75.1 confirm the Athlete's commission of an anti-doping rule violation under IAAF Rule 32.2(a) (presence of the prohibited substance rEPO in the urine sample collected from her on 6 October 2015);*

75.2 confirm the imposition of a period of ineligibility of four years pursuant to IAAF Rule 40.2(a)(i), such period to run from 29 October 2015 (the date of the Athlete's provisional suspension) to 28 October 2019;

75.3 further to IAAF Rule 42.25, order the Athlete to pay a contribution towards the costs that the IAAF has incurred in these proceedings; and

75.4 grant such other and further relief as the CAS Panel sees fit.

76. Regarding the Athlete's application for costs, the IAAF strongly objects to such an order. The IAAF had no direct involvement with the Athlete's sample collection, and it has acted diligently and in good faith throughout these proceedings. Furthermore, to award costs against the IAAF in these circumstances risks deterring the IAAF and other anti-doping organisations from policing and enforcing the rules vigorously for fear of an adverse costs order (which would be to the great detriment of the integrity of the sport)."

V. JURISDICTION

54. The jurisdiction of the CAS derives from Article R47 of the Code in connection with article 13.2.1 CITA ADR and IAAF Rule 42.3. Furthermore, reference to CAS jurisdiction is made also in para 8.5 of the CITA Decision.

55. Article R47 para 1 of the Code provides as follows:

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

56. Article 13.2.1 of the CITA ADR reads as follows:

"In cases arising from participation in an International Event or in cases involving International-Level Athletes, the decision may be appealed exclusively to CAS."

57. IAAF Rule 42.3 reads as follows:

"In cases arising from an International Competition or 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 at national level and shall be appealed exclusively to CAS in accordance with the provisions set out below."

58. Moreover, according to para 8.5 of the CITA Decision, the "*unsatisfied party has the right to appeal to CAS within 21 (twenty-one) days of receipt of the transcript of this decision*".

59. The Respondents did not object to the jurisdiction of the CAS. Furthermore, all Parties confirmed the jurisdiction of the CAS by signing the Order of Procedure dated 25 January 2017, and all parties participated in the proceedings fully.

60. It follows from all of the above that the CAS has jurisdiction to decide the present dispute.

61. Under Article R57 of the Code and in line with the consistent jurisprudence of the CAS, the Panel has full power to review the facts and the law. The Panel therefore dealt with the case *de novo*, evaluating all facts and legal issues involved in the dispute.

VI. ADMISSIBILITY

62. Article R49 of the Code provides as follows:

> *"In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document. When a procedure is initiated, a party may request the Division President or the President of the Panel, if a Panel has been already constituted, to terminate it if the statement of appeal is late. The Division President or the President of the Panel renders her/his decision after considering any submission made by the other parties."*

63. Article 13.6.1 CITA ADR provides that "[t]*he time to file an appeal to CAS shall be twenty-one days from the date of receipt of the decision by the appealing party.*" The same 21-day deadline was stated in para 8.5 of the CITA Decision ("*unsatisfied party has the right to appeal to CAS within 21 (twenty-one) days*").

64. In contrast, IAAF Rule 42.15 reads – *inter alia* – as follows:

> *"Unless stated otherwise in these Rules [...], the appellant shall have forty-five (45) days in which to file his statement of appeal with CAS, such period starting from the day after the date of receipt of the decision to be appealed [...]."*

65. The CITA Decision was issued on 1 February 2016. The Appellant's statement of appeal was filed on 18 February 2016, i.e. before the expiry of 21 days. It follows that, in any event, the appeal is admissible.

66. The appeal brief was sent to the CAS Court Office on 30 March 2016 and was, thus, submitted within the deadline agreed upon by the Parties, namely 1 April 2016, and was, therefore, filed in due time.

VII. APPLICABLE LAW

67. Article R58 of the Code provides as follows:

> *"The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to 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 that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision."*

68. This provision is in line with Article 187 para 1 of the Swiss Private International Law Act (PILA) which in its English translation states as follows: "*The arbitral tribunal shall rule according to the rules of law chosen by the parties or, in the absence of such choice, according to the law with which the action is most closely connected.*"

69. In accordance with its Articles 1.3 and 1.4, the CITA ADR apply to the Appellant as an International-Level Athlete and member of the CITA Registered Testing Pool ("RTP"). In addition, IAAF Rule 42.23 provides that "[i]*n all CAS appeals involving the IAAF, CAS and the CAS Panel shall be bound by the IAAF Constitution, Rules and Regulations (including the Anti-Doping Regulations)*".

70. Moreover, in accordance with IAAF Rule 42.24, CAS appeals involving the IAAF are governed (insofar as the IAAF regulations apply), subsidiarily, by Monegasque law.

71. Thus, the applicable law in this arbitration are the CITA ADR, IAAF regulations, in particular the IAAF Rules, and, subsidiarily, Monegasque law.

VIII. MERITS OF THE APPEAL

72. Considering all Parties' submissions and the testimonies of the witnesses and experts at the hearing, the main issues to be resolved by the Panel are:

A. Has an anti-doping rule violation (ADRV) been committed by the Appellant; and

B. (in case the first question is answered in the affirmative) what is the appropriate sanction?

A. Did the Appellant commit an ADRV?

(1) The Burden of Proof

73. According to Article 3.1 CITA ADR, CITA has the burden of establishing that an ADRV occurred. For these purposes, "[t]*he standard of proof shall be whether CITA has established an anti-doping rule violation to the comfortable satisfaction of the hearing panel bearing in mind the seriousness of the allegation that is made.*" The standard of proof in such cases is "*greater than a mere balance of probability but less than proof beyond a reasonable doubt.*"

74. However, the burden of proof is upon an athlete alleged to have committed an ADRV is set forth as: "*to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability*".

75. IAAF Rule 33.1 reads very similar: "[T]*he IAAF* [...] *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* [...] *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.*" IAAF Rule 33.2 adds as follows: "*Where these Anti-Doping Rules place the burden of proof upon the Athlete* [...] *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.*"

76. According to article 2.1.2 CITA ADR, sufficient proof of an ADRV under Article 2.1 CITA ADR "*is established by any of the following: presence of a Prohibited Substance or its Metabolites or Markers in the Athlete's A Sample* [...] *where the Athlete's B Sample is analyzed and the analysis of the Athlete's B Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the Athlete's A Sample*". IAAF Rule 32.2(a)(ii) reads identically with regard to proof of an ADRV under IAAF Rule 32.1.

77. Article 3.2 CITA ADR and IAAF Rule 33.3 refer to the admissible evidence for establishing facts and presumptions. According thereto an ADRV may be established by "*any reliable means*". In addition, the respective articles provide:

- With regard to the results of sample analysis by WADA-accredited laboratories, article 3.2.2 CITA ADR [and almost identically IAAF Rule 33.3(b)] stipulates that laboratories "*are presumed to have conducted Sample analysis and custodial procedures in accordance with the International Standard for Laboratories. The Athlete* [...] *may rebut this presumption by establishing that a departure from the International Standard for Laboratories occurred which could reasonably have caused the Adverse Analytical Finding. If the Athlete* [...] *rebuts the preceding*

presumption by showing that a departure from the International Standard for Laboratories occurred which could reasonably have caused the Adverse Analytical Finding, then CITA [the IAAF, Member or other prosecuting authority] *shall have the burden to establish that such departure did not cause the Adverse Analytical Finding."*

- Article 3.2.3 CITA ADR adds that "[d]*epartures from any other International Standard or other anti-doping rule or policy set forth in the Code or these Anti-Doping Rules which did not cause an Adverse Analytical Finding or other anti-doping rule violation shall not invalidate such evidence or results"* and "*If the Athlete* [...] *establishes a departure from another International Standard or other anti-doping rule or policy which could reasonably have caused an anti-doping rule violation based on an Adverse Analytical Finding or other anti-doping rule violation, then CITA shall have the burden to establish that such departure did not cause the Adverse Analytical Finding or the factual basis for the anti-doping rule violation."*

- IAAF Rule 33.3(c) reads very similar: "*Departures from any other International Standard or other anti-doping rule or policy set out in these Anti-Doping Rules or the rules of an Anti-Doping Organisation which did not cause an Adverse Analytical Finding or other anti-doping rule violation shall not invalidate such evidence or results. If the Athlete* [...] *establishes a departure from another International Standard or other anti-doping rule or policy which could reasonably have caused an anti-doping rule violation based on an Adverse Analytical Finding or other anti-doping rule violation, then the IAAF, Member or other prosecuting authority shall have the burden of establishing that such departure did not cause the Adverse Analytical Finding or the factual basis for the anti-doping rule violation."*

(2) The application of the above standards to the sabotage scenario

78. The Appellant's urine samples collected on 6 October 2015 were analysed by the Laboratory and resulted in an AAF for rEPO for both the A and the B sample. rEPO is listed as a non-specified substance under category S2.1 of the WADA 2015 Prohibited List and, therefore, is a prohibited substance under the CITA ADR and the IAAF Rules.

79. The Appellant neither disputes the Laboratory's finding nor that did the Laboratory conduct the analysis in compliance with the applicable standards. Thus, the decision of this Panel must start from the presumption contained in Article 3.2.2 CITA ADR and IAAF Rule 33.3(b), whereby the analysis of the Appellant's urine samples and the custodial procedures applied have been conducted by the Laboratory in accordance with the applicable rules and regulations.

(3) The application of the above standards to the sample taking procedure

80. The Appellant submits, in particular, that her urine samples were sabotaged by the DCO during the sample collection procedure on 6 October 2015. The Respondents contest this allegation.

81. In order to follow the argumentation of the Appellant the Panel must be persuaded that it is more likely than not that the DCO spiked the samples, since in accordance with Article 3.1 CITA ADR and IAAF Rule 33.2, the applicable standard of proof is the "balance of probability". However, when assessing the evidence before it, the Panel is not convinced on a balance of probability that the events occurred as advanced by the Appellant. In coming to this conclusion the Panel, in particular, took the following issues into account:

(i) No direct evidence of spiking

82. The Panel notes first and foremost that no direct evidence was submitted that the DCO spiked the Appellant's urine samples.

(a) The Appellant testified at the hearing that on 6 October 2015 after urinating into a collection vessel in the bathroom, she went back to the kitchen with the DCO in order to proceed with the doping control procedure. Then the Appellant allegedly left the kitchen through an open sliding door directly into the adjacent bedroom in order to search for new batteries in a cabinet in the left hand corner of the bedroom. The alleged absence lasted for "*a couple of minutes*" ("*two or three minutes*") during which the Appellant had no chance to observe the DCO and/or the alleged unsealed samples on the table in the kitchen.

(b) The Appellant's husband testified at the hearing that he was sitting on the sofa in the bedroom when the Appellant came into the bedroom to search for the batteries. The Appellant's husband declared that from the sofa he could see – through the open sliding door – the unsealed samples on the kitchen table. Then he went to the Appellant to assist her to search for new batteries in the cabinet and, therefore, had no possibility to observe what happened to the samples.

(ii) The planning of the test on 5 October 2015

83. The Panel finds that the test conducted on the Appellant on 6 October 2015 was not the culminating point of a conspiracy or crusade against the Appellant, but resulted from normal anti-doping activity by CITA.

(a) The Appellant argues that the alleged spiking of her samples on 6 October 2015 is part of a "crusade" against her and her club AC Svetice. The mastermind behind all of this is – according to the Appellant – *inter alia* Mr Jakopovic who is amongst others president of the Zagreb Athletics Association (ZAA). On the morning of 5 October

2015, Mr Jakopovic was requested to appear in the office of the mayor of Zagreb, Mr Bandic, because the Appellant had revealed to the mayor that the ZAA had failed to make payments to AC Svetice. The Appellant submits that the mayor criticized Mr Jakopovic heavily for this behaviour and that the latter felt humiliated. According to the Appellant this incident triggered the sabotage, because Mr Jakopovic wanted to take revenge on her for the humiliation suffered.

(b) According to the testimonies at the hearing, the meeting at the mayor's office started with congratulating the Appellant for the sporting results achieved at the Berlin marathon. She received a bouquet of flowers. This was followed by a discussion between Mr Bandic and the Appellant about, *inter alia*, the financing of AC Svetice. Mr Jakopovic was called to the mayor's office. It appears from the various testimonies that this call occurred between 09:45 and 10:15 am. Mr Jakopovic joined the meeting some 15 minutes later. The meeting concluded according to the testimonies heard by the Panel at around 11:00 am.

(c) At around the same time the Appellant's doping control for 6 October 2015 was being planned. According to the testimonies heard by the Panel the planning occurred in the morning of 5 October 2015. This follows from the testimony of Ms Karlo, the Head of CITA's department for testing. It also follows from her testimony that Mr Jakopovic had no influence on the planning and that he could not have been aware that Ms Karlo had ordered the doping test to be performed on the Appellant. The DCO testified that she was contacted by Ms Karlo in the morning of 5 October 2015 whether she was available to conduct a test on the Appellant the next day. The DCO declared that she answered the question in the affirmative and that she went to the CITA headquarters between 2:00 and 3:00 pm to pick up the doping control equipment for the next day.

(d) In view of the chronology of the events the Panel considers it very unlikely that the planning of the doping control was triggered or influenced by the events in the mayor's office. The Panel is supported in its finding by the testimony of Ms Karlo who declared that she took the decision to test the Appellant on her own. She stated furthermore, that only she, the DCO and the Assistant DCO knew about the doping control. In addition, Ms Karlo testified that she has never discussed any planning of her testing with Mr Jakopovic.

(iii) The rEPO-analysis

84. It is uncontested that the analysis of a sample for rEPO is not part of the standard testing menu, but must be ordered separately. The Panel finds that the persons accused by the Appellant to be part of the alleged conspiracy against her could not have ordered or known that the sample of the Appellant would be tested for rEPO.

(a) According to the Appellant Mr Katalinic is another key figure in the alleged sabotage. It was him – according to the Appellant – who directed and orchestrated the spiking of her samples together with Mr Jakopovic. The latter is a doctor working in a hospital and, thus, has – according to the Appellant – access to rEPO. The Appellant submits that Mr Jakopovic and the DCO knew each other because both of them are members of the mayor's political party. Such political connections are – according to the Appellant – vital to get high-ranked positions or jobs in Zagreb. Mr Jakopovic instructed the DCO how to spike the Appellant's sample.

(b) The Panel finds that planning, staging and directing a sabotage of the Appellant's samples within less than 24 hours is a difficult and complex undertaking. This is even more so considering that several persons needed to be involved. The Appellant failed to prove such a conspiracy that would have to involve several persons, namely Mr Jakopovic, the DCO, the Assistant DCO, Ms Karlo and/or Mr Katalinic. No evidence was heard by the Panel that points towards suspect ties or relationships between the aforementioned persons. The DCO testified that she became aware of Mr Jakopovic only after the Appellant started judicial proceedings and that she did not have any contacts with him. The DCO testified that Mr Katalinic was known to her because he is a popular coach in Croatia. However, just like Mr Jakopovic she has not met Mr Katalinic in person. Mr Jakopovic testified at the hearing that he did not know the DCO. The only time he met her was at a competition in November 2016. Mr Jakopovic further testified that he did not have any contacts to the Assistant DCO and that he had no knowledge of the CITA testing program. The latter was confirmed by Ms Karlo. Mr Katalinic testified that he does not know the DCO or the Assistant DCO. Finally, the Parties went through the phone records of the DCO for the day of the sample collection. None of the outgoing calls or text messages of the DCO were to Mr Jakopovic or to Mr Katalinic. This, however, could have been expected if there was a conspiracy between these persons to spike the Appellant's samples. To sum up therefore, the Panel was unable to detect any relationship between the above named persons that could point to a conspiracy against the Appellant.

(c) It also followed from the testimony of Ms Karlo that it was her who decided that the sample would be tested for rEPO. She was the only person aware of this fact. Neither the DCO nor the Assistant DCO had any knowledge that the samples were being analysed for more than the standard menu. The request for the rEPO testing was filled into the chain of custody form by Ms Karlo only after the DCO had returned the Appellant's samples and the accompanying forms to the CITA headquarters. When Ms Karlo completed the forms and ordered the rEPO analysis, the DCO had already left.

(d) The Panel also notes that Ms Karlo did not randomly decide that the Appellant's sample be analysed for rEPO. Instead, Ms Karlo testified that there were good reasons to do so, because the Appellant was part of the RTP and because she had run the qualifying norm for the 2016 Summer Olympics. Furthermore, it is common

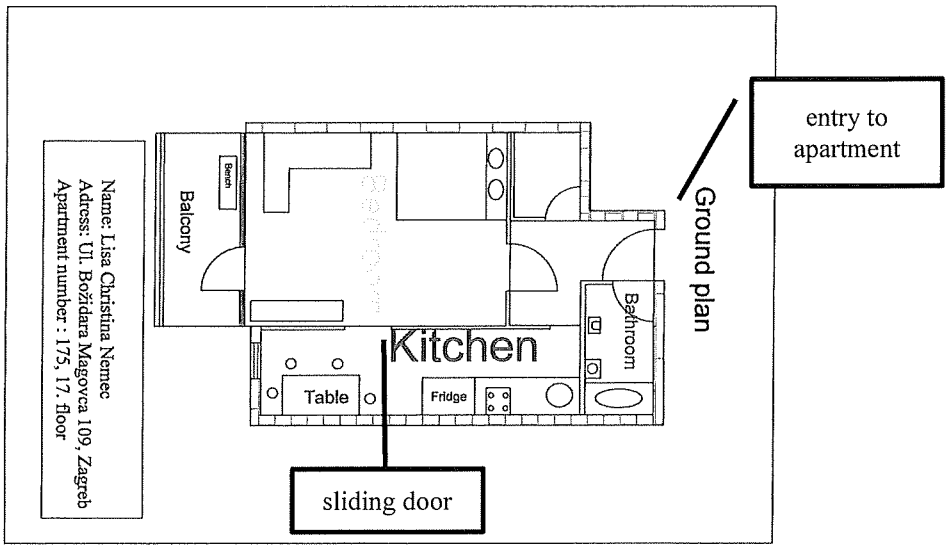
knowledge that rEPO is particularly helpful to enhance sporting performance in endurance sports such as marathon. In addition, the Panel notes that the Appellant's biological passport (eight samples collected between August 2011 and 25 September 2015) had been flagged suspicious and that, therefore, the IAAF had recommended to the CITA to perform an OoC test on the Athlete for rEPO.

To sum up therefore, also the analysis for rEPO was – in the view of the Panel – not the result of a conspiracy, but of standard anti-doping activity.

(iv) The samples were not unattended

85. The samples of the Appellant could only have been spiked by the DCO, if they had been left unattended by the Appellant. The Appellant submits that this was the case and has submitted a map of her apartment, which is reproduced here for ease of discussion. The Respondents contest that the samples were left unattended. The Panel is not persuaded that the DCO was left alone with the samples:

(a) The Appellant testified at the hearing that her husband opened the entry door of the apartment and welcomed the DCO. She further declared that she joined the DCO and her husband while the latter were still standing in the hallway. While her husband went from the hallway to the bedroom, she and the DCO proceeded from the hallway into the kitchen. The DCO and the Appellant, thus, according to the testimony of the Appellant did not enter the bedroom and did not walk through the sliding door. When going to the bathroom to pass the sample, the Appellant clearly remembered that she and the DCO went back into the hallway (and from there to the bathroom) without passing though the bedroom. Furthermore, the Appellant declared that both she and the DCO returned to the kitchen to finish the paper work taking the same way back. When the sample taking procedure was completed, the Appellant stated that the DCO left the apartment by walking back into the hallway from the kitchen. The Appellant testified that she was certain that the DCO never entered the bedroom. These walking



patterns through the Appellant's apartment were confirmed by the testimony of the DCO.

(b) Contrary to the Appellant, her husband (Mr. Dario Nemec) testified that after welcoming the DCO into the apartment, the DCO was escorted from the hallway into the bedroom. Mr Nemec submits that while he sat down on the sofa the two women proceeded from the bedroom through the open sliding door into the kitchen. When asked by the Panel which way the Appellant and the DCO used in order to get back and forth from the bathroom, Mr Nemec testified that the women walked through the bedroom, i.e. by the sofa on which he was sitting while he was using his mobile. When asked by the Panel which way the DCO left the apartment, the Appellant's husband stated that the DCO came through the sliding door into the bedroom, said good bye to him, then walked into the hallway and left the apartment. Upon being questioned Mr Nemec re-confirmed his account of facts and declared that "*I think that is how it happened*". Only after being confronted with the inconsistencies between his and the Appellant's testimony Mr Nemec declared that he was no longer sure which way the two women moved around in the apartment at the time. In light of these inconsistencies the Panel is not prepared to give a lot of weight to Mr Nemec's testimony.

(c) It is undisputed that at the time of the sample taking the Appellant did not object to the procedure, in particular she did not reproach that the samples had been left unattended. Furthermore, it is undisputed that the Appellant failed to mention on the doping control form that the samples were left unattended by her for some minutes. It is further uncontested that also Mr Nemec who allegedly witnessed the doping control procedure from the bedroom did not protest against the way the doping control procedure was conducted.

(d) The account of facts submitted by the Appellant could not be backed by a DNA and/or fingerprint analysis of the batteries. The Appellant requested to have four batteries tested for DNA and fingerprints to prove that the DCO used those batteries provided by her. However, no DNA or fingerprints of the DCO could be detected on the batteries.

(v) The credibility of the testimony of the DCO

86. The Appellant has challenged the credibility of the DCO. In particular, the Appellant sought to challenge the DCO's account of facts by submitting the phone records of the DCO (outgoing calls and messages) on 6 October 2015:

(a) The Panel notes that the times listed in the DCO's phone records do not exactly match the times indicated in the DCO's witness statements in relation to the calls made and the actions taken. The DCO stated e.g. that she called the Assistant DCO when she had finished the doping control and had returned to her car. According to the phone

records the call was made at 06:38 am. However, the doping control form states that the doping control session was completed at 06:32 am only and the chain of custody form states that it was signed by the DCO at 06:35 am. The DCO declared that all the forms were filled out while she was still in the apartment. It is difficult to perceive how the DCO could leave the apartment, descend from the 17th floor and arrive at her car at 06:38. The DCO explained at the hearing that the "*times and durations stated on the records submitted do not fit*". She had noted this already in her statement submitted on 18 July 2016 where she stated: "*I also must say, I noticed some discrepancies regarding the time and duration of calls in the phone records. I have asked the operator for an official explanation of the said discrepancies.*" In the hearing the DCO explained that she had been informed orally by her phone company that "*times and durations on the phone record may vary depending on the phone device used and that the exact data could not be verified*".

(b) Even if the recorded times and durations of the calls do not exactly match the times in the DCO's witness statement, the Panel has no reason to find that the DCO lacks credibility. The Panel notes that the sequence and number of her calls on the phone record is consistent with her testimony (call to the Assistant DCO before ringing the front-door bell, call to the Appellant asking on which floor the apartment was located, call to Assistant DCO after leaving the building). The Appellant testified that the DCO did not call her before entering the apartment, but called her instead when being in the bathroom to pass the sample. According to the Appellant, the DCO did so to distract her and lure her out of the bathroom in order to be able to spike her sample. This account of facts appears difficult to believe considering that the DCO was only one or two meters away from the Appellant watching her passing the sample in the bathroom, when allegedly the phone call was made. In fact, the Appellant admits that she did not see the DCO making the call. Furthermore, the Appellant states that she could not hear the ringing of her mobile, since she had left the latter under her pillow in the bedroom. This statement is, somewhat contradicted by the testimony of her husband, Mr Nemec, who testified that he did not hear any mobile ringing while sitting on the sofa in the bedroom right next to the bed.

(c) The DCO is well-experienced and has been conducting doping controls for CITA for several years. The testimonies provided by her at the various stages of the proceedings were consistent. The few discrepancies that existed were all explained and resolved in cross examination at the hearing. This relates – *inter alia* – to the "screw" on the refractometer that she had referred to in her original statement before the CITA and the question whether the A or (what is provided for in article D.4.14 Annex D of the ISTI) the B bottle was filled first. The DCO explained that the Appellant had followed the DCO's instructions to pour the urine in the B bottle first. She further submitted that in case the police report said otherwise she cannot be held accountable, because she did not sign this report that has been drafted under the sole authority of the police.

(d) It is not without concern that the Panel noted that the DCO made a declaration at the hearing that was not contained in her written affidavit submitted previously. In the hearing the DCO mentioned that at first the refractometer did not work properly and that she had to unscrew the container holding the batteries and reinsert them twice to make the device work. When being asked why she had not mentioned this incident in her affidavit the DCO declared that the device did work properly in the end without any external help and that this incident did neither affect the testing of the specific gravity of the sample nor any other part of the doping control. Thus, according to the DCO, she had no reason to mention it without being specifically asked to do so. The DCO stated that she had drafted the affidavit herself at the request of CITA's counsel and had not been requested to respond to specific questions.

(vi) The Appellant's changing defence strategy over time

87. In the Panel's opinion the spiking theory advanced by the Appellant today is not very consistent with her past defence strategy, but seems to have developed over time.

(a) In her affidavit submitted together with her Appeal Brief, the Appellant states as follows (para 67): "*Once I was informed of my positive test result I put the batteries that I lent the DCO in a brown paper bag to save them in case they would be needed as evidence.*" It follows from this statement that – apparently as from 29 October 2015 when she was informed of her AAF – she had grown suspicious of the DCO. However, the Appellant kept these suspicions for herself and did not communicate them to anyone. On 9 November 2015, the Appellant reported for the first time that allegedly the batteries were not working in the DCO's refractometer during the sample taking. This is rather surprising considering that the Appellant requested CITA on 30 October 2015 to be provided with all documents related to the doping control and considering that the Appellant had a meeting with CITA officers on 2 November 2015, where none of these incidents were reported. This is very surprising considering the statement made by Mr Nemec at the hearing. According to his testimony he immediately realized on the day of the sample collection that the procedure allegedly was not compliant with the applicable rules. According to him he had asked his wife right after the DCO had left the apartment whether she had recorded on the doping control form that the samples were left unattended. If, however, Mr Nemec noted the alleged breach straight away and thought that such breach was worthy to be recorded on the day of sample collection, one would expect that this episode was all the more worthy to be voiced once he and his wife were advised of the AAF. However, none of this was mentioned in the meeting with CITA on 2 November 2015.

(b) Furthermore, para 4.5 of the CITA Decision refers to the Appellant's statement of 9 November 2015 in which the Appellant is quoted to have said that "*due to a malfunction (batteries) of the device, the Sample was left open for a certain time period*" which could have caused a "*possible contamination of the Sample during*

the Doping Control process". The Appellant at this stage, thus, spoke only about a "possible contamination". No reference was made at this point that the DCO was left alone with the samples or that the DCO spiked or sabotaged the samples.

(c) The first time the Appellant submitted that she was sabotaged by the DCO was in her Appeal Brief to the CAS. When she filed the criminal complaint on 5 January 2016 against an "unknown person" with the state prosecutor she did not claim that the DCO might have spiked the samples.

(vii) The practical difficulties of spiking the samples

88. Finally, the Panel is of the view that it needs considerable expertise to spike samples with rEPO such that the results of the analysis are compatible with a typical doping application of rEPO. This is all the more true considering that the DCO had – admitting, for the sake of argument, the facts as alleged by the Appellant are true – a very short time window to spike the Appellant's samples (only 2 to 3 minutes). Furthermore, the Panel notes that in light of the evidence before it, it appears that the DCO has no specific scientific experience in relation to the analysis of samples. In addition, the Panel notes that the concentrations of rEPO in the bodily specimen depend on external variables (such as the volume of the urine) that are not known prior to the sample taking.

(a) It is uncontested that rEPO has been detected in both of the Appellant's samples. It is further uncontested that the method applied by the laboratory is a qualitative and not a quantitative method, meaning that the method does not measure the exact concentrations found in the samples.

Both experts, Ms Antic and Mr Gmeiner, testified that the spiking of a urine sample with rEPO is, in principle, possible. However, to obtain analysis results compatible with the use of doping (bands, density, location, etc.) both experts agree that the (commercially obtainable) rEPO would have to be diluted. The quantity of rEPO to be injected into the sample to achieve "normal" doping patterns depends on the volume of the urine provided. While the Appellant's expert, Ms Antic, explained that the quantity of rEPO needed for spiking is the result of a fairly simple mathematical calculation, Mr Gmeiner submitted that this would require some "experiments", including some pre-analysis on the sample.

(b) Ms Antic testified that she found differences in band shapes, density and positions of the images between the results of the A and the B sample analysis of the Laboratory. It follows from these differences according to her that the concentration of rEPO in the B sample must have been higher than in the A sample. A possible explanation for this might be that the samples were spiked. The volume of urine in the A bottle was higher than in the B bottle. Thus, if someone spiked both bottles with the same quantity of rEPO it is evident that the analysis of the B sample would yield a higher concentration of rEPO.

(c) Mr Gmeiner testified that the findings of the analysis do not support the Appellant's spiking story. Instead, Mr Gmeiner testified that the analytical results obtained are compatible with a "typical" application of rEPO. In his view it is "*nearly impossible in reality to spike a sample in the way to produce such analytical data as we see*". He stated that he himself would not be able to reproduce the Appellant's analytical results through spiking without conducting prior extensive "spiking experiments". According to him such try-and-error experiments last one or two weeks. By way of example, Mr Gmeiner explained that of course it was possible for a blind parachutist to jump out of a plane and land on a small predetermined spot. However, it was rather unlikely that the parachutist were able to achieve this without practicing extensively. In addition, Mr Gmeiner stated that it would be even more difficult for the parachutist to fulfil this task twice in a row. Thus, according to Mr Gmeiner it is even less realistic that the DCO was able to spike two separate samples, i.e. the A sample and the B sample, containing different volumes and still arrive at concentrations compatible with a "typical" application of rEPO and to arrive at similar analytical results (same "bands" at the end of the analysis).

(d) With regard to differences between the analysis results of the A and the B sample Mr Gmeiner testified that they are related to the method (single and double blot) and not to the concentrations found in the sample. Therefore, according to Mr Gmeiner it is the interpretation of the results that is important. However, when interpreting the results of the Appellant's A and B sample analysis it "*is totally the same*" and there is no indication of spiking. Furthermore, Mr Gmeiner stated that the analysis results obtained by him were backed-up by a second laboratory opinion of the WADA-accredited laboratory in Cologne, Germany. Mr Gmeiner also testified that the type of rEPO detected in the Appellant's samples is a fast-eliminating version of rEPO and, depending on the kind of application (e.g. micro doses), the analytical results of the Appellant's samples indicates that the Appellant has applied rEPO up to four days prior to the taking of the sample.

(viii) Summary

89. In conclusion, the Panel finds that when assessing the evidence in relation to the planning of the test, the practical difficulties encountered when spiking samples with rEPO, whether the samples were left unattended by the Athlete and whether the testimony of the DCO is credible it appears more likely than not that the Appellant committed an ADRV compared to the scenario that the samples were spiked by the DCO.

(4) The application of the above standards to the departures of the WADA International Standards

90. According to the Appellant, the doping control procedure on 6 October 2015 violated the WADA International Standard for Testing and Investigations (ISTI). The Appellant submits that the doping control was conducted only by the DCO and not as previously planned by CITA by the DCO and the Assistant DCO. According to the Appellant this constitutes a breach of article 3.3.5 of the WADA "Sample Collection Personnel - Recruitment, Training, Accreditation and Re-Accreditation Guidelines" (hereinafter "*Sample Collection Personnel Guidelines*"). The Panel does not follow the arguments of the Appellant:

(a) According to the section "Scope" of the Sample Collection Personnel Guidelines, "[f]*ull or partial incorporation of these Guidelines into Sample Collection Authority rules and procedures is optional*" (emphasis added). Neither the Appellant nor the Respondents filed any submissions with regard to whether or not the Sample Collection Personnel Guidelines were incorporated into the relevant CITA or IAAF rules.

(b) Section 3 of the Sample Collection Personnel Guidelines (including article 3.3.5) refers only to chaperones. Doping control officers are only referred to in section 2 of the Sample Collection Personnel Guidelines. Thus, Article 3.3.5 of the Sample Collection Personnel Guidelines is not applicable to DCOs. This understanding is backed by the wording of the provision, which provides as follows: "*A Chaperone may be relieved of his/her duties and accreditation by the DCO during the Sample Collection Session under the following circumstances*: [...]."

(c) The first sentence of article 2.2 of the WADA Urine Sample Collection Guidelines – which expands upon the ISTI – reads as follows: "*One lead/senior DCO oversees the Sample Collection Session, ensuring that each Sample is properly collected, identified and sealed, and that all Samples have been properly stored and dispatched in accordance to the relevant analytical guidelines*" (emphasis added). The DCO in the present case is a well-experienced doping control officer and any further (assistant) doping control officers or chaperones would have been only an addition to the standard required by the applicable rules.

91. The Appellant also submits that the doping control procedure has been interrupted on several occasions due to phone calls received by the DCO. Also Mr Nemec testified that the DCO answered at least two phone calls during the sample collection procedure. The DCO testified that she indeed answered one call, which she received from the Assistant DCO. However, according to the DCO she picked up the phone only with the Appellant's specific permission and spoke on the phone only very shortly. Any further incoming calls were ignored by her in order not to disrupt the doping control procedure. Be it as it may, the Panel notes that the Appellant did not point to any rule which might

have been breached by the alleged phone calls. Even if those calls constituted a breach of a WADA International Standard, the Panel fails to see how such a breach may have reasonably caused the AAF within the meaning of article 3.2.3 para 2 CITA ADR and IAAF Rule 33.3(c).

92. The Appellant also testified that she was not requested by the DCO to wash her hands after the passing of the sample. This has been contested by the DCO. Again, the Appellant failed to point at a provision in the WADA International Standards which might have been breached by this conduct. Furthermore, the Panel finds that even if a breach of a provision of a WADA International Standard has been committed, the Appellant failed to establish according to article 3.2.3 para 2 CITA ADR and IAAF Rule 33.3(c) how such a violation may have reasonably caused the AAF.

93. The Appellant further criticizes the way the chain of custody form has been filled out. The form shows a "second receipt confirmation" that has subsequently been crossed out (see section three of the form). The head of CITA's department for testing, Ms Karlo, explained in her testimony that the second receipt confirmation had been filled in mistakenly and once the mistake had been detected it had been rectified promptly by crossing out the respective text. Furthermore, the responsible CITA employee initialled this operation. The Appellant failed again to point to a rule in the WADA International Standard that might have been breached as a consequence of this conduct. Once again the Panel finds that even if this would constitute a violation of any WADA International Standard, the Appellant failed to establish according to article 3.2.3 para 2 CITA ADR and IAAF Rule 33.3(c) how such a violation reasonably could have caused her AAF.

94. The Appellant submits that the way Ms Karlo took the decision to test the Appellant's sample for rEPO breaches the applicable WADA International Standards. The Appellant with the consent of the Respondents introduced a new exhibit into the proceedings entitled "Doping Control Officer (DCO) Instructions: Chain of Custody Form". The document that has been issued by WADA reads – *inter alia* – as follows:

> *"**Section 2 – Sample Code Numbers and Analytical Information***
> - *The DCO should clearly and accurately record the Sample code numbers for all the Samples included in the shipment to the laboratory.*
> - *Where appropriate, any specific Sample analysis required for individual Samples should be recorded. The box 'Specific Sample Analysis' includes the categories of the prohibited substances within the scope of the TDSSA and an 'Other' box. In this 'Other' box the DCO should record a specific Sample analysis request from the 'Other laboratory analysis' menu at the bottom of Section 2 – Sample Code Numbers and Analytical Information, by noting the relevant number.* [...]"

95. In light of the document the Appellant submits that a specific sample analysis must be requested by the respective doping control officer performing the doping control and not

by any other personnel. The Panel does not concur with this view of the Appellant and refers to the following two provisions in the ISTI:

> *"7.3.1 The Sample Collection Authority shall be responsible for the overall conduct of the Sample Collection Session, with specific responsibilities delegated to the DCO."*
>
> *"8.3.3 The Sample Collection Authority shall develop a system to ensure that, where required, instructions for the type of analysis to be conducted are provided to the laboratory that will be conducting the analysis.* [...]."

96. According to article 7.3.1 ISTI, it is primarily the "Sample Collection Authority" which shall be responsible for the overall conduct of the Sample Collection Session. It clearly follows from the doping control form and the chain of custody form used in the Appellant's case that the Sample Collection Authority within the above meaning was CITA. Taking into consideration the discretion given to CITA by article 8.3.3 ISTI regarding the development of a system to provide laboratories with "*instructions for the type of analysis to be conducted*", the Panel finds that Ms Karlo, being the Head of CITA's department for testing, was empowered to order the additional test for rEPO on the Appellant's samples collected on 6 October 2015. Consequently, the Panel understands the WADA "Doping Control Officer (DCO) Instructions: Chain of Custody Form" to be guidelines for those DCOs that have been empowered by their Sample Collection Authority to give instructions for additional types of analysis. No submission was made to the effect that CITA has delegated the responsibility to order additional analysis to the DCO. Instead, it follows from the testimony of Mr Manojlovic, the Head of CITA's anti-doping department, that any instructions to laboratories with respect to sample analysis, rest exclusively with the Head of CITA's department for testing, i.e. Ms Karlo.

97. To sum up, the Panel finds that no violation of the applicable WADA International Standards has been established and that – subsidiarily – the Appellant failed to establish according to article 3.2.3 para 2 CITA ADR and IAAF Rule 33.3(c) that any such violation reasonably could have caused the AAF.

(5) No analogy to the Campbell Brown case

98. In her submission the Appellant stated that her case must be decided in light of the CAS case *Veronica Campbell-Brown v. The Jamaica Athletics Administrative Association (JAAA) & IAAF* (CAS 2014/A/3487). Both cases, however, are very different from the outset. In the *Veronica Campbell-Brown* case the panel had established a departure from the applicable WADA International Standards and had to discuss whether and to what extent such departure could reasonably have caused the AAF. In the case at hand the point of departure is very different because the Panel has **not** established any departure

from the applicable International Standards. Consequently, the Appellant cannot derive anything in her favour from the *Veronica Campbell-Brown* decision.

(6) The insignificance of the polygraph test

99. The Appellant has submitted a polygraph test that was performed on her on 4 January 2016 and yielded a "negative result". Whether or not such polygraph tests are admissible evidence in arbitration proceedings is disputed in CAS jurisprudence. In the case at hand the Panel need not discuss the matter, because even though the reliability of the polygraph test was contested by the Respondent the Appellant chose not to produce any evidence to this effect. In particular, the Appellant failed to present the expert who conducted the polygraph test for expert testimony, i.e. for cross-examination and questioning by the Panel. Consequently, the polygraph test submitted by the Appellant is simply part of the Appellant's submissions contested by the Respondents and must be weighted by this Panel as such. The Panel notes in this regard that the questions put to the Appellant in the context of the polygraph test were limited in scope. According to the English translation of the report submitted by the Appellant, the Appellant had been asked the following questions:

(1) "*In the period between September 27, 2015 – October 6, 2015 did you take any banned substance which would by the applicable rules be considered as doping?*"

(2) "*In the period between September 27, 2015 – October 6, 2015 did you knowingly put erythropoietin into your body?*"

(3) "*In the period between September 27, 2015 – October 6, 2015 did you knowingly inject erythropoietin into your body?*"

(4) "*Is your claim that there was only one DCO present at your out of competition testing true?*"

100. The Panel finds it noteworthy that only the period between 27 September and 6 October 2015 is covered by the questions. In addition, the possibility of an injection of rEPO by a third person is not covered by the questions.

(7) Conclusion

101. The Appellant committed an ADRV in accordance with article 2.1 CITA ADR and IAAF Rule 32.2(a). The Respondents established to the comfortable satisfaction of the Panel the presence of rEPO in the Appellant's A sample which was confirmed by the analysis of the Appellant's B sample. The Appellant failed to proof by a balance of probability a sabotage of her urine samples on 6 October 2015. In addition, no violation of any WADA International Standards has been established by the Appellant that could

reasonably have caused her AAF within the meaning of article 3.2.3 para 2 CITA ADR and IAAF Rule 33.3(c)

B. If an ADRV has been committed, what is the sanction?

(1) The applicable legal framework

102. Article 10.2 CITA ADR reads, in the relevant parts, as follows:

> *"The period of Ineligibility for a violation of Articles 2.1* [...] *shall be as follows, subject to potential reduction or suspension pursuant to Articles 10.4, 10.5 or 10.6:*
>
> ***10.2.1** The period of Ineligibility shall be four years where:*
>
> *10.2.1.1 The anti-doping rule violation does not involve a Specified Substance, unless the Athlete or other Person can establish that the anti-doping rule violation was not intentional."*

103. IAAF Rule 39.2 reads very similar:

> *"The period of Ineligibility imposed for a violation of Rules 32.2(a) (Presence of a Prohibited Substance or its Metabolites or Markers)* [...] *shall be as follows, subject to potential reduction or suspension pursuant to Rules 40.5, 40.6 or 40.7:*
>
> *(a) the period of Ineligibility shall be four years where:*
>
> *(i) The anti-doping rule violation does not involve a Specified Substance, unless the Athlete or other Person can establish that the anti-doping rule violation was not intentional;"*

104. With regard to the term "intentional", article 10.2.3 CITA ADR [and almost identically IAAF Rule 40.2(a)] stipulates as follows:

> *"As used in Articles 10.2 and 10.3* [Rules 40.2 and 40.4], *the term "intentional" is meant to identify those Athletes who cheat. The term, therefore, requires that the Athlete or other Person engaged in conduct which he or she knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk.* [...]".

105. With regard to any credit for a provisional suspension or period of ineligibility already served, article 10.11.3.1 CITA ADR [and identically IAAF Rule 40.11(c)] stipulates as follows:

"If a Provisional Suspension is imposed and respected by the Athlete or other Person, then the Athlete or other Person shall receive a credit for such period of Provisional Suspension against any period of Ineligibility which may ultimately be imposed. If a period of Ineligibility is served pursuant to a decision that is subsequently appealed, then the Athlete or other Person shall receive a credit for such period of Ineligibility served against any period of Ineligibility which may ultimately be imposed on appeal."

(2) The application of the aforementioned principles to the case at hand

106. In application of articles 10.2.1 and 10.2.1.1 CITA ADR, the CITA Decision rendered on 1 February 2016 imposes on the Appellant a period of ineligibility of four (4) years, starting on 29 October 2015 and ending on 28 October 2019.

107. The Appellant did not file any submissions with regard to the length of the period of ineligibility or any other consequence imposed on her. In particular, the Appellant did not submit that the above provisions were applied wrongly, that the result of their application is not proportional or that the period of ineligibility should be mitigated for some other reasons. Consequently, the Panel finds that the ADRV was committed by her intentionally within the meaning of article 10.2.3 CITA ADR and IAAF Rule 40.2(a) and that there are no mitigating circumstances according to articles 10.5 and 10.6 CITA ADR or IAAF Rules 40.6 and 40.7. As a result, the Panel finds that the Appellant is ineligible for a period of four (4) years.

108. According to article 10.11.3.1 CITA ADR and IAAF Rule 40.11(c) the Appellant gets credit for the period of her provisional suspension and the period of ineligibility already served. Consequently, the period of ineligibility of four (4) years is to be calculated from 29 October 2015 when the Appellant was provisionally suspended and will last until 28 October 2019 as imposed in the CITA Decision.

IX. COSTS

109. 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."

110. Article R64.5 of the 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 complexity and outcome of the proceedings, as well as the conduct and the financial resources of the parties."

111. Bearing in mind the outcome of the arbitration, in particular the fact that the Appellant's appeal has been rejected in full, the Panel finds that the costs of this appeal shall be borne by the Appellant. The amount will be determined and notified to the parties by the CAS Court Office.

112. Pursuant to Article R64.5 of the Code, in consideration of the outcome of the present proceedings, the conduct and, in particular, the financial resources of the parties, the Panel finds it reasonable that the Appellant shall pay a contribution to the Respondents' legal fees and expenses. She shall pay each of the Respondents CHF 1,000. In addition, she shall bear her own legal fees and expenses.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Ms Lisa Christina Nemec on 18 February 2016 is dismissed.

2. The decision rendered by the Disciplinary Panel of the Croatian Institute for Toxicology and Anti-Doping (CITA) on 1 February 2016 is upheld.

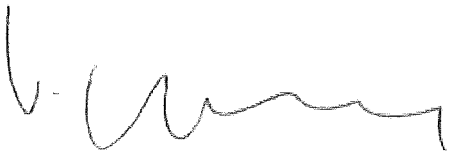
3. The costs of the arbitration, to be determined by the CAS Court Office, shall be borne by Ms Lisa Christina Nemec.

4. Ms Lisa Christina Nemec is ordered to pay CHF 1,000.00 (one thousand Swiss Francs) to the Croatian Institute for Toxicology and Anti-Doping (CITA) and a further CHF 1,000.00 (one thousand Swiss Francs) to the International Association of Athletics Federations (IAAF) as a contribution towards their legal fees and expenses. Ms Lisa Christina Nemec shall bear her own legal fees and expenses.

5. All other motions or prayers for relief are dismissed.

Place of arbitration: Lausanne
Date: 27 April 2017

THE COURT OF ARBITRATION FOR SPORT



Ulrich Haas
President of the Panel