

**INTERNATIONAL OLYMPIC COMMITTEE**

**IOC DISCIPLINARY COMMISSION**

**DECISION**

**REGARDING EKATERINA GNIDENKO  
BORN ON 11 DECEMBER 1992, RUSSIAN FEDERATION, ATHLETE, CYCLING**

(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 XXX Olympiad, London 2012 (the “**Rules**”) and, in particular, Articles 1, 2, 4.1, 6.3.3, 7, 8 and 13 thereof:

**1. FACTS**

1. Ekaterina Gnidenko (hereinafter the “**Athlete**”), participated in the Games of the XXX Olympiad, London 2012 (the “**2012 Olympic Games**”).
2. On 3 August 2012, the Athlete competed in the Cycling Track Keirin Event, in which she ranked 8<sup>th</sup> and for which she was awarded a diploma.
3. On 5 August 2012, the Athlete also competed in the Cycling Track Sprint Event, in which she ranked 18<sup>th</sup>.
4. On 24 July 2012, the Athlete was requested to provide a urine sample for a doping control in Ratomka, Belarus. This doping control was performed at the request of the IOC. The sample collected from the Athlete was identified with the number 3038222.
5. The A-Sample 3038222 was analysed by the WADA-accredited laboratory “Deutsche Sporthochschule Köln, Institut für Biochemie” in Cologne, Germany (the “**Cologne Laboratory**”). Such analysis did not result in an adverse analytical finding at that time.
6. After the conclusion of the 2012 Olympic Games, the samples analysed were kept in Cologne for long-term storage.
7. The IOC decided to perform further analyses on samples collected during the 2012 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 2012 Olympic Games.
8. The IOC decided that the reanalysis process would be conducted as a regular A and B sample analysis, without resorting to a splitting of the B sample.
9. The analysis of the A-Sample by the Laboratory resulted in an Adverse Analytical Finding (“**AAF**”) as it showed the presence of the metabolite (4-chloro-17-hydroxymethyl-17-methyl-18-nor-5 $\beta$ -androst-13-ene-3ol) of a Prohibited Substance: dehydrochloromethyltestosterone (turinabol).
10. The results were reported to the IOC in accordance with Art. 6.2.1 of the Rules.
11. Further to the verifications set forth in Art. 6.2.2 of the Rules and in application of Art. 6.2.3 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.

12. 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;
  - Mrs Gunilla Lindberg (Sweden);
  - Mr Juan Antonio Samaranch (Spain) or Mr Ugur Erdener (Turkey), depending on the date of the hearing.
13. On 27 May 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 the opening and analysis of the B-Sample and to attend this process, either in person and/or through a representative.
14. On 1 June 2016, the Athlete sent directly to the IOC 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 her B-Sample. She further indicated that Ms Kira Rogova (RCF anti-doping department representative) would attend the opening and analysis of the B-Sample on her behalf. Finally, she requested a copy of the laboratory documentation package.
15. On 2 June 2016, the IOC informed the Athlete that the opening of the B-Sample would occur on 8 June 2016 at the Cologne Laboratory and provided the Athlete with an invitation letter addressed to the attention of Ms Rogova.
16. The B-sample analysis took place on 8 June 2016 at the Cologne Laboratory in the presence of Ms Kira Rogova.
17. The results were reported to the IOC on 9 June 2016. They confirmed the presence in the B-Sample of a Prohibited Substance: dehydrochloromethyltestosterone (turinabol).
18. On 13 June 2016, the IOC notified to the Athlete the results of the B-sample analysis and informed her of her right to obtain the documentation package of such analysis. She was also made aware that a hearing would take place during the last week of June or the first part of July 2106 and invited to present her defence in writing and/or to attend the hearing of the Disciplinary Commission.
19. On 20 June 2016, the Athlete filed written observations in lieu of returning the Disciplinary Commission Form.
20. In her written observations, the Athlete requested to be provided with the A and B samples documentation package and a hearing in a reasonable timeframe.
21. On 6 July 2016, the IOC informed the Athlete that the hearing of the Disciplinary Commission was scheduled to be held on 20 July 2016. She was invited to submit a written defence within a deadline granted until 18 July 2016. The IOC also provided the Athlete with the A and B samples documentation package.
22. On the same day, the IOC invited the NOC and the international federation (UCI) to send a representative to the hearing and/or, depending on the Athlete's response, to send written observations within a deadline granted until 18 July 2016.
23. On 12 July 2016, the Athlete informed the IOC that she would attend the hearing via video-conference and that she would send her representative to attend the hearing in person.

24. On 15 July 2016, the IOC confirmed to the Athlete that the hearing would take place on 20 July 2016 at 9:00 am at the IOC Headquarters and reminded the Athlete that she had the possibility to submit additional written observations by 18 July 2016.
25. On 16 July 2016, the Athlete informed the IOC that Mr Artem Patsev, attorney-at-law, would represent her at the hearing of the Disciplinary Commission, while she would participate in the hearing via video-conference. She also confirmed that she would submit her written observations by 18 July 2016.
26. On 18 July 2016, the Athlete submitted additional written observations.
27. On the same day, the UCI informed the IOC that no IF representative would be sent to the hearing.
28. The NOC did not reply.
29. The hearing was held on 20 July 2016 at 9 a.m. at the IOC headquarters in Pully, Switzerland.
30. The Athlete, who was assisted by an interpreter, took part via video-conference. She was assisted by her legal counsel, Mr Artem Patsev, attorney-at-law, who attended in person.
31. The IOC was represented by Mr Christian Thill, IOC Legal Counsel, and Mr Jean-Pierre Morand and Mr Nicolas Français, attorneys-at-law, IOC external legal counsels.
32. Prof Martial Saugy of the Lausanne Anti-doping Laboratory was heard as an expert witness during the hearing.
33. It is to be observed that in the course of two other hearings concerning two other athletes, also represented by Mr Patsev, and in respect of which AAFs had been reported for the same substance, the same issues regarding the validity of the method applied by the Laboratory and, in this instance, by the WADA-accredited laboratory of Cologne were addressed.
34. In all three cases, the validity of the method used to establish the presence of the Prohibited Substance, was challenged, respectively discussed based on arguments set forth in a scientific opinion issued by Dr Kopylov on 18 July 2016 "Critical point of view on method for detection novel metabolites of turinabol". Dr Kopylov further appeared as expert witness in the other two cases.
35. Upon proposal of the Chairman of the Disciplinary Commission made during one of the hearings, it was expressly agreed by all the parties (including the three athletes concerned) that the explanations provided by Dr Kopylov and Prof Saugy during each of the three hearings in respect to the issues regarding the method applied to establish the presence of the Prohibited Substance could be used in all three proceedings.
36. At the outset of the hearing, counsel for the IOC referred to the McLaren Report, which had just been published, and requested that it be added to the file. Counsel for the Athlete objected to the addition of this new evidence. The Chairman of the Disciplinary Commission stated he was of the opinion that they did not need to rely upon the Report for this case and they could wait until a later stage to determine whether the Report was of relevance. The Disciplinary Commission confirms that it has reached its findings and conclusions in this case, without having regard to the McLaren Report.
37. Neither the NOC of the Athlete nor the IF were represented at the hearing.

38. At the end of the hearing, the Athlete expressly confirmed that her right to be heard had been respected in the course of the proceedings.
39. Minutes of the hearing were taken by Mr Robert Elkins. The hearing was also recorded.

## **2. APPLICABLE RULES**

40. Art. 1 of the Rules provides as follows:

*“Application of the Code – Definition of Doping – Breach of the Rules*

*1.1 The commission of an anti-doping rule violation is a breach of these Rules.*

*1.2 Subject to the specific following provisions of the Rules below, the provisions of the Code and of the International Standards apply mutatis mutandis in relation to the London Olympic Games.”*

41. Art. 2 of the Rules provides that Article 2 of the Code applies to determine anti-doping rule violations.
42. Art. 2.1 of the Code provides that the following constitutes an anti-doping rule violation:

*“Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete’s Sample.*

*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 Samples. 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 Sufficient proof of an anti-doping rule violation under Article 2.1 is established by either of the following: presence of a Prohibited Substance or its Metabolites or Markers in the Athlete’s A Sample where the Athlete waives analysis of the B Sample and the B Sample is not analysed; or, where the Athlete’s B Sample is analysed and the analysis of the Athlete’s B Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the Athlete’s A Sample.*

*2.1.3 Excepting those substances for which a quantitative threshold is specifically identified in the Prohibited List, the 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.*

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

43. Art. 2.2 of the Code provides the following constitutes an anti-doping rule violation:

*“Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method.*

*2.2.1 It is each Athlete’s personal duty to ensure that no Prohibited Substance enters his or her body. 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 rule violation for Use of a Prohibited Substance or a Prohibited Method.*

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

44. Art. 4.1 of the Rules provides as follows:

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

*The Period of the London Olympic Games is defined as "the period commencing on the date of the opening of the Olympic village for the London Olympic Games, namely, 16 July 2012 up until and including the day of the closing ceremony of the London Olympic Games, namely, 12 August 2012".*

45. Art. 6.3.3 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 Secretary General of the NOC of the Athlete or other Person shall be deemed to be a delivery of notice to the NOC."*

46. Art. 7.1 of the Rules provides as follows:

*"A violation of these Rules in Individual Sports in connection with Doping Control automatically leads to Disqualification of the Athlete's results in the Competition in question, with all other consequences, including forfeiture of any medals, points and prizes."*

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

*"An anti-doping rule violation occurring or in connection with the London Olympic Games may lead to Disqualification of all the Athlete's results obtained in the London Olympic Games with all consequences, including forfeiture of all medals, points and prizes, except as provided in Article 8.1.1."*

48. Art. 8.1.1 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 Competitions (for which the Athlete's results have not been automatically Disqualified as per Article 7.1 hereof) 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."*

49. Art. 8.3 of the Rules provides as follows:

*"The Consequences 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 London Olympic Games, shall be managed by the relevant International Federations."*

50. Art. 13.1 of the Rules provides as follows:

*“These Rules are governed by the Olympic Charter and by Swiss law”.*

51. Art. 13.5 of the Rules provides as follows:

*“These Rules have been adopted pursuant to the applicable provisions of the Code and shall be interpreted in a manner that is consistent with applicable provisions of the Code.”*

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### **3. DISCUSSION**

#### **1. Anti-Doping Rule Violation**

##### **a. Establishment of anti-doping rule violation**

52. The presence of the metabolite of a Prohibited Substance has been established in 2016 in the sample 3038222 that the Athlete provided on 24 July 2012, upon the occasion of the 2012 Olympic Games.
53. The substance detected in the Athlete's sample is an exogenous anabolic steroid. It is listed in the WADA 2012 Prohibited List and in all subsequent lists.
54. 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.
55. In spite of the arguments submitted by the Athlete, which are discussed below, the Disciplinary Commission is further satisfied that the analytical results are valid and do properly establish the presence of the Prohibited Substance at stake in the Athlete's samples.
56. Based on the above, the Disciplinary Commission finds that an anti-doping rule violation pursuant to Art. 2.1 of the Rules consisting in the presence of a Prohibited Substance in the Athlete's body is established.
57. In addition, the Disciplinary Commission finds that an anti-doping rule violation could also be held as established if the circumstances were considered in the perspective of art. 2.2 of the Rules.
58. In this respect, the Disciplinary Commission observes that the nature of the substance which was found in the Athlete's sample (i.e. a traditional doping substance) makes this result consistent with the use of a Prohibited Substance specifically ingested to deliberately improve performance.
59. The Disciplinary Commission, which has now handled multiple cases arising out of the re-analysis of samples from the 2008 and 2012 Olympic Games, observes that the presence of metabolites of this particular substance has been established in a remarkably high number of cases, which resulted from the re-analysis of the samples collected in Beijing 2008 and London 2012.
60. This constitutes an indication that said substance has been in widespread use by athletes, who were doping at that time.
61. Prior to the application of a new detection strategy searching for metabolites remaining detectable over a much longer period of time and which began to apply only from late 2012 /2013, the detection window of said substance was limited to much shorter period of time (5 to 6 days).
62. The search for the newly established so called "long term" metabolites significantly extended the detection window (up to 50 and more days). Such a significant extension of the detection window is the obvious explanation for the unfortunately spectacular and

unprecedented high number of positive cases which were revealed by the re-analysis process.

63. Doping is a planned process in which the detection window is a key parameter. The athletes using the substance at the time, and/or the persons who were supporting them in this respect, planned with the detection window applicable at the time. They did not expect that the detection window would subsequently be significantly extended, by virtue of a new method capable of detecting long-term metabolites during a much longer period of time.
64. This explains why athletes, who had in the past effectively managed to avoid anti-doping controls were caught. It is an illustration of the effectiveness of the re-analysis process and of its purpose, which is essentially to give those who think they can outsmart the anti-doping controls, the message that they will never be safe.
65. In any event for the purpose of these proceedings, it is not necessary to examine exhaustively whether the Athlete could establish how the substance entered her body, as the mere establishment of presence suffices to justify the application of the consequences provided for under the Rules.
66. In conclusion, the Disciplinary Commission finds that an anti-doping violation is established pursuant to both Art. 2.1 and Art. 2.2 of the Rules.

## **b. Arguments of the Athlete**

67. The Athlete has challenged the commission of an anti-doping violation on the basis of various arguments set out in written observations and at the hearing. None of them put the above finding into question.

### **i. Correctness of the analysis conducted by the Cologne Laboratory**

68. The Athlete questions the correctness of the analysis conducted by the Cologne Laboratory.
69. The basis of the Athlete's challenge are that (i) on the morning the Athlete's representative (Ms Kira Rogova) arrived at the Cologne Laboratory for the opening of the B-Sample, both the A- and B-Samples were already defrosted, and (ii) WADA-accredited laboratories could already detect short-term metabolites of turinabol in 2012, but none were found at that time, despite the fact that the Athlete provided samples on 22 May, 27 May and 27 July 2012.
70. Regarding the defrosting of the samples: The Athlete argues that as the samples were already defrosted when Ms Rogova arrived at the Cologne Laboratory, Ms Rogova could not witness the samples' defrosting procedure, nor could she verify the integrity of the bottles when they were stored frozen. The Athlete alleges that this is contrary to par. 5.2.4.3.2.6 of the ISL 2015.
71. Counsel for the Athlete confirmed at the hearing that the argument regarding the defrosting of the samples was still in issue, but it was not essential to their argument.
72. Regarding the defrosting procedure, Prof Saugy observed that it was not a requirement of the ISL for the witness to be shown the frozen sample. The practice in his laboratory (the Lausanne laboratory) is for the witness to be taken to the freezer to observe the frozen samples being removed for opening and analysis. However, this is not required by the ISL.



What is important is that the representative can verify that the sample has not been tampered with, and that the seal is intact, which is the case here.

73. Furthermore, Prof Saugy noted that temperature has no impact on the presence of the steroid metabolite. These steroid metabolites were quite stable and the freezing and thawing process could never create these kinds of metabolites.
74. The Disciplinary Commission is satisfied that the defrosting of the samples in advance of Ms Rogova's arrival at the Cologne Laboratory was not a deviation from the ISL. The Disciplinary Commission further notes page 36/53 of the laboratory documentation package, which is the Cologne Laboratory's internal document, "B-sample analysis, Verification of sample identity". This document, which is signed by Ms Rogova, records at point 3 that, "The bottle of the B-sample is correctly closed and sealed".
75. Accordingly, the Athlete's arguments in this regard are dismissed.
76. Regarding the detection of short-term metabolites of turinabol in 2012: The Athlete argues that WADA-accredited laboratories could already detect short-term metabolites of turinabol in 2012, but none were found at that time, despite the fact that the Athlete provided samples on 22 May, 27 May and 27 July 2012. The Athlete does not make further arguments in this respect, except to note that it is "oddly enough".
77. The Disciplinary Commission has considered the evidence of Prof Saugy regarding the detection windows for short- and long-term metabolites of turinabol. The Disciplinary Commission also notes Prof Saugy's evidence that it was possible that the metabolite had not been found in the Athlete's samples in May 2012, because of a limit of detection of the laboratory.
78. The Disciplinary Commission does not find it problematic – nor indeed relevant – for the current adverse analytical finding that no adverse analytical findings for short-term metabolites of turinabol were reported for the Athlete's samples in 2012. The method which was used by the Cologne laboratory identified long term metabolites, which were precisely not searched for in 2012. The fact that they were not detected then and detected in 2016 is simply the logical consequence of the application of the new method.
79. This finding could be the result of an ingestion at any time after May 27, 2012. Unless, it would have taken place shortly before July 27, 2012, the absence of short-term metabolites is absolutely not inconsistent.
80. Accordingly, the Athlete's arguments in this regard are dismissed.

## **ii. Statute of limitations**

81. The Athlete alleges that the proceedings are time barred. She refers in this respect to Art. 60 of the Olympic Charter and the 3 year deadline set forth therein.
82. The possibility to reanalyse the samples collected on the occasion of the Olympic Games in London during a period of 8 years and then to proceed on the basis of the results of the reanalysis is expressly provided for in Art. 5.1 of the Rules, which itself refers to Art. 17 of the World Anti-Doping Code ("WADC").
83. Art. 17 of WADC 2009, which was applicable at the time of collection, provides that an anti-doping action against an athlete shall be commenced within 8 years from the date of the

violation (i.e. the presence of the Prohibited Substance in the Athlete's sample established as of 24 July 2012).

84. Under Art. 17 WADC 2015, the deadline is extended to 10 years from the date of the violation. A notification of the anti-doping rule violation as provided in Art 7 WADC 2015 (i.e. the AAF notification) shall effectively be performed or reasonably attempted within that deadline. This is a confirmation, respectively a specification, that the AAF notification constitutes the "commencement" of the action as set forth in art. 17 WADC 2009.
85. All phases of the analysis of sample n°3038222 (A and B confirmation analysis), as well as the effective notification of the corresponding AAF to the Athlete occurred before the expiry of the 8 year deadline (July 24, 2020) and a fortiori of the ten year deadline (July 24, 2022).
86. There is therefore no doubt that these proceedings are not time barred pursuant to the Rules and the WADC, based on which the Rules have been adopted.
87. The reference to the 3 year deadline mentioned in Art. 60 of the Olympic Charter is without merit. Indeed, Art. 60 clearly and expressly indicates that this deadline is not applicable in the field of application of the World Anti-Doping Code: "**subject to any other provision of the World Anti-Doping Code**".
88. The applicable statute of limitations is therefore the one set forth in the Rules in reference to art. 17 WADC and not the three year deadline set forth in Art. 60 of the Olympic Charter.

### **iii. Validity of the method used by the Cologne Laboratory**

89. The Athlete seeks to rebut the presumption of scientific validity of the analytical method used by the Cologne Laboratory, and requests that an independent expert be appointed to assist the Disciplinary Commission. The Athlete relies in this respect on Art. 3.2.1 of WADC 2015.
90. The basis of the Athlete's challenge are arguments set forth in Dr Kopylov's Scientific Opinion dated 18 July 2016 "Critical point of view on method for detection novel metabolites of turinabol".
91. As already mentioned, Dr Kopylov's opinion was also filed in two other cases. While Dr Kopylov was not heard as an expert in this case, he was heard as a party-appointed expert during the hearing of the two other cases.
92. Prof Saugy was heard as expert witness in respect of the issue of the validity of the analysis in general, and specifically in respect of the issues raised by Dr Kopylov in all three hearings.
93. The Disciplinary Commission has carefully reviewed the issues raised and the arguments set forth in Dr Kopylov's opinion and the explanations provided by Prof Saugy and Dr Kopylov during the three different hearings at which they were addressed.
94. The Disciplinary Commission observes the following in respect of the analysis which led to the identification of the Prohibited Substance in the Athlete's sample:
95. First, the method which was used is a method which has been approved by WADA and determined as fit for purpose.

96. It is based on a peer-reviewed publication, namely the publication of Tim Sobolevsky and Grigory Rodchenkov in *Journal of Steroid Biochemistry and Molecular Biology*, 2012, p. 121-127 ("2012 Publication").
97. Since its approval by WADA, this method has been validated and implemented in the majority of WADA-accredited laboratories including the WADA-accredited laboratories of Lausanne and Cologne.
98. Prof Saugy testified that there had been a publication from the Moscow laboratory in 2012 on the detection of long-term metabolites of oral turinabol. He explained that improved equipment had appeared after 2010 increasing the sensitivity of the method applied, allowing them to find other metabolites other than the usual ones looked for in the detection of the intake of oral turinabol. Dr Saugy recalled seeing the method and discussing it with other laboratories about the application of the method in the laboratory, at the end of 2013.
99. The method validation process is conducted by the WADA-accredited laboratories in accordance with the ISL requirements (see Art. 5.4.4.2.1 ISL 2016). Such process involves both positive and negative samples.
100. Since no Standard Reference material is available, positive samples from excretion studies were used for validation. This is a possibility expressly provided for in the ISL (Art. 5.4.4.2.1, 7<sup>th</sup> bullet point ISL 2016).
101. The method is within the scope of accreditation of the laboratories. Prof Saugy mentioned that the method is not a completely new method but that it involves using existing technology (having become more sensitive) and the search for new analytes, i.e. the metabolites newly identified in the 2012 Publication. In such circumstances, a new method will fall within the scope of accreditation of the laboratory without the need for specific approval by the accreditation body (see Art. 4.4.12 ISL 2016, Flexible Scope of Accreditation).
102. Since its validation, WADA-accredited laboratories have been applying the method as part of the regular analytical menu to thousands of samples without any issue. In each case, positive and negative controls were used.
103. Prof Saugy indicated that the validation data are normally not published. There is no requirement to publish validation data and effectively, such publication would not be accepted as it would not bring any new element but just be confirmation data, which each laboratory shall establish for itself.
104. The ISL (i.a. Art. 5.4.4.2.3 ISL 2016) confirms that validation data constitutes internal data to be assessed in the accreditation process. There is no publication requirement. On the contrary, Art. 5.4.4.2.3 confirms a fortiori that it does not even need to be provided in any legal proceedings.
105. The Disciplinary Commission finds that the issues, which Dr Kopylov attempts to raise in this respect, do not appear to put in question the scientific validity of the analytical method used by the Cologne Laboratory to identify the substance.
106. Referring to the summary of the main challenges set forth on page 14 of Dr Kopylov's opinion, the Disciplinary Commission observes the following:
107. Regarding the alleged lack of negative controls: this observation has no factual basis. Prof Saugy expressly mentioned that negative controls were used in the validation (as is

required and normal). It is also noted that in each of the thousands of applications of the method, negative controls have been used.

108. Regarding the alleged lack of post-administration assays: this observation again lacks a factual basis and is even contradictory to the one based on the absence of synthetic standard (see below). In the absence of a synthetic standard, the validation process is conducted based on positive samples obtained in excretion studies: i.e. post administration assays.
109. Regarding the lack of synthetic standard: The application of a synthetic standard is expressly not a requirement pursuant to the ISL.
110. Regarding the alleged “baseless conclusions with regard to the detection window”: The only conclusion which is drawn in this respect is that the detection window has been significantly extended (up to 50 – 60 days). This was shown to be correct with even longer detection windows observed in certain cases. This is the reason why the method proved so effective in catching dopers, who had planned according to a window of detection meant to be much shorter. The Disciplinary Commission cannot detect any baseless conclusion in this respect but rather a meritless argument.
111. Regarding the alleged “huge discrepancies between presented data and its interpretation”: the Disciplinary Commission observes that this allegation is simply not substantiated. As such, it has no value and seems aimed at creating the impression of the existence of issues, which are effectively not characterised.
112. Regarding the “alleged inconsistencies of the proposed structures with those found and validated by authors”: the Disciplinary Commission understands that the study to which Dr Kopylov refers describes the transformation of the substance into specific metabolites in vitro, through the application of a particular enzyme. As noted by Prof Saugy, this logically does not exclude that the metabolites in question, which were not identified in this study, resulted from other more complex enzymatic pathways in the body. In any event, the excretion studies (and the results which have now been obtained over years of application) confirm that the metabolites in question are effectively obtained further to the administration of the prohibited substance. There is therefore no inconsistency between the publication to which Dr Kopylov refers and the identification of the substance by the method at issue. It is notable that the study in question was precisely issued by a team of the Cologne laboratory. When confronted with the question of how this could be explained that the same laboratory would continue to apply the method if there indeed was an inconsistency between the method and a study it had itself issued, it is noteworthy that Dr Kopylov had no explanation to provide.
113. Regarding the lack of confirmation by alternative approach: while it is desirable to obtain confirmation, when possible, this in itself is not a reason to put the validity of a method into question.
114. In reference to the last point, the Disciplinary Commission further observes that the application of the method over the years is effectively and in itself a confirmation of its validity.
115. As already noted, the Cologne Laboratory was not the only laboratory to validate the method and then to implement it in its analysis.
116. Since the method has become part of the regular analytical menu of WADA-accredited laboratories, it has thus been applied over years to an extremely high number of samples.

117. The substance in question has been effectively used as a doping substance, notably, and this is public knowledge, in Russia and other Eastern European countries. As a consequence, the application of a decisively improved method of detection resulted in high numbers of Adverse Analytical Findings: over 100, not taking into account the results in the present re-analysis process.
118. There is no known case in which the results obtained on this basis were put into question. Effectively, there was no challenge to the method and in many cases, the results were expressly admitted by the athletes concerned.
119. In the course of the present re-analysis process, the Disciplinary Commission observes that the substance in question, identified through the discussed method, represents a strikingly high proportion of the AAFs.
120. The substance sometimes comes in combination with another classical doping substance. In several cases, the athletes have accepted the AAFs.
121. It results from the above that the method used appears to be not only a valid one but an experience-proven one and an efficient tool in the identification of anti-doping violations.
122. When scrutinised, the arguments put forward by Dr Kopylov do not appear to put the validity of the method in question. Far from being persuasive, they appear either to be irrelevant in the perspective of the applicable rules and/or lacking factual substance or even logical relevance.
123. In view thereof, the Disciplinary Commission finds that the presence of the Prohibited Substance has been validly established.
124. Furthermore, the Disciplinary Commission also specifically rejects the Athlete's application for the appointment of an independent expert pursuant to Art. 3.2.1 WADC 2015.
125. First, the Disciplinary Commission observes that this provision may not even be applicable.
126. Under Swiss Law, provisions on the burden of proof are part of substantive law (see Art. 8 Swiss Civil Code). Therefore, and in application of Art. 24.5 WADC 2015, it shall not apply retroactively.
127. Secondly, the conditions of application of Art. 3.2.1 WADC 2015 do not appear to be met. This provision refers expressly to the Court of Arbitration for Sport (CAS). The appointment of an expert would further require a decision from WADA.
128. Finally, and decisively, the Disciplinary Commission does not need the assistance of an independent expert to conclude that the arguments put forward by Dr Kopylov are meritless. The scientific validity of the analytical method used by the Cologne Laboratory is beyond question. It is confirmed through years of application and the general acceptance of this analytical method by the relevant scientific community. Dr Kopylov has not raised any arguments which could, even on a prima facie basis, rebut the presumption of scientific validity. For these reasons, and even assuming Art. 3.2.1 WADC 2015 would be applicable, the Disciplinary Commission rejects the Athlete's application to appoint an independent expert and dismisses the Athlete's arguments in this regard.

#### **iv. Contaminated Products**

129. As the Athlete herself correctly notes, the issue whether the source of the presence of the Prohibited Substance could be the ingestion of contaminated supplements will be more relevant in the context of the UCI proceedings.
130. Indeed, in the perspective of the application of the Rules, the mere presence of the Prohibited Substance is sufficient to establish an anti-doping violation and to trigger the main consequence pursuant to the Rules consisting in the disqualification of the results.
131. The Athlete alleges that she never intentionally used any prohibited substances and/or methods and always strictly followed her doctor's recommendations. At the hearing, the Athlete stated that she had taken some vitamins and substances which the federation allowed. She also stated that the National Team gave out medicines, which were produced in America, and substances. The Athlete also provided the Disciplinary Commission with details of her competition and testing history.
132. Counsel for the Athlete asked Prof Saugy if he was aware that at least five types of supplements had been recalled by the Food and Drug Administration ("FDA") from November 2010 to March 2013, due to a probable contamination with turinabol. Prof Saugy gave evidence that he was not aware of any contamination of supplements with turinabol.
133. The Disciplinary Commission observes that athletes have long been warned against the use of supplements and, as such, the fact that turinabol may have been ingested as part of a supplement is not likely to constitute an element exonerating the Athlete from having been at fault for using a Prohibited Substance.
134. In this respect, the Disciplinary Commission observes that supplements do not, as a rule, contain turinabol and that accidental contamination of a supplement appears to be very unlikely. The Disciplinary Commission also notes that the Athlete did not put forward any evidence regarding the alleged recall of supplements by the FDA, including what those supplements were and whether they were supplements being taken by the Athlete during the 2012 Games.
135. In any event and based on the elements provided in these proceedings, the Athlete has not met her burden to establish that she did not intentionally use a Prohibited Substance
136. In conclusion, the Disciplinary Commission finds that an anti-doping violation is also established in application of Art. 2.2 of the Rules.

#### **2. Consequences of the anti-doping rule violation**

137. Under the Rules, the consequences of anti-doping rule violations are limited to consequences in connection with the 2012 Olympic Games.
138. In application of Art. 7.1 and/or Art. 8.1 of the Rules, the results achieved by the Athlete during the 2012 Olympic Games shall be annulled, with all resulting consequences (notably withdrawal of medals, diplomas, pins etc.).
139. In application of Art. 8.3 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 2012 Olympic Games, shall be conducted by the UCI.

\* \* \* \* \*

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 XXX Olympiad, London 2012 and, in particular, 1, 2, 4.1, 6.3.3, 7, 8 and 13 thereof:

THE DISCIPLINARY COMMISSION OF THE  
INTERNATIONAL OLYMPIC COMMITTEE  
DECIDES

- I. The Athlete, Ekaterina Gnidenko:
  - (i) is found to have committed an anti-doping rule violation pursuant to the IOC Anti-Doping Rules applicable to the Games of the XXX Olympiad, London 2012 (presence and/or use, of a Prohibited Substance or its Metabolites or Markers in an athlete's bodily specimen),
  - (ii) is disqualified from the events in which she participated upon the occasion of the Olympic Games London 2012, namely, the Cycling Track Keirin Event in which she ranked 8<sup>th</sup> and the Cycling Track Sprint Event in which she ranked 18<sup>th</sup>, and
  - (iii) has the diploma obtained in the Cycling Track Keirin Event withdrawn and is ordered to return same.
- II. The UCI is requested to modify the results of the above-mentioned events accordingly and to consider any further action within its own competence.
- III. The Russian Olympic Committee shall ensure full implementation of this decision.
- IV. The Russian Olympic Committee shall notably secure the return to the IOC, as soon as possible, of the diploma awarded in connection with the Cycling Track Keirin Event to the Athlete.
- V. This decision enters into force immediately.

Lausanne, 07 September 2016

In the name of the IOC Disciplinary Commission



Ugur Erdener



Denis Oswald, Chairman



Gunilla Lindberg