

CAS 2014/A/3694 Roman Kreuziger v. UCI

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Mr Michael Geistlinger, Professor in Salzburg, Austria

Arbitrators: Mr Lars Nilsson, attorney-at-law in Stockholm, Sweden

Mr Bernhard Welten, attorney-at-law in Bern, Switzerland

in the arbitration between

ROMAN KREUZIGER, Czech Republic

Represented by Mr Jan Stovicek, KSD Legal advokatni kancelar s.r.o., Prague, Czech Republic

Appellant

and

UNION CYCLISTE INTERNATIONALE (UCI), Aigle, Switzerland

Represented by Mr Antonio Rigozzi, Lévy Kaufmann-Kohler, Geneva, Switzerland

Respondent

I. THE PARTIES

- 1.1. Mr Roman Kreuziger, (hereinafter referred to as the “Appellant”) is a professional cycling rider, member of the UCI ProTeam Tinkoff-Saxo, and license holder of the Union Cycliste Internationale (“UCI”).
- 1.2. The Union Cycliste Internationale (hereinafter referred to as the “UCI” or the “Respondent”) is the international governing body for the sport of cycling.

II. FACTS

- 2.1. On 28 June 2013, the Respondent informed the Appellant that it received a unanimous opinion from a panel of three independent scientific experts asserting that a comprehensive review of blood samples provided by the Appellant in the period from 27 November 2007 until 9 April 2013 indicated “*that it is highly likely, absent a satisfactory explanation from you*” (the Appellant) “*that you have used a Prohibited Substance or Prohibited Method*”. The Respondent’s letter referred to the applicable rules and sanctions and set a deadline of 12 August 2013 for the Appellant to send his explanation on his haematological profile.
- 2.2. On 8 September and on 3 October 2013 the Appellant submitted a file to the Respondent to provide an alternative justification for his haematological profile. The file submitted by the Appellant had included two Expert opinions, one of Dr. Locatelli Massimo dated 1 August 2013 and another of Dr. Douwe de Boer dated 25 August 2013.
- 2.3. Following the Appellant’s filing of his explanation to the Respondent, the Respondent’s Expert Panel, consisting of Dr. Yorck Olaf Schumacher, Dr. Giuseppe d’Onofrio and Dr. Robin Parisotto, reviewed the explanations and accompanying expert opinions and conducted a detailed review of the entire file. On 12 May 2014, the Expert Panel concluded in its Final Expert Opinion that the Appellant’s explanations did not explain the abnormalities in his blood profile and held as follows:

“Based on the information in the Passport, it is therefore the unanimous opinion of the panel that it is highly likely that the Athlete used a prohibited substance and/or prohibited method, likely involving blood transfusion and erythropoiesis stimulating agents, and that it is unlikely to find the passport abnormal assuming any other cause.”

This finding was forwarded to the Appellant by the Respondent on 30 May 2014.

- 2.4. On 30 May 2014, the Respondent informed the Appellant of the assertion of an anti-doping rule violation based on his athlete biological passport and offered the Appellant an “acceptance of sanction”. By acknowledging the anti-doping-rule violation and accepting the proposed sanction the Appellant could have avoided disciplinary proceedings to be run by his National Federation in accordance with the Anti-Doping Rules of the UCI (hereinafter referred to as the “UCI ADR”).
- 2.5. On 16 June 2014, the Appellant requested a further extension of the deadline, already prolonged on 1 June 2014, for his answer whether he would accept the proposed sanctions arguing that he would submit a further expert opinion. The Respondent denied this request

and did not accept new evidence at that stage of the procedure related to the Acceptance of Sanction. The Appellant, nevertheless, submitted the Expert opinion of Hon. Dr Kingsley Kevin Hampton to the Respondent on 26 June 2014.

- 2.6. The Respondent requested its Expert Panel to review the Expert opinion of Hon. Dr Hampton as a precaution. The Expert Panel confirmed that the new opinion did not alter the conclusion in the Final Expert Opinion.
- 2.7. The Appellant did not participate in the 2014 edition of the Tour de France.
- 2.8. Between 1 and 28 July 2014, the Appellant's first counsel in the procedure before the Respondent and the Respondent discussed the possibility of adjudicating the anti-doping-rule violation directly before CAS. This discussion was continued by the counsel representing the Appellant in the current procedure before CAS and the Respondent, when the first counsel had withdrawn on 28 July 2014.
- 2.9. The Appellant did not accept the proposed sanction on or before the extended deadline of 30 June 2014 and by letter dated 31 July 2014 disputed that there is a legal basis for a provisional suspension.
- 2.10. On 31 July 2014, the Appellant's team issued a press release announcing that the Appellant would participate in the 2014 Tour of Poland, starting on 3 August 2014. On 1 August 2014, the Respondent, holding the opinion that the Appellant's team had declared not to enter the Appellant at any race before the end of the procedure, as it became usual practice in cycling, informed the Appellant that should the Appellant participate in the 2014 Tour of Poland, the Respondent would impose a Provisional Suspension on him. The Respondent initiated such procedure before the Czech Cycling Federation on 8 August 2014.
- 2.11. On 1 August 2014, the Appellant informed the Respondent that he could not see any legal basis allowing the Respondent to apply a provisional suspension and he would travel to Poland. On the same day, the Respondent informed the Appellant's team on the suspension decision taken on that day.
- 2.12. On 2 August 2014, the President of the UCI Anti-Doping Commission (hereinafter referred to as the "UCI ADC") issued a decision called "Imposition of a Provisional Suspension" (hereinafter referred to as the "Challenged Decision") provisionally banning the Appellant from participating at any competition referring to Articles 242, 248 and 313 UCI ADR until either:
 - a. the ADC decides to lift the provisional suspension after having reviewed the Rider's written submission;*
 - b. the CAS sets aside the present decision and/or the decision not to lift suspension, or*
 - c. the final decision on the merits will be taken at a hearing conducted under Chapter IX of the ADR."*
- 2.13. When the Challenged Decision was notified to the Appellant on 2 August 2014, the latter had already received his start number for the Tour of Poland. The Respondent stated for

the record that it had no cause to believe that the Appellant's team did not inform the Appellant of the suspension at an earlier point.

- 2.14 On 6 August 2014, the Appellant informed the Respondent that he did not want the matter to be adjudicated directly before CAS and invited the Respondent to refer the matter to the Czech Cycling Federation.
- 2.15 On 8 August 2014, the Respondent referred the matter to the Czech Cycling Federation to initiate disciplinary proceedings against the Appellant.

III. PROCEEDINGS BEFORE THE CAS

- 3.1. On 5 August 2014, the Appellant submitted his Statement of Appeal against the Challenged Decision, also serving as his Appeal Brief. The Appellant requested an expedited procedure to which the Respondent agreed by letter dated 11 August 2014 together with a procedural calendar, according to which the Answer of the Respondent was to be filed by 15 August 2014, the hearing was to be held on 20 August 2014 and the operative part of the award to be rendered on the same day.
- 3.2. On 15 August 2014, the Respondent filed its Answer to the Appeal.
- 3.3. On 20 August 2014, the hearing took place at the CAS Headquarters. The Appellant appeared in person and was represented by JUDr Jan Stovicek, attorney-at-law. The Respondent was represented by its counsel Prof. Antonio Rigozzi and Mrs. Brianna Quinn, attorneys-at-law.
- 3.4. On the day before the hearing, the Respondent objected in writing to the admission of the witnesses nominated by the Appellant (Mr Stefano Feltrin, team representative, and Hon. Dr Kingsley Kevin Hampton, expert advisor, both to be heard by phone). At the beginning of the hearing, the Appellant upheld to hear Mr Hampton, in case the witness nominated by the Respondent, Dr. Yorck Olaf Schumacher, member of the Expert Panel, was to be heard. Since the Panel felt that both witnesses could only testify as to the merits of the case and not to the question of the provisional suspension/measures and since the Appellant declared that he did not dispute the fact that the UCI Expert Panel has confirmed its conclusion after having dealt with Dr Hampton's expert opinion, the Panel did not allow to hear the witnesses nominated by the respective parties.
- 3.5. At the beginning of the hearing, the Appellant informed the Panel that the Respondent did not accept the Appellant's offer of a friendly settlement of the case. The Respondent confirmed this and gave as reason that the proposed lifting of the provisional ban imposed on the Appellant for the Vuelta a España 2014 and the World Championships 2014 would counteract the very purpose of the imposed measure.
- 3.6. The Appellant and the Respondent confirmed their submissions in writing and answered the Panel's questions which focused on articles 204, 235 – 248, 313 and 329 UCI ADR.
- 3.7. At the end of the hearing the parties confirmed that they had no objections with regard to the composition of the Panel, the handling of the hearing and that their right to be heard had been respected.

IV. SUBMISSIONS OF THE PARTIES

a. The Appellant:

- 4.1. The Appellant asserts that the Challenged Decision is illegal because “*it is clearly inconsistent with the Respondent’s own rules and regulations.*” The Challenged Decision bears the heading “*Imposition of a Provisional Suspension*”, but cannot be based on article 235 UCI ADR, which reads as follows:

“If analysis of an A Sample has resulted in an Adverse Analytical Finding for a Prohibited Substance that is not a Specified Substance or for a Prohibited Method, and a review in accordance with article 204 does not reveal an applicable TUE or departure from the International Standard for Testing or the International Standard for Laboratories that caused the Adverse Analytical Finding, the Rider shall be Provisionally Suspended pending the hearing panel’s determination of whether he has committed an anti-doping rule violation.”

- 4.2. The Appellant holds that in the case at stake the Appellant’s samples have not been tested positive and no Adverse Analytical Findings have ever been found in his career. Thus, the conditions of article 235 UCI ADR have not been met.
- 4.3. The Appellant then refers to article 242 of the UCI ADR as an eventual legal basis under the assumption that the Respondent in fact intended to impose a provisional measure. Article 242 UCI ADR reads as follows:

“1. If after the review described in articles 204 – 231 the UCI asserts that an anti-doping violation under article 21.1 or article 21.2 was committed, the Anti-Doping Commission or one of its members may ban the Rider from participating in Events for such time that the violation, in the opinion of the Anti-Doping Commission or such member, is likely to affect the Rider’s results.

2. Where the ban is intended to last more than one week, the Rider shall be given an opportunity to file written submissions before the ban goes into effect or on a timely basis thereafter.”

- 4.4. The Appellant holds that the condition precedent for imposing such provisional measure is the fact that the alleged violation is likely to affect the rider’s results. The argument given in the Challenged decision that the effect in the Appellant’s case is the possible annulment of the results achieved by the Appellant in consequence of his possible conviction for an alleged anti-doping rules violation does not meet this requirement in the Appellant’s opinion. In the Appellant’s view, possible annulment of results is not the effect meant by the drafter of the rule. It is meant that there is an imminent risk that the rider’s performance is still influenced by the potential use of prohibited substances and/or prohibited method. This understanding and intention is supported or even re-enforced by articles 243 and 244 of the UCI ADR. These articles read as follows:

Article 243

“If after the initial review described in article 204 and at the eve or during a particular Event, the UCI makes an assertion that an anti-doping violation may have been committed under articles 21.1 or 21.2 and determines that the asserted anti-doping violation, that occurred prior to that Event, may affect the Rider’s results at the Event, the Anti-Doping Commission may request that the Rider is banned from the Event.

The request shall be made to the president of the commissaires panel for the Event. The president of the commissaires panel shall summon the Rider to be heard and decide whether the Rider shall be banned from the Event.”

Article 244

“If, during an Event and where applicable after the review described in article 204 the UCI asserts that an anti-doping violation has been committed during the same Event, the UCI will inform the president of the commissaires panel for the Event. The president of the commissaires panel shall summon the License-Holder concerned to be heard. The president of the commissaires panel may Disqualify the Rider or ban the License-Holder from the Event subject to the due opinion of the President or another member of the Anti-Doping Commission.

If a Rider is Disqualified for an asserted violation under articles 21.1 or 21.2 that occurred during a team race, the Rider’s team shall be relegated to the last place of the race. In stage races on the road and subject to the application of article 328 after the decision of the hearing body, the team will be given its actual time.”

- 4.5. The Appellant argues that the over 2 years old blood profile findings of the Appellant cannot have any influence on his sporting performance, and therefore cannot affect his sporting results in the Tour of Poland and in the Vuelta a España. The other justifications offered by the Challenged Decision, such as possible altering of the sportive significance of the competition and prejudice to the interests of sport and the competition image are irrelevant for the imposition of a provisional measure.
- 4.6. Further to the lack of legal basis, the Appellant holds that, given it was meant to issue a provisional measure, the Respondent ignored the procedural rights of the Appellant by not having given him an opportunity to file written submissions before the ban came into effect or on a timely basis thereafter. This omission could not be compensated by an invitation to ask the Respondent for lifting the provisional measure, because such lifting is only possible for a Provisional Suspension under article 237 of the UCI ADR. This article reads as follows:

“The Rider may request that the Provisional Suspension shall be lifted.

The request shall be made to the Anti-Doping Commission in writing and state the reasons.”

- 4.7. The Appellant thus considers the Respondent’s decision as null and void and emphasizes that no disciplinary proceedings have even been opened against him for an alleged anti-

doping rule violation. There is only the assertion of the Respondent's Expert Panel, which is contested by other experts. The case should have been transferred to the Appellant's National federation in order to open disciplinary proceedings against the Appellant, which was not done.

4.8. The Appellant submits the following Prayers for Relief:

"I. Set aside the Appealed Decision;

II. Grant the Appellant compensation of his costs including, in particular, his legal and other fees."

b. The Respondent:

4.9. The Respondent raises the attention to the connection of the provisional measures according to the UCI ADR with the concept of the provisional suspension in the World Anti-Doping Code (hereinafter referred to as "WADC"). The World Anti-Doping Agency (hereinafter referred to as "WADA") in the context of the present case has publicly confirmed that the provisional suspension imposed by the Respondent was a decision compliant with the WADC.

4.10. With reference to established CAS practice (e.g. CAS 2009/A/1920, FK Pobeda, Aleksandar Zabrcanec, Nikolce Zrdaveski v. UEFA, Award of 15 April 2010, p 17, at para. 87), the Appellant holds that the de novo nature of the Appeal to CAS cures any alleged procedural defects of the first instance.

4.11. Besides, the Respondent argues that there were no procedural mistakes, because article 242 para. 2 UCI ADR was applied properly. Due to the late timing of the announcement of the Appellant's resuming of competitions, the UCI ADC could not invite for a comprehensive written submission before issuing the Challenged Decision. Thus, the Appellant could file a written submission as per the rule on a timely basis after the decision. The Appellant preferred, however, to agree with the Respondent that an expedited CAS proceeding would be more efficient and faster and submitted a written submission with CAS three days after he was officially provisionally banned. The Respondent holds that by filing the present Appeal the Appellant effectively waived his right to file a written submission with the ADC and is, thus, estopped from relying on such right. The fact that the Challenged Decision mentioned the possibility to file a request for lifting of the provisional ban was not an attempt to replace such right, but simply wanted to remind of the Appellant's procedural rights. Even if there was an obligation of the Respondent to hear the Appellant before adopting the Challenged Decision, which the Respondent denies in case of urgency, the UCI ADC considered all arguments of the Appellant before issuing the decision.

4.12. The Respondent states, that, since the present case is an Athlete's Biological Passport (hereinafter referred to as "ABP") case, it was not article 235 UCI ADR which has been applied, but article 242. Article 235 is, however, not totally irrelevant as it gives useful indications for determining the rationale of provisional suspensions under the WADC and the UCI ADR. The UCI ABP program is subject to the WADA Athlete Biological Passport Operating Guidelines & Compilation of Required Elements (hereinafter referred to as "WADA ABP Guidelines"). These Guidelines require a formalized procedure to be

followed and consisting of a set of subsequent steps to be followed and ending in a Final Expert Opinion as ultimate conclusion of an Expert Panel which “is therefore not a simple assertion of a “possible” ADRV as suggested by the Appellant, but a thorough expert investigation taking into account all confounding factors and the Rider’s own explanations for his profile.” (emphasized by the Respondent).

- 4.13 The Respondent reports that, so far, it had 13 ABP cases and all of them resulted in a sanction. 4 of these cases were appealed to CAS and in all of them the relevant Final Expert Opinion was upheld. The Respondent underlines that the imposition of a provisional measure does not prejudice the decision whether an anti-doping-rule violation has occurred, but there is an extremely high likelihood that such violation will be established once a decision on the merits will be taken.
- 4.14. According to the Respondent, the key objective of the WADC and the UCI ADR in imposing a provisional suspension is to address serious anti-doping-rule violations and prevent athletes from competing where it is likely that they have engaged in serious, intentional doping conduct. The Respondent as a consequence of prominent doping cases in the cycling sport in the period 1999 – 2005 has a clear objective and responsibility to act against anti-doping-rule violations and ensure *“that the results obtained in competitions are not tainted by doping and/or retroactively disrupted for anti-doping related issues.”* The Respondent supports this opinion by opinions from sports lawyers and points at the public criticism that was raised against the effectivity of its anti-doping policy.
- 4.15. The Respondent underlines that the Challenged Decision did not refer to article 235 of the UCI ADR. This provision provides for a mandatory provisional suspension on riders who have tested positive for Prohibited Substances. The suspension remains in force until a hearing panel determines whether an anti-doping-rule violation has been committed. For the application of this provision it is not relevant whether the rider’s performance is still influenced by potential use of a Prohibited Substance and Prohibited Method during an approaching event. It is, however, relevant in the opinion of the Respondent, referring to article 239 UCI ADR, whether the rider can establish that *“the apparent anti-doping rule violation has no reasonable prospect of being upheld or that he has a strong arguable case that he bears No Fault or Negligence for such violation.”*
- 4.16. Article 239 UCI ADR reads as follows:
- “The Provisional Suspension shall not be lifted unless the Rider establishes that the apparent anti-doping rule violation has no reasonable prospect of being upheld or that he has a strong arguable case that he bears No Fault or Negligence for such violation.”*
- 4.17. The Respondent holds that this argument and the objectives underpinning article 235 relate also to a provisional measure under article 241 et seq. UCI ADR.
- 4.18. With regard to the interpretation of article 242 UCI ADR, the Respondent is of the opinion that, as with article 235, there is no requirement that the anti-doping rule violation continues to affect the rider’s sporting performance. Such conclusion follows also from the principles of interpretation under Swiss law.

- 4.19. The Respondent considers that it is generally accepted under Swiss law that the statutes and regulations of an association shall be interpreted objectively, according to the principle of trust, which means according to the provisions' wording as it can and should be understood in light of all the relevant circumstances. The "relevant circumstances" include the context of the words and the other provisions in the text or other texts the respective text is referring to. According to CAS practice the rule further has to be interpreted to achieve its purpose within that context. In the present case the context "*clearly involves the need to provisionally suspend the rider against whom serious ARDVs have been asserted, and to protect the other cyclists and the sport of cycling in general.*" As a result, if it is (highly) likely that the Appellant has intentionally committed a serious anti-doping rule violation and his results will be affected, which means disqualified as a result, the provisional suspension must be upheld.
- 4.20. The Respondent refers to the Final Expert Opinion which states that the present anti-doping rule violation involves the highly likely use of blood transfusions and erythropoiesis stimulating agents. These Substances and Methods are Prohibited and not Specified, they are intentional and serious doping, more serious than the majority of the anti-doping rule violations which require a mandatory provisional suspension under article 235 UCI ADR. Thus, the Respondent considers a provisional suspension more than appropriate in such circumstances.
- 4.21. As to the likelihood of the rider's results being affected, as required by article 242 UCI ADR, the Respondent holds that the Final Expert Opinion is compelling proof at this *prima facie* stage. It is not only likely, but highly likely that the results of the Appellant and of the other riders participating are affected. The Expert Panel's comprehensive and convincing report is more proof than the A-Sample in an Adverse Analytical Finding leading to a mandatory provisional suspension. Besides, the Appellant has not disputed the validity of the samples nor the ABP program.
- 4.22. The Respondent assumes that the Rider will most likely be sanctioned for a period of Ineligibility ranging from 2 – 4 years. In addition, as CAS has adjudicated in an earlier ABP case (TAS 2010/A/2308 Franco Pellizotti c/ CONI & UCI, TAS 2011/A/2335 UCI v/Franco Pellizotti, FCI, CONI), article 313 of the UCI ADR must be applied, unless the Appellant can prove that such application would be unfair. Article 313 reads as follows:
- "In addition to the Automatic Disqualification of the results in the Competition pursuant to article 288 and except as provided in articles 289 to 292, all other competitive results obtained from the date a positive Sample was collected (whether In-Competition or Out-of-Competition) or any other anti-doping rule violation occurred, through the commencement of Provisional Suspension or Ineligibility period, shall, unless fairness requires otherwise, be Disqualified."*
- 4.23. The Respondent does not see any considerations of fairness in the present case. Due to the seriousness of the anti-doping rule violation it holds likely that aggravating circumstances will have to be considered. The damage caused to the sport of cycling outweighs any possible consideration of fairness. In addition, instead of admitting his mistakes, the Appellant uses all legal tools to avoid provisional suspension and a sanction. Thus, the Respondent holds that the Appellant's results will clearly be affected and that the provisional ban was entirely appropriate.

4.24. The Respondent submits the following Prayers for Relief:

*“Dismissing the Appeal of Mr. Roman Kreuziger;
Condemning Mr. Roman Kreuziger to pay a contribution towards the Union Cycliste Internationale’s arbitration-related costs;
Ordering any other remedy the Panel deems appropriate.”*

V. CAS JURISDICTION AND ADMISSIBILITY

5.1. The jurisdiction of the CAS was explicitly agreed to by the parties. The parties also agreed at the hearing that article 329(10) of the UCI ADR shall be considered to be the legal basis for the jurisdiction of the CAS in the present case. This provision reads as follows:

“The following decisions may be appealed to the Court of Arbitration for Sport:

...

10. a decision that a Rider shall be banned from participating in Events under article 242 if the ban is for more than 1 (one) month.

...”

5.2. The Respondent also agreed to an expedited procedure allowing the Appellant to bypass the exhaustion of internal remedies within the UCI. Furthermore, the parties agreed to particular deadlines for this case which were all respected.

5.3. It follows that the CAS has jurisdiction to decide the present case and that the case is admissible.

VI. APPLICABLE LAW

6.1. Art R58 of the Code of Sports-related Arbitration (hereinafter referred to as the “CAS 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 the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.”

6.2. In the present matter, the parties have not agreed, before CAS, on the application of any particular law.

6.3. The Panel, thus, concludes that the Statutes and regulations of the UCI, in particular, the UCI ADR and, subsidiarily, Swiss law being the law of the country where the UCI is based, shall apply.

VII. MERITS

- 7.1. At the hearing, the parties agreed that irrespective of the title “Provisional Suspension”, in fact the UCI ADC’s President in the Challenged Decision imposed a provisional measure based on article 242 UCI ADR. The Panel finds that considering their genesis articles 235 seq. and 241 seq. implement article 7.5 WADC. The relevant parts of article 7.5 WADC read as follows:

“7.5.1 Mandatory Provisional Suspension after A Sample Adverse Analytical Finding

Signatories shall adopt rules, applicable to any Event for which the Signatory is the ruling body or for any team selection process for which the Signatory is responsible or where the Signatory is the applicable International Federation or has results management authority over the alleged anti-doping rule violation, providing that when an A Sample Adverse Analytical Finding is received for a Prohibited Substance, other than a Specified Substance, a Provisional Suspension shall be imposed promptly after the review and notification described in Articles 7.1 and 7.2.

....

7.5.2 Optional Provisional Suspension based on A Sample Adverse Analytical Finding for Specified Substances or other anti-doping rule violations

A Signatory may adopt rules, applicable to any Event for which the Signatory is the ruling body or for any team selection process for which the Signatory is responsible or where the Signatory is the applicable International Federation or has results management authority over the alleged anti-doping rule violation, permitting Provisional Suspensions to be imposed for anti-doping rule violations other than an Adverse Analytical Finding, or after the review and notification described in Articles 7.1 and 7.2 for Specified Substances, but prior to the analysis of the Athlete’s B Sample or the final hearing as described in Article 8 (Right to a Fair Hearing).

...”

- 7.2. Whereas article 235 UCI ADR follows as strictly as required article 7.5.1 WADC, articles 241 – 245 UCI ADR use the margin of discretion opened up to the Respondent as a Signatory of the WADC by article 7.5.2 WADC.
- 7.3. The respective provisions of the UCI ADR, as far as not yet reproduced above, read as follows:

“Provisional Measures

241. Where no Provisional Suspension applies, including in any period preceding a Provisional Suspension, one or more of the following provisional measures may be imposed.

242. ... (See above at para 4.3.).

243. ... (See above at para 4.4.).

244. . (See above at para 4.4.).

245. The provisional measures under articles 242, 243 and 244 may also be imposed on Rider’s Support Personnel against whom an anti-doping violation is asserted for any period prior to the decision of the hearing panel.”

- 7.4. Articles 241 – 245 UCI ADR and article 235 UCI ADR have in common that a review under article 204 must have been completed first. Whereas article 204 UCI ADR gives the impression that such review is started after receipt of an A Sample Adverse Analytical Finding, it is established practice within the UCI and accepted by CAS that also anomalies revealed under the UCI ABP program initiate such review. The Panel supports this reading due to the fact that article 242 UCI ADR also refers to all further provisions for such review (articles 204 – 231 UCI ADR) and, thus, in particular, to articles 215 – 218 dealing with results management for atypical findings. In order to avoid any possible future misunderstandings, the Panel, however, would recommend to the Respondent to redraft the reference to articles 204 *et seq.* UCI ADR and/or the articles referred to in view of its ABP program when adapting its ADR to the WADC 2015.
- 7.5. The articles enumerated in section 7.4. above (articles 241 – 245 UCI ADR) further have in common with articles 235 *et seq.* UCI ADR that articles 246 – 248 UCI ADR apply to both Adverse Analytical Findings and ABP Findings. Considering that article 242 UCI ADR on the one hand declares particular provisions as directly applicable, which does not include article 235 UCI ADR, and, on the other hand, the UCI ADR includes a set of provisions which are common for article 235 and article 242 and which do also not embrace article 235 UCI ADR, the Panel does not deem it legitimate to refer to article 235 UCI ADR in the present case. The wording of article 242 UCI ADR in an objective reading, considering its context and the systematics of the UCI ADR, does not allow for reference to article 235 UCI ADR in the case at stake.
- 7.6. The Panel, when comparing the nature and contents of the provisional measures as laid down by articles 241 – 245 UCI ADR to the nature and contents of the provisional suspension as described in article 235 UCI ADR, does not see any other difference than wording and details of application. Whether to speak of a provisional ban or of a provisional suspension covers the same essence, which is that a rider or other person, either provisionally suspended, or provisionally banned, is not allowed to participate at one or more cycling events during a specified period. Thus, whereas the heading of the Challenged Decision was misleading as it points to article 235 UCI ADR, by its contents and nature it meant the same as a provisional measure, and, in fact, imposed a provisional

measure. The heading, thus, in the opinion of the Panel did not ensue any consequences as to the character of the measure that was imposed.

- 7.7. Having found this, the Panel needs to establish whether the conditions mentioned in articles 241 and 242 UCI ADR have been met in the present case. The Panel deems article 241 UCI ADR fulfilled, since the Respondent did not apply a Provisional Suspension (in the understanding of articles 235 – 240 UCI ADR) and there are no other restrictions mentioned in this article for the Respondent to impose a provisional measure. The discretion of whether to impose a provisional measure assigned to the Respondent by article 241 UCI ADR is only limited by the conditions mentioned in articles 242 – 245 pending on which case of provisional measure applies.
- 7.8. In the case at stake, the Respondent applied article 242 UCI ADR. Article 242 para. 1 UCI ADR states three limitations of the discretion of either the Respondent's ADC or one of its members when imposing such provisional measure:
- A review described in articles 204 to 231 must have been done before the application of such measure;
 - The Respondent's ADC or one of its members, after such review, must assert that an anti-doping rule violation under article 21.1 or article 21.2 was committed;
 - A ban may be imposed on a Rider from participating in Events for such time that the violation, in the opinion of the Respondent's ADC or such member is likely to affect the Rider's results.
- 7.9. As to the element of review, the Appellant did not dispute that an Atypical Finding had been given and he did also not dispute the integrity of samples that led to such finding. Thus, there is no dispute that the Respondent correctly applied articles 215 – 218 and 206 UCI ADR, as far as applicable in the context of the ABP program.
- 7.10. The Appellant did also not dispute that the Respondent's ADC's President had good reasons to assert that an anti-doping rule violation according to article 21.2.1 – 21.2.2 UCI ADR was committed. This provision reads as follows:

“21. The following constitute anti-doping rule violations:

1. ...

2. Use or Attempted Use by a Rider of a Prohibited Substance or a Prohibited Method.

2.1. It is each Rider's personal duty to ensure that no Prohibited Substance enters his or her body and that he does not Use any Prohibited Method. Accordingly, it is not necessary that intent, fault, negligence or knowing Use on the Rider's part be demonstrated in order to establish an anti-doping rule violation for Use of a Prohibited Substance or a Prohibited Method.

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

....”

- 7.11. The Appellant undertook to demonstrate a more convincing explanation by adducing two expert opinions before the deadlines set by the Respondent in the proceedings governed by the WADA ABP Guidelines and one expert opinion (Hon. Dr Hampton) after the Respondent's Expert Panel had unanimously adopted its Final Expert Opinion as last step prior to sanction in an ABP case according to these Guidelines. Even if not required to do so, the Respondent requested its Expert Panel to review the late expert opinion submitted by the Appellant and the Expert Panel upheld its unanimous conclusions that it is highly likely that the Appellant used a prohibited substance and/or prohibited method.
- 7.12. The Parties agreed that it goes beyond the jurisdiction of the Panel in the present case to deal with the merits of whether an Anti-Doping Rule violation could be established and whether the Appellant could rebut the finding that he had used a Prohibited Substance and/or Prohibited Method. Thus, the Panel finds that the proceedings under the WADA ABP Guidelines applied by the Respondent and its result, the unanimous Final Report of the Expert Panel, legitimately allowed the President of the Respondent's ADC to assert that an anti-doping rule violation according to article 21.2.1 – 21.2.2 UCI ADR was committed.
- 7.13. As to the third element, the duration of the provisional measure, the Panel holds that the reasons given in the Challenged Decision are valid. This follows on the one hand from the applicability of article 313 UCI ADR, found by CAS in the ABP case TAS 2010/A/2308 Franco Pellizotti c/CONI & UCI, TAS 2011/A/2335 UCI v/Franco Pellizotti, FCI, CONI, at para 86. On the other hand, this finding is underlined by the reasons given by WADA for inclusion of article 9 and article 10.1 in the WADC. Article 313 of the UCI ADR, quoted above at para 4.22., provides for automatic Disqualification of all other competitive results obtained from the date an anti-doping rule violation occurred, through the commencement of any Ineligibility period, unless fairness requires otherwise. As can be seen from the comments of WADA to article 9 and 10.1 WADC, which are the provisions implemented by the Respondent through articles 288 and 313 UCI ADR, a signatory to the WADC in its ADR is not required to establish whether an anti-doping rule violation influenced the sporting performance and the sporting results in competitions as far as such results are Disqualified. The provisions on the Disqualification of competitive results aim at protecting clean athletes, the integrity of the competitions and the respective sport as such. It is irrelevant whether the athlete was at fault in any way. Only a clean athlete should benefit from his or her competitive results. In the case of an athlete whose blood profile allows for the assertion of an anti-doping rule violation, also the assertion that such athlete is not a clean athlete seems to be legitimate. This is even more valid in the case at hand, since the assertion is for a serious, intentional and systematic anti-doping rule violation.
- 7.14. None of the provisions in the UCI ADR enumerated by the Appellant, in the opinion of the Panel, speaks against the legitimacy of the reasons given in the Challenged Decision. Articles 243 and 244 UCI ADR provide for other provisional measures than article 242. Each of these provisions autonomously describes its elements.
- 7.15. The Panel thus finds that in the light of the above, to read and apply the words "*is likely to affect the Rider's results*" in article 242 para. 1 UCI ADR - as the President of the UCI ADC did - was correct. The Appellant's results in the competitions could be affected by

annulment. The participation of the Appellant at these competitions and the possible retroactive disqualification of the results achieved by the Appellant could alter the significance of the competitions. The seriousness of the asserted anti-doping rule violation could prejudice the reputation of the sport and the image of the respective competitions. All these elements were, therefore, likely to affect the Appellant's results.

- 7.16. As to the procedural defects argued by the Appellant, the Panel wishes to refer to the established practice of CAS in line with the Swiss Federal Tribunal that the CAS appeals procedure which allows for a full hearing cures any eventual defects in the procedure before the first instance (see eg CAS 98/211, B. / Fédération Internationale de Natation (FINA), award of 7 June 1999, at para. 8, reported in: CAS Digest II, p. 255 (264)).
- 7.17. Besides, article 242 para. 2 UCI ADR allows for hearing the athlete on a timely basis after the imposition of the provisional measure which took place within this expedited procedure.
- 7.18. For these reasons the Panel decides to dismiss the appeal.

VIII. COSTS

- 8.1. (...)

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 5 August 2014 by Mr Roman Kreuziger against the decision adopted by the UCI Anti-Doping Hearing Panel on 2 August 2014 is dismissed.
2. The decision adopted by the UCI Anti-Doping Hearing Panel on 2 August 2014 is confirmed.
3. (...).
4. (...).
5. All other motions or prayers for relief are dismissed.

Lausanne, Switzerland.

Operative part notified on 20 August 2014.

Date: 24 September 2014

THE COURT OF ARBITRATION FOR SPORT

Michael Geistlinger
President of the Panel

Lars Nilsson
Arbitrator

Bernhard Welten
Arbitrator