

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

1. FACTS

1. Iryna KULESHA (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 Women’s 75 kg weightlifting event in which she ranked 3rd and for which she was awarded a bronze medal.
3. On the same day, the Athlete was requested to provide a urine sample for a doping control (in competition). Such sample was identified with the number 2721838.
4. The A-Sample 2721838 was analysed during the 2012 Olympic Games by the WADA-accredited Laboratory in London. Such analysis did not result in an adverse analytical finding at that time.
5. After the conclusion of the 2012 Olympic Games, all the samples collected upon the occasion of the 2012 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 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.
7. 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.
8. The remains of the A-Sample were analysed by the Laboratory and resulted in an Adverse Analytical Finding (“**AAF**”) as it showed the presence of the metabolites of two Prohibited Substances: dehydrochlormethyltestosterone (turinabol) and stanozolol.
9. The results were reported to the IOC in accordance with Art. 6.2.1 of the Rules.
10. 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.

11. 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)
12. On 19 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 the opening and analysis of the B-Sample and to attend this process, 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.
13. On 22 July 2016, the Athlete sent to the IOC through her NOC her completed AAF Notification Appendix in which she indicated that she did not accept the AAF and requested the opening and analysis of her B-Sample. She indicated that she would not attend the process, neither personally nor through a representative. Finally, she requested a copy of the laboratory documentation package.
14. On 27 July 2016, the IOC informed the Athlete, through her NOC, that the opening and analysis of his B-Sample was scheduled to take place on 8 August 2016 at the Laboratory.
15. The opening of the B-Sample took place on 8 August 2016.
16. The opening of the B-Sample was conducted in the presence of an independent witness and an IOC representative.
17. The results of the analysis were reported to the IOC on 11 August 2016. They confirmed the presence in the B-Sample of the two Prohibited Substances already detected in the A-Sample: dehydrochlormethyltestosterone (turinabol) and stanozolol.
18. On 16 August 2016, the IOC notified the B-Sample results to the Athlete through her NOC. The Athlete was invited to indicate whether she accepted the Adverse Analytical Finding and whether she requested the B-Sample laboratory documentation package. The Athlete was further informed of the possibility to present her defence in writing and/or to attend the hearing of the Disciplinary Commission.
19. On 19 August 2016, the Athlete sent to the IOC 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 B-Sample laboratory documentation package and informed the IOC that she would not attend the hearing of the Disciplinary Commission, neither personally nor through a representative. She finally indicated that she would not present a defence in writing.
20. On the same day, the IOC acknowledged receipt of the Disciplinary Commission Form. The Athlete was advised that the Disciplinary Commission would issue a decision on the basis of the file. She was invited to submit a written defence by 31 August 2016.
21. On 24 August 2016, the IOC provided the Athlete through her NOC with a copy of the A-Sample laboratory documentation package.
22. On 31 August 2016, the Athlete through her NOC submitted a written defence.

23. 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.
24. 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 bought in Russia. She asserted that, due to the long period of time since the collection of the sample, 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.
25. 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.
26. Neither the NOC nor the IF filed written observations.
27. As a final observation, it is to be noted that samples provided by the same Athlete on the occasion of the Games of the XXIX Olympiad in Beijing in 2008 (the “**2008 Olympic Games**”) were also subject to further analysis.
28. In this case, the analytical results also showed the presence of a Prohibited Substance, namely dehydrochloromethyltestosterone (turinabol), one of the two substances found in the present case.
29. 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 (BRT III – 043).

2. APPLICABLE RULES

30. 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.”*
31. Art. 2 of the Rules provides that Article 2 of the Code applies to determine anti-doping rule violations.
32. 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."*
33. 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."*
34. 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 delivery of notice to the NOC."*
35. 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."*
36. 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."*
37. 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.”

38. 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 Federation.”

3. DISCUSSION

39. The results of the analysis of the sample provided by the Athlete establish the presence in her sample of the metabolites of two Prohibited Substances, i.e. dehydrochloromethyltestosterone (turinabol) and stanozolol.
40. The substances detected are anabolic steroids. They are listed in the WADA 2012 Prohibited List and in all subsequent lists under S1.
41. In the written observations she submitted, the Athlete does not bring forth any element challenging the validity of the analytical results.
42. The Athlete simply denies having used performance-enhancing substances. As an explanation for the presence of the Prohibited Substances, she raises the hypothesis that the substances may have been contained in food supplements bought in Russia at that time.
43. Based on the analytical results establishing the presence of Prohibited Substances 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 Code.
44. 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 Code.
45. 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 doping substances, which are “classical” doping substances, were found, supports this consideration.
46. Furthermore, the Disciplinary Commission observes that the fact that the substances in question may have been contained in food supplements would not exonerate the Athlete from having used it.
47. 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.

48. 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.
49. 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 in which the Prohibited Substances 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.
50. Finally, the fact that samples of the same Athlete collected on the occasion of the 2008 Olympic Games were also found to contain one of the Prohibited Substances detected in the sample collected in 2012, i.e. dehydrochloromethyltestosterone (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.
51. 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 Code.
52. The consequences of an anti-doping rule violation pursuant to the Rules are limited to consequences in connection with the 2012 Olympic Games.
53. 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 medal, diploma, pin etc.).
54. 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 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 XXX Olympiad in London in 2012 and, in particular, Articles 1, 2, 6.3.3, 7 and 8 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 XXX Olympiad in London in 2012 (presence, and/or use, of Prohibited Substances or its Metabolites or Markers in an athlete's bodily specimen),
 - (ii) is disqualified from the event in which she participated upon the occasion of the Olympic Games London 2012, namely the Women's 75 kg weightlifting event, in which she ranked 3rd and for which she was awarded a bronze medal, a medallist pin and a diploma.
 - (iii) has the medal, the medallist pin and 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 medal, the medallist pin and the diploma awarded in connection with the Women's 75 kg weightlifting event to the Athlete.
- V. This decision enters into force immediately.

Lausanne, 10 November 2016

In the name of the IOC Disciplinary Commission



Ugur Erdener



Denis Oswald, Chairman



Gunilla Lindberg