

**INTERNATIONAL OLYMPIC COMMITTEE**

**IOC DISCIPLINARY COMMISSION**

**DECISION**

**REGARDING MARIA ABAKUMOVA  
BORN ON 15 JANUARY 1986, RUSSIAN FEDERATION, ATHLETE, ATHLETICS**

(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 16 thereof:

**I. FACTS**

1. Maria ABAKUMOVA (hereinafter the “**Athlete**”), participated in the Games of the XXIX Olympiad in Beijing in 2008 (the “**2008 Olympic Games**”).
2. From 19 to 21 August 2008, the Athlete competed in the javelin throw Event (Qualification and Final) in which she ranked 2<sup>nd</sup> and was awarded the silver medal.
3. On 21 August 2008 on the occasion of the Final, the Athlete was requested to provide a urine sample for a doping control. This doping control was performed at the request of the IOC. Such sample was identified with the number 1845585.
4. The A-Sample 1845585 was analysed during the 2008 Olympic Games by the WADA-accredited Laboratory in Beijing, but 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 (“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 in order to possibly detect Prohibited Substances which could not be 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 a A- and B-Sample).
8. The decision to proceed based on split B-samples was made in principle for all the re-analysis.

9. Pursuant to the ISL, the presence of the Athlete for the first phase of the B-sample process (opening and splitting of the B-sample in a B-1 and a B-2 sample and analysis of the B1 sample) is not a requirement.
10. The IOC nevertheless decided, 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.
11. 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 a Prohibited Substance: dehydrochlormethyltestosterone (turinabol).
12. 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, the sealing of the B2-Sample and the analysis of the B1-Sample.
13. By email dated 24 May 2016 sent directly to the IOC, the Athlete requested a copy of the full documentation package related to her A-Sample in order to decide whether or not she would request and attend the opening and splitting of the B-Sample. She also indicated that she was keen to cooperate with the IOC and other anti-doping organisations in the fight against doping.
14. On the same day, the IOC explained to the Athlete that the analytical data related to the A-Sample analysis would be reported in the documentation package established in connection with the B1-Sample.
15. On 25 May 2016, the Athlete sent to the IOC her completed PAAF Notification Appendix in which she indicated that she would not personally attend the opening and splitting of the B-Sample, the sealing of the B2-Sample and the analysis of the B1-Sample. She however indicated that she would send a representative, Dr Arthur Kopylov, on this occasion.
16. On 26 May 2016, the IOC informed the Athlete that the opening, splitting of the B-Sample, sealing of the B2-Sample and analysis of the B1-Sample was scheduled to take place on 31 May 2016. The Athlete was also informed that the NOC would send a representative for the opening, splitting of the B-Sample and sealing of the B2-Sample.
17. The opening, splitting of the B-Sample, the sealing of the B2-Sample occurred on 31 May 2016.
18. The opening and splitting was attended by an independent witness. Mr Victor Berezov, Deputy Chief of the Russian Olympic Committee Legal Department, attended the same part of the process on behalf of the NOC.
19. The Athlete's representative, Dr Kopylov attended the opening, splitting of the B-Sample, sealing of the B-Sample and part of the analysis of the B1-Sample.
20. The Laboratory reported the results of the B1-Sample analysis on 2 June 2016. They confirmed the presence of the metabolites of a Prohibited Substance: dehydrochlormethyltestosterone (turinabol).
21. Such results constitute an Adverse Analytical Finding (“**AAF**”). They were reported to the IOC in accordance with Art. 7.2.1 of the Rules.

22. 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.
23. 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 Ugur Erdener (Turkey)
24. On 3 June 2016, the IOC notified the Athlete 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 and to request a copy of the documentation package.
25. By email dated 9 June 2016, the Athlete sent a letter to the IOC setting out some arguments, and attaching a report prepared by Dr Kopylov who witnessed the splitting process of the B-Sample and part of the analysis of the B1-Sample, entitled "Report on carrying out the first part of analysis of sample B1".
26. In her letter, the Athlete asserted that she had never used intentionally any prohibited substances and/or methods and had always strictly followed the recommendations received from her doctor.
27. The Athlete stated that the analysis performed by the WADA-accredited laboratory in Lausanne was marked by many irregularities, which were set out in Dr Kopylov's report.
28. The Athlete further expressed doubts about the competence and capability of the Laboratory to carry out the analysis and stated that the laboratory could not conduct the analysis as it would be subject to suspension.
29. In her letter dated 9 June 2016, the Athlete did not indicate whether she requested the opening and analysis of the B2-Sample. She requested a copy of the B1-Sample laboratory documentation package before deciding whether she would request the opening and analysis of her B2-Sample.
30. She finally requested that the hearing of the Disciplinary Commission take place in a reasonable timeframe to allow her prepare her defence, in particular in order to collect the reliable evidence and to establish a list of the nutritional supplements used at the time.
31. On 14 June 2016, the IOC explained to the Athlete that the analysis of the B2-Sample would have to proceed in any event. She would then be given a reasonable time limit to prepare her defence after completion of the analytical process. The IOC also indicated that the arguments presented in her letter dated 9 June 2016 would be examined by the Disciplinary Commission. The Athlete was finally informed that the opening of the B2-Sample was scheduled on 20, 21 or 22 June 2016 and invited her to indicate whether she would attend such process by 16 June 2016.
32. On 16 June 2016, the Athlete repeated that she would need to study the full documentation package before taking any decision regarding the opening of the B2-Sample.

33. On 17 June 2016, the IOC explained to the Athlete that the conduct of the B2-Sample analysis was not linked to the provision of the B1-Sample documentation package. The IOC however mentioned that said documentation package was expected to be available on 20 June 2016.
34. The Athlete was once again invited to indicate whether she intended to attend the opening and analysis of the B2-Sample scheduled to take place on 22 June 2016 and whether there was any compelling reason why she would specifically not be available on this date.
35. The Athlete did not reply within the time limit granted.
36. The opening of the B2-Sample occurred on 22 June 2016 in the presence of an independent witness.
37. The results of the B2-Sample analysis were reported to the IOC on 24 June 2016. They confirmed the presence in the B2-Sample of the metabolites of a Prohibited Substance: dehydrochlormethyltestosterone (turinabol).
38. On 26 June 2016, the Athlete repeated her request for the IOC to provide her with the A and B1 sample laboratory documentation package.
39. On 28 June 2016, the IOC communicated to the Athlete the results of the B2-Sample analysis together with a copy of the B1 and B2 laboratory documentation packages.
40. 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 IOC mentioned that the hearing would be scheduled to take place from the second week of July 2016.
41. On 1 July 2016, the Athlete repeated that she had never intentionally used any prohibited substances and/or methods and that she could not understand how such substance could have entered her system. She asserted once again her doubts as to the analysis performed by the WADA-accredited laboratory in Lausanne. For these reasons, she indicated that she could not accept the Adverse Analytical Finding.
42. The Athlete informed the IOC that she would attend the hearing of the Disciplinary Commission personally and that she would be assisted by a lawyer. In addition, she indicated that she would also present her defence in writing.
43. On 13 July 2016, the IOC informed the Athlete that the hearing of the Disciplinary Commission was scheduled to take place on 21 July 2016. The Athlete was invited to confirm whether she would attend the hearing personally, and/or through a representative. Additional documentation related to her samples and in particular their handling in Beijing and transfer to the WADA-accredited laboratory in Lausanne was provided with the same communication.
44. On the same day, the NOC and the IF were invited to send a representative to attend the hearing of the Disciplinary Commission.
45. Neither the NOC, nor the IF filed observations, nor responded to the invitation to attend the hearing.
46. On 15 July 2016, the Athlete informed the IOC that she would do her best to ensure that her representative would attend the hearing and asked the IOC to confirm the exact time of the hearing.

47. On 19 July 2016, the IOC informed the Athlete that the hearing would take place on 21 July 2016 at 10:30 am at the IOC Headquarters.
48. On the same day, the Athlete submitted additional written observations.
49. The hearing was held on 21 July 2016 at 11:02 at the IOC headquarters in Pully, Switzerland.
50. 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 also attended via video-conference.
51. The IOC was represented by Ms Tamara Soupiron, IOC Legal Counsel as well as by Mr Jean-Pierre Morand and Mr Nicolas Français, attorneys-at-law, IOC external legal counsels.
52. Dr Arthur Kopylov and Prof Martial Saugy of the Lausanne Anti-doping Laboratory were heard as expert witnesses during the hearing. Dr Kopylov was heard via video-conference.
53. 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 one instance, by the WADA-accredited laboratory of Cologne, had been addressed by the same expert witnesses.
54. 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".
55. Upon proposal of the Chairman of the Disciplinary Commission, 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.
56. Neither the NOC of the Athlete nor the IF were represented at the hearing.
57. 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.
58. Minutes of the hearing were taken by Ms Kate Ollier. The hearing was also recorded.

## **II. APPLICABLE RULES**

59. 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."*

60. 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."*

61. 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."*

62. 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."*

63. 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."*

64. 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.”*

65. 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”.*

66. 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”.*

67. Art. 16.1 of the Rules provides as follows:

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

68. Art. 16.5 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.”*

\*\*\*\*\*

### **III. DISCUSSION**

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

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

69. The presence of the metabolite of a Prohibited Substance has been established in 2016 in the sample 1845585 that the Athlete provided on 21 August 2008, upon the occasion of the 2008 Olympic Games.
70. The substance detected in the Athlete's sample is an exogenous anabolic steroid. It is listed in the WADA 2008 Prohibited List and in all subsequent lists.
71. 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.
72. 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.
73. 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.
74. 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.
75. 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.
76. 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.
77. This constitutes an indication that said substance has been in widespread use by athletes, who were doping at that time.
78. 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 10 days).
79. 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.

80. 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.
81. 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.
82. 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.
83. 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**

84. The Athlete has challenged the commission of an anti-doping violation on the basis of various arguments set out in three written submissions, which are addressed below. None of them put the above finding into question.

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

85. In her letters sent on 9 June 2016 and 1 July 2016, the Athlete questions the correctness of the analysis conducted by the Laboratory.
86. The basis of the Athlete's challenge are (i) the Laboratory unduly reported a "Presumptive Adverse Analytical Finding", a finding the Athlete alleges is not provided for in par. 5.2.6.8 of the ISL 2015; and (ii) the Athlete alleges that the Laboratory reported at least two false-positive analytical results during the same period her B1-Sample was analysed, which ought to have resulted in the Laboratory being suspended and the Athlete's samples being re-analysed.
87. Regarding the "Presumptive Adverse Analytical Finding": the Athlete's argument is without merit. According to par. 5.2.2.12.10 ISL 2015, the Testing Authority may use the A-Sample for an initial analysis. "Presumptive Adverse Analytical Finding" is the ISL defined term for a suspicious result obtained through an initial analysis (see par 3.2 ISL 2015).
88. When reporting the information that such a result had been obtained, the Laboratory simply used this term to correctly describe such result. The corresponding information was provided to the Athlete to explain the reason why the IOC had decided to proceed to confirmation analysis based on a split B-sample, in accordance with the option expressly provided for in the ISL.
89. There is nothing surprising or wrong in this process, which conforms to the ISL. The Disciplinary Commission observes that the IOC gave the Athlete the opportunity to attend the B-Sample splitting and the B1- analysis, whilst this is not a requirement. The

information about the existence of a Presumptive Adverse Analytical Finding was provided in this context and was necessary to explain the reason for the invitation to exercise this additional opportunity. The Athlete's complaint in this respect is therefore misplaced.

90. Regarding the alleged two false-positives reported by the Laboratory: The Athlete alleges "it is widely known that" the Laboratory reported "at least" two false-positives during the period her B1-Sample was analysed. The Athlete submits that accordingly, the Laboratory should have been immediately suspended pending a full investigation, which might have included the re-analysis of all relevant samples, including the Athlete's, for the preceding 12 months.
91. The Disciplinary Commission notes that the argument raised by the Athlete relates to the accreditation of the Laboratory. The Laboratory has a standing WADA-accreditation and carries out all analysis, including that carried out on the Athlete's samples, in accordance with the applicable standards.
92. To the best of the Disciplinary Commission's knowledge, the allegation of the existence of three false positives is not factually supported and there is no investigation ongoing, nor any process in course, putting the accreditation of the Laboratory into question.
93. In any event this argument has no relevance in regard to the validity of the analysis of the Athlete's sample and is therefore devoid of merit.
94. In conclusion, the Disciplinary Commission rejects the Athlete's arguments and confirms its finding that an anti-doping violation is established pursuant to both Art. 2.1 and Art. 2.2 of the Rules.

## **ii. Statute of limitations**

95. 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.
96. The possibility to reanalyse the samples collected on the occasion of the Olympic Games in Beijing 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. 6.5 of the Rules, which itself refers to Art. 17 of the World Anti-Doping Code ("WADC").
97. Art. 17 of WADC 2003, 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 21 August 2008).
98. 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 2003.
99. All phases of the analysis of sample n°1845585 (A-initial, B1 and B2 confirmation analysis), as well as the effective notification of the corresponding AAF to the Athlete, occurred before the expiry of the 8 year deadline (August 21, 2016) and a fortiori of the ten year deadline (August 21, 2018).
100. 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.

101. 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**”.
102. 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 laboratory**

103. The Athlete seeks to rebut the presumption of scientific validity of the analytical method used by the 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.
104. 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”.
105. As already mentioned, Dr Kopylov's opinion was also filed in two other cases. Dr Kopylov, was further heard as a party-appointed expert during the hearing of the present case and a further hearing concerning one of the other above-mentioned athletes.
106. Prof Saugy was heard as an expert witness, in respect of the issue of the validity of the analysis method in general, and specifically in respect of the issues raised by Dr Kopylov in all three hearings.
107. 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 gave evidence.
108. The Disciplinary Commission observes the following with respect to the analysis which led to the identification of the Prohibited Substance in the Athlete's sample:
109. First, the method which was used is a method, which has been approved by WADA and determined as fit for purpose.
110. 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”).
111. Since its approval by WADA, this method has been validated and implemented in the majority of the WADA-accredited laboratories including the WADA-accredited laboratories of Lausanne and Cologne.
112. Prof Saugy testified that the method validation process took place in Lausanne in 2013. Such process was conducted in accordance with the ISL requirements (see Art. 5.4.4.2.1 ISL 2016) and involved both positive and negative samples.
113. Since no Standard Reference material is available, positive samples from excretion studies were used. This is a possibility expressly provided for in the ISL (Art. 5.4.4.2.1, 7<sup>th</sup> bullet point ISL 2016).

114. The method is within the Laboratory scope of accreditation. The method is not a completely new method but 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. It fell 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).
115. Since its validation, the Laboratory has 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.
116. Prof Saugy indicated that the validation data were not published. There is no requirement to publish validation data and effectively, such publication would normally not be accepted as it would not bring any new element, but just be confirmation data, which each laboratory shall establish for itself.
117. The ISL (i.a. Art. 5.4.4.2.3 ISL 2016) confirm 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.
118. The Disciplinary Commission finds that the issues, which Dr Kopylov attempts to raise in this respect, do not appear to put into question the validity of the method used by the Laboratory to identify the substance.
119. Referring to the summary of the main challenges set forth on page 14 of Dr Kopylov's opinion, the Disciplinary Commission observes the following:
120. 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.
121. Regarding the alleged lack of post-administration assays: this observation again lacks a factual basis and is even contradictory with the one based on the absence of synthetic standard (see below). In the absence of a synthetic standard, the validation was conducted based on positive samples obtained in excretion studies: i.e. post administration assays.
122. Regarding the lack of synthetic standard: The application of a synthetic standard is expressly not a requirement pursuant to the ISL.
123. Regarding the alleged "baseless conclusions in regard of 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.
124. 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.
125. 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 issued by a team of the Cologne laboratory. This laboratory applied and continues to apply the method (including to establish one of the specific AAFs under discussion, see # 63 above). When confronted with the question of how this could be explained, if there indeed was an inconsistency between the study and the method, it is noteworthy that Dr Kopylov had no explanation.

126. 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.
127. 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.
128. As already noted, the laboratory in Lausanne was not the only laboratory to validate the method and then to implement it in its analysis.
129. 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.
130. 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 number of Adverse Analytical Findings: over 100, not taking into account the results in the present re-analysis process.
131. 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.
132. 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.
133. The substance sometimes comes in combination with another classical doping substance. In several cases, the athletes have accepted the AAFs.
134. 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.
135. When scrutinised, the arguments put forward by Dr Kopylov do not appear to put the validity of the method into 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.
136. In view thereof, the Disciplinary Commission finds that the presence of the Prohibited Substance has been validly established.

137. 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.
138. First, the Disciplinary Commission observes that this provision may not even be applicable.
139. 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.
140. 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.
141. 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 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**

142. 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 IAAF proceedings.
143. 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.
144. The Athlete alleges that she never used intentionally any prohibited substances and/or methods and always strictly followed her doctor's recommendations. At the hearing, the Athlete stated that she had taken proteins, fat regulators and multi-vitamins, with the permission of her doctor and after consultation with a specialist. She stated that these products were produced in the USA and were provided to her by Dr Rodchenkov, who had been head of the Moscow anti-doping laboratory at that time and in whom she had placed her full trust. She had also been given some other vitamins, produced in Russia, but these had been tested and registered to the best of her knowledge.
145. That said, 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.
146. 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.
147. 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

148. 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**

149. Under the Rules, the consequences of anti-doping rule violations are limited to consequences in connection with the 2008 Olympic Games.
150. In application of Art. 8.1 and 9.1 of the Rules, the results achieved by the Athlete during the 2008 Olympic Games shall be annulled, with all resulting consequences (notably withdrawal of medals, diplomas, pins etc.).
151. 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 2008 Olympic Games, shall be conducted by the IAAF.

\* \* \* \* \*

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 16 thereof.

THE DISCIPLINARY COMMISSION OF THE  
INTERNATIONAL OLYMPIC COMMITTEE  
DECIDES

- I. The Athlete, Maria Abakumova:
  - (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 events in which she participated upon the occasion of the Olympic Games Beijing 2008, namely, the javelin throw event in which she ranked 2<sup>nd</sup> and was awarded the silver medal, and
  - (iii) has the silver medal, the diploma and the medallist pin obtained in the javelin throw event withdrawn and is ordered to return same.
- II. The IAAF is requested to modify the results of the above-mentioned event 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 silver medal, the diploma and the medallist pin awarded in connection with the javelin throw event to the Athlete.
- V. This decision enters into force immediately.

Lausanne, 05 September 2016

In the name of the IOC Disciplinary Commission



Ugur Erdener



Denis Oswald, Chairman



Gunilla Lindberg