UNION CYCLISTE INTERNATIONALE

Anti-Doping Tribunal

UCI Anti-Doping Tribunal

Judgment

case ADT 07.2019

UCI v. Mr Mehdi Sohrabi

Single Judge:

Mr Ulrich Haas (Germany)

Aigle, 17 January 2020

I. INTRODUCTION

1. The present Judgment is issued by the UCI Anti-Doping Tribunal (hereinafter referred to as "the Tribunal") in application of the UCI Anti-Doping Procedural Rules (hereinafter referred to as "the ADT Rules") in order to decide whether Mr Mehdi Sohrabi (hereinafter referred to as "the Rider") has violated the UCI Anti-Doping Rules (hereinafter referred to as "the UCI ADR"), as alleged by the Union Cycliste Internationale (hereinafter referred to as the "UCI" and, together with the Rider, "the Parties").

II. FACTUAL BACKGROUND

2. The circumstances stated below are a summary of the main relevant facts, as submitted by the Parties. Additional facts may be set out, where relevant, in connection with the legal discussion that follows. While the Single Judge has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, the Judgment refers only to the necessary submissions and evidence to explain his reasoning.

A. The UCI

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

B. The Rider

4. The Rider is a professional road cyclist. He was born on 12 October 1981. At the time of the alleged anti-doping rule violation (hereinafter referred to as "ADRV") he was affiliated to the UCI Continental Team Pishgaman, an Iranian UCI Continental cycling team. He was, thus, a License-Holder within the meaning of the UCI ADR.

5. The Rider started his professional career in 2005 with the UCI Continental Team Paykan. As of 2017 the Rider was under contract with the Team Pishgaman. In 2019 The Rider was not affiliated to any team.

C. The ABP

6. The Rider was part of the UCI's Athlete Biological Passport Program (hereinafter referred to as "the ABP"). The ABP is based on longitudinal monitoring of the athlete and is designed to be an "indirect" method of doping detection. It focuses on the effect of prohibited substances and methods on the athlete's haematological values rather than on the identification of a specific substance or method in the athlete's specimen.

7. The Adaptive Model is a statistic tool which was developed to identify atypical values or profiles that warrant further investigation (Atypical Passport Finding – "APF"). It predicts – for the individual athlete – an expected range within which the athlete's biological markers will fall, assuming a normal physiological condition.

8. The Adaptive Model flags haematological data as atypical if 1) a haemoglobin (HGB) and/or OFF-score (OFFS) marker value falls outside the expected intra-individual ranges, with outliers corresponding to values out of the 99%-range (0,5 – 99,5 percentiles) (1:100 chance or less that this result is due to normal physiological variation) or 2) when sequence deviations (a longitudinal profile or marker values) are present at specificity of 99,9% (1:1000 chance or less

that this is due to normal physiological variation). The OFF-score value is a haematological marker which is a combination of HGB and the percentage of reticulocytes (RET%).

D. The alleged ADRV

9. The UCI alleges that the Rider committed a violation of Article 2.2 UCI ADR based on the abnormalities detected in the haematological values contained in the Rider's ABP. The following tables summarize the key parameters reported by the Rider's ABP:

	Sample code	date	Test type	HCT%	HGB g/l	Off-score	RET%	altitude
1	526631	24.09.2011	IC	50.4	16.80	90	1.69	1850
2	544587	11.01.2012	OoC	48.2	16.2	99.07	1.1	1700
3	546877	01.02.2012	OoC	47.8	16.1	97.8	1.11	24
4	548766	21.03.2012	IC	44.2	14.7	83.8	1.11	1700
5	553474	01.10.2012	OoC	44.2	14.6	89.4	0.89	1
6	347877	30.01.2018	OoC	57.2	18.7	150	0.38	1900

10. In early 2018, sample 6 of the Rider's ABP, collected on 30 January 2018, was flagged three times by the Adaptive Model for abnormalities at 99% specificity (upper limit HGB, lower limit reticulocytes and upper limit OFF score). The ABP sequences for HGB and OFF Score were also abnormal at >99.9%.

11. Following the initial expert review, the Athlete's Passport Management Unit ("APMU") submitted the Rider's ABP to an expert panel consisting of three experts (Prof. Giuseppe d'Onofrio, Prof. Michel Audran and Prof. Yorck Olaf Schumacher, hereinafter referred to as the "Expert Panel") for independent evaluation.

12. The Expert Panel conducted a review of the Rider's ABP and in a joint Expert Opinion dated 11 July 2018 (hereinafter referred to as "Expert Opinion 1") set forth their unanimous opinion on the Rider's haematological profile as follows:

> *"[…] In our view, the data of the athlete bears one highly abnormal feature in samples 6 (30.01.2018) obtained 10 days prior to the 2018 Asian Championships, for which no explanation is available at this stage. This sample displays high hemoglobin concentration paired with low reticulocytes, leading to an increased OFF score. Such pattern is typically observed when red blood cell mass has been supraphysiologically increased (high hemoglobin) and the organism tries to downregulate this surplus by suppressing its own red cell production (low reticulocytes). This situation is pathognomonic for the use and recent discontinuation of an erythropoiesis stimulant or the application of a blood transfusion (1). Notably, a value of hemoglobin of 18.7g/dl is very abnormal and rarely seen in a few severe medical conditions: the pathological limits indicated by the World Health Organization (2016) for the diagnostic of the neoplastic disease polycythemia vera is 16.5 g/dl.*
>
> *According to the whereabouts, the athlete resided at altitude (1700- 1900m) between 20.10.17 and 11.01.18 (or until 15.01.18, according to the DCF). The impact of altitude on markers used in the ABP has been studied extensively (2–3). There is agreement that altitude of sufficient duration and height will cause mild changes in the ABP. As main feature, a mild increase in the OFF score is visible within 7 to 10 days upon return to sea level. The magnitude of these changes ranges between 10 and 20 points from baseline. The OFF-score value observed in this case, 150, is 50 -60 points above the OFF-score value of the five other samples. As a matter of interest, the likelihood of observing an OFF-score of 150 in an undoped population of male athletes even considering a "worst case scenario" (i.e. all confounding factors such as altitude in favor of the athlete) is less than 1/10 000 (4).*
>
> *All samples were scrutinized for their analytical details outlined in the documentation packages. In the available documentation, there is no indication that any analytical or pre-analytical issues might have influenced the results in a way that would explain the*

abnormalities in the profile or influence the analytical result to the disadvantage of the athlete.

Based on these facts and the information available to date, it is our unanimous opinion that in the absence of an appropriate physiological explanation, the likelihood of the abnormality described above being due to blood manipulation, namely the artificial increase of red cell mass using for example erythropoiesis stimulating substances, is high. On the contrary, the likelihood of environmental factors or a medical condition causing the described pattern is very low.

We therefore conclude that it is highly likely that a prohibited substance or prohibited method has been used and that it is highly unlikely that the passport is the result of any other cause."

13. On 16 January 2019, the UCI informed the Rider of the APF and the Expert Opinion 1. The UCI further invited the Rider to submit an explanation for the abnormalities identified by 29 January 2019.

14. On 1 March 2019, the Rider sent the following explanation for the abnormal findings to the UCI:

"1 - […] I have never had such a high value in my entire cycling history which has generally ranged between 44% (long term sea level) & 50% (post prolonged high altitude training). In fact I had a full medical checkup for my health insurance approximately 3 weeks prior to the test by WADA (30th January) and my Hematocrit level was about 50%, this was on the back of long term high altitude training.

I did however suffer some from unusually seasonal high heat, severe dehydration and dusty conditions during the tough training camp prior to this test but not sure if it could affect my test results to such extent.

2 - I have been tested many times over the past 20 years but somethings were different during the test which was carried out in an empty room at the hotel which was used as bike storage by mechanics.

Our group of cyclists (at least 7 or 8 including female cyclists) were in the room at the same time and all blood samples were taken at the same time, this differed from all my previous tests as I have always been tested on individual basis. Urine samples were taken individually though.

Another unusual point was that none of us were asked for ID. We all had our national ID cards but it was at our rooms and no one asked for them. Our passports were at national cycling federation HQ in Tehran (for visa application) as was our expired 2017 UCI ID cards. We did not have our 2018 UCI ID cards as they were only issued just before the 12th February 2018 Asian Road Championships in Myanmar. I along with other team members received my UCI ID card on 12th February. It is my understanding that a valid ID is required for sample collection as per guidelines issued by WADA […]

Therefore given the fact that such major discrepancy against WADA guidelines was not noted in any of the paperwork submitted one has to question the integrity of sample collection process in this case and even the test results particularly since the results are so unusual as there could be other deviations from the guidelines on testing samples unknown to me.

3 - I have been a vocal and active proponent of anti-doping, speaking up against doping in our region to national papers and collaborating with CADF providing vital information to Mr Francois Marclay for a number of years such as doping practices prior to team training camps (email dd Feb 21, 2017), information on specific offenders (21st May 2017), notification of this specific training camp (email dd 24th January 2018) and some specific issues with certain cyclists at the date the above samples were collected (email dd 30th January 2018). I have no objections to Mr Francois Marclay providing you with my entire correspondence (as well as those written on my behalf by my wife Zara) as long as it is treated with full confidentiality due to repercussions.

Conclusion;

I have been a professional cyclist for 20 years having raced at national, continental, protour and Olympic levels and fully aware of doping practices within our sport as listed and shared with Fracois Marclay, intelligence manager of CADF. As such I agree that a Hematocrit level of 57% is highly dubious but also that only an amateur would dope to such extent risking detection and possibly even health issues. It is my understanding that in order to achieve a 10% gain in Hematocrit level one would have to use 40 to 50 x Erythropoietin 2000 iu/0.3ml injections over as many days. Would I provide info on location and time of training camp on 24th January 2018 to CADF intelligence if I had used 40 to 50 injections and still stay at camp when control officers turn up?

Why would I even consider this when in reality I am semi-retired only participating in some local races and a couple of races per year with the national team with no financial gain or glory. Why would I taint a clean and illustrious career of 20 years, for what purpose? […]"

15. On 10 April 2019, the Expert Panel issued a follow up Report (hereinafter referred to as "Expert Opinion 2") in which it considered the Rider's explanations. The opinion of the Expert Panel was as follows:

"[…] it … appears that the statement of the athlete regarding his normal haematocrit level is likely correct:, his previous blood tests were measure with haematocrits between 44% and 50% and haemoglobin values between 14.7 and 16.8g/dl. Reticulocytes ranged around 1%. The adaptive model acknowledges this fact and clearly flags the abnormal sample 6 for both haemoglobin (high) and reticulocytes (low). Scrutiny of the scattergram confirms the abnormality of the test and makes any analytical or pre analytical abnormality related to sampling unlikely.

The athlete further speculates on the dosage to achieve such abnormal blood levels. He states that "40 -50 2000IU injections" would be necessary "..to achieve a 10% gain in Haematocrit..".

This is obviously not correct. Given his already rather high haemoglobin concentration, an increase of haemoglobin of 2-3g/dl such as seen in the profile has been achieved in numerous studies with dosages ranging around half of what the athlete suggests: For example, in the landmark study of the performance enhancing effects of Erythropoietin, Ekblom et al (1) achieved an increase of 10% in haemoglobin concentration and haematocrit with a total of 46800 IU of erythropoietin , thus ~23 injections of 2000IU. The authors conclude that "…The main finding is that a low dose of rhEpo (20-40 IU - kg -' body weight) injected subcutaneously 3 times a week increased [Hb] and Hct in healthy subjects. After 6 weeks of rhEpo treatment, the increase was about 10%".

These facts demonstrate that contrary to the statement of the athlete, features such as observed in the profile can be achieved by relatively moderate doses of erythropoiesis stimulating substances.

The fact that the suspicious sample was obtained 10 days prior to the Asian Championships further increases the suspicion of this test, as Erythropoietin is typically discontinued in time before major competitions to avoid detection with conventional urine tests (which is more likely to happen at major events).

In summary, the explanations provided by the athlete do not explain the abnormal picture of erythropoietic suppression seen in sample 6 of the profile. On the contrary, the data of the athlete is well explained by the use and discontinuation of an erythropoietic stimulant or the application of a blood transfusion in the weeks prior to sample 6.

We therefore conclude that based on the data available at this stage, it is highly likely that a prohibited substance or prohibited method has been used and that it is unlikely that the passport is the result of the causes highlighted by the athlete in his submission."

16. On 3 July 2019, the UCI informed the Rider of the Expert Panel's conclusion and provided him with the relevant documentation. In the same communication the Rider was informed by the

UCI that an ADRV according to Article 2.2 UCI ADR was asserted against him and that he was therefore provisionally suspended. The Rider was also offered an Acceptance of Consequences pursuant to Article 8.4 UCI ADR. The latter contained a 4-year ineligibility period under Article 10.2.1 UCI ADR, starting on 11 July 2018, disqualification of all results obtained between 30 January 2018 and 12 February 2018, payment of the costs for results management in the amount of CHF 2,500.00 and reimbursement of the costs of the Documentation Packages of the samples analysed for his Biological Passport in the amount of CHF 860.00.

17. On 29 July 2019, the Rider rejected the UCI's Acceptance of Consequences and requested to have his case decided by the Tribunal.

18. On 16 and 18 September 2019, the Rider appealed the Provisional Suspension before the UCI Disciplinary Commission. In summary, the Applicant alleged that he did not use prohibited substances or prohibited methods.

16 September 2019:

"…
With due respect this is to inform you regarding my latest correspondence
As to follow my case and be informed that when exactly the UCI Anti-Doping Tribunal will file its petition as my professional Cycling carrier is seriously Threatened due to baseless doping Allegation raised against me for High Hematological Values in my Blood Anti-Doping Test conducted in Kish Island – IRAN, due to my good Training condition I am preparing for Tokyo Olympic Games 2020 as my last main cycling event in my Professional Cycling Carrier as to fulfill my sporting ambition.
Iran Cycling Federation conducts blood test through the years from Prominent professional cyclist (reports are attached) even before and after The Anti-Doping test held in Kish Island –Iran, and other documents are Also available to support my case confirming that I have not used any Prohibited substance or any prohibited methods.

Another thing need to think about that it is I'd love to pay attention to and confidential is my correspondence with Francis Marcella. During my Kish camp, I was contacted by your fellow Franceso Marceli (Francois.marciay@cadf.ch) via let him know about kish camp.
This email is shared me and my wife (mohamadis36@yahoo.com) to share my time and place on Kish island camp. I provided him with the announcement and other information needed to find duplexers ,so how could I have done myself and ask you to go there for a doping test?

Exactly in the kish camp, We sent email to uci and I want they come there for doping tests.

Once again I humbly request you to look into my case and let me know the Decision of Anti-Doping Committee of UCI as soon as it is convenience.
…"

18 September 2019:

"Respectfully, I refer to my correspondence with Mr Lessard dated September 16 th in which I copied and addressed disciplinary commission as well.
Hereby, according to article 7.9.5 of the ADR, I wrote to you to annul and set aside my provisional suspension since there are a number of important international tournaments, namely tour of Iran- Asia championship, track Korea, CISM tournament, Asia championship road race 2020 and I have to participate in these competitions because I am a professional athlete and Iranian team captain. Otherwise my professional career will be seriously damaged. Therefore, I kindly ask you to lift my provisional suspension and as communicated before I strongly reject all baseless doping claims against me and I am full ready to answer any question and clarify this issue. In fact, I want my provisional suspension be cancelled until I defend my right before the Anti Doping Tribunal, for which I have enough evidence (and I already forwarded to UCI) that shows my innocence.

It should be noted that in the course of my correspondence with Mr Lessard, I was told that my case will be referred to UCI Anti Doping tribunal first of 30th of July but they did not take any action and just recently Mr Lessard for the second time informed me that my case will be referred to Anti doping tribunal promptly. This has definitely brought me professional and personal loss since I have lost and continue to lose my opportunities to participate in tournaments and winning medals. Besides this issue has brought about bad reputation for me, while I am totally innocent and such damages should be compensated.

Considering the above, please let me know the result at the earliest possible time. My lawyers are following up the case and I kindly ask you to send a reference number and reply for their further follow up."

19. On 30 September 2019, the Rider sent another letter to the UCI Disciplinary Commission and requested that the Provisional Suspension be annulled. The letter stated as follows:

"On behalf of my client, Mr Mehdi Sohrabi the Iranian national cyclist and Asian champion, I wrote to you to regretfully express our dissatisfaction and serious concern over the unjust and suspicious practice of UCI legal and disciplinary departments.
As you are well aware, after the baseless accusation of doping and his provisional suspension, my client has previously contacted several times to object and has provided you with the evidence on his innocence. Despite his numerous efforts UCI has still failed to take a decision on lifting the provisional suspension and given the urgency of the matter and upcoming tournament for my client, which is emphasized in his correspondence, Mr Sohrabi is both professionally and mentally damaged.
For the sake of justice, you are kindly asked to act in accordance with the relevant rules and take a fair decision very soon."

20. On 24 October 2019, the UCI Disciplinary Commission dismissed Rider's request dated 30 September 2019.

III. PROCEDURE BEFORE THE TRIBUNAL

21. In accordance with Article 13.1 ADT Rules, the UCI has initiated proceedings before this Tribunal through the filing of a Petition to the Secretariat on 9 October 2019. In its Petition the UCI has filed the following requests:

- *"Declaring that Mr Mehdi Sohrabi has committed an Anti-Doping Rule Violation.*
- *Imposing on Mr Sohrabi a period of ineligibility of 4 years starting on the date of notification of the Tribunal's decision.*
- *Holding that the period of provisional suspension served by Mr Mehdi Sohrabi since 3 July 2019 shall be credited against the period of ineligibility imposed by the Tribunal.*
- *Disqualifying all the results obtained by Mr Mehdi Sohrabi from 30 January 2018 until 3 July 2019*
- *Ordering Mr Mehdi Sohrabi to pay the costs of results management by the UCI (2'500.- CHF) and the costs incurred for the documentation packages of the blood samples analyzed for the Biological Passport (860.- CHF)."*

22. On 18 October 2019, the Secretariat of the Tribunal appointed Mr Ulrich Haas to act as Single Judge in the proceedings in application of Article 14.1 ADT Rules.

23. On 19 October 2019, and in application of Article 14.4 ADT Rules, the Tribunal informed the Rider that disciplinary proceedings had been initiated against him before the Tribunal and that Mr Ulrich Haas had been appointed as Single Judge of the Tribunal. Furthermore, the Rider was informed that he was granted a deadline until 4 November 2019 to submit his answer (hereinafter referred to as the "Answer") in conformity with Articles 16.1 and 18 ADT Rules.

24. On 3 November 2019, the Rider, represented by Mr Mehrdad Mohammadi, submitted his Answer.

25. On 7 November 2019, the Tribunal acknowledged receipt of the Rider's Answer and advised the Parties that, in accordance with Article 17 ADT Rules, they shall neither supplement nor amend their submissions, unless allowed to do so by the Single Judge. Furthermore, the Parties were informed that the Single Judge had decided not to hold a hearing.

IV. JURISDICTION

26. The jurisdiction of the Tribunal follows from Article 8.2 UCI ADR and Article 3.1 ADT Rules according to which "*the Tribunal shall have jurisdiction over all matters in which an anti-doping rule violation is asserted by the UCI based on a results management or investigation process under Article 7 ADR; […]*".

27. Furthermore, Article 3.2 ADT Rules provides the following:

> *"Any objection to the jurisdiction of the Tribunal shall be brought to the Tribunal's attention within 7 days upon notification of the initiation of the proceedings. If no objection is filed within this time limit, the Parties are deemed to have accepted the Tribunal's jurisdiction."*

28. The above conditions are fulfilled in the case at hand. The Rider is a license-holder within the meaning of the UCI ADR and, thus, bound by the UCI ADR. Furthermore, the matter in dispute here deals with an asserted ADRV against the Rider following the results management/investigation procedures under Article 7 UCI ADR. Finally, the Tribunal notes that the Rider in his e-mail dated 29 July 2019 *"wish*[ed his case] *to be referred to the UCI anti-doping tribunal"* and, consequently, did not challenge the jurisdiction of the Tribunal. Therefore, the Single Judge has jurisdiction to decide the present matter.

V. APPLICABLES RULES

29. Article 25 ADT Rules provides that "[…] *the Single Judge shall apply the* [UCI] *ADR and the standards referenced therein as well as the UCI Constitution, the UCI Regulations and, subsidiarily, Swiss law*".

30. The relevant sample (Sample 6) of the Rider's ABP was collected on 30 January 2018. Article 25.1 UCI ADR provides that the effective date of the UCI ADR 2015 edition is 1 January 2015. Since the relevant doping control was carried out after this date, the Tribunal applies the 2015 edition of the UCI ADR.

31. As to the other "*standards referenced therein*" mentioned in Article 25 ADT Rules, the Tribunal notes that Part E of the Introduction of the UCI ADR provides as follows:

> *"Under the World Anti-Doping Program, WADA may release various types of documents, including (a) International Standards and related Technical Documents, and (b) Guidelines and Models of Best Practices.*
>
> *The UCI may, consistent with its responsibilities under the Code, choose to (a) directly incorporate some of these documents by reference into these Anti-Doping Rules, and/or (b) adopt Regulations implementing all or certain aspects of these documents for the sport of cycling.*
>
> *Compliance with an International Standard incorporated in these Anti-Doping Rules or with UCI Regulations (as opposed to another alternative standard, practice or procedure) shall be sufficient to conclude that the procedures addressed by the International Standard or UCI Regulations were performed properly.*

All documents binding upon Riders or other Persons subject to these Anti-Doping Rules are made available on the UCI Website, in their version effective and as amended from time to time."

32. The Single Judge also notes that Article 7.5 UCI ADR provides as follows:

> *"Review of Atypical Passport Findings and Adverse Passport Findings shall take place as provided in the UCI Testing & Investigations Regulations, the International Standard for Laboratories, WADA Athlete Biological Passport Operating Guidelines and respectively related Technical Documents […]"*

33. Accordingly, in addition to the UCI ADR, the Single Judge will take into consideration the UCI Testing & Investigations Regulations, the International Standard for Laboratories, the WADA Athlete Biological Passport Operating Guidelines (hereinafter referred to as "WADA ABP Guidelines"), and the related Technical Documents to the extent relevant or necessary.

VI. THE FINDINGS OF THE SINGLE JUDGE

34. The main issues for the Single Judge to decide are:

A) Did the Rider commit an ADRV within the meaning of Article 2.2 UCI ADR? and if so,
B) what are the appropriate consequences of such an ADRV?

A. Did the Rider commit an ADRV?

1. The relevant legal framework

35. Article 2.2. UCI ADR defines the relevant ADRV as follows:

> ***"2.2 Use or Attempted Use by a Rider of a Prohibited Substance or Prohibited Method***
>
> *2.2.1 It is each Rider's personal duty to ensure that no Prohibited Substance enters his or her body and that no Prohibited Method is Used. Accordingly, it is not necessary that intent, Fault, Negligence or knowing Use on the Rider's part be demonstrated in order to establish an anti-doping rule violation for Use of a Prohibited Substance or a Prohibited Method.*
>
> *2.2.2 The success or failure of the Use or Attempted Use of a Prohibited Substance or Prohibited Method is not material. It is sufficient that the Prohibited Substance or Prohibited Method was Used or Attempted to be Used for an anti-doping rule violation to be committed.*
>
> *[Comment to Article 2.2: It has always been the case that Use or Attempted Use of a Prohibited Substance or Prohibited Method may be established by any reliable means. As noted in the Comment to Article 3.2, unlike the proof required to establish an anti-doping rule violation under Article 2.1, Use or Attempted Use may also be established by other reliable means such as admissions by the Rider, witness statements, documentary evidence, conclusions drawn from longitudinal profiling, including data collected as part of the Rider Biological Passport, or other analytical which does not otherwise satisfy all the requirements to establish 'Presence' of a Prohibited Substance under Article 2.1. Forample, Use may be established based upon reliable analytical data from the analysis of an A Sample (without confirmation from an analysis of a B Sample) or from the analysis of a B Sample alone where the Anti-Doping Organization provides a satisfactory explanation for the lack of confirmation in the other Sample.]*

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

36. As to the burden and standard of proof, Article 3.1 UCI ADR reads as follows:

"The UCI shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether the UCI has established an anti-doping rule violation to the comfortable satisfaction of the hearing panel, bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt. Where these Anti-Doping Rules place the burden of proof upon the Rider or other Person alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability. …".

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

"Facts related to anti-doping rule violations may be established by any reliable means, including admissions. The following rules of proof shall be applicable in doping cases:

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

3.2.1 Analytical methods or decision limits approved by WADA after consultation within the relevant scientific community and which have been the subject of peer review are presumed to be scientifically valid. Any Rider or other Person seeking to rebut this presumption of scientific validity shall, as a condition precedent to any such challenge, first notify WADA of the challenge and the basis of the challenge.

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

3.2.2 WADA-accredited laboratories, and other laboratories approved by WADA, are presumed to have conducted Sample analysis and custodial procedures in accordance with the International Standard for Laboratories. The Rider or other Person may rebut this presumption by establishing that a departure from the International Standard for Laboratories occurred which could reasonably have caused the Adverse Analytical Finding.

If the Rider or other Person rebuts the preceding presumption by showing that a departure from the International Standard for Laboratories occurred which could reasonably have caused the Adverse Analytical Finding, then the UCI shall have the burden to establish that such departure did not cause the Adverse Analytical Finding.

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

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

38. It follows from Article 3.1 UCI ADR that the UCI bears the burden of proof to establish that the Rider committed a violation under Article 2.2 UCI ADR. The standard of proof is "*comfortable satisfaction, bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt*".

2. Is the ABP a reliable evidence?

39. It is not in dispute between the Parties that the ABP is, in principle, a reliable means for the purpose of establishing the use of a prohibited substance or prohibited method within the meaning of Article 2.2 UCI ADR. The latter has been confirmed by numerous CAS decisions[1] and by this Tribunal.[2] It further follows from the comment to Article 3.2 UCI ADR that "*the UCI may establish an ADRV under Article 2.2 UCI ADR based on the conclusions drawn from the profile of a series of the Rider's blood or urine samples, such as data from the Athlete Biological Passport*".

3. Should the data of sample 6 be included in the Rider's ABP?

40. The UCI basis its requests in its Petition on the analytical results obtained for Sample 6 of the Rider's ABP. The Rider submits that:

> (i) the Sample 6 "(taken at Kish island camp) does not belong to the Rider";
> (ii) the "procedures for collecting blood has been totally messed and wrong". In that respect the Rider claims – *inter alia* – that:
>
> - 7-8 cyclists were in the room, when his blood test was taken. There was no privacy;

[1] See e.g. CAS 2015/A/4006, para. 103; CAS 2016/O/4481, para. 133; CAS 2016/O/4464, para 148; CAS 2010/A/2174, para 9.8; CAS 2010/A/2176; CAS 2010/A/2235.

[2] UCI ADT 03.2017, UCI v. Isabella Moreira Lacerda, para 60, and UCI ADT 06.2017, UCI v. Alex Correia Diniz, para 54.

- he was not asked by the DCO to present his ID before providing the blood sample. He only provided to the DCO the passport number orally. Such procedure is not in line with the WADA ABP Guidelines.
- the Rider's English "is very weak". He had no assistance when filling out the Doping Control Form ("DCF"). The Rider did not have the help of a translator, which is in clear contravention of the International Standard for Testing and Investigation ("ISTI").

(iii) the general conditions of the room, where the blood sample was taken were not in compliance with articles 4, 5, 6 and 7 of the ISTI. In particular, the Rider submits that the collection facility:

- did not meet the required "Privacy, Cleanliness and sole use requirements",
- the procedures were not carried out by experienced personnel. In support of this the Rider submits two photographs, an affidavit and a certificate by his physician.

a) Did Sample 6 belong to the Rider?

41. The UCI has submitted the DCF for Sample 6. The latter is signed by the Rider and refers to the exact place and time of the sample collection. The DCF also refers to the code number of Sample 6, i.e. the identification number 347877 (for which the blood data were recorded by the laboratory). Thus, the DCF links a specific sample (identified by a unique number) to the Rider. The DCF is also signed by the DCO. Thus, prima facie, the UCI has – in a substantiated manner – provided sufficient facts that link the sample with the identification number 347877 (Sample 6) to the Rider. The latter contests these factual submissions by the UCI and claims that the Sample 6 does not belong to him. The Rider's submissions, however, are completely unsubstantiated. He accepts that he gave a sample on that day. He does not contest the time and the place of the sample collection. In addition, he also accepts that he has signed the DCF, which refers to Sample 6. The Rider simply alleges that – despite of all the above evidence – Sample 6 is not his. He fails to submit any facts or evidence to back his allegation. He does not even put forward a theory to whom the sample 347877 might belong or when and how it could have been tampered with, swapped or exchanged. The Rider does not submit that he lost sight or control of his sample at any moment in time. Thus, it is completely unclear on what basis the Rider claims that Sample 6 does not belong to him. If, however, the Rider does not contest the facts submitted by the UCI in a substantiated manner, he must be treated as if he had not contested UCI's allegations at all. Consequently, the UCI's submissions are uncontested, and the Single Judge finds that the Sample 6 originates from the Rider.

b) Can the analytical results be attributed to the Rider?

42. The Rider does not contest the analytical results of Sample 6 provided by the laboratory. In particular, he does not submit that the laboratory breached the applicable International Standards for laboratories. The Rider, however, is of the view that the analytical results of Sample 6 cannot be attributed to him, because the sample collection procedure was not in line with the applicable provisions. However, in order to invalidate the analytical results the Rider must not only prove a deviation from the applicable International Standards. In addition, the Rider must also establish by a balance of probabilities that the violation of the provisions regulating sample collection "could have reasonably caused" the ADRV (Article 3.2.3 UCI ADR).

(i) The threshold of Article 3.2.3 UCI ADR is not met

43. The Rider has failed for all and any of the alleged violations of the applicable International Standards to show how they could have "reasonably caused" the ADRV. The lack of privacy, the fact that the Rider did not carry his ID with him at the time of sample collection, the fact that the room was not sufficiently clean or that the personnel was not sufficiently experienced has –

prima facie – no impact on the analytical results. The Rider does not submit any facts to the contrary. Thus, from the outset, the Rider's submissions are unsubstantiated and cannot invalidate the analytical findings obtained for Sample 6.

(ii) The Rider acknowledged that the procedures were conducted in compliance with the rules

44. In addition, the Single Judge notes that the Rider did not raise any objections at the time of the sample collection. Article 7.7 of the ISTI Blood Sample Collection Guidelines provides as follows:

> *"[…]*
> *The Athlete is given the opportunity to complete the comments section of the form if he/she has any concerns or comments regarding how the Sample Collection Session was conducted. If there is insufficient space on the form, the Athlete is provided a supplementary report form.*
>
> *The Athlete and the Athlete Representative (if present) are invited to check that all information on the form accurately reflects the details of the Sample Collection Session. The Athlete is invited to complete the comments section of the form if he/she has any concerns or comments regarding the procedure. If there is insufficient space on the form, the Athlete is provided a supplementary report form.*
>
> *If present, the Athlete's Representative signs the Doping Control form.*
>
> *The Athlete and DCO then sign the Doping Control form."*

45. The Rider has not provided any comments in section 4 of the DCF. Moreover, by signing the DCF, the Rider declared the following:

> *"I DECLARE THAT THE INFORMATION I HAVE GIVEN ON THIS DOCUMENT IS CORRECT. I DECLARE THAT, SUBJECT TO COMMENTS MADE IN SECTION 4, SAMPLE COLLECTION WAS CONDUCTED IN ACCORDANCE WITH THE RELEVANT PROCEDURES FOR SAMPLE COLLECTION. I ACCEPT THAT ALL INFORMATION RELATED TO DOPING CONTROL, INCLUDING BUT NOT LIMITED TO LABORATORY RESULTS AND POSSIBLE SANCTIONS, SHALL BE SHARED WITH RELEVANT BODIES IN ACCORDANCE WITH THE WORLD ANTI-DOPING CODE.I HAVE READ AND UNDERSTOOD THE TEXT OVERLEAF, AND I CONSENT TO THE PROCESSING OF MY PERSONAL DATA THROUGH ADAMS."*

46. It follows from the above that the Rider by signing the DCF acknowledged that the sample collection was conducted in accordance with the applicable rules.

(iii) The alleged language issue

47. The Rider submits that his unconditional signing of the DCF does not constitute acceptance of the sample collection procedure. The Rider justifies this conclusion by stating that he was not provided with any assistance when filling out the DCF and that his English is "very weak". He was, thus, not been able to record his concerns on the DCF. This is all the more true according to the Rider, since he was not assisted by any translator.

48. Article 6.3.3 ISTI Blood Sample Collection Guidelines provides the following:

> *"6.3.3. The Sample Collection Authority shall establish criteria for who may be authorized to be present during the Sample Collection Session in addition to the Sample Collection Personnel. At a minimum, the criteria shall include:*
> *a) An Athlete's entitlement to be accompanied by a representative and/or interpreter during the Sample Collection Session, except when the Athlete is passing a urine Sample"*

49. Article 5.0.1 ISTI Blood Sample Collection Guidelines reads as follows:

> *"f. The Athlete's rights, including the right to:-Have an Athlete Representative present throughout the course of the entire Sample collection process (other than Sample provision) and, if available, an interpreter.-Ask questions and request additional information about the Sample collection process.-Request a delay in reporting to the Blood Collection Facility for valid reasons (ISTI Article 5.4.4 (a), (b) and Guidelines Section 5.1.3).-Request modifications to the Sample collection procedure if the Athlete is a Minor and/or has an impairment (ISTI Annex B -Modifications for Athletes with Impairments and Annex C -Modifications for Athletes who are Minors)."*

50. The Single Judge notes that the Rider is experienced and that – according to his own accord – he had undergone already several sample collection sessions. The Rider has been a professional cyclist for 20 years. He successfully took part in many races at national, continental, WorldTour and Olympic level and was fully aware of the doping collecting procedures within his sport (see letter of the Rider as of 1 March 2019). It is, thus, obvious, that the Rider has already filled out DCFs numerous times and was well aware of their content. In addition, the Single Judge notes that an interpreter is only to be provided if available and only upon the request of the Rider. There is no indication on file that the Rider requested the presence of an interpreter. In addition, there were several other people in the room, whose assistance the Rider cold have requested if indeed he had a language issue. Furthermore, there is no record on file that the Rider requested any additional information from the DCO on the sample collection procedure. To conclude, the Single Judge finds that there is nothing on file that would indicate that the Rider's signature on the DCF does not constitute a willful and knowledgeable acceptance of the doping control procedure. Consequently, the Rider's acknowledgement stands according to which the sample collection procedure was conducted in conformity with the applicable International Standards.

4. Do the analytical results constitute an abnormal finding?

51. The Adaptive Model flagged the analytical results of Sample 6 as atypical. This finding was corroborated by Expert Panel in their Opinion 1 and Opinion 2. In the Opinion 1 the experts stated that *"[i]n our view, the data of the athletes bears one highly abnormal feature in samples 6 (30.01.2018) … for which no explanation is available at this stage. This sample displays high hemoglobin concentration paired with low reticulocytes, leading to an increased OFF score."* Furthermore, the Expert Opinion 1 provides that *"a value of hemoglobin of 18.7g/dl is very abnormal and rarely seen in a few severe medical conditions: the pathological limits indicated by the World Health Organization (2016) for the diagnostic of the neoplastic disease polycythemia vera is 16.5 g/dl.*" The Rider does not contest that the analytical results constitute an abnormal finding. Instead, in his letter dated 1 March 2019 he states that "…*I agree that an Hematocrit level of 57% is highly dubious".* In addition, the Rider does not contest that the procedure for ABP has been followed correctly.

5. Are the results sufficient proof of doping?

a) Preliminary remarks

52. As set forth by the UCI in the Petition, the fundamental requirement of establishing an ADRV on the basis of a longitudinal profile is that:

> *"[…] all experts – independent from each other – come to the conclusion that doping is a plausible and likely explanation for the abnormal variation and that there is no other plausible cause ascertained with a significant degree of probability".*[3]

[3] CAS 2010/A/2174, Francesco De Bonis v. CONI & UCI, para 4.4.2 (b).

53. As previously emphasised by this Tribunal[4] in quoting CAS:[5]

> *"a pitfall to be avoided [in the context of the ABP] is the fallacy that if the probability of observing values that assume a normal or pathological condition is low, then the probability of doping is automatically high". Concretely this has been said in legal literature to mean that "if the ADO is not able to produce a 'doping scenario' with a minimum degree of credibility ('density'), the abnormality is simply unexplained, the burden of proof enters into play and the ADO's case must be dismissed since there is no evidence pleading in favour of the hypothesis of 'doping' any more than for another cause."*[6]

54. It has further been stated by this Tribunal, that since the mere fact that the Rider's haematological values are abnormal is no proof of doping, the UCI must both demonstrate that doping is a plausible source for the abnormal ABP values, as well as "establish – in principle – that all other alternative explanations for these values can be excluded. This puts the UCI in a difficult evidentiary position".[7] As previously emphasized by this Tribunal,[8] this position has been described, and solved, by a CAS Panel as follows (CAS 2011/A/2384 & 2386, UCI & WADA v. Alberto Contador Velasco & RFEC, para. 252 et seq.):

> *"The exceptions concern cases in which a party is faced with a serious difficulty in discharging its burden of proof ("état de nécessité en matière de preuve", "Beweisnotstand"). A cause for the latter may be that the relevant information is in the hands or under the control of the contesting party and is not accessible to the party bearing the burden of proof (cf. ATF 117 Ib 197, 208 et seq.). Another reason may be that, by it[s] very nature, the alleged fact cannot be proven by direct means. This is the case whenever a party needs to prove 'negative facts'. According to the Swiss Federal Tribunal, in such cases of "Beweisnotstand", principles of procedural fairness demand that the contesting party must substantiate and explain in detail why it deems the facts submitted by the other party to be wrong (ATF 106 II 29, 31 E. 2; 95 II 231, 234; 81 II 50, 54 E 3; FT 5P.1/2007 E. 3.1; KuKo-ZGB/Marro, 2012, Art. 8, no 14; CPC-Haldy, 2011, Art. 55, no 6). The Swiss Federal Tribunal has described in the following manner (ATF 119 II 305, 306 E 1b) this obligation of the (contesting) party to cooperate in elucidating the facts of the case:*
>
> > *"Dans une jurisprudence constante, le Tribunal fédéral a précisé que la règle de l'art. 8 CC s'applique en principe également lorsque la preuve porte sur des faits négatifs. Cette exigence est toutefois tempérée par les règles de la bonne foi qui obligent le défendeur à coopérer à la procédure probatoire, notamment en offrant la preuve du contraire (ATF 106 II 31, consid. 2 et les arrêts cités). L'obligation, faite à la partie adverse, de collaborer à l'administration de la preuve, même si elle découle du principe général de la bonne foi (art. 2 CC), est de nature procédurale et est donc exorbitante du droit fédéral – singulièrement de l'art. 8 CC –, car elle ne touche pas au fardeau de la preuve et n'implique nullement un renversement de celui-ci. C'est dans le cadre de l'appréciation des preuves que le juge se prononcera sur le résultat de la collaboration de la partie adverse ou qu'il tirera les conséquences d'un refus de collaborer à l'administration de la preuve.''*

55. As previously stated by this Tribunal *"it follows from the above that difficulties in proving "negative facts" result in a duty for the party not bearing the onus of proof to cooperate in establishing the facts. That party – i.e. the Rider – must cooperate in the investigation and clarification of the facts of the case. It is up to him to submit and substantiate other plausible sources for the abnormal values. It will then be up to the UCI to contest those other alternatives*

[4] UCI ADT 02.2018, UCI v. Mr Jaime Roson Garcia, para 75; UCI ADT 03.2017, UCI v. Isabella Moreira Lacerde, para 64 and UCI ADT 06.2017, UCI v. Alex Correia Diniz, para 82.
[5] CAS 2016/O/4464, IAAF v. ARAF & Ekaterina Sharmina, para 150.
[6] Id. quoting Marjolaine Viret (2016), Evidence in Anti-Doping in the Intersection of Science and Law, T.M.C Asser Press,The Hague, p. 774.
[7] UCI ADT 06.2017, UCI v. Alex Correira Diniz, para. 68.
[8] Ibid.

and, ultimately, for the Single Judge to evaluate the evidence before him in relation to the various scenarios. Nonetheless, the burden of proof, i.e. the risk that a certain scenario cannot be established or discarded, remains with the UCI."[9] This does not mean, as it was argued by the Rider that the required standard of proof on the Rider's part shall be whether the Rider has established that a certain scenario put forth "*cannot be ruled out*". It does mean, as stated in the Diniz-case cited above, that the standard of proof on the Rider's part is that the Rider shall *"submit and substantiate other plausible sources for the abnormal values"*. Then, *"It will be up to the UCI to contest those other alternatives and, ultimately, for the Single Judge to evaluate the evidence before him in relation to the various scenarios."*[10] At the end of the day, it is for the Single Judge to decide, if the UCI has fulfilled its burden of proving, to the comfortable satisfaction of the Single Judge, that the Rider has committed a violation of the anti-doping rules.

b) The assessment of the evidence

No alternative scenario

56. As previously stated by this Tribunal *"it follows from the above that difficulties in proving "negative facts" result in a duty for the party not bearing the onus of proof to cooperate in establishing the facts. That party – i.e. the Rider – must cooperate in the investigation and clarification of the facts of the case. It is up to him to submit and substantiate other plausible sources for the abnormal values. It will then*

The Rider has not advanced any other plausible scenario that could explain the abnormal values before the Tribunal. The Expert Opinion 1 examined whether the analytical results could be due to altitude training, but found that:

> *According to the whereabouts, the athlete resided at altitude (1700- 1900m) between 20.10.17 and 11.01.18 (or until 15.01.18, according to the DCF). The impact of altitude on markers used in the ABP has been studied extensively (2–3). There is agreement that altitude of sufficient duration and height will cause mild changes in the ABP. As main feature, a mild increase in the OFF score is visible within 7 to 10 days upon return to sea level. The magnitude of these changes ranges between 10 and 20 points from baseline. The OFF-score value observed in this case, 150, is 50 -60 points above the OFF-score value of the five other samples. As a matter of interest, the likelihood of observing an OFF-score of 150 in an undoped population of male athletes even considering a "worst case scenario" (i.e. all confounding factors such as altitude in favor of the athlete) is less than 1/10 000 (4).*

57. The above finding by the Experts was not contested by the Rider. In his letter dated 1 March 2019 the Rider, however, advanced the following:

> *I have never had such a high value in my entire cycling history which has generally ranged between 44% (long term sea level) & 50% (post prolonged high altitude training). In fact I had a full medical checkup for my health insurance approximately 3 weeks prior to the test by WADA (30thJanuary) and my Hematocrit level was about 50%, this was on the back of long term high altitude training.*
>
> *I did however suffer some from unusually seasonal high heat, severe dehydration and dusty conditions during the tough training camp prior to this test but not sure if it could affect my test results to such extent.*

58. The Experts in the Opinion 2 rejected these alternative scenarios, since they could not explain the sudden low value for the Rider's reticulocytes. The Single Judge follows this reasoning. In addition, the Experts contemplated whether the analytical results may be due to *"any analytical or pre analytical abnormality related to sampling"* but considered this – on the basis of the

[9] Ibid, para 68-69.
[10] Ibid, para 69.

Documentation Package – to be *"very unlikely".* The Rider has not submitted any substantiated allegation to contradict the finding of the experts.

Plausible doping scenario

59. The Experts also convincingly found that doping was a plausible explanation for the analytical results obtained for Sample 6. In the Opinion 1 the experts stated that these results constitute a "*pattern* [that] *is typically observed when red blood cell mass has been supraphysiologically increased (high hemoglobin) and the organism tries to downregulate this surplus by suppressing its own red cell production (low reticulocytes). …. This situation is pathognomonic for the use and recent discontinuation of an erythropoiesis stimulant or the application of a blood transfusion … Based on these facts and the information available to date, it is our unanimous opinion that in the absence of an appropriate physiological explanation, the likelihood of the abnormality described above being due to blood manipulation, namely the artificial increase of red cell mass using for example erythropoiesis stimulating substances, is high. On the contrary, the likelihood of environmental factors or a medical condition causing the described pattern is very low."* The Expert Panel finishes by concluding *"that it is highly likely that a prohibited substance or prohibited method has been used and that it is highly unlikely that the passport is the result of any other cause".*

No other evidence contradicting the doping scenario

60. The Rider submits that other evidence on file contradicts the doping scenario. In this respect the Rider points to the following

- since the age of ten he has been undergoing treatment for Juvenile myoclonic epilepsy. This follows from a report issued by Dr. Babak Khadem Rahgoshaei. The latter provides as follows:

  "Please be informed that Mr Mehdi Sohrabi has been undergoing treatment by me because of Juvenile myoclonic epilepsy since about ten years ago; the prescribed drugs for him is as following:
  Depakine 500g (BID and sometimes TDS in case of requirement), Clobazam and recently (in recent years) he has consumed Depakine and Levetiracetam(levebel).
  Although he has taken full dose drugs (which has been confirmed with the blood level of the drugs), Myoclonus and the patient seizures have not been completely controlled."

  The report further states any blood manipulation, in particular "*drug consumption … can cause hypoxia resulting in seizures … and can create the risk of permanent neurological side effects and even cause the patient to die*". The Rider follows from this that "*[…] the doctor who is treating the Rider for many years (Dr. Babak Khadem Rahgoshaei) has clearly confirmed that all methods causing to increase haemoglobin blood can have fatal effects on the Rider and the patient has observed it certainly and absolutely. […]"*

- the blood tests taken shortly before (14 January 2018) and after (5 February 2018) Sample 6 did not show abnormal blood values. Thus, this is proof that the Rider could not have manipulated his blood values on 30 January 2018. The latter is also corroborated by the Rider's letter of 1 March 2019, in which he stated the following:

  "[…] I am very surprised with the unusually high hematocrit level in the test carried out on 30th January 2018 (57.2%).

- in addition, the Rider submits that only an "amateur" would have doped to such levels and that he – as an experienced athlete – would not be so stupid to do so. In his letter dated 1 March 2019, the Rider states as follows:

  "… only an amateur would dope to such extent risking detection and possibly even health issues. It is my understanding that in order to achieve a 10% gain in Hematocrit level one would have to use 40 to 50 x Erythropoietin 2000 iu/0.3ml injections over as many days."

- Finally, the Rider stated that it was him who told the UCI about the training camp. "*Would I provide info on location and time of training camp on 24th January 2018 to CADF intelligence if I had used 40 to 50 injections and still stay at camp when control officers turn up? […]"*

61. The Single Judge finds that the above submissions are not enough to cast doubt on the doping scenario. It is common knowledge that doping practices put an athlete's health at risk. This knowledge, however, is not a strong deterrence against doping. Instead, the history of doping is littered with athletes that voluntarily put their health at risk for the benefit of a competitive advantage over their peers.

62. The two tests submitted by the Rider (before and after the taking of Samle 6) cannot contradict the doping scenario either. There is no evidence on file that the two blood sample analysis results were provided by the Rider. In addition, the laboratory report was drawn up by Farabi Pathobiology Lab. The latter is not a WADA-accredited laboratory. Thus, it is completely unknown which standards were applied by this laboratory and whether or not the results were obtained under comparable conditions as the other samples in the Rider's ABP.

63. Also the argument of the Rider that he – as an experienced athlete – would never use such amateur doping techniques does not carry much weight. The Single Judge firstly refers to the Expert Opinion 2 that states as follows:

> *"The athlete further speculates on the dosage to achieve such abnormal blood levels. He states that "40-50 2000IU injections 'would be necessary' … to achieve a 10% gain in Haematocrit …*
> *This is obviously not correct. Given his already rather high haemoglobin concentration, an increase of haemoglobin of 2-3g/dl such as seen in the profile has been achieved in numerous studies with dosages ranging around half of what the athlete suggests: For example, in the landmark study of the performance enhancing effects of Erythropoietin, Ekblom et al (1) achieved an increase of 10% in haemoglobin concentration and haematocrit with a total of 46800 IU of erythropoietin , thus ~23 injections of 2000IU. The authors conclude that "…The main finding is that a low dose of rhEpo (20-40 IU - kg -' body weight) injected subcutaneously 3 times a week increased [Hb] and Hct in healthy subjects. After 6 weeks of rhEpo treatment, the increase was about 10% ".*
>
> *These facts demonstrate that contrary to the statement of the athlete, features such as observed in the profile can be achieved by relatively moderate doses of erythropoiesis stimulating substances.*
>
> *The fact that the suspicious sample was obtained 10 days prior to the Asian Championships further increases the suspicion of this test, as Erythropoietin is typically discontinued in time before major competitions to avoid detection with conventional urine tests (which is more likely to happen at major events).*

64. The Rider has failed to submit any evidence to contradict the above Expert Panel's finding. Thus, it appears that a 10% gain in haematocrit is possible with moderate doses of erythropoiesis.

65. Finally, the Single Judge admits that – from a rational point – it appears strange that an athlete would inform the anti-doping authority of the time and location of a training camp if he used

prohibited substances or methods. However, taking prohibited substances and methods never seems rational from an ex post perspective in which an athlete has been caught doping. Things are very different from an ex ante perspective in which an athlete is persuaded that he can outwit the system. This is particularly true considering that the detection window for blood manipulation is rather small. In such a context providing information to an anti-doping authority may be a way to distract attention.

66. To conclude, the Single Judge is convinced by the required threshold, i.e. comfortable satisfaction that the Rider committed blood manipulation. He based his findings in particular on the following facts and evidence:

- the profile was flagged with abnormalities at 99% specificity three times for sample 6: upper limit hemoglobin, lower limit reticulocytes, upper limit OFF score
- the sequences for haemoglobin and OFF score are abnormal at >99.9%
- Sample 6 displays high hemoglobin concentration paired with low reticulocytes, leading to an increased OFF score
- this is typically when red blood cell mass has been supraphysiologically increased (high hemoglobin) and the organism tries to down regulate this surplus by suppressing its own red cell production (low reticulocytes)
- this situation is pathognomonic for the use and recent discontinuation of an erythropoiesis stimulant or the application of a blood transfusion
- a value of hemoglobin of 18.7g/dl is very abnormal and rarely seen in a few severe medical conditions
- the pathological limits indicated by the World Health Organization (2016) for the diagnostic of the neoplastic disease polycythemia vera is 16.5 g/dl
- there is no other alternative scenario that could explain the plausible doping scenario
- also considering all other evidence on file, there is nothing on file casting doubt on a doping scenario by the Rider.

c) Conclusion

67. The Single Judge is comfortably satisfied that the Rider committed an ADRV according to Article 2.2 UCI ADR in the form of use of a prohibited substance or prohibited method.

B. What are the proper consequences of the ADRV?

1. The period of Ineligibility

68. The starting point of the period of Ineligibility is Article 10.2. UCI ADR that specifically refers to an ADRV according to Article 2.2 UCI ADR. Since blood manipulation by use of a prohibited substance or prohibited method does not involve a Specified Substance (Article 4.2.2 UCI ADR), Article 10.2.1.1 UCI ADR applies, which states as follows:

"10.2.1. The period of Ineligibility shall be four years where:

10.2.1.1 The anti-doping rule violation does not involve a Specified Substance, unless the Rider or the person can establish that the anti-doping rule violation was not intentional."

69. As mentioned previously, the Single Judge is comfortably satisfied that the Rider committed an ADRV according to Article 2.2 UCI ADR. Furthermore, there is no evidence on file that the violation was not intentional. The onus of proof in this regard is on the Rider. Since the latter is unable to discharge his burden of proof, the Single Judge need not enter into an examination whether or not fault-related reductions (Articles 10.4 or 10.5 UCI ADR) apply. In addition, no submissions have been made with respect to non-fault-related reductions according to Article 10.6 UCI ADR.

70. Thus, the Single Judge finds that a period of Ineligibility of four years shall be imposed on the Rider.

2. Commencement of the Period of Ineligibility

71. The Single Judge has to determine the commencement of the period of Ineligibility. Article 10.11 UCI ADR provides in this respect as follows:

"Except as provided below, the period of Ineligibility shall start on the date of the final hearing decision providing for Ineligibility or, if the hearing is waived or there is no hearing, on the date Ineligibility is accepted or otherwise imposed. […]"

72. It is undisputed between the Parties that the Rider was provisionally suspended since 3 July 2019 and that he respected and observed the Provisional Suspension imposed on him. Therefore, the Rider shall receive a credit for the period of the Provision Suspension pursuant to Article 10.11.3.1 UCI ADR.

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

73. Consequently, the period of Ineligibility shall commence on the date of the decision of the Tribunal. However, the Rider shall be credited for the time served under the Provisional Suspension, i.e. as from 3 July 2019 to the date of the issuance of the decision.

3. Disqualification

74. The UCI in its Petition requests the Single Judge to decide that *"all results obtained from the Rider* since *the date of collection of Sample 6 (i.e. on 30 January 2018) until the day he was provisionally suspended (i.e. 3 July 2019) shall be disqualified"*.

75. Article 10.8 UCI ADR provides as follows:

"In addition to the automatic Disqualification of the results in the Competition which produced the positive Sample under Article 9, all other competitive results of the Rider obtained from the date a positive Sample was collected (whether In-Competition or Out-of-Competition), or other anti-doping rule violation occurred, through the commencement of any Provisional Suspension or Ineligibility period, shall, unless fairness requires otherwise, be Disqualified with all of the resulting Consequences including forfeiture of any medals, points and prizes."

76. The Single Judge acknowledges that according to Article 26 ADT Rules:

"The Single Judge shall determine the type and extent of the sanction(s) and consequences to be imposed according to the circumstances of the case, in accordance with the ADR.

The Single Judge is not bound by the Parties' prayers for relief."

77. The Single Judge concurs with the view expressed by this Tribunal, according to which:

> *"... art. 10(8) ADR provides an unfortunate lack of clarity in the situation involving a violation basedon an ABP. The Single Judge has been unable to find a definition of a "positive Sample" in the ADR; the term appears to be used exclusively in connection with art. 10(8) ADR. The Single Judge sees fit to understand the reference to a "positive Sample" in the phrase "the date a positive Sample was collected" (as opposed to a more precise defined term such as "Adverse Analytical Finding") here as a means to create a rule that distinguishes between violations based on collected Samples from other types of violations, such as art. 2(4) ADR (Whereabouts Failure) or art. 2(10) ADR (Prohibited Association), or even violations of art. 2(2) ADR that are based on non-analytical evidence. As a consequence, for violations that arise based on collected Samples, such as those based on an ABP, the Disqualification period would start on the date of Sample collection. The Single Judge feels comforted in this view by the consistent line of CAS case law that, in the context of the Disqualification for ABP violations, links the timing of the violation to the timing of the relevant Sample collection."*[11]

78. In conclusion, the Disqualification shall start on the date when the Sample 6 was collected, i.e. on 30 January 2018.

79. Since this sample was collected out-of-competition, Article 10.8 UCI ADR applies, which provides the following:

> *"In addition to the automatic Disqualification of the results in the Competition which produced the positive Sample under Article 9, all other competitive results of the Rider obtained from the date a positive Sample was collected (whether In-Competition or Out-of-Competition), or other anti-doping rule violation occurred, through the commencement of any Provisional Suspension or Ineligibility period, shall, unless fairness requires otherwise, be Disqualified with all of the resulting Consequences including forfeiture of any medals, points and prizes.*
>
> *[Comment to Article 10.8: Nothing in these Anti-Doping Rules precludes clean Riders or other Persons who have been damaged by the actions of a Person who has committed an anti-doping rule violation from pursuing any right which they would otherwise have to seek damages from such Person.]"*

80. The aforementioned provision requires the Disqualification of all results from the date the positive sample was found until the date the Provisional Suspension was imposed, unless *"fairness requires otherwise"*.

81. In this connection the UCI refers to the following CAS jurisprudence[12]:

> *"The Panel finds that no reasons of fairness exist in this case could justify mitigating the effects of Article 40.9 of the 2009 IAAF ADR. This conclusion applies irrespective of the discussion between the parties as to whether the anti-doping organization or the athlete bears the burden of proving whether it is fair to disqualify the results in question.*
>
> *As a preliminary matter, the Panel notes that 'fairness' is a broad concept (CAS 2013/A/3274, para. 85), covering a number of elements that the deciding body can take into account in its decision not to disqualify some results. The CAS precedents (in general terms,*

[11] See e.g. CAS 2010/A/2235, UCI v. Valjavec, para. 117; CAS 2014/A/3469, IAAF v. Alhamdah, para. 44; CAS 2014/A/3614, IAAF v. Dominguez, para. 404; CAS 2016/O/4463, IAAF v. Ugarova, para. 133; UCI ADT 02.2018; UCI v. Jaime Roson Garcia, para 158; UCI ADT 03.2017, UCI v. Isabella Moreira Lacerde, para 132 and UCI ADT 06.2017, UCI v. Alex Correia Diniz, para 104.

[12] CAS 2015/A/4006 IAAF v. ARAF, Zaripova & RUSADA, paras 101-102.

inter alia, CAS 2007/A/1283, para. 53; CAS 2013/A/3274, para. 85-88) took into account a number of factors, such as the nature and severity of the infringement (CAS 2010/A/2083, para. 81), the length of time between the anti-doping rule violation, the result to be disqualified and the disciplinary decision, the presence of negative tests between the anti-doping rule violation and the competition at which the result to be disqualified was achieved, and the effect of the infringement on the result at stake (CAS 2008/A/1744, para. 76; CAS 2007/A/1362&1393, para 7.22). The Panel underlines that no single element is decisive alone: an overall evaluation of them is necessary."

82. The Single Judge takes into account that blood manipulation is always intentionally and with the purpose to enhance the sporting performance and results. Thus, the Single Judge, in exercising his discretion, finds that all competitive results obtained by the Rider from 30 January 2018 until the date the Provisional Suspension (i.e. 3 July 2019) shall be disqualified.

4. Mandatory Fine and Costs

83. The UCI requests that a financial sanction shall be imposed on the Rider but no fine.

84. In relation to the costs of the testing and the results management process, the Single Judge takes into account Article 10.10.2 UCI ADR. The provision reads as follows:

"*10.10.2 Liability for Costs of the Procedures*

If the Rider or other Person is found to have committed an anti-doping rule violation, he or she shall bear, unless the UCI Anti-Doping Tribunal determines otherwise:

1. *The cost of the proceedings as determined by the UCI Anti-Doping Tribunal, if any.*
2. *The cost of the result management by the UCI; the amount of this cost shall be CHF 2'500, unless a higher amount is claimed by the UCI and determined by the UCI Anti-Doping Tribunal.*
3. *The cost of the B Sample analysis, where applicable.*
4. *The costs incurred for Out-of-Competition Testing; the amount of this cost shall be CHF 1'500, unless a higher amount is claimed by the UCI and determined by the UCI Anti-Doping Tribunal.*
5. *The cost for the A and/or B Sample laboratory documentation package where requested by the Rider.*
6. *The cost for the documentation package of Samples analyzed for the Biological Passport, where applicable.*

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

85. In application of the above provisions, the Single Judge holds that the Rider shall reimburse to the UCI the following amounts:

- CHF 2'500.- for costs of the results management [Article 10.10.2 (2)];
- EUR 860.- (VAT excl.) for the documentation package of the blood samples analysed for the Biological Passport [Article 10.10.2 (6)].

VII. COSTS OF THE PROCEEDINGS

86. Article 28 ADT Rules provides as follows:

1. The Tribunal shall determine in its judgment the costs of the proceedings as provided under Article 10.10.2 para. 1 ADR.

2. As a matter of principle the Judgment is rendered without costs.

3. Notwithstanding para. 1 above, the Tribunal may order the Defendant to pay a contribution toward the costs of the Tribunal. Whenever the hearing is held by videoconference, the maximum participation is CHF 7'500.

4. The Tribunal may also order the unsuccessful Party to pay a contribution toward the prevailing Party's costs and expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and experts. If the prevailing Party was represented by a legal representative the contribution shall also cover legal costs.

87. In application of Article 28.2 ADT Rules, the Tribunal decides that the present Judgment is rendered without costs. In light of all of the circumstances of this case, the Tribunal finds it appropriate to not order the Rider (as the unsuccessful party) to pay a contribution towards the UCI's costs.

VIII. RULING

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

1. Mr Mehdi Sohrabi has committed an Anti-Doping Rule Violation.

2. Mr Mehdi Sohrabi is suspended for a period of Ineligibility of 4 years. The period of Ineligibility shall commence on the date of the decision, i.e. 17 January 2020. However, considering the credit for the period of the Provisional Suspension already served by Mr Sohrabi since 3 July 2019, Mr Sohrabi's period of Ineligibility effectively began on 3 July 2019, and shall end four years from this date, i.e. 2 July 2023.

3. The results obtained by Mr Sohrabi from 30 January 2018 until 3 July 2018 are disqualified.

4. Mr Mehdi Sohrabi is ordered to pay to the UCI:

a) the amount of CHF 2'500 for the costs of results management; and
c) the amount of EUR 860 for costs of the laboratory documentation package of the blood samples.

5. All other and/or further-reaching requests are dismissed.

6. This judgment is final and will be notified to:

a) Mehdi Sohrabi;
b) Iran National Anti-Doping Organization;
c) UCI; and
d) WADA

89. This Judgment may be appealed before the CAS pursuant Article 30.2 ADT Rules and Article 74 UCI Constitution. The time limit to file the appeal is governed by the provisions in Article 13.2.5 UCI ADR.

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Ulrich HAAS
Single Judge