

**INTERNATIONAL OLYMPIC COMMITTEE**

**IOC DISCIPLINARY COMMISSION**

**DECISION**

**REGARDING IRYNA KULESHA  
BORN ON 26 JUNE 1986, BELARUS, ATHLETE, WEIGHTLIFTING**

(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 and 9 thereof:

**I. FACTS**

1. Iryna KULESHA (hereinafter the “**Athlete**”), participated in the Games of the XXIX Olympiad in Beijing in 2008 (the “**2008 Olympic Games**”).
2. On 15 August 2008, the Athlete competed in the Women’s 75 kg weightlifting event in which she ranked 4<sup>th</sup> and for which she was awarded a diploma.
3. On the same day, the Athlete was requested to provide a urine sample for a doping control. Such sample was identified with the number 1846394.
4. The A-Sample 1846394 was analysed during the 2008 Olympic Games by the WADA-accredited Laboratory in Beijing. Such analysis did not result in an adverse analytical finding at that time.
5. 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, Switzerland (“the **Laboratory**”) for long-term storage.
6. 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 using more sensitive equipment and/or searching for new metabolites in order to possibly detect Prohibited Substances which were not identified by the analysis performed at the time of the 2008 Olympic Games.
7. 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 an A- and B-Sample).
8. The decision to proceed based on split B-samples was made in principle for all the re-analysis.

9. 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.
10. At that time, resealing of A-Samples (or transport in sealed containers) was not a requirement pursuant to the applicable ISL (2008).
11. However, it was felt that the option to rely on the B-Sample constituted an additional precaution securing the strength and reliability of the analytical process.
12. 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 into a B1- and B2-Sample, sealing of the B2-Sample and analysis of the B1-Sample).
13. Pursuant to the ISL, the presence of the Athlete is not a requirement for such first phase of the B-Sample analysis.
14. The IOC nevertheless decided, once 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.
15. 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 a Prohibited Substance: dehydrochlormethyltestosterone (turinabol).
16. On 12 July 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, the sealing of the B2-Sample and the analysis of the B1-Sample.
17. On 14 July 2016, the Athlete sent her completed PAAF Notification Appendix to the IOC through her NOC, in which she indicated that she would not attend the opening, splitting of the B-Sample, the sealing of the B2-Sample and the analysis of the B1-Sample, neither personally nor through a representative.
18. On the same day, the IOC informed the Athlete, through her NOC, that the opening, splitting of the B-Sample, the sealing of the B2-Sample and the analysis of the B-Sample was scheduled to take place on 18 July 2016 at the Laboratory.
19. The opening and splitting of the B-Sample, the sealing of the B2-Sample occurred on 18 July 2016 at the Laboratory.
20. The Athlete did not attend the opening and splitting of the B-Sample and was not represented on this occasion.
21. As provided in the ISL, the opening and splitting was attended by an independent witness.
22. The results of the B1-Sample analysis were reported on 21 July 2016. These results establish the presence of the metabolites of a Prohibited Substance, namely dehydrochlormethyltestosterone (turinabol).
23. Such results constitute an Adverse Analytical Finding. They were reported to the IOC in accordance with article 7.2.1 of the Rules.

24. Further to the verifications set forth in Art. 7.2.2 of the Rules and in application of Art. 7.2.3 of the Rules, the IOC President, Mr Thomas Bach, was informed of the existence of the AAF and the essential details available concerning the case.
25. 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 Legal Affairs Commission;
  - Mrs Gunilla Lindberg (Sweden)
  - Mr Ugur Erdener (Turkey)
26. On 26 July 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 of the B2-Sample and its analysis, either in person and/or through a representative, which was initially scheduled to take place on 8 or 9 August 2016. The Athlete was finally informed of her right to request a copy of the laboratory documentation package.
27. On 1 August 2016, the Athlete through her NOC provided the IOC with her completed AAF Notification Appendix in which she indicated that she did not accept the Adverse Analytical Finding and requested the opening and analysis of the B2-Sample. She indicated that she would not attend personally the process and that she would not be represented on this occasion. She also requested a copy of the laboratory documentation package.
28. On 2 August 2016, the IOC informed the Athlete that the opening of the B2-Sample would take place on 8 August 2016 at the Laboratory followed by the analysis of the sample over the following days.
29. As planned, the opening of the B2-Sample occurred on 8 August 2016 in the presence of an independent witness followed by the analysis.
30. The results of the B2-Sample analysis were reported to the IOC on 11 August 2016. They confirmed the presence in the B2-Sample of the metabolites of a Prohibited Substance, namely dehydrochloromethyltestosterone (turinabol).
31. On 16 August 2016, the IOC communicated to the Athlete the results of the B2-Sample analysis. The Athlete was also invited to indicate whether she accepted the Adverse Analytical Finding, whether she would attend the hearing of the Disciplinary Commission and/or she would submit a defence in writing. The Athlete was also informed of her right to request a copy of the laboratory documentation package.
32. On 19 August 2016, the Athlete sent to the IOC through her NOC her completed Disciplinary Commission Form in which she indicated that she did not accept the Adverse Analytical Finding. She did not request a copy of the B2-Sample laboratory documentation package. She also indicated that she would not attend the hearing of the Disciplinary Commission, neither personally nor through a representative, and that she would not present a defence in writing.
33. On 19 August 2016, the IOC acknowledged receipt of the completed Disciplinary Commission Form and offered once the possibility to the Athlete to submit a defence within a deadline expiring on 31 August 2016.

34. On 24 August 2016, the IOC provided the Athlete through her NOC with a copy of the requested B1-Sample laboratory documentation package.
35. On 31 August 2016, the Athlete through her NOC submitted a written defence.
36. In her written defence, the Athlete submitted that she had always been very responsible in preparing for a competition and had never used a banned substance in her career. She contended that she had been subject to several out of competition doping tests during her career and that none of them had ever been reported positive.
37. To explain the presence of the prohibited substances in her sample, the Athlete supposed that she used the banned substances unintentionally by consuming food supplements, which were bought in Russia. She asserted that, due to the long period of time since 2008, she was not in the position to provide the Disciplinary Commission with any evidence related to the product used at the time to prove her innocence.
38. On 6 September 2016, the IOC acknowledged receipt of the written defence filed by the Athlete and she was advised that her arguments would be brought to the attention of the Disciplinary Commission.
39. On 27 September 2016, the NOC and the IF were informed that the Athlete decided not to attend the hearing of the Disciplinary Commission and that a decision would be issued on the basis of the file. The IOC invited the NOC and the IF to file written observations by 12 October 2016.
40. Neither the NOC nor the IF replied.
41. As a final observation, it is to be noted that samples provided by the same Athlete on the occasion of the Games of the XXX Olympiad in London in 2012 (the “**2012 Olympic Games**”) were also subject to further analysis.
42. In this case, the analytical results also showed the presence of Prohibited Substances, namely dehydrochloromethyltestosterone (turinabol) and stanozolol.
43. The corresponding proceedings addressing this further matter have been conducted in parallel to the present proceedings. The Disciplinary Commission is issuing its decision on this matter on the same day as the present decision (LRT II – 031).

## II. APPLICABLE RULES

44. These proceedings are conducted in application of the 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 the 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 the General Secretary 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”.*

### **III. DISCUSSION**

53. The presence of metabolites of a Prohibited Substance, i.e. dehydrochloromethyltestosterone (turinabol), has been established in 2016 in the sample 1846394 that the Athlete provided on 15 August 2008, upon the occasion of the 2008 Olympic Games.
54. The substance detected in the Athlete’s sample is an anabolic steroid. It is listed in the WADA 2008 Prohibited List and in all subsequent lists.
55. The Disciplinary Commission is satisfied that the sample which has been re-analysed by the Laboratory is unequivocally linked to the Athlete and that no relevant departure from the WADA International Standards occurred.
56. In the written observations she submitted, the Athlete does not bring forth any element challenging the validity of the analytical results.
57. The Athlete simply denies having used performance-enhancing substances. As an explanation for the presence of the Prohibited Substance, she raises the hypothesis that the substance may have been contained in supplements bought in Russia at that time.
58. Based on the analytical results establishing the presence of a Prohibited Substance in the Athlete’s sample, the Disciplinary Commission finds that the Athlete has in any event committed an anti-doping rule violation pursuant to Art. 2.1 of the Rules.
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 substance which was found in the Athlete’s sample is consistent with intentional use of Prohibited Substances specifically ingested to deliberately improve performance. The fact that the metabolite of a doping substance, which is a “classical” doping substance was found, supports this consideration.
61. Furthermore, the Disciplinary Commission observes that the fact that the substance in question may have been contained in food supplement would not exonerate the Athlete from having used it.
62. First, the use of food supplements in which a Prohibited Substance is an ingredient may just be a way of using deliberately such Prohibited Substance. The fact that the Prohibited Substance might be included in a food supplement does not make it less reprehensible to use than the substance in isolation.

63. Furthermore, athletes have been repeatedly warned to apply extreme caution when using food supplements, which may contain undeclared Prohibited Substances or which may have been contaminated during production.
64. With the mere hypothesis that the source of finding could be food supplement, the Athlete does not establish that she applied the required level of caution. Assuming for the sole purpose of discussion, that the source of the analytical finding would indeed be “supplements bought in Russia” in which the Prohibited Substance would have been included without the Athlete’s knowledge, there is in any event no indication (not to speak of any evidence) in the Athlete’s explanations that she satisfied the high duty of care and caution in choosing food supplements, which is expected from high-level athletes.
65. Finally, the fact that samples of the same Athlete collected on the occasion of the 2012 Olympic Games were also found to contain Prohibited Substances, stanozolol and dehydrochlormethyltestosterone (turinabol), more than suggests that the Athlete has been doping on a regular basis throughout her career. She could evade detection until the new methods based on long-term metabolites finally exposed her.
66. In conclusion, the Disciplinary Commission finds that an anti-doping violation is thus established pursuant to both Art. 2.1 and Art. 2.2 of the Rules.
67. 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 and 9 of the Rules and are the following.
68. In application of Art. 8.1 and/or Art. 9 of the Rules, the results achieved by the Athlete at the Women’s 75 kg weightlifting event in which she ranked 4th during the 2008 Olympic Games, shall be annulled, with all resulting consequences (notably withdrawal of medal, diploma, pin etc.).
69. 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 International Weightlifting Federation (“**IWF**”).

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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 and 9 thereof.

THE DISCIPLINARY COMMISSION OF THE  
INTERNATIONAL OLYMPIC COMMITTEE  
DECIDES

- I. The Athlete, Iryna KULESHA:
  - (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 the Women's 75 kg weightlifting event in which she participated upon the occasion of the Olympic Games Beijing 2008,
  - (iii) has the diploma obtained in the Women's 75 kg weightlifting event withdrawn and is ordered to return the same.
- II. The IWF is requested to modify the results of the above-mentioned event accordingly and to consider any further action within its own competence.
- III. The National Olympic Committee of the Republic of Belarus shall ensure full implementation of this decision.
- IV. The National Olympic Committee of the Republic of Belarus shall notably secure the return to the IOC, as soon as possible, of the diploma awarded in connection with the Women's 75 kg weightlifting event to the Athlete.
- V. This decision enters into force immediately.

Lausanne, 19 October 2016

In the name of the IOC Disciplinary Commission



Ugur Erdener



Denis Oswald, Chairman



Gunilla Lindberg