

INTERNATIONAL OLYMPIC COMMITTEE

IOC DISCIPLINARY COMMISSION

DECISION

**REGARDING ANASTASIA KAPACHINSKAYA
BORN ON 21 NOVEMBER 1979, ATHLETE, RUSSIAN FEDERATION**

(Rule 59.2.1 of the Olympic Charter)

Pursuant to the Olympic Charter and, in particular, Rule 59.2.1 thereof, and pursuant to the IOC Anti-Doping Rules applicable to the Games of the XXIX Olympiad in Beijing in 2008 (the “**Rules**”) and, in particular but without limitation, Articles 2, 5.1, 7.3.3, 8, 9 and 10 thereof:

I. FACTS

1. Anastasia KAPACHINSKAYA (hereinafter the “**Athlete**”), participated in the Games of the XXIX Olympiad in Beijing in 2008 (the “**2008 Olympic Games**”).
2. From 16 to 19 August 2008, the Athlete competed in the 400m (Round 1, Semi-final and Final) in which she ranked 5th.
3. On 23 August 2008, she competed in the 4x400m relay, in which she and her teammates ranked 2nd and for which they were awarded the silver medal.
4. On 17 August 2008 on the occasion of the Semi-final of the 400m, the Athlete was requested to provide a urine sample for a doping control (in competition). Such sample was identified with the number 1843769.
5. The A-Sample 1843769 was tested during the 2008 Olympic Games by the WADA-accredited Laboratory in Beijing, but did not result in an adverse analytical finding at that time.
6. After the conclusion of the 2008 Olympic Games, all the samples collected upon the occasion of the 2008 Olympic Games were transferred to the WADA-accredited “Laboratoire suisse d’analyse du dopage” in Lausanne (“the **Laboratory**”) for long-term storage.
7. The IOC decided to perform further analyses on samples collected during the 2008 Olympic Games. These additional analyses were notably performed with improved analytical methods in order to possibly detect Prohibited Substances which could not be identified by the analysis performed at the time of the 2008 Olympic Games.
8. In accordance with the provisions of the applicable International Standards for Laboratories (the “**ISL**”), the IOC decided that the reanalysis process would be conducted as follows:
 - An initial analysis was to be conducted on the remains of the A-samples
 - If such initial analysis resulted in the indication of the potential presence of a Prohibited Substance or its Metabolites or Markers (“Presumptive Adverse Analytical Finding” - PAAF), the full confirmation analysis process (double confirmation) was to be conducted on the B-Sample, which would be split for the occasion into a B1- and a B2 Sample (becoming thus the equivalent of a A- and B-Sample).

9. The decision to proceed based on split B-samples was made in principle for all the re-analysis.
10. This choice was made in view of the fact that during the transfer of the samples from the Beijing laboratory to the Laboratory, the A-samples were not individually resealed nor transported in sealed containers.
11. At that time, resealing of A-Samples (or transport in sealed containers) was not a requirement pursuant to the then applicable ISL (2008).
12. However, it was felt that the option to rely on the B-Sample did constitute an additional precaution securing the strength and reliability of the analytical process.
13. A similar cautious approach was adopted with regard to the implementation of the analytical process and notably of its first phase (opening and splitting of the B-Sample in a B1- and B2-Sample, sealing of the B2-Sample and analysis of the B1-Sample).
14. Pursuant to the ISL, the presence of the Athlete is not a requirement for such first phase of the B-Sample analysis.
15. The IOC nevertheless decided, again as a matter of principle, that, whenever this was practically possible, the Athlete would be offered the opportunity to attend the above described first phase of the B-sample procedure.
16. All these additional measures, going beyond what is required, were decided in the spirit of enhancing the position of the Athlete.
17. The remains of the A-Sample of the Athlete were subject to initial analysis. Such analysis resulted in a Presumptive Adverse Analytical Finding (“**PAAF**”) as it indicated the potential presence of the metabolites of two Prohibited Substances: stanozolol and dehydrochloromethyltestosterone (turinabol).
18. On 18 May 2016, the Athlete through her NOC was informed of the PAAF and of the possibility to attend the opening and splitting of the B-Sample into a B1- and B2-Sample and the sealing of the B2-Sample the analysis of the B1-Sample.
19. By email dated 24 May 2016 sent to the NOC and forwarded to the IOC on 25 May 2016, the Athlete communicated the following:

“I do not have time for all this – printing and sending documents. Let them do everything they want – open, close, drink! You can translate for them everything that I am writing”.
20. On 26 May 2016, the IOC informed the Athlete, through her NOC, that the opening, splitting of the B-Sample, sealing of the B2-Sample and analysis of the B1-Sample would take place on 31 May 2016 at the Laboratory.
21. The opening of the B-Sample and splitting took place on 31 May 2016 at the Laboratory.
22. The Athlete did not attend the opening and splitting of the B-Sample and was not represented on this occasion.
23. As provided in the ISL, the opening and splitting was attended by an independent witness.
24. Mr Victor Berezov, Deputy Chief of the Russian Olympic Committee Legal Department attended on behalf of the NOC.

25. The analysis of the B1-Sample was then conducted over the following days.
26. The results of the B1-Sample analysis were reported on 2 June 2016. They confirmed the presence of the metabolites of two Prohibited Substances, namely stanozolol and dehydrochloromethyltestosterone (turinabol).
27. Such results constitute an Adverse Analytical Finding (“**AAF**”). They were reported to the IOC in accordance with Art. 7.2.1 of the Rules.
28. Further to the verifications set forth in Art. 7.2.2 of the Rules and in application of Art. 7.2.3 of Rules, the IOC President, Mr Thomas Bach, was informed of the existence of the AAF and the essential details available concerning the case.
29. Pursuant to Art. 7.2.4 of the Rules, the IOC President set up a Disciplinary Commission, consisting in this case of:
 - Mr Denis Oswald (Chairman, Switzerland), who is a member of the IOC Juridical Commission;
 - Mr Juan Antonio Samaranch (Spain)
 - Mr Ugur Erdener (Turkey)
30. On 3 June 2016, the IOC notified the Athlete, through her NOC, of the above-mentioned AAF and of the institution of disciplinary proceedings to be conducted by the Disciplinary Commission. The IOC also informed the Athlete of her right to request and attend the opening and analysis of the B2-Sample, either in person and/or through a representative. The Athlete was also informed of her right to request a copy of the laboratory documentation package.
31. The Athlete has not replied to the above-mentioned AAF communication within the deadline granted by the IOC.
32. On 14 June 2016, the IOC asked the NOC to confirm that the AAF Notification Letter, dated 3 June 2016, had been effectively communicated to the Athlete and requested the NOC to take action urgently in order to obtain an answer from the Athlete.
33. The IOC also requested the NOC to communicate immediately a reminder to the Athlete and set a new deadline to the Athlete to indicate whether she requested the opening of the B2-Sample and/or wished to attend, personally or through a representative, the opening of the B2-Sample and its analysis.
34. On 15 June 2016, the NOC informed the IOC that the Athlete had been notified of the results of the B1-Sample through the National Federation and that the Athlete had received the information provided with the AAF Notification Letter.
35. On 16 June 2016, the NOC confirmed once again to the IOC that the Athlete confirmed the receipt of the AAF Notification Letter by phone.
36. On 21 June 2016, the IOC asked the NOC to specifically reconfirm whether the AAF Notification Letter had been effectively communicated to the Athlete and to confirm whether the Athlete had been informed of the content of said letter.
37. In the same communication, the IOC reminded the NOC that, pursuant to Art. 7.3.3 of the Rules, notification to the NOC shall be deemed notification to the Athlete.

38. The NOC confirmed that the Athlete had been effectively notified of the AAF.
39. On 24 June 2016, the IOC informed the Athlete, through her NOC, that it was noted that, as confirmed by her NOC, she had been effectively informed of the present proceedings. The IOC noted that the lack of response was to be understood as she had waived her right to request to opening and analysis of the B2-Sample and informed the Athlete that the IOC had elected to rely on the B1-Sample results and therefore to proceed to hearing phase..
40. The Athlete was also informed that she had the possibility to attend the hearing of the Disciplinary Commission scheduled to take place on 1st July 2016 and/or to submit a defence in writing by 29 June 2016.
41. One the same day, the NOC and the IF were also invited to indicate whether they wished to attend the hearing.
42. On 29 June 2016, the NOC submitted written observations in which it noted that the presence of the Prohibited Substances had been established and asked the Disciplinary Commission to issue its decision accordingly.
43. The Athlete did not reply and the IAAF did not submit any observation.
44. The Disciplinary Commission held a hearing by teleconference on 1st July 2016. Mr Christian Thill was acting as Secretary of the Disciplinary Commission. The IOC was represented by Mr Howard M. Stupp, Director of Legal Affairs, and Dr Richard Budgett, Medical and Scientific Director. Mr Jean-Pierre Morand, attorney-at-law, took part to the teleconference as IOC counsel.

II. **APPLICABLE RULES**

45. Art. 2.1 of the Rules provides as follows:

"The presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's bodily Specimen.

2.1.1 *It is each Athlete's personal duty to ensure that no Prohibited Substance enters his or her body. Athletes are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their bodily Specimens. Accordingly, it is not necessary that intent, fault, negligence or knowing Use on the Athlete's part be demonstrated in order to establish an anti-doping violation under Article 2.1.*

2.1.2 *Excepting those substances for which a quantitative reporting threshold is specifically identified in the Prohibited List, the detected presence of any quantity of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample shall constitute an anti-doping rule violation.*

2.1.3 *As an exception to the general rule of Article 2.1, the Prohibited List may establish special criteria for the evaluation of Prohibited Substances that can also be produced endogenously."*

46. Art. 2.2 of the Rules provides as follows:

"Use or Attempted Use of a Prohibited Substance or a Prohibited Method

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

47. Art. 5.1 of the Rules provides as follows:

“The IOC is responsible for Doping Control during the Period of the Olympic Games. The IOC is entitled to delegate all or part of its responsibility for Doping Control to one or several other organisations.

The Period of the Olympic Games, or In-Competition Period, is defined as “the period commencing on the date of the opening of the Olympic village for the Olympic Games, namely, 27 July 2008 up until and including the day of the closing ceremony of the Olympic Games, namely, 24 August 2008.

All Athletes participating at the Olympic Games shall be subject, during the Period of the Olympic Games, to Doping Control initiated by the IOC at any time or place, with No Advance Notice. Such Doping Control may include Testing for all Prohibited Substances and all Prohibited Methods referred to in the Prohibited List.

The IOC shall have to right to conduct or cause to conduct Doping Control during the Period of the Olympic Games, and is responsible for the subsequent handling of such cases.”

48. Art. 7.3.3 of the Rules provides as follows:

“Notice to an Athlete or other Person who has been accredited pursuant to the request of the NOC, may be accomplished by delivery of the notice to the NOC. Notification to the Chef de Mission or the President or Secretary General of the NOC of the Athlete or other Person shall be deemed to be a delivery of notice to the NOC.”

49. Art. 8.1 of the Rules provides as follows:

“A violation of these Rules in connection with Doping Control automatically leads to Disqualification of the Athlete with all other consequences, including forfeiture of any medals, points and prizes.”

50. Art. 9.1 of the Rules provides as follows:

“An Anti-Doping Rule violation occurring during or in connection with the Olympic Games may lead to Disqualification of all of the Athlete’s results obtained in the Olympic Games with all consequences, including forfeiture of all medals, points and prizes, except as provided in Article 9.1.1.”

51. Art. 9.1.1 of the Rules provides as follows:

“If the Athlete establishes that he or she bears No Fault or Negligence for the violation, the Athlete’s results in the other Competition shall not be Disqualified unless the Athlete’s results in Competitions other than the Competition in which the anti-doping rule violation occurred were likely to have been affected by the Athlete’s anti-doping rule violation.”

52. Art. 9.3 of the Rules provides as follows:

“The management of anti-doping rule violations and the conduct of additional hearings as a consequence of hearings and decisions of the IOC, including with regard to the imposition

of sanctions over and above those relating to the Olympic Games, shall be managed by the relevant International Federation”.

53. Art. 10.1 of the Rules provides as follows:

“Where more than one team member in a Team Sport has been notified of a possible Anti-Doping Rule violation under Article 7 in connection with the Olympic Games, the Team shall be subject to Target Testing for the Olympic Games.

In Team Sports, if more than one team member is found to have committed an anti-doping rule violation during the Period of the Olympic Games, the team may be subject to Disqualification or other disciplinary action, as provided in the applicable rules of the relevant International Federation.

In sports which are not Team Sports but where awards are given to teams, if one or more team members have committed an anti-doping rule violation during the Period of the Olympic Games, the team may be subject to Disqualification, and/or other disciplinary action as provided in the applicable rules of the relevant International Federation.”

54. Rule 39 of the IAAF Competition Rules 2008 provides as follows:

“Disqualification of Results

- 1. Where an Anti-Doping Rule violation occurs in connection with an in-competition test, the athlete shall be automatically disqualified from the event in question and from all subsequent events of the competition, with all resulting consequences for the athlete, including the forfeiture of all titles, awards, medals, points and prize and appearance money.*
- 2. Where the athlete who commits an Anti-Doping Rule violation under Rule 39.1 is a member of a relay team, the relay team shall be automatically disqualified from the event in question, with all resulting consequences for the relay team, including the forfeiture of all titles, awards, medals, points and prize and appearance money. If the athlete who has committed an Anti-Doping Rule violation competes for a relay team in a subsequent event in the competition, the relay team shall be disqualified from the subsequent event, with all the same resulting consequences for the relay team, including the forfeiture of all titles, awards, medals, points and prize and appearance money.”*

III. DISCUSSION

55. The presence of the metabolites of two Prohibited Substances has been established in 2016 in the sample 1843769 that the Athlete provided on 17 August 2008, upon the occasion of the 2008 Olympic Games.
56. The substances detected in the Athlete’s sample are exogenous anabolic steroids. They are listed in the WADA 2008 Prohibited List and in all subsequent lists.
57. The Disciplinary Commission is satisfied that the samples which have been re-analysed by the Laboratory are unequivocally linked to the Athlete and that no relevant departure from the WADA International Standards occurred.

58. Based on the above, the Disciplinary Commission finds that the Athlete has committed an anti-doping rule violation pursuant to Art. 2.1 of the Rules consisting in the presence of Prohibited Substances in her body.
59. In addition, the Disciplinary Commission finds that an anti-doping rule violation is also established if the circumstances are considered in the perspective of art. 2.2 of the Rules.
60. The Disciplinary Commission observes that the nature of the substances which were found in the Athlete's sample is consistent with intentional use of Prohibited Substances specifically ingested to deliberately improve performance. The fact that the metabolites of two different doping substances, which are both "classical" doping substances were found, supports this consideration.
61. In conclusion, the Disciplinary Commission finds that two anti-doping violations are established pursuant to both Art. 2.1 and Art. 2.2 of the Rules.
62. The consequences of an anti-doping rule violation under the Rules are limited to consequences in connection with the 2008 Olympic Games. They are set forth in Art. 8, 9 and 10 of the Rules and are the following.
63. In application of Art. 8.1, (results of the 400 m) and respectively 9.1 of the Rules (for all other results), all the results achieved by the Athlete during the 2008 Olympic Games shall be annulled.
64. In addition, and in application of Art. 10.1 of the Rules in connection with Art. 39.2 of the IAAF Competition Rules 2008 (last sentence), the results of the 4x400m Women relay achieved by the Russian team shall also be annulled.
65. In application of Art. 9.3 of the Rules the further management of the consequences of the anti-doping rule violations and in particular the imposition of sanctions over and above those related to the Olympic Games 2008 shall be conducted by the IAAF.

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CONSIDERING the above, pursuant to the Olympic Charter and, in particular, Rule 59.2.1 thereof, and pursuant to the IOC Anti-Doping Rules applicable to the Games of the XXIX Olympiad in Beijing in 2008 and, in particular, 2, 5.1, 7.3.3, 8, 9 and 10 thereof.

THE DISCIPLINARY COMMISSION OF THE
INTERNATIONAL OLYMPIC COMMITTEE
DECIDES

- I. The Athlete, Anastasia KAPACHINSKAYA:
 - (i) is found to have committed an anti-doping rule violation pursuant to the IOC Anti-Doping Rules applicable to the Games of the XXIX Olympiad in Beijing in 2008 (presence and/or use, of a Prohibited Substance or its Metabolites or Markers in an athlete's bodily specimen),
 - (ii) is disqualified from all the events in which she participated upon the occasion of the Olympic Games Beijing 2008, namely, the Women 400m and the Women 4x400m relay, and
 - (iii) has the medals, the medallist pins and the diplomas obtained in the Women 400m and the Women 4x400m relay withdrawn and is ordered to return the same.
- II. The Russian Federation Team is disqualified from the Women 4x400m relay. The corresponding medals and diplomas are withdrawn and shall be returned.
- III. The IAAF is requested to modify the results of the above-mentioned events accordingly and to consider any further action within its own competence.
- IV. The Russian Olympic Committee shall ensure full implementation of this decision.
- V. The Russian Olympic Committee shall notably secure the return to the IOC, as soon as possible, of the medals, the medallist pins and the diplomas awarded in connection with the Women 400m and in connection with the Women 4x400m relay to the Athlete and to the other team members of the Women 4 x 400m Russian Federation Team.
- VI. This decision enters into force immediately.

Lausanne, 15 August 2016

In the name of the IOC Disciplinary Commission

Denis Oswald, Chairman

Juan Antonio Samaranch

Ugur Erdener