

**CAS 2024/A/10938 Iryna Popova v. Union Cycliste Internationale (UCI)**

**ARBITRAL AWARD**

**delivered by the**

**COURT OF ARBITRATION FOR SPORT**

**sitting in the following composition:**

President: Dr. Vladimir Novak, Attorney-at-law in Brussels, Belgium

Arbitrators: Prof. Song Lu, Professor of law in Beijing, China  
Mr. Bernhard Welten, Attorney-at-law in Bern, Switzerland

**in the arbitration between**

**Iryna Popova**, Gorlovka City, Ukraine

represented by Ms. Ganna Gnizdovska, Attorney-at-law, Odesa, Ukraine, and Mr. Borys Boguslavskyy, Legal counsel, Konstanz, Germany

**Appellant**

**and**

**Union Cycliste Internationale (UCI)**, Aigle, Switzerland

represented by Mr. Antonio Rigozzi, Attorney-at-law, and Mr. Patrick Pithon, Attorney-at-law, Lévy Kaufmann-Kohler, Geneva, Switzerland

**Respondent**

## **I. PARTIES**

1. Ms. Iryna Popova (the “Appellant”) was a Ukrainian professional mountain bike cyclist, affiliated to the Ukrainian Cycling Federation (“UCF”) and a Licence-Holder within the meaning of the UCI Anti-Doping Rules (“UCI ADR”). She was affiliated to the UCF until 28 June 2023.
2. The Union Cycliste Internationale (“UCI” or the “Respondent”) has its headquarter in Aigle, Switzerland and it is an association under Articles 60 et seq. of the Swiss Civil Code (“SCC”). UCI is the world governing body of cycling.
3. The Appellant and the Respondent are collectively referred to as the “Parties”.

## **II. FACTUAL BACKGROUND**

### **A. Background Facts**

4. Below is a summary of the relevant facts and allegations based on the Parties’ written submissions and evidence adduced. Additional facts and allegations found in the Parties’ submissions and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Panel has considered all facts, allegations, legal arguments, and evidence submitted by the Parties in the present proceedings, the Award refers only to the submissions and evidence that the Panel considers necessary to explain its reasoning.
5. As a professional cyclist, the Appellant was part of the UCI’s Athlete Biological Passport (“ABP”) Program. The ABP Program focuses on the effect of prohibited substances and methods on the athlete’s blood values rather than on the identification of a specific substance or method in an athlete’s specimen.
6. The marker values from the blood samples collected in the ABP Program are fed into a standardised Bayesian statistical model (“Adaptive Model”). The Adaptive Model uses an algorithm that takes into account both (i) variability of such marker values within the population generally (*i.e.*, blood values reported in a large population of non-doped athletes) and (ii) factors affecting the variability of an athlete’s individual values, including gender, ethnic origin, age, altitude, type of sport, and instrument-related technology. The selected markers include haemoglobin (“HGB”) count and percentage of reticulocytes (“RET%”), the statistical combination of which is used to calculate the “OFF-score”, a value sensitive to changes in erythropoiesis. They are monitored over a period of time and a longitudinal profile is created that establishes an athlete’s upper and lower limits within which the athlete’s values are expected to fall, assuming normal physiological conditions (*i.e.*, the athlete is healthy and has not been doping). The athlete becomes his/her own point of reference, and each time a blood sample is recorded, the Adaptive Model calculates where the reported HGB, RET% and OFF-

score values fall within the athlete's expected distribution. Following a new test, a new range of expected results for the athlete is determined.

7. If the Adaptive Model determines that an athlete's values fall outside his or her expected individual range, the results are considered to be atypical and require further investigation and/or analysis. The "specificity" of the limits generated by the Adaptive Model (*i.e.*, the software's ability to identify clean athletes) is 99%, *i.e.*, at most, only 1 in 100 athletes who are not doping and with normal physiological conditions would produce values outside the range by chance. The further the value lies outside the limits of the range predicted by the Adaptive Model, the less likely it is that the value reflects normal physiological conditions.
8. The ABP Program is administered and managed by an Athlete Passport Management Unit ("APMU").
9. In January 2023, the APMU managing the Appellant's ABP identified abnormalities in six out of eight samples taken between 17 August 2016 and 24 August 2022. In particular:
  - Sample 1 taken on 17 August 2016 was flagged with lower limit RET%;
  - Sample 3 taken on 14 May 2022 was flagged with upper limit HGB, upper limit OFF-score and lower limit RET%;
  - Sample 4 taken on 31 May 2022 was flagged with upper limit OFF-score and lower limit RET%;
  - Sample 5 taken on 19 June 2022 was flagged with lower limit HGB;
  - Sample 6 taken on 14 August 2022 was flagged with lower limit HGB, lower limit OFF-score and upper limit RET%;
  - Sample 7 taken on 24 August 2022 was flagged with lower limit HGB, lower limit OFF-score and upper limit RET%.
10. The APMU submitted the Appellant's profile to one expert for initial review. That expert concluded that the Appellant's ABP was likely the result of the use of a prohibited substance or method.
11. The APMU then submitted the Appellant's profile to two additional experts. On 10 February 2023, the three-expert panel ("Expert Panel") concluded that *"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 any other cause"* ("First Expert Opinion").

12. On 8 March 2023, the Respondent informed the Appellant that the abovementioned Adverse Passport Finding (“APF”) may constitute an Anti-Doping Rule Violation (“ADRV”), inviting the Appellant to provide explanations.
13. Between 5 and 12 April 2023, the Appellant alleged that the APF could be the result of her contracting Covid-19 in October 2020, an intensive training period that followed her recovery from COVID-19, and the emotional stress due to her home country (Ukraine) being war-torn. The Appellant also noted to have always tested negative for prohibited substances, and that the situation in Ukraine would in any event have impeded her from obtaining doping substances.
14. On 19 May 2023, the Expert Panel, after having reviewed the Appellant’s explanation, concluded that *“the arguments provided by the athlete do not explain the abnormalities in her profile. We maintain our previous assessment that the likelihood of the profile considering COVID19, the absence of positive urine test, training or emotional stress (alone or in combination) is low, whereas its likelihood considering the use of a prohibited substance or method, namely an erythropoietic stimulant or a blood transfusion, is high”* (“Second Expert Opinion”).
15. On 20 June 2023, the Respondent asserted an ADRV against the Appellant, and notified her of a provisional suspension from that date. The Respondent also offered the Appellant an Acceptance of Consequences (“AoC”), with a deadline until 4 July 2023 to accept it.
16. On 21 June 2023, the Appellant rejected the AoC and claimed that the ADRV was not established, including because the required standard of proof had not been met, the Appellant’s defence rights had been breached, and the Expert Panel failed to adequately consider the situation in Ukraine and the consequences of Covid-19.
17. On 25 June 2023, the Appellant participated in the 2023 European Games.
18. After additional correspondence between the Appellant and the Respondent, on 9 November 2023, the Respondent filed a petition with the UCI Anti-Doping Tribunal requesting that an award be issued as follows:
  - *“Declaring that Ms. Popova has committed an Anti-Doping Rule Violation.*
  - *Imposing a period of ineligibility of four years on Ms. Popova, starting on the date of notification of the Tribunal’s decision.*
  - *Disqualifying all the results obtained by Ms. Popova from the date of collection of Sample 1 (i.e. on 17 August 2016) until the date of the Tribunal’s decision.”*

## **B. Proceedings before the UCI Anti-Doping Tribunal**

19. On 13 December 2023, the Appellant filed her statement of defence. The Appellant denied having committed an ADRV for the reasons previously asserted and further claimed that the ADRV was caused by her medical condition - polycystic ovarian syndrome (“PCOS”).
20. The Respondent *inter alia* submitted a new opinion of the Expert Panel addressing the additional arguments raised by the Appellant in her submissions before the UCI Anti-Doping Tribunal and concluding that they “*do not explain the abnormalities in her profile. The likelihood of the profile considering the influence of polycystic ovarian syndrome (PCOS) on the red blood cell system is low. We therefore maintain our previous assessment that the likelihood of the profile considering the use of a prohibited substance or method, namely an erythropoietic stimulant or a blood transfusion in 2016 and 2022, is very high*” (“Third Expert Opinion” and, together with the First Expert Opinion and the Second Expert Opinion, the “Three Expert Opinions”).
21. On 20 June 2024, a hearing was held by videoconference. After the Parties’ opening statements, the UCI Anti-Doping Tribunal heard the three experts forming the Expert Panel as well as two coaches of the Appellant as witnesses. The Parties made their final pleadings. Both Parties confirmed not to have objections to the conduct of the proceedings.
22. On 20 September 2024, the UCI Anti-Doping Tribunal issued its decision (“Appealed Decision”), finding as follows:
  - “*Ms. Iryna Popova has committed an Anti-Doping Rule Violation (Article 2.2 UCI ADR 2015).*
  - *Ms. Iryna Popova is suspended for a period of Ineligibility of 4 years. The period of Ineligibility shall commence on the date of the decision, i.e., 20 September 2024.*
  - *The results obtained by Ms. Iryna Popova from the date of collection of Sample 1 (17 August 2016) until the day of the decision (20 September 2024) are disqualified.*
  - *Ms. Iryna Popova is ordered to pay to the UCI the amount of CHF 2’500 for the costs of results management, and the amount of EUR 1’515 for costs incurred for the documentation packages of the blood samples analysed for the Biological Passport.*
  - *All other and/or further-reaching requests are dismissed.*
  - *This judgment is final and will be notified to: [...]”.*

### **III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT (“CAS”)**

23. On 15 October 2024, the Appellant filed the Statement of Appeal against the Appealed Decision. The Statement of Appeal contained a request for the stay of the execution of the Appealed Decision.
24. On 23 October 2024, the CAS Court Office noted that the arbitrator named by Appellant in the Statement of Appeal (Prof. Dr. Yong Han) was not listed in the CAS list of arbitrators and requested the Appellant to nominate an arbitrator from the CAS list within three days. The CAS Court Office also granted the Respondent a 10-day time limit to file its position on the Appellant’s request for stay.
25. On 25 October 2024, the Appellant filed the Appeal Brief. The Appellant requested a hearing and called the APMU’s Manager that appointed the Expert Panel which issued the Three Expert Opinions, *i.e.* Ms. Céline Schobinger, to be called as a witness. The Appellant also nominated Prof. Kent Pantry as arbitrator.
26. On 1 November 2024, the Respondent noted that Prof. Kent Pantry was likewise not listed in the CAS list of arbitrators. Given that the nomination of an arbitrator is a fundamental requirement of the Statement of Appeal, the Respondent requested that the President of the CAS Appeals Arbitration Division issued a termination order. The Respondent also requested that its time limits to nominate an arbitrator and to file an Answer be suspended.
27. On 4 November 2024, the CAS Court Office granted the request for suspension of the time limits for the Respondent to nominate an arbitrator and to file its Answer.
28. On 4 November 2024, the Respondent requested that the Appellant’s request to stay the execution of the Appealed Decision be dismissed.
29. On 5 November 2024, the Appellant nominated Prof. David N.W. Chen as an arbitrator.
30. On 11 November 2024, the CAS Court Office informed the Parties that the President of the CAS Appeals Arbitration Division denied the Respondent’s request to terminate the present procedure, and that the suspension of the Respondent’s time limit to nominate an arbitrator and to file an Answer was lifted.
31. On 13 November 2024, the Respondent nominated Mr. Bernhard Welten as an arbitrator.
32. On 23 November 2024, the Respondent requested an extension of the time limit to file the Answer.
33. On 28 November 2024, the CAS Court Office confirmed that the Respondent’s time limit to file the Answer was extended until 6 December 2024.

34. On 6 December 2024, the Respondent filed the Answer. The Respondent requested that the CAS issue an award based solely on the Parties' written submissions.
35. On 9 December 2024, the CAS Court Office invited the Parties to restate their position regarding the need to conduct a hearing and/or a case management conference.
36. On 10 December 2024, the CAS Court Office informed the Parties that Prof. David N.W. Chen did not accept his nomination as arbitrator and requested the Appellant to nominate another arbitrator within 10 days.
37. On 11 December 2024, the Appellant confirmed its request for a hearing and a case management conference. The Appellant also nominated Prof. Song Lu as an arbitrator.
38. On 12 December 2024, the Respondent confirmed its objection to the need for a hearing and, in case the CAS decided to conduct one, left it to the CAS to decide on the need for a case management conference.
39. In a first letter on 23 December 2024, the Appellant informed the CAS that a urine sample was recently taken from her, expressing the concern that the results of such test could be used as evidence in the present case. The Appellant insisted on her request to conduct a hearing, and also requested that the UCI Anti-Doping Program Manager and/or the UCI Anti-Doping Director who were responsible for assigning such test be called as witnesses. In a second letter on 23 December 2024, the Appellant challenged the impartiality of the arbitrator appointed by the Respondent—Mr. Bernhard Welten.
40. On 3 January 2025, the Respondent commented on the recent taking of a urine sample from the Appellant, arguing that such ongoing doping control was legitimate and, in any event, irrelevant in the context of the present procedure. The Respondent therefore asked that Appellant's request to summon additional witnesses in relation to that urine sample collection be dismissed.
41. On 7 January 2025, the Appellant submitted further arguments on the recent taking of her urine sample, arguing that such sample should have been taken together with the blood samples that revealed the abnormalities consisting in the ADRV, to better assess such abnormalities.
42. On 9 January 2025, the CAS Court Office informed the Parties that the Panel appointed to decide the present case was constituted as follows:

President: Dr. Vladimir Novak, Attorney-at-law in Brussels, Belgium.

Arbitrators: Prof. Song Lu, Professor of law in Beijing, China.  
Mr. Bernhard Welten, Attorney-at-law in Bern, Switzerland.

43. On 19 March 2025, the CAS Court Office sent the Parties a copy of the Order on Challenge rendered by the ICAS dismissing the Appellant's challenge in its entirety.
44. On 11 April 2025, the CAS Court Office informed the Parties that the Panel decided to hold a hearing by videoconference. The Appellant was invited to give the details of the alleged procedural inconsistencies in the research of her biological markers and alleged violation of human rights and fundamental principles, explaining why and how the called witness (Ms. Schobinger) would be able to answer such questions.
45. On 15 April 2025, the CAS Court Office informed the Parties that they were called to appear at the hearing of 20 May 2025, 09:00 am (Swiss time), by videoconference (via CISCO Webex) ("Hearing"). The Panel also called Ms. Schobinger to appear as a witness.
46. On 17 April 2025, the Appellant submitted her arguments concerning the relevance of Ms. Schobinger's testimony. The Appellant also asked the CAS Court Office whether representation by her counsel at the Hearing would be sufficient, given the Appellant's presence in Ukraine and associated difficulties.
47. On 23 April 2025, the CAS Court Office informed the Parties of the Panel's decision to allow the Appellant to call Ms. Schobinger to appear as a witness at the Hearing. The Appellant was also informed that representation by her counsel would be sufficient but that the Panel would welcome the Appellant's presence should her circumstances so allow.
48. On 5 May 2025, the CAS Court Office sent the Parties the Order of Procedure.
49. On 7 May 2025, the CAS Court Office requested the Respondent to confirm that Ms. Schobinger will appear at the Hearing.
50. On 8 May 2025, each of the Appellant and the Respondent signed the Order of Procedure.
51. On 13 May 2025, the Parties received a tentative Hearing schedule for their comments.
52. On 20 May 2025, the Hearing took place. The Panel was assisted in an administrative capacity by Mr. Riccardo Molè (with the agreement of the Parties) and Ms. Andrea Sherpa-Zimmermann, CAS Counsel. The Hearing was also attended by the following participants:

For the Appellant: Ms. Ganna Gnizdovska, Mr. Borys Boguslavskyy (legal counsel).

For the Respondent: Mr. Antonio Rigozzi, Mr. Patrick Pithon, Ms. Josepha Nehring (legal counsel).

Witness: Ms. Céline Schobinger.

53. At the outset of the hearing, the Parties confirmed that neither had any additional objections as to the constitution and composition of the Panel.
54. During the hearing, the Parties had ample opportunity to present their case, submit their arguments and answer the Panel's questions. Furthermore, the Panel heard Ms Céline Schobinger in her capacity as a witness called by the Appellant.
55. At the end of the hearing, the Parties stated they had no objections as to the procedure adopted by the Panel and confirmed that their right to be heard had been respected.
56. The arguments raised by the Parties during the Hearing are summarized below and, where relevant, discussed in the corresponding Merits section of the Award.

#### **IV. SUBMISSIONS OF THE PARTIES**

57. The Appellant's Appeal Brief contains the following requests for relief:

- “a) Acknowledge that there have been significant violations of the Rider's Human Rights during the process of Athlete Biological Passport Investigation.*
- b) Recognize that the Expert Report provided by UCI on Rider's anti-doping rules violations doesn't correspond to the Anti - Doping Organisation's / UCI's burden of proof.*
- c) Find the Rider not fault of anti-doping rules violation.*
- d) Assign the costs of the Athlete Biological Passport Investigation and Tribunal process to the UCI.*
- e) to set aside the UCI Tribunal's Judgment in its entirety”.*

58. In support of her relief, the Appellant relied on the following principal arguments.

- The APF, as well as the tests and the Three Expert Opinions on which it is based, do not duly account for the specific circumstances of the case, including notably that the Appellant is a woman suffering from PCOS, that contracted Covid-19, and that was under psychological stress particularly because of the war in Ukraine.
  - The data relied on are scarce and fragmentary. In particular, the first and only blood sample collected from the Appellant in 2016 is insufficient for constructing a longitudinal profile.
  - Certain doping control forms did not determine the gender of the test subject.

- The factors above influence the statistical dispersion of biological markers over time and in relation to certain events that require increased physical and nervous stress, including competitions.
- By not considering that sudden spikes in HGB and erythropoietic suppression may be due to the above factors, the Respondent did not discharge its burden to prove an ADRV. On the contrary, the Appellant met her standard of proof by submitting evidence based on a more complete set of data and showing that PCOS and more generally the Appellant's specific conditions could be possible alternative reasons (other than artificial intervention) for those spikes.
- The Appellant's human rights were infringed.
  - By not granting the Appellant's request for an extension of the time-limit to provide explanations, the Respondent discriminated against the Appellant.
  - The Respondent's failure to assess the possible complex influence of the factors above (*i.e.*, the Appellant being a woman suffering from PCS) on deviation in biological markers is a gender-based discrimination against the Appellant.
  - The Appellant's right to a fair trial has been infringed because the Appealed Decision does not reflect the testimony of experts supporting her position.
  - There were other irregularities, including with respect to the independence of the Expert Panel, that ultimately impinged on the Appellant's fundamental human rights.
- The UCI Anti-Doping Tribunal applied the wrong set of rules.
  - The UCI Anti-Doping Tribunal applied the UCI ADR 2015 in that they were the set of rules applicable at the time of the first blood sample was taken (2016). However, when the Appellant was informed of the possible ADRV, the UCI ADR 2021 were into force. The latter should apply in the present case because "*the time of the infringement has a legal connection with the time of the formation of the expert opinion*" (Appeal Brief, para. 169).
  - For the same reason, the Appellant's results' disqualification should have occurred from the establishment of the ADRV by the UCI (2023), not from the date of the first blood sample that was used to establish such ADRV (2016).

- In any event, the UCI Anti-Doping Tribunal adopted the Appealed Decision more than eight years after the first blood sample, *i.e.*, when its power to apply disciplinary sanctions was time barred.

59. At the Hearing, the Appellant reiterated her arguments and in particular insisted on the following issues.

- The procedure followed to collect and analyse the Appellant’s blood samples was deprived of scientific/statistical value because of the APMU Manager’s “human” influence on it.
- The Appellant’s human rights were infringed.
- The Expert Panel was not independent, and in any event did not consider all the various factors regarding the Appellant’s conditions in a holistic (as opposed to individual) manner.

60. The Respondent’s Answer contains the following requests for relief:

*“[...] UCI respectfully requests the Panel to issue an arbitral award ruling as follows:*

- (i) The appeal filed by Ms. Iryna Popova and all of the prayers for relief contained therein are dismissed.*
- (ii) The Decision of the UCI Anti-Doping Tribunal of 20 September 2024 is upheld.*
- (iii) Ms. Iryna Popova shall bear all arbitration costs incurred with the present proceedings, if any, and pay a significant contribution towards the costs incurred by UCI in connection with these proceedings”.*

61. In support of its relief, the Respondent relied on the following principal arguments.

- The Respondent established an ADRV to the requisite legal standard.
  - In particular, the ABP model cannot be challenged by the Appellant because only one blood sample was taken from her in 2016. The Expert Panel duly took into account the Appellant’s gender, her alleged pathologies, and the combination of these factors with the other factors alleged by the Appellant (including notably Covid-19 and psychological stress).
  - The Appellant failed to provide reasonable, alternative explanations for the abnormalities in her ABP.

- There have been no procedural irregularities or human rights violations.
    - The Appellant failed to substantiate her case, but had the right, means and time to possibly do so. In any event, the present *de novo* procedure would cure any alleged infringement of the Appellant’s defence rights.
  - The sanctions and consequences imposed by the Appealed Decision should be confirmed. They are consistent with the applicable rules, and in any event the Appellant has not substantiated her arguments in this respect.
62. At the Hearing, the Respondent reiterated its arguments and in particular insisted on the following issues:
- The Appellant has failed to present any new arguments or evidence that would warrant a conclusion different from that reached in the first-instance proceedings. Notably, the Appellant does not contest the integrity of her blood profile itself but rather challenges the ABP as a statistical model. The Appellant has neither attempted to rebut the substance of the Three Expert Reports nor requested the examination of the Expert Panel members as witnesses. The testimony of Ms. Schobinger is irrelevant to the substantive assessment of the Appellant’s claims.
  - The Appellant has not clearly identified which of her fundamental rights were allegedly infringed, nor has she explained how such infringements occurred.
  - The Three Expert Reports reflect a comprehensive and holistic assessment of all relevant factors and conditions specific to the Appellant. The independence of the Expert Panel’s members has not been meaningfully challenged, and in any event, there are no grounds to question their impartiality or objectivity.

## V. JURISDICTION

63. The Appellant submitted that the CAS has jurisdiction pursuant to—*inter alia*—Article 72 of the UCI Constitution, Article 8.3.3 of the UCI ADR 2021, Article 31 of the UCI Anti-Doping Tribunal Procedural Rules, as well as Article R47 of the Code of Sports-related Arbitration (Code).
64. Article 72 of the UCI Constitution provides as follows:

*“The Court of Arbitration for Sport in Lausanne, Switzerland, is the sole competent authority to adjudicate appeals, in cases stipulated by the present Constitution or the regulations established by the Management Committee, against sporting, disciplinary and administrative decisions taken in accordance with UCI rules. Any decision taken by the Congress or the Management Committee may be appealed to the Court of Arbitration for Sport in Lausanne, Switzerland”.*

65. Article 8.3.3 of the UCI ADR 2021 provides as follows:

*“Upon hearing the matter as provided for in its procedural rules, the UCI Anti-Doping Tribunal shall issue a written, reasoned decision in a timely manner, in accordance with the UCI Results Management Regulations. The decision may be appealed to CAS as provided in Article 13. [...]”.*

66. As discussed in Section VIII below, the Parties are in dispute on the law applicable to the present dispute, namely the UCI ADR 2021 vs. the UCI ADR 2015. However, that issue is irrelevant for jurisdiction, given that the abovementioned Article 8.3.3 of the UCI ADR 2021 is substantially identical to Article 8.3 of the UCI ADR 2015, which provides as follows:

*“Upon hearing the matter as provided for in its procedural rules, the UCI Anti-Doping Tribunal shall issue a written, reasoned decision in a timely manner. The decision may be appealed to CAS as provided in Article 13. [...]”.*

67. Article 31 of the UCI Anti-Doping Tribunal Procedural Rules provides as follows:

*“[...] Judgments are subject to appeals lodged with the Court of Arbitration for Sport, in accordance with Article 13 ADR. [...]”.*

68. Article R47 of the Code provides as follows:

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

69. The Respondent did not challenge the jurisdiction of the CAS.

70. The Panel notes that Article 72 of the UCI Constitution, Article 8.3.3 of the UCI ADR 2021 (and/or Article 8.3 of the UCI ADR 2015), and Article 31 of the UCI Anti-Doping Tribunal Procedural Rules explicitly provide for an appeal against the decisions of the UCI Anti-Doping Tribunal to the CAS.

71. The Panel therefore concludes that CAS has jurisdiction to entertain the present Appeal.

## **VI. ADMISSIBILITY**

72. Article R49 of the Code provides as follows:

*“In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time*

*limit for appeal shall be twenty-one days from the receipt of the decision appealed against”.*

73. Article 13.2.5.1 of the UCI ADR 2021 provides as follows:

*“Unless otherwise specified in these Anti-Doping Rules, appeals under Article 13.2.1 and 13.2.2 from decisions made by the UCI Anti-Doping Tribunal or UCI Disciplinary Commission shall be filed before the CAS within thirty (30) days from the day the appealing party receives notice of the decision appealed”.*

74. As discussed in Section VIII below, the Parties are in dispute on the law applicable to the present dispute, namely the UCI ADR 2021 vs. the UCI ADR 2015. However, that issue is irrelevant for admissibility, given that Article 13.2.5.1 of the UCI ADR 2015 and Article 13.2.5.1 of the UCI ADR 2021 provide for the same time limit:

*“Unless otherwise specified in these rules, appeals under Article 13.2.1 and 13.2.2 from decisions made by the UCI Anti-Doping Tribunal or UCI Disciplinary Commission shall be filed before the CAS within 1 (one) month from the day the appealing party receives notice of the decision appealed”.*

75. The Appellant submitted that the Appealed Decision was notified to her on 20 September 2024.

76. The Panel finds that the Statement of Appeal was filed on 15 October 2024, and thus within the applicable 30-day limit.

77. Article R51 of the Code provides as follows:

*“Within ten days following the expiry of the time limit for the appeal, the Appellant shall file with the CAS Court Office a brief stating the facts and legal arguments giving rise to the appeal, together with all exhibits and specification of other evidence upon which it intends to rely [...]”.*

78. The Panel finds that the Appeal Brief was filed on 25 October 2024, and thus within the applicable 10-day limit.

79. The Respondent did not contest the admissibility of the Appeal.

80. Accordingly, the Appeal is admissible.

## **VII. Procedural Request**

81. The Appellant requested that the “*UCI Anti-Doping Program Manager and/or the UCI Anti-Doping Director*” be heard as witnesses at the Hearing. According to the Appellant, these individuals were responsible for assigning the urine test conducted on her on 11

December 2024. She argued that their testimony could clarify the motives and rationale behind the decision to conduct that specific test and, by contrast, shed light on why urine samples were allegedly not collected in conjunction with the blood samples used to construct her hematological module that showed abnormal values.

82. Moreover, the Appellant requested that, in addition or in alternative to Ms. Schobinger, “*another person responsible for procedural actions during the research of the Rider’s ABP*” be heard as a witness at the Hearing.
83. The Panel dismissed these requests for the following reasons:
84. The issue of urine testing is not relevant to the matter at hand, which concerns whether certain abnormal blood values are indicative of doping. At no point was it suggested that the results of the 11 December 2024 urine test could have any bearing on the present proceedings. As the Respondent rightly noted, any adverse findings from that urine test could only serve as the basis for a separate potential anti-doping rule violation, unrelated to the current case.
85. Moreover, as discussed below, the Panel notes that urine samples were, in fact, collected at the time the relevant blood samples were taken—contrary to the Appellant’s assertion. Therefore, the sole reason advanced by the Appellant and related to the current case for calling these additional witnesses is factually incorrect.
86. Accordingly, the Panel found no relevance in ordering the testimony of the UCI Anti-Doping Program Manager and/or Director regarding the reasons for the 11 December 2024 urine test.
87. With regard to the Appellant’s additional witness request, the Panel finds that the Appellant failed to substantiate the request in any meaningful way—not even by identifying the individual or specifying the role this person allegedly played in the investigation of the Appellant’s ABP. In any event, since Ms. Schobinger was ultimately heard as a witness, the Panel saw no relevance in summoning additional APMU personnel.
88. Pursuant to Articles R44.2 and R57 of the Code, the Panel therefore did not consider it necessary to hear these witnesses.

#### **VIII. APPLICABLE LAW**

89. Article R58 of the Code provides that the Panel is required to 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”.*

90. The Appealed Decision was issued under the UCI ADR. The Parties agree that the UCI ADR should govern the present dispute concerning an ADRV.
91. However, the Parties are in disagreement over which version of the UCI ADR should govern their dispute—specifically, whether the 2015 edition (*i.e.*, the UCI ADR 2015) or the 2021 edition (*i.e.*, the UCI ADR 2021) applies. Nevertheless, the Panel found no material differences between the two versions with respect to the issues relevant to the present proceedings.
92. The two editions of the UCI ADR were in force at distinct and significant stages relevant to the present dispute.
93. The UCI ADR 2015 governed the period during which the initial blood sample—forming the basis of the ADRV—was collected. On this basis, the Respondent (as well as the UCI Anti-Doping Tribunal at first instance) contends that the UCI ADR 2015 should apply. In support of this position, the Respondent invokes the principle of *tempus regit actum*.
94. Conversely, the UCI ADR 2021 were in effect at the time the ADRV was formally asserted against the Appellant and subsequently established. On this basis, the Appellant argues that the UCI ADR 2021 should apply. In support of this position, the Appellant argued that the relevant date for determining the applicable edition of the UCI ADR is the “*time of formation of the expert opinion*”, which, in the present case, would coincide with the issuance of the Second Expert Opinion on which the ADRV was ultimately based.
95. The Panel notes that substantive aspects of CAS proceedings are governed by the well-established principle of *tempus regit actum*, meaning that the provisions in force at the time of the anti-doping violation apply (CAS 2022/A/9033; CAS 2022/A/8651).
96. In addition, Article 27.2 of the UCI ADR 2021 states: “*Any anti-doping rule violation case which is pending as of the Effective Date and any anti-doping rule violation case brought after the Effective Date based on an anti-doping rule violation which occurred prior to the Effective Date shall be governed by the substantive anti-doping rules in effect at the time the alleged anti-doping rule violation occurred, and not by the substantive anti-doping rules set out in these Anti-Doping Rules or the Code, unless the panel hearing the case determines the principle of “lex mitior” appropriately applies under the circumstances of the case. For these purposes, the retrospective periods in which prior violations can be considered for purposes of multiple violations under Article 10.9.4 and the statute of limitations set forth in Article 17 are procedural rules,*

*not substantive rules, and should be applied retroactively along with all of the other procedural rules in these Anti-Doping Rules or the Code (provided, however, that Article 17 shall only be applied retroactively if the statute of limitations period has not already expired by the Effective Date)."*

97. In the present case, the ADRV did not arise from the issuance of the Second Expert Opinion *per se*, but rather from the detection of abnormal values in certain of the Appellant's blood samples.
98. The complexity in this matter stems from the fact that the abnormal values underpinning the ADRV were identified in samples collected under different editions of the UCI ADR—namely, Sample 1 under the UCI ADR 2015, and Samples 3, 4, 5, 6, and 7 under the UCI ADR 2021.
99. Therefore, the Panel considers that in general, the UCI rules and specifically the UCI ADR 2015 constitute the applicable law to the matter at hand. Swiss law applies subsidiarily.

## **IX. MERITS**

100. To resolve the present dispute, the Panel considers it necessary to address the following issues:
  - Has the ADRV been demonstrated to the requisite legal standard?
  - Have the Appellant's human rights been infringed?
  - Is the sanction, including in terms of ineligibility and/or disqualification, appropriate and proportionate?

### **A. The ADRV**

101. The present case concerns an ADRV within the meaning of Article 2.2 of the UCI ADR 2015 (labelled "*Use or Attempted Use by a Rider of a Prohibited Substance or a Prohibited Method*"), which provides as follows:

*"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.*

*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”.*

102. The comment to the abovementioned Article 2.2 clarifies that:

*“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 information which does not otherwise satisfy all the requirements to establish “Presence” of a Prohibited Substance under Article 2.1. For example, 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”.*

103. Article 3.1 of the UCI ADR 2015 provides 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”.*

104. Article 3.2 of the UCI ADR 2015 provides as follows:

*“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:*

*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.*

*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”.*

105. The comment to Article 3.2 of the UCI ADR 2015 notes that:

*“the UCI may establish an anti-doping rule violation under Article 2.2 based on [...] reliable documentary evidence, reliable analytical data from either an A or B Sample [...], 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”.*

106. Accordingly, the Respondent bears the burden to prove to the “comfortable satisfaction” of the Panel that the Appellant committed an ADRV.

107. The Panel recalls that the “comfortable satisfaction” test is well-known in the CAS practice and withstood the scrutiny of the SFT.<sup>1</sup> Accordingly, the Panel will apply the “comfortable satisfaction” standard as provided in the UCI ADR 2015 and consistently

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<sup>1</sup> Swiss Federal Tribunal, 2nd Civil Division, Judgment of 31 March 1999, 5P.83/1999, c. 3.d. See also CAS 2009/A/1912-1913, award of 25 November 2009, para. 54.

applied in many cases concerning allegations of blood manipulation or other serious form of doping.<sup>2</sup>

108. The Respondent relies on the abnormalities identified in the Appellant's ABP and the Three Expert Reports that consistently concluded that it is highly likely that these abnormalities result from doping.
109. In particular, as discussed in Section II above, once the adaptive model flagged multiple abnormalities in the Appellant's ABP, the profile was submitted for an initial review by an independent expert. That expert concluded that the ABP was indicative of likely doping, prompting referral to the Expert Panel. The Expert Panel unanimously confirmed this assessment (see First Expert Report, p. 2: "*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 any other cause*").
110. Following this, the Respondent notified the Appellant and invited her to provide explanations. These explanations were submitted to the Expert Panel, which reaffirmed its initial conclusion (as mentioned in the Second Expert Report, "*we conclude that the arguments provided by the athlete do not explain the abnormalities in her profile. We maintain our previous assessment*").
111. Accordingly, the Respondent proceeded to assert an ADRV against the Appellant.
112. During the first-instance proceedings, the Appellant presented additional explanations for her blood values. In response, the Respondent requested the Expert Panel "*to comment on additional justifications submitted by the athlete regarding her blood profile*" (Third Expert Report). The Expert Panel again concluded that "*the additional arguments provided by the athlete do not explain the abnormalities in her profile. [...] We therefore maintain our previous assessment*".
113. Furthermore, each of the three members of the Expert Panel was examined as a witness during the first-instance proceedings. They each confirmed that none of the explanations offered by the Appellant could account for the abnormal blood values, which, in their expert opinion, were consistent with doping. The Appellant did not produce any material scientific or medical evidence nor called any experts to question the Three Expert Reports during the present CAS proceedings.
114. In summary, as will be discussed below in greater detail, the Respondent's assertion of an ADRV is grounded in: (i) abnormalities flagged by a robust and scientifically validated adaptive model; (ii) as many as five expert assessments, *i.e.* the initial independent expert review, the three Expert Reports, and the oral testimony from each

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<sup>2</sup> See also CAS 2009/A/1912-1913, award of 25 November 2009, para. 56.

member of the Expert Panel. These assessments were conducted by highly qualified and independent professionals, whose integrity and impartiality are not in question, as will be discussed below. The Expert Panel thoroughly considered all available data, documentation, and the Appellant's arguments, in full compliance with the applicable guidelines and procedures.

115. In light of the above, the Panel finds no indication that the Respondent failed to meet its burden of proof. On the contrary, the Panel is comfortably satisfied that the Respondent has discharged its burden in full.
116. None of the Appellant's arguments related to the ADRV call this conclusion into question.
117. The Appellant's arguments related to the ADRV may be grouped into the following categories:
  - The ADRV is based on an inadequate method and/or incomplete data. The Appellant essentially challenges the ABP as a method of doping detection, both in general and in the specific circumstances surrounding her case, including by alleging that no comprehensive medical examination was carried out, too few blood samples were taken, and no urine samples were taken.
  - The ADRV does not duly account for the Appellant's gender and conditions. The Appellant essentially claims that the Respondent and the Three Expert Reports did not duly account for the fact the Appellant is a woman, that she suffered from PCOS as well as Covid-19, and that she was under severe stress because of intense training periods and the war in Ukraine.

**1. The method and data used by UCI to establish the ADRV**

***a. ABP as a doping detection method***

118. The Appellant has questioned, both in her Appeal Brief and at the Hearing, the statistical significance of the longitudinal profile upon which the abnormal values in her blood samples were identified, including because of the alleged "*human intervention*" by the APMU Manager, which—in the Appellant's view—further undermined the integrity of the testing method in the present case.
119. The Panel notes that the use of ABP as a doping detection method—which is based on longitudinal analysis—is expressly identified as one of the "*any reliable means*" under the UCI ADR 2015 (see, in particular, Article 3.2.1 and the comments to Articles 2.2 and 3.2, respectively), as well as under the WADA Code (see, in particular, comments to Article 2.2 and 3.2, respectively).

Article 3.2.1 of the UCI ADR 2015: “[a]nalytical methods or decision limits approved by WADA after consultation within the relevant scientific community and which have been the subject of peer review”, such as ABP, “are presumed to be scientifically valid”.

120. Moreover, the validity of ABP has been confirmed by the CAS on several occasions (see, e.g., CAS 2019/A/6254: “*The ABP is, and has been generally accepted as, a reliable mean of evidence to assist in establishing ADRV*”; see similarly CAS 2018/A/5520; see also CAS 2019/A/6226: “*The Panel acknowledges as undisputed that the ABP profile is a method of proving blood doping and not an ADRV in and of itself [...]. However, the Panel is convinced that [...] an ABP profile is a reliable and accepted means of evidence in establishing an ADRV*”; and CAS 2017/O/5398: “*The ABP system is to be presumed valid, unless convincing arguments are made that a specific element of the system does not operate satisfactorily*”).
121. Finally, during the Hearing, Ms. Schobinger testified that the involvement of APMU Managers in reviewing and managing an athlete’s biological profile—including in determining whether it should be subjected to further expert analysis and choosing the experts to that end—has no bearing or impact of any kind on the scientific or statistical validity of the longitudinal profiling process as such.
122. Therefore, the Panel concludes that the validity of ABP as a doping detection in the present case is not at stake.
123. For completeness, the Panel notes that the challenge to ABP has not even been properly put forward by the Appellant.
124. Article 3.2.1 of the UCI ADR 2015 provides that “[a]ny Rider or other Person seeking to rebut” the “*presumption of scientific validity*” of “[a]nalytical methods [...] approved by WADA”, such as ABP, “shall, as a condition precedent to any such challenge, first notify WADA of the challenge and the basis of the challenge”.
125. In the present case, the Appellant has not demonstrated the fulfilment of the abovementioned “*condition precedent*” of notifying WADA of her challenge against the ABP as an analytical method under Article 3.2.1 of the UCI ADR 2015.
126. For the sake of completeness, the Panel notes that Article 3.2.1 of the UCI ADR 2015 also provides that “*CAS on its own initiative may also inform WADA of any such challenge*”. However, having considered the Parties’ submissions—including, in particular, the lack of substantiation in the Appellant’s arguments—and the overall circumstances of the present case, the Panel does not consider it necessary to notify WADA on its own initiative.

**b. Medical examination(s) beyond blood**

127. The Appellant argued that the ADRV could not be established because “[a] *medical examination of Ms. Popova [...] was not carried out either in 2016, or in 2019, or in 2022, or in 2023*”. According to the Appellant, such an examination would have been instrumental in identifying legitimate and medically grounded explanations for the abnormal HGB levels detected in her blood—levels whose presence the Appellant does not dispute.
128. Section IX.A.2 below examines whether the various factors cited by the Appellant as potential explanations for the abnormalities in her blood were duly considered by the Expert Panel in their analysis. In the following paragraphs, the Panel will assess whether the results of the ABP—in terms of testing methodology and/or data utilized—should have been supplemented by, or interpreted in conjunction with, additional medical testing of the Appellant. The potential necessity of urine testing is addressed separately in Section IX.A.1.d below.
129. Within the ABP framework, according to Article 2.1.1 of the ABP Operating Guidelines 2021, the haematological module:
- “[...] collects information on Markers of blood doping. This Module aims to identify the Use of Prohibited Substances and/or Prohibited Methods for the enhancement of oxygen transport or delivery, including the Use of ESAs and any form of blood transfusion or manipulation.*
- In addition to identifying the use of ESAs included under section S2 of the Prohibited List (Peptide Hormones, Growth Factors, Related Substances and Mimetics), the Haematological Module also seeks to identify the Use of Prohibited Methods categorized under section M1 of the Prohibited List (Manipulation of Blood and Blood Components).*
- The following blood variables are considered within the ABP Haematological Module: [a list of 14 different blood variables follows]”.*
130. Article 2.3.2 of the ABP Operating Guidelines 2021 provides as follows:
- “Given that additional information is required from Athletes beyond what is collected in traditional Doping Control documentation pursuant to the ISTI, supplemental or revised documentation may be required. Such documentation may be collected as appropriate, both prior to and after Testing, for APMU assessment and Experts’ review as required.*
- For ABP blood Samples, in addition to the mandatory information set out in ISTI Article 7.4.5, which must be recorded as a part of all Sample Collection Sessions, the*

*information listed in ISTI I.2.9 (Section 3.1 below) shall be recorded in a specific ABP Supplementary Form or a related form to be signed by the Athlete”.*

131. The remainder of the ABP Operating Guidelines 2021 outlines specific and detailed rules regarding, for instance, “*Collection, Storage and Transport of Blood Athlete Biological Passport Samples*” (Article 3.1) and “*Analytical Requirements for the Haematological Module of the Athlete Biological Passport*” (Article 3.2).
132. In light of the foregoing, the Panel observes that blood samples constitute the central element of the ABP—and, consequently, of the ADRV—in the present case. In any event, the blood data is complemented by additional information, including relevant medical context.
133. At the Hearing, Ms. Schobinger confirmed that APMUs do have access to all additional information contained in an athlete’s ABP Supplementary Report Form, as available in ADAMS, and such information is routinely checked when evaluating the blood samples.
134. The Panel therefore finds no justification to extend the scope of medical analyses or information collection beyond what is prescribed in the ABP Operating Guidelines 2021.
135. Moreover, the Appellant has not specified which additional medical examinations or information she believes should have been conducted—apart from those related to PCOS, Covid-19, stress, etc., all of which were duly considered in the Three Expert Reports, as discussed below.
136. In any event, the Panel is comfortably satisfied that the Expert Panel did consider various information and data beyond blood data, including notably those submitted by the Appellant herself. See, e.g.:
  - First Expert Report: “*Access to the profile coded BP91BU18821W102E22 was granted in ADAMS and documents summarising the data in tables and graphs were available in pdf format. The documentation packages/certificates of analysis for the 8 valid samples of the profile were evaluated. The samples were obtained between 2016 and 2022. With the profile, we received a summary of the peri-analytical/ analytical information contained in the documentation packages (ABP documentation package). In addition to the blood data, the competition schedule from 2016 to 2022 and altitude information for May to November 2022 were reviewed*”;
  - Second Expert Report, clarifying that the Expert Panel reviewed also the “*14 exhibits referenced in the letter*” containing the Appellant’s explanations;
  - Third Expert Report, clarifying that the same applies to the additional “*31 exhibits*” submitted by the Appellant at that time.

**c. Number of blood samples and collection frequency**

137. The Appellant argued that the ADRV is unsupported due to the allegedly insufficient number of blood samples, which were collected over an excessively extended period.
138. With regard to sample quantity, neither the ABP Operating Guidelines 2021 nor any other applicable regulation prescribes a minimum number of blood samples required for establishing an ADRV.
139. The Panel considers this point alone would be sufficient to dismiss the Appellant's argument, particularly as the Appellant has failed to cite any supporting authority—except for a reference to a specific edition of the ABP Operating Guidelines, which, as will be discussed below, is not applicable to the facts of this case.
140. Moreover, the position that the applicable regulatory framework does not require a minimum number of blood samples has been consistently affirmed in CAS jurisprudence. Notably, the case law has concluded that the absence of a large number of samples does not preclude the establishment of an ADRV. For instance, “[a]s to the argument of the Athlete that the ABP consists of too little samples to constitute a reliable basis to estimate a reliable baseline against which potential outliers should be compared, the Sole Arbitrator finds that this argument is to be dismissed. The ABP Operating Guidelines do not determine that an ABP must consist of a certain minimum number of samples before an athlete can be charged. As confirmed by Prof. d’Onofrio during the hearing, the Athlete’s ABP did not consist of less samples in comparison with other ABPs and he felt comfortable issuing an opinion about an ABP with less than 13 samples. Also Dr. Schumacher confirmed that, from a statistical point of view, after two samples 80% of the uncertainty is taken away and that he could make an assessment on the basis of much less samples than 13” (see CAS 2016/O/4464); “neither the WADC, the WADA International Standards nor the ABP Guidelines establish the minimum number of samples from an athlete’s ABP profile which must be analysed in order to find an ADRV, although, naturally in order to establish the individual reference values of an athlete, multiple samples must be used”; the latter award also concluded that two samples were sufficient: “the Panel concludes that an ADRV can be found on the basis of an analysis of Samples 1 to 6 only”) (see CAS 2019/A/6226).
141. That said, as previously noted, the only reference to the number of samples to be collected appears in the 2023 edition of the ABP Operating Guidelines. Article 2.3.1 of that edition states:  
  
“it is generally recognized that the ABP is more efficient when at least three (3) tests are planned per Athlete in a calendar year”.

142. The Panel observes that even this provision does not establish a mandatory minimum number of tests. It merely suggests that the efficiency of the ABP may be enhanced if at least three tests are conducted annually. However, it does not state or imply that the ABP becomes unreliable if fewer than three tests are performed.
143. At the Hearing, both Parties questioned Ms. Schobinger regarding her interpretation of Article 2.3.1 of the ABP Operating Guidelines 2023, specifically whether she considered it to be mandatory or merely advisory. Ms. Schobinger confirmed that the provision is to be understood as a recommendation rather than a binding requirement.
144. That testimony is consistent with the explanations by one of the members of the Expert Panel – Ms. Lewis – during the first-instance proceedings, where she likewise confirmed that the ABP model does not require a minimum number of samples to be collected per year.
145. In this context, the Panel recalls that the ADRV in the present case is based on six blood samples—namely, Samples 1, 3, 4, 5, 6, and 7—all of which exhibited abnormal values.
146. The Panel is comfortably satisfied that this constitutes a sufficiently robust dataset to support the finding of an ADRV, particularly in light of the applicable regulatory framework and the consistent position adopted in CAS jurisprudence.
147. With regard to collection frequency, the only relevant provision is Article 2.3.1 of the ABP Operating Guidelines 2021, whose accompanying comment states:
- “For the Haematological Module, it is recommended to use data from samples collected 5 days apart or more to optimize the statistical significance of the data. This does not preclude Testing an Athlete less than five (5) days apart, notably and without limitation, when a potential risk of doping practices has been identified. The validity of the Samples and their inclusion in the Expert review is in any event not put in question by the collection frequency [...]”.*
148. The Panel notes, first, that this provision is explicitly framed as a recommendation rather than a mandatory requirement.
149. Second, the recommendation does not even suggest that samples collected less than five days apart would be unreliable or invalid.
150. Third, the provision expressly clarifies that the frequency of sample collection does not affect the validity of the samples or their admissibility in expert review.
151. Fourth, the Panel recalls that the six blood samples from the Appellant that exhibited abnormal values were collected over a span of six years (from 17 August 2016 to 24 August 2022), with intervals ranging from nearly five years (between Sample 1 and

Sample 3), to two months (Samples 5 to 6), three weeks (Samples 4 to 5), two weeks (Samples 3 to 4), and even less than that (Samples 6 to 7). Accordingly, the only recommendation regarding collection frequency—namely, that samples be collected at least five days apart—was respected in this case.

152. Moreover, while the time gap between Sample 1 and the subsequent samples (3 to 7) may appear long, the Expert Panel confirmed that all samples collectively reflect “*the same picture*”.
153. In conclusion, the Panel is comfortably satisfied that the frequency and timing of the Appellant’s blood sample collection do not contrast with the applicable guidelines and support the finding of an ADRV in the present case.

***d. Urine samples***

154. The Appellant raises concerns regarding the absence of urine testing conducted at or around the time her blood samples—showing abnormal values—were taken. She raises this argument in the context of her human rights’ violations pleas (which are specifically addressed below), but it also concerns the completeness of the data and method used to establish an ADRV against her. In particular, the Appellant has argued that “*taking a blood sample for investigation of anti-doping rule violations without taking a urine sample contradicts the recommendations of WADA*” (Appellant’s letter of 7 January 2025).
155. The “*recommendations of WADA*” cited by the Appellant are Article 2.3.1 of the ABP Operating Guidelines 2023. However, as this provision was not applicable *ratione temporis* at the relevant time, the Panel will base its assessment on the corresponding Article 2.3.1 of the ABP Operating Guidelines 2021, which—for the purpose of the present Award—is substantially identical to that of the 2023 version. Notably, the commentary to the 2021 provision provides as follows:

*“When an ABP blood Sample is collected, the ADO must consider whether the collection of concomitant urine or blood Samples is warranted, under the circumstances, to perform traditional analysis. For Out-of-Competition Testing, it is recommended to collect urine Samples together with the blood Sample(s) in order to permit Analytical Testing for ESAs when required”.*

156. At the Hearing, Ms. Schobinger clarified that the role of APMU managers is to possibly recommend additional analysis or testing (such as taking urine samples), but not to actually collect the samples. APMU managers do not even know whether their recommendations are followed, as this is up to the passport custodians and their available resources. In the case of the Appellant, Ms. Schobinger could not recall whether she recommended taking urine samples together with the blood samples, and,

at the time of the first Sample, Ms. Schobinger was not even working for the relevant APMU yet.

157. In this context, the Panel notes that the ABP Operating Guidelines 2021 draw a distinction between “in-competition” testing and “out-of-competition” testing, clarifying that, when blood samples are at stake, taking also urine samples is recommended only in the latter case.
158. Even irrespective of the fact that taking urine samples together with blood samples is not formally required in the context of “out-of-competition” testing (being only “*recommended*”), with respect to the blood samples of the Appellant showing abnormal values the Panel observes the following:

| Blood sample | Date           | Out-of- or In-competition? | Urine sample also taken? | Supporting exhibit |
|--------------|----------------|----------------------------|--------------------------|--------------------|
| 1            | 17 August 2016 | Out                        | Yes                      | Exhibit A5         |
| 3            | 14 May 2022    | In                         | No                       | Exhibit A14        |
| 4            | 31 May 2022    | Out                        | Yes                      | Exhibit A6         |
| 5            | 19 June 2022   | In                         | Yes                      | Exhibit A7         |
| 6            | 14 August 2022 | In                         | Yes                      | Exhibit A17        |
| 7            | 24 August 2022 | In                         | Yes                      | Exhibit A8         |

159. In practice, urine samples were taken together with all but one of the Appellant’s blood samples showing abnormal values. The only instance in which this did not happen concerned an “in-competition” testing, for which taking a urine sample together with the relevant blood sample is not even recommended under the ABP Operating Guidelines.
160. The above circumstances alone show that the Appellant’s arguments concerning the need to test also her urine are unfounded.
161. Moreover, to the extent that the Appellant’s arguments aimed at showing that abnormalities were found only in her blood but not also in her urine, the Second Expert Report addressed this issue at length, concluding *inter alia* that “*the fact that urine tests are negative does not prove that no manipulation has taken place*”. The Appellant has not presented any evidence that would allow to question such conclusion.

## **2. The Appellant’s gender and conditions**

162. The Appellant claimed in various ways that the Three Expert Reports and/or the ADRV finding and/or the Appealed Decision do not duly account for her gender, pathologies

(notably, PCOS and Covid-19), and alleged psychological stress, either individually or holistically, *i.e.*, in combination one with another.

163. The Appellant’s arguments in this regard frequently lack specific references to the legal provisions allegedly violated. The only clearly articulated alleged violations are as follows:

- “*the World Anti-Doping Code International Standard for Testing and Investigations International Testing (WADA ADC IST & IIT)*”, although no particular provision is cited;
- Article 3.2 of the ABP Operating Guidelines 2023, which provides as follows:

*“[...] The DCO/BCO shall collect and record the following additional information on an Athlete Biological Passport supplementary form, Athlete Biological Passport specific Doping Control form or other related report form to be signed by the Athlete and the DCO/BCO:*

*[...]*

*f) Did the Athlete receive any blood transfusion(s) during the prior three (3) months? Was there any blood loss due to accident, pathology or donation in the prior three (3) months? If so, the estimated volume should be recorded.*

*g) Has the Athlete been exposed to any extreme environmental conditions during the last two (2) hours prior to blood collection, including any sessions in any artificial heat environment, such as a sauna? If so, the details should be recorded. [...]*”.

- Articles 14 and 17 of the European Convention on Human Rights and Fundamental Freedoms (“ECHR”), which respectively provide as follows:

*“The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status”.*

*“Nothing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention”.*

164. At the outset, the Panel notes that with respect to the alleged violation of the “*WADA ADC IST & IIT*”, the Appellant failed to substantiate this claim in any meaningful way. This claim must therefore be rejected outright.
165. The Panel finds the remaining two alleged violations to be without merit.
166. First, regardless of whether the ABP Operating Guidelines 2023 were applicable at the relevant time, the wording, context, and rationale of Article 3.2 of the ABP Operating Guidelines 2023 make it clear that the terms “*blood loss*” and “*extreme environmental conditions*” are not intended to cover the specific circumstances invoked by the Appellant in the present case—namely, menstrual blood loss and psychological stress due to the war in Ukraine. Article 3.2 of the ABP Operating Guidelines 2023:
- explicitly limits relevant blood loss to that resulting from “*accident, pathology or donation in the prior three (3) months*”. These categories are understood to refer to exceptional or medically significant events. Routine physiological processes such as menstruation do not fall within this scope. While it is arguable whether a condition like PCOS might qualify as a “*pathology*” under this provision, the Panel notes that the Expert Panel has already thoroughly evaluated the potential impact of PCOS on the Appellant’s hematological profile, ruling out it could have been the reason for the abnormalities, as discussed further below; and
  - defines “*extreme conditions*” strictly in “*environmental*”—and physical—terms, with specific reference to exposure to heat, including artificial environments like saunas. Psychological stress, even if severe, does not meet the criteria established by the provision and is therefore not encompassed by its scope.
167. Second, regarding the alleged violations of the ECHR, the Panel observes that the Appellant’s submissions are similarly lacking in substance. In any event, the Panel finds no indication of sex-based or other forms of discrimination: as discussed below, the Appellant’s gender was duly known and appropriately considered throughout the sample collection and testing processes. Accordingly, there has been no violation of Article 14 of the ECHR. As for Article 17 of the ECHR, the Panel notes that it is intended to apply to fundamentally different circumstances than those at issue in the present proceedings (notably, abuse or misuse of the rights protected under the ECHR with the aim of “destroying” those very same rights) and, therefore, cannot serve as a valid legal basis for the Appellant’s claims.
168. That being said, the Panel considers that the Appellant’s arguments are, in any event, more unfounded in fact than in law.
169. The following paragraphs will demonstrate that each of the factors which the Appellant claims were, in fact, duly considered. For the sake of completeness, the Panel further

observes that this comprehensive consideration also effectively precludes any potential issue of deviation from the WADA standards, as appears to have been suggested by the Appellant in her submissions.

**a. Gender (individually considered)**

170. With respect to gender, the Appellant complained that certain Doping Control Forms relating to the blood samples showing abnormalities were not completed in the section designated for the athlete's gender.
171. The Panel finds that, even irrespective of such circumstance, it is beyond dispute that the Expert Panel was well aware of the Appellant's gender.
172. Information about an athlete's gender is recorded in ADAMS, alongside his or her discipline and age. This was confirmed both by Ms. Schobinger during the Hearing and by a member of the Expert Panel at the first-instance hearing.
173. Moreover, the fact that the Expert Panel considered the possible relevance of PCOS in their analysis—contrary to the Appellant's assertions, as will be addressed below—further confirms their awareness of the Appellant's gender, since PCOS is a condition that affects women only.

**b. Pathologies (each of them individually considered)**

174. With respect to PCOS, the Appellant similarly complained that the Doping Control Forms did not reflect the "*Rider's pathology*" and especially PCOS .
175. The Panel finds that, even irrespective of such circumstance, the Third Expert Report thoroughly addressed PCOS as a possible reason for the abnormalities found in the Appellant's blood samples tested. In particular:
  - page 1 thereof reads that "[i]n her new submission, the athlete (through her lawyers) repeats and contests several previous claims (COVID) and adds another medical condition, namely the polycystic ovarian syndrome (PCOS) of which she allegedly suffers, to the potential explanations for the abnormalities of the profile. [...] In the below, we evaluate the newly presented arguments around PCOS as a potential cause for the abnormalities seen in the profile";
  - page 2 is entirely dedicated to assessing PCOS;
  - in page 3, the Third Expert Reports concludes that "[b]ased on the data available at this stage, we conclude that the additional arguments provided by the athlete do not explain the abnormalities in her profile. The likelihood of the profile

considering the influence of polycystic ovarian syndrome (PCOS) on the red blood cell system is low”.

176. Similarly, with respect to Covid-19, the Appellant complains in various parts of her pleadings that the Expert Panel failed to take it into account.
177. The Panel finds also this assertion to be not factually correct. The Second Expert Report thoroughly addresses Covid-19 as the possible reason for the abnormalities found in the Appellant’s blood. In particular:
- page 1 summarizes the Appellant’s arguments in this respect, already showing that they have been considered by the Expert Panel;
  - the entirety of page 2 is dedicated to “*COVID19 and the haematological changes observed in the profile*”, leading the Expert Panel to conclude that “*the type of the haematological abnormalities observed in the passport and the timeline of the SarS CoV2 infection in relation to the abnormalities makes COVID19 as an explanation for the profile highly unlikely*”;
  - therefore, the Second Expert Report concludes that: “[w]e maintain our previous assessment that the likelihood of the profile considering COVID19 [...] (alone or in combination [with other factors]) is low, whereas its likelihood considering the use of a prohibited substance or method, namely an erythropoietic stimulant or a blood transfusion, is high”.

**c. Stress (individually considered)**

178. With respect to stress, whether stemming from periods of intense training or the ongoing war in Ukraine, as claimed by the Appellant in various parts of her pleadings, the Panel finds that this factor was also addressed in the Second Expert Report. In particular:
- at page 3, the Expert Panel concluded that the observed blood abnormalities were “*highly unlikely to be caused by exercise and highly likely induced by a supraphysiological increase of red cell mass*”;
  - additionally, at page 5, the Panel found that “*there is no scientific evidence to support any relevant impact of emotional or psychological stress on the markers of the ABP in the profile of the athlete*”.

**d. All factors (holistically considered)**

179. The Appellant complains in various parts of her pleadings that the Expert Panel did not consider all factors raised by her as possible explanations for the blood abnormalities “*in combination*”.

180. The Panel finds that the Second Expert Report contains a holistic analysis of the various factors:

- page 5 clarifies that “*the likelihood of the profile considering COVID19, the absence of positive urine test, training or emotional stress (alone or in combination) is low, whereas its likelihood considering the use of a prohibited substance or method, namely an erythropoietic stimulant or a blood transfusion, is high*”.

181. Moreover, during the first-instance hearing, a member of the Expert Panel elaborated on their evaluative approach, stating as follows (which was not rebutted by the Appellant in any meaningful way):

*“We look at each of the different factors, but at many times there will be a dominant one and also we will look at the direction and the magnitude of the different factors. So coming back to this case, all the proposed explanations actually serve to move the values in the opposite direction that what we see. So one, you cannot sum different factors together. That’s not how physiology works. And two, just because you suddenly converge all these different factors doesn’t mean they’re going to suddenly act in a completely opposite direction or force. So yes, we considered everything”.*

182. At the Hearing, when questioned by Panel regarding their interpretation of this statement, the Appellant merely argued that all relevant factors should have been assessed holistically—an approach that, as demonstrated, the Expert Panel had in fact already undertaken.

### **3. The Appellant’s medical reports**

183. Other than contesting the ADRV on the various grounds discussed above and on further grounds relating to alleged procedural irregularities and infringements of the Appellant’s fundamental human rights, the Appellant has submitted certain medical reports (the *pars construens*).

184. However, these appear to be the same medical reports previously submitted by the Appellant during the first-instance proceedings. In other words, the Appellant has not presented any new medical evidence. Furthermore, no expert witness has been called by the Appellant.

185. In light of these circumstances, at the outset the Panel can only reaffirm the conclusion stated in the Appealed Decision: “*the Rider neither provided a specific report to rebut the Third Opinion nor brought an expert to the hearing to challenge such considerations and conclusions*”.

186. That said, and in any event, for the reasons outlined below the Panel finds that the three medical reports of the Appellant (continue to) do not explain the abnormalities found in her blood.
187. The medical report of 22 November 2023 submitted by the Appellant essentially concludes that:
- the Appellant has been suffering from PCOS since 2014;
  - according to certain medical literature,
    - women suffering from PCOS could have higher HGB levels than women not suffering from it, possibly because of the ensuing reduced frequency of menstruation;
    - PCOS could also be the reason for higher red cell distribution width (RDW) and other blood values;
  - in the 2015-2023 period, the Appellant’s blood tests show “*only a slight increase in hemoglobin*” and “*a slight increased red blood cell*”;
  - “*the increase in the level of hemoglobin and red blood cells [...] only partially coincides with the schedule of competitions*”.
188. However, this report, first of all confirms that the HGB count of the Appellant was abnormal—something that the Appellant has not contested even in the present proceedings (see, e.g., Appeal Brief, § 105; “*The Rider’s Party doesn’t put the question to the results of laboratory tests obtained on the basis of those samples that were provided by ITDM to laboratories*”).
189. Second, it is ultimately based on generic studies that have no specific link with the Appellant’s own conditions.
190. Third, it does not address the other abnormalities found in the Appellant’s blood samples, namely those concerning RET% and OFF-score. In this specific respect, the Panel finds that in previous cases the CAS already had the chance to clarify that “*the ABP measures several blood parameters. Thus, the mere fact that the values for haemoglobin concentration remain within the “normal range” has no impact on whether or not the other data yields abnormal results or not*” (CAS 2017/A/5045).
191. In any event, the Panel finds the Third Expert Report to contain a more thorough explanation of the possible impact of PCOS on a female athlete’s blood values, one that is specifically tailored on the Appellant’s blood samples showing abnormal values. The

Third Expert Report even quotes studies that contradict the conclusions of those mentioned in the Appellant's own report. In particular:

- *“It's essential to note that the relationship between PCOS and the red blood cell system is complex and may vary between individuals, some studies have also reported no difference in haemoglobin levels 15 between PCOS patients and matched control subjects” ;*
- *“Relating these facts to the profile, the abnormalities in samples 3 and 4 described in our joint report were high OFF scores (high haemoglobin concentration combined with low reticulocyte percentages), indicating a supraphysiologically increased red cell mass with a suppressed erythropoiesis (the production of red blood cells in the bone marrow). As mentioned above, PCOS often causes irregular menses involving heavy and prolonged bleeding, which will result in anaemia (3), i.e. the opposite of what is seen in samples 3 and 4 of the profile” ;*
- *“In the current profile however, the haemoglobin levels of the athlete in samples 3 and 4 are 3-5g/dl higher than in the remaining samples, far beyond what can be expected from the androgen effect in PCOS. It is also of note that the timeline of the changes observed in the profile does not support androgen induced erythrocytosis associated to PCOS”;*
- *“In summary, the type of the haematological abnormalities observed in the passport and the potential effects of PCOS on the haematological system of the athlete do not match. PCOS is therefore highly unlikely to have caused the abnormalities of the profile”.*

192. The medical report of 11 September 2017 submitted by the Appellant appears to merely confirm that the Appellant suffers from PCOS—an issue that is neither contested by the Respondent nor disputed in general, and that in any event has been duly accounted for by the Expert Panel, as discussed above.
193. Other than submitting the abovementioned reports, the Appellant did provide evidence confirming that she suffered from Covid-19. It is also undisputed that the Appellant is a professional cyclist with intense training periods, as well as a Ukrainian national with the conflict with Russia possibly being an additional source of stress.
194. Yet, each of these factors have been considered by the Expert Panel in as many as three reports, which consistently concluded that such factors do not explain all the abnormalities in the Appellant's blood samples tested, either individually or in combination (as discussed in Section IX.A.2 above).

195. At the Hearing, when questioned about the absence of any counterarguments raised against the conclusions of the Expert Panel, and what inferences the Panel should draw from this silence, counsel for the Respondent was unable to provide a substantive explanation.

**B. The Appellant’s human rights pleas**

196. The Appellant contends that the various procedures employed in the collection, analysis, and/or subsequent evaluation of her blood samples in the present case were marred by several irregularities. The Appellant argues that these procedural flaws infringe upon her fundamental human rights, which would render the ADRV and/or the Appealed Decision invalid, although the Appellant did not cite any specific provision in support of this.
197. Before turning to the Appellant’s specific arguments on this issue, the Panel considers it appropriate to make three preliminary observations of a general nature.
198. First, the Panel observes that the Appellant’s allegations concerning violations of fundamental human rights have not been adequately substantiated. The Appellant failed to specify which particular provisions or fundamental rights were allegedly infringed. More importantly, even assuming that such infringements had occurred, the Appellant did not demonstrate how the proper observance of those rights would have materially influenced the outcome—namely, by leading the Expert Panel or the UCI Anti-Doping Tribunal to exclude the possibility of a doping violation.
199. Secondly, and in any event, the Panel wishes to recall the content of Article R57 of the Code, according to which:
- “The Panel has full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance [...]”.*
200. In other words, and consistent with long-standing CAS jurisprudence, appeals arbitration proceedings before CAS are conducted *de novo*. This means that the Panel has full authority to review the facts and the law, unconstrained by the findings of the previous instance. As a result, any procedural irregularities that may have occurred during the earlier proceedings are, in principle, remedied by the comprehensive nature of the CAS appeal process. Accordingly, the Panel considers it unnecessary to determine whether the alleged procedural shortcomings—characterized by the Appellant as violations of fundamental human rights—actually occurred. Even assuming such infringements took place, the present *de novo* proceedings effectively cure any such defects or, at the very least, the Appellant has failed to demonstrate that any alleged violations could not be remedied through this process. Notably, during the

Hearing, counsel for the Appellant were unable to provide a clear response when asked by the Panel what specific remedial action they expected in this context.

201. Finally, insofar as the Appellant's claims of alleged violations of her fundamental human rights are based on the purported failure—particularly by the Expert Panel—to assess her gender, conditions, or other relevant factors, the Panel refers to Section IX.A.2 above. As stated therein, all pertinent elements were thoroughly considered by the Expert Panel, both individually and in a holistic manner. Accordingly, there is no basis to assert that any failure to assess such factors resulted in a violation of the Appellant's human rights, and these aspects will not be addressed further.
202. In light of the foregoing considerations, the Appellant's remaining arguments concerning alleged violations of fundamental human rights essentially boil down to two core issues: (i) whether her rights to present evidence, to be heard, and—more generally—to a fair trial were respected; and (ii) whether the members of the Expert Panel satisfied the requirement of independence.
203. For the reasons set out below, the Panel finds that neither of these arguments is substantiated. Accordingly, the asserted ADRV and/or the Appealed Decision cannot be invalidated on the basis of the alleged breaches of fundamental human rights.

***a. Rights to present evidence, to be heard, and to a fair trial***

204. In addition to the general considerations outlined above regarding the curative nature of the present *de novo* procedure, the Panel finds that the Appellant has been afforded full and ample opportunity to present her case, including during the first-instance proceedings.
205. The following is a non-exhaustive summary of the opportunities the Appellant has had to explain the abnormalities detected in her blood profile, to challenge the expert reports suggesting these abnormalities were likely due to doping, and to present her case before an arbitral tribunal.
  - Prior to the UCI Anti-Doping Tribunal proceedings:
    - After the Appellant was first informed of the potential ADRV on 8 March 2023, the Appellant was granted a deadline (subsequently extended at her request) to provide an alternative explanation for the abnormalities observed in her blood profile.
    - On 5 and 12 April 2023, the Appellant did submit her explanations regarding the findings communicated to her by the Respondent. Already at that stage, she had the opportunity to include an expert opinion supporting her position.

- On 21 June 2023, the Appellant submitted additional allegations. However, no expert report accompanied this submission.
  - During the UCI Anti-Doping Tribunal proceedings:
    - The Appellant submitted an answer to the Respondent's petition, followed by a second submission containing her final written comments on the Respondent's reply, which included the Third Expert Report.
    - The Appellant requested and was granted an oral hearing. During this hearing, two of her coaches appeared as witnesses. She also had the opportunity to cross-examine the members of the Expert Panel (called as witnesses by the Respondent), although she did not call any expert witnesses of her own, reportedly due to financial constraints.
  - Following the UCI Anti-Doping Tribunal proceedings (*i.e.*, in the context of the present CAS procedure):
    - As detailed in Section III above, the Appellant has exercised the procedural rights typically afforded in CAS proceedings, including the right to submit evidence and arguments in her defence.
206. Moreover, as referenced in Section IX.A.2 A.2above, the Panel notes that the Expert Panel duly considered the explanations and evidence submitted by the Appellant in her attempt to justify the abnormalities found in her blood profile.
207. In light of the foregoing, the Panel concludes that the Appellant's fundamental rights to present and defend her case have not been infringed. Nor does the Panel find any procedural irregularities in the manner in which the case has been assessed at any stage of the proceedings.
208. It follows that the failure to substantiate the Appellant's case cannot be attributed to any procedural deficiency or external factor, but solely to the Appellant herself. Despite being afforded multiple opportunities throughout both the first-instance and the present proceedings, the Appellant did not introduce or request any evidence capable of justifying the abnormalities observed in her blood profile. During the present CAS proceedings, the Appellant did not submit any new evidence that had not already been presented during the first-instance phase. Moreover, the only witness called by the Appellant was the APMU Manager, based on the allegation that this individual may have influenced the statistical evaluation of the ABP. However, the examination of Ms. Schobinger during the Hearing clearly established that the actions of the APMU Manager could not, in any manner, have affected the statistical values of the ABP or otherwise influenced the assessment of the evidence and the Appellant's explanations by the Expert Panel.

209. Consequently, the principle of *sibi imputet* applies: the Appellant must bear the consequences of her own procedural inaction. As a result, there is no basis to annul either the ADRV or the Appealed Decision.

***b. Independence of the Expert Panel's members***

210. The Appellant contends that “*the independence of the experts is under the doubt*”, citing the fact that all three members of the Expert Panel recently participated in the same conference and that two of them collaborated on academic research over a decade ago.

211. According to the Appellant, these circumstances allegedly constitute a breach of Article 6.3 of the ABP Operating Guidelines 2023, which in the relevant part provides as follows:

*“All three (3) Experts forming an Expert panel assigned to review a particular Passport shall not be of one and the same nationality and no two (2) Experts shall have a primary affiliation with the same organization, institution or company, including, but not limited to, universities, hospitals and research institutes”.*

212. The question of whether the 2023 edition of the ABP Operating Guidelines applies *ratione temporis* is immaterial to the Appellant’s argument in this case, as the relevant provision is identical to Article 6.2 of the 2021 ABP Operating Guidelines—which, for the sake of completeness, the Panel notes is the applicable version.
213. A plain reading of the cited provision reveals that the circumstances invoked by the Appellant—namely, past academic collaboration and joint participation in a professional conference—are not among the criteria set forth therein for determining the independence of Expert Panel members.
214. The provision requires only that the three experts be of different nationalities—which the Appellant does not dispute—and that no two experts share the same “*primary affiliation*”. Again, the Appellant has not alleged that this requirement was violated.
215. In any event, as confirmed by the Respondent’s counsel during the hearing in response to a question from the Panel, it had already been clarified during the first-instance proceedings that the three experts had distinct “*primary*” affiliations: one with a hospital in Rome, another with a sports institution in Qatar, and the third with a university in Australia.
216. Moreover, at the Hearing Ms. Schobinger confirmed that experts working with the relevant APMU are required to sign declarations affirming their independence and the absence of any conflict of interest. Although the Appellant has not alleged any breach of these obligations, the Panel is satisfied that such formal declarations further safeguard

the independence of the experts and preclude any reasonable doubt as to their impartiality.

### C. The sanction

217. Having established in Section VIII above the applicability of the UCI ADR 2015, the sanction stemming from the ADRV will be assessed in the light of such provisions.

#### a. Statute of limitations

218. The Appellant contends that the Appealed Decision was rendered “*outside the eight-year period for applying disciplinary sanctions*”. In particular, the Appellant argues that “*the UCI Tribunal’s Judgment was adopted on 20.09.2024, but the first doping test was taken from Rider on 18.06.2016, i.e. outside the eight-year period for applying disciplinary sanctions*” (§ 184).

219. Article 17 of the UCI ADR 2015 provides:

*“No anti-doping rule violation proceeding may be commenced against a Rider or other Person unless he or she has been notified of the anti-doping rule violation as provided in Article 7 [...] within ten years from the date the violation is asserted to have occurred”.*

220. Article 7.3 of the UCI ADR 2015 provides:

*“[...] the UCI shall promptly notify the Rider of [...] the anti-doping rule violated [...]”.*

221. In the present case, the Panel notes the following key facts and considerations:

- The first sample underlying the ADRV—Sample 1—was collected on 17 August 2016. The Panel observes that the Appellant’s reference to “18.06.2016” appears to be a typographical error. The Doping Control Form confirms the correct date as 17 August 2016. This date constitutes “*the date the violation is asserted to have occurred*” under Article 17 of the UCI ADR 2015, as discussed in Section VIII above.
- The ADRV was formally asserted against the Appellant on 20 June 2023 (: “*In view of the above, the UCI asserts that your client has committed an Anti-Doping Rule Violation (ADRV) under Article 2.2 of the UCI Anti-Doping Rules (UCI ADR)*”). This date is to be regarded as the date on which the Appellant was “*notified of the anti-doping rule violation*” under Articles 7 and 17 of the UCI ADR 2015.

- Sanctions were formally imposed on the Appellant by the Appealed Decision dated 20 September 2024.
  - The applicable limitation period under Article 17 of the UCI ADR 2015 is 10 years, not eight years as incorrectly asserted by the Appellant.
222. It follows that, in any case, fewer than 10 years elapsed between the date the violation is asserted to have occurred and the date on which the Appellant was notified of the ADRV.
223. For the sake of completeness, the Panel notes that the same conclusion would apply: (i) even if the date of the Appealed Decision were considered the date of notification; and (ii) regardless of whether the term “anti-doping rule violation proceeding” in Article 17 of the UCI ADR 2015 refers to the commencement of UCI proceedings, UCI ADT proceedings, or even the present CAS proceedings.
224. Accordingly, the Panel concludes that the present matter is not time barred.

***b. Ineligibility, commencement period, and disqualification of results***

225. In terms of ineligibility and disqualification of results, the relevant paragraphs of Article 10 of the UCI ADR 2015 provide as follows:

*“An anti-doping rule violation occurring during or in connection with an Event may, upon the decision of the ruling body of the Event, lead to Disqualification of all of the Rider’s individual results obtained in that Event with all Consequences, including forfeiture of all medals, points and prizes [...]” (Article 10.1);*

*“The period of Ineligibility shall be four years where [...] [t]he anti-doping rule violation does not involve a Specified Substance, unless the Rider or other Person can establish that the anti-doping rule violation was not intentional” (Article 10.2.1.1);*

*“In addition to the automatic Disqualification of the results in the Competition which produced the positive Sample [...], 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” (Article 10.8);*

*“[...] 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” (Article 10.11);*

*“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”* (Article 10.11.3.1).

226. In accordance with the applicable rules, and taking into consideration that (i) the ADRV did not involve a *“Specified Substance”*, (ii) there is no indication that the ADRV was not intentional, (iii) there were neither grounds presented nor requests made by the Appellant to justify a departure from the standard period of ineligibility, (iv) the Appellant did not comply with the mandatory provisional suspension imposed upon her, and (v) the UCI Anti-Doping Tribunal found no exceptional circumstances that would warrant a departure from the applicable rules on grounds of fairness, the UCI Anti-Doping Tribunal:
- imposed a period of ineligibility of four years, starting from the date of the Appealed Decision (*i.e.*, 20 September 2024); and
  - disqualified all results obtained by the Appellant from the date of collection of Sample 1 (*i.e.*, 17 August 2016) until the date of Appealed Decision (*i.e.*, 20 September 2024).
227. For the reasons identified by the UCI Anti-Doping Tribunal, the Panel does not see any basis to reduce the sanction of a period of ineligibility of four years or to grant any credit for provisional suspension given it was not fully respected.
228. That said, as a practical matter, the disqualification dating back to 2016 results in an overall period of ineligibility extending over 12 years, from 17 August 2016 to 20 September 2028. This is due to the fact that, under established CAS jurisprudence, the disqualification of results is considered to constitute a *de facto* retroactive period of ineligibility (see, *e.g.*, CAS 2019/O/6153: “[t]he main purpose of a disqualification of results is not to punish a transgressor, but rather to correct any unfair advantage and to remove any tainted performances from the record. However, having regard to the fact that a disqualification of results embraces the forfeiture of any titles, awards, medals, points, and prizes, as well as appearance money, disqualification may be considered equal to a retroactive ineligibility period and therefore a sanction”).
229. In this context, the Appellant merely asserts—without substantiating the claim through any meaningful legal or factual argument—that the overall sanction imposed *“is clearly discriminatory”*. Beyond this unelaborated assertion, the Appellant advances a series

of rather convoluted arguments concerning the commencement date of the ineligibility period and/or the applicable version of the UCI ADR.

230. That notwithstanding, the Panel acknowledges the Appellant’s position and is sympathetic to the view that, in its totality, the sanction imposed in this case appears excessive. While the Panel concurs with the UCI Anti-Doping Tribunal that the imposition of the maximum four-year ineligibility period without any credit is justified—given the seriousness of the violation and the Appellant’s failure to present any exculpatory arguments or evidence—it finds that the disqualification of results dating back to 2016 is disproportionate when assessed against the principle of fairness and the particular circumstances of the case. In particular:
- The ADRV is based on six blood samples, five of which were collected between May and August 2022, and one—Sample 1—collected nearly six years earlier, in August 2016.
  - There is no evidence indicating that the Appellant used prohibited substances or methods prior to August 2016, between September 2016 and April 2022, or after September 2022.
  - While an Expert Panel’s member confirmed that the August 2016 sample reflects the same haematological pattern as the 2022 samples (*“the same picture”*), it remains a single, isolated data point.
  - Disqualification of results entails, among other consequences, the *“forfeiture of any medals, points and prizes”*.
  - The Appellant appears to be in a precarious financial situation, which she cited as the reason for not calling expert witnesses during the first-instance proceedings. Moreover, as indicated by her counsel at the Hearing, she is currently unemployed [...].
231. Although the Appellant did not explicitly invoke fairness as a ground for reducing the disqualification period—hence the UCI Anti-Doping Tribunal’s decision not to consider it—the Panel is mindful that the principle of fairness is not only explicitly referenced in Article 10.8 of the UCI ADR 2015, but, more importantly, constitutes a *“general principle”* which *“must prevail when determining the length of a disqualification period”* (CAS 2023/O/9401).
232. In the same vein, CAS jurisprudence has recognized that *“in certain exceptional circumstances, the strict application of the disqualification rule can produce an unjust result. In particular, this may be the case when the potential disqualification period covers a very long term, which is normally the case when the facts leading to the ADRV*

*took place long before the adjudicating proceedings started which usually occurs when they are opened as a result of the re-testing of a sample or of the uncover of a sophisticated doping scheme. In addition, in this type of cases it may be difficult to prove that the athlete at stake used prohibited substances or methods during such a long period of time”* (CAS 2021/A/7839 and CAS 2021/A/8012).

233. This is precisely the situation presented in the current case. If the original sanction were to be upheld in its entirety, the total period of ineligibility—taking into account the disqualification of results, which, as previously noted, functions *de facto* as a retroactive ineligibility period—would exceed 12 years. This duration is three times longer than the maximum four-year ineligibility period prescribed under the UCI ADR 2015. In this regard, the Panel observes that approximately half of this 12-year period is a result of the inclusion of the 2016 sample, which, as discussed, constitutes an isolated data point at best.
234. Accordingly, without altering its findings regarding the applicable rules, the existence of an ADRV, or any other substantive issue addressed in the Award, the Panel considers it appropriate to limit the disqualification of results to the period beginning with the first 2022 sample that contributed to the ADRV (14 May 2022) and ending on the date of the Appealed Decision (20 September 2024). This results in a disqualification period of slightly more than two years, following the last relevant sample collected on 24 August 2022.

## **X. CONCLUSION**

235. Consequently, the Panel rules that the Appeal is partially upheld. The Appealed Decision is confirmed, except with respect to the duration of the disqualification of results, which shall be reduced in accordance with the determinations set out in Section IX.C.b above.

## **XI. COSTS**

(...)

## ON THESE GROUNDS

### The Court of Arbitration for Sport rules that:

1. The appeal filed by Ms. Iryna Popova on 15 October 2024 against the Union Cycliste Internationale with respect to the decision of the UCI Anti-Doping Tribunal under the UCI Anti-Doping Rules (2015), in the matter of proceedings no. 4/2023, is partially upheld.
2. The decision no. ADT/4/2023 of 20 September 2024 of the UCI Anti-Doping Tribunal is confirmed except for part 3, which shall be amended as follows:  
  
*“3. The results obtained by Ms. Iryna Popova from the date of collection of Sample 3 (14 May 2022) until the day of the decision (20 September 2024) are disqualified”.*
3. (...).
4. (...).
5. All other motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Date: 28 August 2025

## THE COURT OF ARBITRATION FOR SPORT

Dr. Vladimir Novak  
President of the Panel

Song Lu  
Arbitrator

Bernhard Welten  
Arbitrator