



2022/ADD/52 International Olympic Committee (IOC) & Federation International de Ski (FIS)  
v. Ms Valentyna Kaminska

**PARTIAL ARBITRAL AWARD**

delivered by the

**ANTI-DOPING DIVISION  
OF THE COURT OF ARBITRATION FOR SPORT**

sitting in the following composition:

Sole Arbitrator: Raphaëlle Favre Schnyder, Attorney-at-law, Switzerland

in the arbitration between

**International Olympic Committee, Switzerland**

Represented by the International Testing Agency  
appearing through Mr Jean-Pierre Morand and Mr Adam Taylor, Attorneys-at-law, Switzerland

**Federation Internationale de Ski, Switzerland**

Appearing through Dr Stephan Netzle and Dr. Mirjam Koller, Switzerland

**Claimants**

and

**Ms Valentyna Kaminska, Ukraine**

**Respondent**

**Ms Viktoriya Olekh, Ukraine**  
**Ms Maryna Antsybor, Ukraine**  
**Ms Darya Rublova, Ukraine**

**Interested Parties**

## I. PARTIES

1. The International Olympic Committee (the “IOC” or the “Claimant”) is the world governing body for Olympic sport having its registered offices in Lausanne, Switzerland. The IOC is incorporated as an association pursuant to articles 60 et seq. of the Swiss Civil Code. As a signatory of the World Anti-Doping Code (the “Code”), the IOC has enacted the IOC Anti-Doping Rules applicable to the Games of the XXIV Olympiad Beijing 2022 (the “IOC ADR”). The IOC has delegated some of its responsibilities related to the implementation of the Doping Control in relation to the Games of the XXIV Olympiad Beijing 2022 (the “Tokyo 2020”) to the International Testing Agency (the “ITA”), this includes the results management and subsequent prosecution of potential Anti-Doping Rule Violations (“ADRV”) to the ITA.
2. The International Ski and Snowboard Federation (“FIS”) is the International Federation governing international skiing and snowboarding, including Alpine Skiing, Cross-Country Skiing, Ski Jumping, Nordic Combined, Freestyle Skiing and Snowboarding.
3. Ms Valentyna Kaminska (the “Athlete” or “Respondent”) is a cross-country skier from Ukraine and was registered to participate and to represent the National Olympic Committee of Ukraine in the Olympic Winter Games Beijing 2022.
4. Ms Viktoriya Olekh, Ms Maryna Antsybor and Ms Darya Rublova (the “Interested Parties”) are, besides the Athlete, other members of the Women’s 4x5km Relay team at the Beijing Winter Olympics.

## II. FACTUAL BACKGROUND

5. The Athlete, born on 5th September 1987, is a Ukrainian cross-country skier who has been competing internationally since at least 2006.
6. The Athlete was registered to take part in the Beijing Winter Olympics, where she competed in the following three events:
  - a) woman’s print free on 8 February 2022 where she placed 70th;
  - b) women’s 10-kilometre classic on 10 February 2022 where she placed 79th;
  - c) women’s 4 x 5km Relay on 12 February 2022 where she and her team placed 18th.
7. Following the woman’s 10-kilometre classic event on 10 February 2022 the Athlete was subject to an In-Competition doping control under the Testing Authority and Result Management Authority of the IOC and sample number A and B 7048066 was collected from her.
8. On her doping control form (the “DCF”) referring to medication or supplements taken in the seven days prior to the doping control, the Athlete indicated having used *Syberian - sports gel Isotonic (Nutrend) Stimol Vitamin E Vitamin D Vitamin C Zinc Picolinate Coenzyme Q10 Amber acid Sedafiton forte*. She also confirmed on her DCF that the sample collection was undertaken in accordance with the relevant procedures for example collection.
9. On 15 February 2022, the WADA-accredited National Anti-Doping Laboratory in Beijing, China (the “Laboratory”), reported AAFs for mesterolone metabolite nd3 $\alpha$ -hydroxy-1 $\alpha$ -methyl-5 $\alpha$ -androstane-17-one (“Mestaminole”) which is a substance is prohibited by WADA at all times and is classified as a non-specified substance under Section S1(1) (Anabolic Androgenic Steroids) of the 2022 WADA Prohibited List as well as for 5-methylhexan-2-amine (1,4-dimethylpentylamine) (“MHA”); and heptaminol (“Heptaminol”) which are substances prohibited by WADA in-

competition and are classified as specified substances under Section S6 (Stimulants) of the 2022 WADA Prohibited List.

10. The other members of the Athlete's relay team in the Women's 4x5km Relay, Ms Viktoriya Olekh, Ms Maryna Antsybor, Ms Darya Rublova, were subjected to target testing between 12 February 2022 and 20 February 2022 and all samples provided negative results.
11. The initial review conducted by the ITA under Article 7.2.2 of the IOC ADR and Article 5.1.1 of the International Standards for Result Management found no applicable Therapeutic Use Exemption ("TUE") no apparent departure from the International Standard for Testing and Investigations or from International Standards for Laboratories that could have undermined the validity of the AAF and that the AAF was not caused by the ingestion of the Prohibited Substance through a permitted route insofar as anabolic steroids and stimulants are banned irrespective of their route of ingestion.
12. On 16 February 2022, the ITA, on behalf of the IOC, notified the Athlete of the AAF, provisionally suspended her and informed her that she would have to indicate that same day whether she wished to have the B-sample analysed failing which she would be deemed to waive her right to B-sample analysis and she would be deemed not to challenge the AAF.
13. Upon information by the National Olympic Committee of Ukraine (the "NOC") that the Athlete would not be able to respond within the deadline set as she was on her way to the airport with limited access to the internet, the Athlete was granted a new deadline until 18 February 2022 for requesting the B-sample analysis. The ITA granted the Athlete a further extension until 21 February 2022.
14. On 19 February 2022, the ITA informed the Athlete that the estimated concentrations of the prohibited substances are found in her substance were as follows:
  - (i) mesterolone metabolite 3 $\alpha$ -hydroxy-1 $\alpha$ -methyl-5 $\alpha$ -androstan-17-one – 6 ng/mL;
  - (ii) 5-methylhexan-2-amine (1,4-dimethylpentylamine) – 1600 ng/ml;
  - (iii) heptaminol – 3000 ng/ml.
15. On 21 February 2022, the Athlete returned the B-sample arrangements form, wherein she stated that she did not accept the AAF, that she did request the opening and analysis of the B-sample, but that she did not request the laboratory documentation package.
16. The B-sample opening and analysis took place on 23 February 2022. It confirmed the findings of the A-sample.
17. On 9 March 2022, the ITA provided a Notice of Charge to the Athlete and invited a response by 23 March 2022.
18. On 18 March 2022, the Athlete raised the possibility of contaminated nutritional supplements as the cause of her AAF. She requested further time to organise testing of the supplements due to logistical problems caused by the war in Ukraine.
19. Following a request from the ITA, on 28 March 2022, the Athlete provided information relating to her supplement usage. She provided further information on 8 and 10 May 2022.
20. On 10 June 2022, the Athlete shipped four supplements to the ITA, which were subsequently transferred to the WADA-accredited laboratory in Lausanne for analysis.

21. The Lausanne laboratory returned a pre-evaluation report on 17 July 2022 and a final report on 26 July 2022. The laboratory found that the supplements supplied tested negative for all three of the Prohibited Substances found in the Athlete's sample.
22. The results were notified to the Athlete on 27 July 2022, and she was requested to respond with her explanations to the matters set out in the Notice of Charge dated 9 March 2022.
23. On 8 August 2022, the Athlete provided her response to the Notice of Charge stating that she could not explain how the prohibited substances got into her system but that she did not take them intentionally.

### **III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT**

24. On 19 October 2022, the IOC filed an application pursuant to Article 8.1.1 of the IOC Anti-Doping Rules applicable to the Games of the XXIV Olympic Winter Games Beijing 2022.
25. By letter dated 20 October 2022, the CAS Court Office acknowledged receipt of the Request for Arbitration and informed the Parties that it had been assigned to the Anti-Doping Division of the Court of Arbitration for Sports (the "CAS ADD") pursuant to Article S20 of the Code of Sports related Arbitration. Further, the FIS was invited to inform the CAS ADD, by 24 October 2022, whether it intends to join these arbitral proceedings as Co-Claimant and the Athlete to submit her Answer as soon as the question of the participation of the FIS would be solved. Further the Parties were invited to liaise and revert back with their chosen arbitrator by 27 October 2022 failing which, the President of the ADD would appoint a Sole Arbitrator. The Athlete was invited to object to the use of English as procedural language within 3 days.
26. On 22 October 2022, the Athlete confirmed her agreement to the use English as procedural language.
27. By email dated 24 October 2022, FIS informed the CAS Court Office of its intent to join these proceedings as Co-Claimant since it will be in charge of the non-Olympic consequences imposed on the Athlete.
28. On 25 October 2022, the CAS Court Office informed the Parties on the procedural calendar as follows: the FIS is granted a 10-day time limit to file its written submissions, if necessary, with respect to the ADRV allegedly committed by the Athlete and the consequences at Olympic level; the Athlete is granted a 20-day time limit to file her Answer strictly limited to the commission of the ADRV and the consequences at Olympic level; Holding of a hearing, if necessary; notification of the Arbitral Award limited to the ADRV and its consequences at Olympic level. Further, the Parties were invited to comment on the proposed calendar by 28 October 2022.
29. By email dated 27 October 2022, the IOC confirmed its agreement with the proposed calendar and informed the CAS Court Office that the IOC, FIS and the Athlete had agreed to nominate Ms Raphaëlle Favre Schnyder as Sole Arbitrator.
30. By letter dated 31 October 2022, and further to the Parties' agreement, the CAS Court Office confirmed the appointment of Ms Raphaëlle Favre Schnyder as Sole Arbitrator by the Division President of the CAS Anti-Doping Division as well as the suggested procedural calendar, hence the FIS was invited to file its written submission with respect to the ADRV allegedly committed by the Athlete and the consequences at Olympic level no later than 10 November 2022.
31. By e-mail dated 10 November 2022, FIS confirmed that it did not intend to make written submissions with respect to the alleged ADRV at Olympic level at this stage of the procedure

before the ADD and that it reserved however the right to comment on the Athlete's Answer to the extent it would concern any facts related to the competition in which the sample was taken and to participate in the hearing regarding the alleged ADRV at Olympic level.

32. The Athlete filed her Answer on 24 November 2022 and at the same time informed the CAS Court Office that she considered a hearing not necessary in this matter.
33. By letter of the same date, the CAS Court Office invited the IOC and FIS to indicate by 30 November 2021 whether they considered a hearing necessary.
34. By e-mail dated 28 November 2022, the IOC and FIS confirmed that a hearing limited to the commission of the ADRV was not necessary.
35. The Parties signed and returned the Order of Procedure on 5 and 13 December 2022 respectively.

#### IV. SUBMISSIONS OF THE PARTIES

##### A. The Claimants

36. The ITA, on behalf of the IOC, asserts that of the analysis conducted on a urine sample collected from the Athlete in the scope of an In-Competition Doping Control on 10 February 2022 in Beijing, China, under the Testing Authority of the IOC.
37. The analysis of the A-sample resulted in an AAF for the prohibited substances of mesterolone metabolite  $3\alpha$ -hydroxy- $1\alpha$ -methyl- $5\alpha$ -androstane- $17$ -one, 5-methylhexan-2-amine (1,4-dimethylpentylamine) and heptaminol. The Athlete requested the opening and analysis of the B-sample, which confirmed the results of the A-sample.
38. The IOC therefore asserts that the Athlete has committed an ADRV under Article 2.1 and/or 2.2 of the IOC ADR pursuant to which “*the presence of a Prohibited Substance or its metabolites or markers in an athlete's sample constitutes an ADRV. In particular, sufficient proof of an ADRV under Article 2.1 is established by the 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”*” .
39. Accordingly, The ITA, on behalf of the IOC, requests the CAS ADD to grant the following relief:
  - (i) *The Application is admissible.*
  - (ii) *Valentyna Kaminska is found to have committed an anti-doping rule violation pursuant to Article 2.1 and/or Article 2.2 of the IOC Anti-Doping Rules applicable to the Games of the XXIV Olympic Winter Games Beijing 2022.*
  - (iii) *The result obtained by Valentyna Kaminska in the Women's Sprint Free, the Women's 10km Classic and the Women's 4x5km Relay shall be disqualified, with the resulting forfeiture of any and all medals, diplomas, points or prizes.*
  - (iv) *The team result obtained by Valentyna Kaminska, Viktoriya Olekb, Maryna Antsybor, and Darya Rublova in the Women's 4x5km Relay shall be disqualified, with the resulting forfeiture of any and all medals, diplomas, points or prizes.*

*(v) The International Ski and Snowboard Federation (FIS) is requested to consider any further action within its own competence.*

*(vi) The parties are to bear their own legal and other costs.*

40. The FIS has stated that it would join the IOC as Co-Claimant and has not filed additional submissions or prayers for relief specifically related to the ADRV.

## **B. The Athlete**

41. In her Statement dated 24 November 2022, the Athlete held that she had very limited ability to investigate how banned substances had entered her system as at the moment she is in Estonia as a refugee. She believed that the substances had entered her body through contamination by supplements and that she had been and is unable to submit all supplement, as they are fabricated in Ukraine and because of the war, she was unable to obtain the same batches or because they are not produced and sold any more.
42. Further, she acknowledged the ADRV and stated that she understood that the consequences of this violation will be very serious and that her results in the Beijing Olympics will be annulled, and that she will face a severe sanction from FIS. The Athlete also stated that she has neither the physical nor the financial capacity to fully participate in the proceedings before the ADD and that she admits the ADRV hoping that her voluntary admission will lead to a lesser sanction.
43. Hence, the Athlete stated as follows:
1. *I admit to violating anti-doping rules.*
  2. *I accept the consequences of this violation.*
  3. *I waive my rights the hearing in this case, and I agree to the decision to be based on written statements.*
  4. *I will provide any information or clarification of interest to the Anti-Doping Authorities to the best of my knowledge and belief.*
  5. *I declare that the violation was not intentional.*

## **V. JURISDICTION**

44. Pursuant to their scope, the IOC ADR apply *“in relation to the Olympic Games Beijing 2022. They shall, without limitation, apply to all Anti-Doping Activities and Doping Controls over which the IOC has jurisdiction in relation to the Olympic Games Beijing 2022.”*
45. In particular, the IOC ADR provides that *“these Rules shall, without limitation, apply to [...] (b) all Athletes entered in the Olympic Games Beijing 2022 or who have otherwise been made subject to the authority of the IOC in connection with the Olympic Games Beijing 2022 (see below); [...].”*
46. Where the case was not resolved upon waiver of a hearing or resulting from other consequences as provided for in article 7.8 of the IOC ADR, *“[...] the ITA shall promptly file an application with the CAS Anti-Doping Division, acting as first-instance authority to conduct proceedings and to issue decisions, as per the CAS Anti-Doping Division Arbitration Rules. The application shall be filed in the name of the IOC by the ITA acting on the IOC’s behalf”* as provided for in Article 8.1 of the IOC ADR.



Further, Article 8.1.2 IOC ADR states that: *“The composition of the hearing panel and procedures applicable to the CAS Anti-Doping Division shall be as per the CAS Anti-Doping Division Arbitration Rules.”*

47. Rule A1 of the Arbitration Rules of the CAS ADD (“the Arbitration Rules”) states:

*“The Anti-Doping Division of the Court of Arbitration for Sport (CAS ADD) has been established to hear and decide anti-doping cases as a first-instance authority pursuant to a delegation of powers from the International Olympic Committee (IOC), International Federations of sports on the Olympic programme (Olympic IFs), and any other signatories to the World Anti-Doping Code (WADC). These WADC signatories have delegated their powers to CAS ADD to decide whether or not there has been a violation of their anti-doping rules, as well as to decide any sanction, if applicable, in accordance with the WADC. CAS ADD and these procedural rules have been established in conjunction with the applicable anti-doping rules of the WADC signatories concerned.”*

48. Rule A2 of the Arbitration Rules provides:

*“A2 Jurisdiction of CAS Anti-Doping Division - Application of the Present Rules CAS ADD shall be the first-instance authority to conduct proceedings and issue decisions when an alleged anti-doping rule violation has been filed with it and for imposition of any sanctions resulting from a finding that an anti-doping rule violation has occurred. CAS ADD has jurisdiction to rule as a first-instance authority on behalf of any WADC signatory which has formally delegated its powers to CAS ADD to conduct anti-doping proceedings and impose applicable sanctions. These Rules apply whenever a case is filed with CAS ADD. Such filing may arise by reason of an arbitration clause in the Anti-Doping Rules of a WADC signatory, by contract or by specific agreement.”*

49. The Athlete signed the Athlete Information Notice on her Doping Control Form, thereby confirming her understanding of and consent to the following text:

*“The IFA will in particular initiate and undertake testing activities on the occasion of the Games, determine whether or not a potential anti-doping rule violation has occurred pursuant to the Rules, and if so, file the case with the Court of Arbitration for Sport for decision.”*

50. The jurisdiction of the CAS ADD is not disputed by the Parties who have confirmed it by signing and returning the Order of Procedure.

51. Accordingly, the CAS ADD has jurisdiction to hear the dispute.

## **VI. LANGUAGE OF THE ARBITRATION**

52. Pursuant to Article 4 of the CAS ADD Rules,

*“CAS ADD working languages are English, French and Spanish. In the absence of agreement between the parties, the President of the Panel or, if not yet appointed, the President or Deputy President of CAS ADD shall select one of these three languages as the language of the arbitration at the outset of the procedure, taking into account relevant circumstances then known. Thereafter, the proceedings shall be conducted exclusively in that language, unless the parties and the President of the Panel otherwise agree.”*

53. The Parties have agreed to the use of English as language for this arbitration.

## VII. MERITS

### A. Commission of the ADRV

54. Article 2.1 of the IOC ADR provides that the presence of a Prohibited Substance or its metabolites or markers in an athlete's sample constitutes an ADRV. In particular, sufficient proof of an ADRV under Article 2.1 is established by the 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*".
55. Article 3.1 IOC ADR provides that "*the IOC (or the ITA acting before the hearing panel on behalf of the IOC as set forth in Article 8.1.1 of these Rules) shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether the IOC has established an anti-doping rule violation to the comfortable satisfaction of the hearing panel bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than a mere balance of probabilities but less than proof beyond a reasonable doubt. Where these Rules place the burden of proof upon the Athlete or other Person alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, except as provided in Articles 3.2.2 and 3.2.3 of these Rules, the standard of proof shall be by a balance of probabilities.*"
56. Article 3.2 of the ADR states that "*Facts related to anti-doping rule violations may be established by any reliable means, including admissions*", and it also clarifies that WADA accredited laboratories are presumed to have conducted sample analysis in accordance with applicable International Standards and the burden of proof lies with an athlete to rebut this presumption: "*WADA-accredited laboratories, and other laboratories approved by WADA, are presumed to have conducted Sample analysis and custodial procedures in accordance with the International Standard for Laboratories. The Athlete or other Person may rebut this presumption by establishing that a departure from the International Standard for Laboratories occurred which could reasonably have caused the Adverse Analytical Finding. If the Athlete or other Person rebuts the preceding presumption by showing that a departure from the International Standard for Laboratories occurred which could reasonably have caused the Adverse Analytical Finding, then the IOC shall have the burden to establish that such departure did not cause the Adverse Analytical Finding.*"
57. Mesterolone metabolite 3 $\alpha$ -hydroxy-1 $\alpha$ -methyl-5 $\alpha$ -androstan-17-one, 5-methylhexan-2-amine (1,4-dimethylpentylamine) and heptaminol were found in the Athlete's A-sample. The first substance is prohibited by WADA at all times and is classified as a non-specified substance under Section S1(1) (Anabolic Androgenic Steroids) of the 2022 WADA Prohibited List. The second and third substances are prohibited by WADA in-competition and are classified as specified substances under Section S6 (Stimulants) of the 2022 WADA Prohibited List.
58. The analysis of the B-Sample performed at the request of the Athlete confirmed the results of the A-Sample, namely the presence of the Prohibited Substances, i.e. Mesterolone metabolite 3 $\alpha$ -hydroxy-1 $\alpha$ -methyl-5 $\alpha$ -androstan-17-one, 5-methylhexan-2-amine (1,4-dimethylpentylamine) and heptaminol.
59. The IOC submits that it has discharged its burden of proof, pursuant to Article 3.1 of the IOC ADR, of establishing the Article 2.1 and/or Article 2.2 ADRV.
60. The Athlete has expressly accepted the alleged ADRV and admitted an ADRV pursuant to Article 2.1 and/or Article 2.2 of the IOC ADR.
61. Therefore, the Sole Arbitrator finds that the Athlete has committed an ADRV in accordance with Article 2.1 and/or 2.2. IOC ADR.



## B. Consequences

62. This case concerns an Athlete who competes in an Individual Sport, as defined in the IOC ADR as “*Any sport that is not a Team Sport*”, where “*Team Sport*” is defined as “*A sport in which the substitution of players is permitted during a Competition*”.
63. Under the IOC ADR, the Consequences of an ADRV are limited to consequences in connection with the Beijing Winter Olympics.
64. Apart from the establishment of the ADRV itself, the consequences of an ADRV are specifically set out in Articles 9 and 11 of the IOC ADR.
65. Article 9 of the IOC ADR states:

*“Automatic Disqualification of Individual Results*

*An anti-doping rule violation in Individual Sports in connection with an In-Competition test automatically leads to Disqualification of the result obtained in that Competition with all resulting Consequences, including forfeiture of any medals, diplomas, points and prizes.”*

66. Article 10.1 of the IOC ADR states:

*“Disqualification of Results in the Olympic Games Beijing 2022*

*10.1.1. Disqualification of Results in the Olympic Games Beijing 2022 10.1.1 An anti-doping rule violation occurring during or in connection with the Olympic Games Beijing 2022 may, pursuant to the decision of the CAS Anti-Doping Division, lead to Disqualification of all of the Athlete's individual results obtained in the Olympic Games Beijing 2022 with all Consequences, including forfeiture of all medals, diplomas, points and prizes, except as provided in Article 10.1.2.*

*Factors to be included in considering whether to Disqualify other results in the Olympic Games Beijing 2022 may include, for example, the seriousness of the Athlete's anti-doping rule violation and whether the Athlete tested negative in other Competitions.*

*10.1.2 If the Athlete establishes that he/she bears No Fault or Negligence for the anti-doping rule violation, the Athlete's individual results in the other Competitions 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.”*

67. Article 10.2 of the IOC ADR states:

*“Ineligibility and other Consequences*

*10.2.1 Should an Athlete or other Person be found to have committed an anti-doping rule violation, the CAS Anti-Doping Division may declare the Athlete or other Person Ineligible, considering Articles 10.2 to 10.9 and 10.13 of the Code, for such Competitions at the Olympic Games Beijing 2022 in which such Athlete or other Person has not yet participated, along with other sanctions and measures which may follow, such as exclusion of the Athlete and other Persons concerned from the Olympic Games Beijing 2022 and the loss of accreditation.*

*No Athlete or other Person who has been declared Ineligible or is subject to a Provisional Suspension may, during the period of Ineligibility or Provisional Suspension, continue to participate in any capacity in the Olympic Games Beijing 2022.*

*10.2.2 In accordance with Article 7.1.2, completion of the Results Management in the case in terms of sanctions beyond the Olympic Games Beijing 2022 itself shall be referred to the applicable International Federation.*

*10.2.3 In addition to the automatic Disqualification of the results in the Competition which produced the positive Sample under Article 9 of these Rules, all other competitive results of the Athlete in the Olympic Games Beijing 2022 obtained from the date a positive Sample was collected (whether In-Competition or Out-of-Competition), or other anti-doping rule violation occurred, through the commencement of any Provisional Suspension or Ineligibility period, shall, unless fairness requires otherwise, be Disqualified with all of the resulting Consequences including forfeiture of any medals, points and prizes.”*

68. Articles 9 and 10 of the IOC ADR apply to ADRVs in Individual Sports in connection with an In-Competition test. As a consequence, the Athlete’s result obtained in that competition, namely her Women’s Sprint Free finish on 8 February 2022, where she placed 70<sup>th</sup> and her Women’s 10km Classic finish on 10 February 2022, where she placed 79<sup>th</sup> shall be disqualified, with the resulting forfeiture of any and all medals, diplomas, pints or prizes.

69. Article 11.3 of the IOC ADR provides consequences to teams in sports which are not “*Team Sports*” and states as follows:

*“If one or more members of a team in a sport which is not a Team Sport but where awards are given to teams, is found to have committed an anti-doping rule violation during the Period of the Olympic Games Beijing 2022, the CAS Anti-Doping Division shall apply the rules of the relevant International Federation to determine the Consequences on the team (e.g., loss of points, Disqualification from a Competition, Event or the Olympic Games Beijing 2022, or other Consequences), in addition to any Consequences imposed pursuant to these Rules on the individual Athlete(s) found to have committed the anti-doping rule violation.*

*Should the relevant International Federation not have such rules or, if in the CAS Anti-Doping Division’s discretion, the rules of the relevant International Federation do not adequately protect the integrity of the Competition, the Panel shall have the authority to determine the Consequences on the team, including the Disqualification of the team’s results in any Competition or Event or any other Consequences. The CAS Anti-Doping Division may only take such action in circumstances when one or more members of a team are found to have committed an anti-doping rule violation and, in the Panel’s discretion, the violation may have affected the results of the team in the concerned Competition(s) or Event(s).”*

70. In the present case, Article 11.3 applies as the pairs skating competition involves a team of two, but not within a “*Team Sport*”. Article 11.3 states that the CAS ADD shall apply the rules of the relevant International Federation, being the FIS ADR in the present case, to determine the consequences to be imposed on the team.

71. Article 11 of the FIS ADR state as follows:

*“11.1 Testing of Teams*

*Where one (1) member of a team (outside of Team Sports) has been notified of an anti-doping rule violation under Article 7 in connection with an Event, the ruling body for the Event shall conduct appropriate Target Testing of all members of the team during the Event Period.*

*11.2 Consequences for Teams*

*11.2.1 An anti-doping rule violation committed by a member of a team in connection with an In-Competition test automatically leads to Disqualification of the result obtained by the team in that Competition, with all resulting Consequences for the team and its members, including forfeiture of any medals, points and prizes.*

*11.2.2 An anti-doping rule violation committed by a member of a team occurring during or in connection with an Event (e.g. FIS World Championships) may lead to Disqualification of all of the results obtained by the team in that Event with all Consequences for the team and its members, including forfeiture of all medals, points and prizes, except as provided in Article 11.2.3.*

*11.2.3 Where an Athlete who is a member of a team committed an anti-doping rule violation during or in connection with one (1) Competition in an Event, if the other member(s) of the team establish(es) that he/ she/ they bear(s) No Fault or Negligence for that violation, the results of the team in any other Competition(s) in that Event shall not be Disqualified unless the results of the team in the Competition(s) 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."*

72. In the FIS ADR, an Event is defined as “Event: A series of individual Competitions conducted together under one ruling body (e.g., the Olympic Games, World Championships of an International Federation, or Pan American Games)”.
73. In the case at hand, the Athlete was tested positive for Heptaminol and MHA as well as for Mesterolone following the 10km Classic event on 10 February 2022. The Claimant has not submitted any evidence on additional testing of the Athlete, although the other members of the 4 x 5km Relay of 12 February 2022 members were tested several times, i.e. Ms Viktoriya Olekh on 12 and 20 February 2022, Ms Maryna Antsybor on 12, 16 and 20 February 2022 and Ms Darya Rublova on 12 February 2022, where the test results all returned negative.
74. As evidenced in the Expert opinion rendered by Prof. Martial Saugy and submitted in evidence by the Claimant, Heptaminol and MHA are two specified stimulants belonging to the category S6.b of the WADA Prohibited List, and they are prohibited in-competition only. Heptaminol is a stimulant of the cardiovascular system. It will promote the general activity of the cardiovascular system during a specific effort. MHA is a sympathomimetic substance. Sympathomimetic substances are stimulant compounds, which mimic the effects of endogenous agonists of the sympathetic nervous system. They will then stimulate the “fighting spirit” during a competition. Both of these substances have an effect which lasts for several hours only and, the effect of the two stimulants have long ended before the 4 x 5km Relay. Therefore, Heptaminol and MHA had an effect during the competition of 10 February. According to the evidence submitted, if no other doses of those stimulants were taken by the Athlete on the day of the Relay (12 February 2022), it cannot be said that their presence in the urine on 10 February 2022 induced an enhancement of the performance of the Athlete in the team competition.
75. Mesterolone however, is an Anabolic Androgenic Steroid (“AAS”): the AAS are used to prepare the body to enhance performance during a competition. As a result, this product is mainly used out-of-competition and this is why it is prohibited at all times. The effect is a long-term effect. The concentration of the metabolite of Mesterolone (6 ng/ml) shows that the last intake was probably several days prior to the first competition. Prof. Saugy comes to the conclusion that Mestosterone, having a long-term effect, was likely to have had a positive effect on the sporting performance of the Athlete in the team competition of 12 February 2022.
76. As evidenced by the Competition Analysis for the Women’s 4 x 5km Relay of 12 February 2022, the Athlete, who was the second to ski after Viktoriya Olekh, did not finish her leg and the following members of the team, i.e. Maryna Antsybor and Daria Rublova did not start. As a consequence, the team finished 18<sup>th</sup> and last of all competing teams. Hence, despite the finding of Prof. Saugy that Mestosterone was likely to have a positive effect on the Athlete’s performance, it is evident that the team result has not been positively affected by the Athlete’s ADRV.

77. Therefore, in accordance with Art. 11.3 IOC ADR and Art. 11.2.3 of the FIS ADR, the results obtained by the team of the Olympic Athletes from Ukraine in Women's 4 x 5km Relay of 12 February 2022 event at the Olympic Winter Games Beijing 2022 are disqualified.
78. The Sole Arbitrator notes that the Athlete expressly reserves her right to seek the elimination or reduction of the ineligibility period on the basis of "No Fault or Negligence" in further disciplinary proceedings outside the period of the Olympic Games. Such reservation is the right of the Athlete and more information will follow concerning the next steps in this procedure in due course following the Games.
79. The anti-doping rule violation now having been determined, the IOC is no longer a party to this procedure and with the issuance of this Order, the IOC's participation in these proceedings is hereby terminated.

### **VIII. CO-APPLICANT FIS**

80. Further to the FIS's request to participate as a Co-Applicant in this procedure, the Sole Arbitrator notes the FIS's delegation of power to the CAS ADD during the Beijing Winter Olympics in accordance with Articles 7.1.2 and 10.2.2 of the IOC ADR. In this regard, the FIS's request is granted.
81. In application of Articles 7.1.2, 7.9 and 10.2.2 of the IOC ADR, these proceedings shall continue by and between the FIS, who joined these proceedings as Co-Claimant, and the Athlete, in regard to the consequences of the ADRV which may be imposed on the Athlete. The Sole Arbitrator, after consultation with the Parties, shall determine the procedural directions applicable to the remaining part of the arbitration and shall issue, at the conclusion of these proceedings following the Olympic Games, a final award, all in accordance with Article A20 of the CAS ADD Rules.

### **IX. COSTS**

(...).

### **X. APPEAL**

87. Article 8 of the FIS ADR provides:

#### *8.2 Notice of Decisions*

*8.2.1 At the end of the hearing, or promptly thereafter, the CAS ADD shall issue a written decision that conforms with Article 9 of the International Standard for Results Management and which includes the full reasons for the decision, the period of Ineligibility imposed, the Disqualification of results under Article 10.10 and, if applicable, a justification for why the greatest potential Consequences were not imposed.*

*8.2.2 FIS shall notify that decision to the Athlete or other Person and to other Anti-Doping Organisations with a right to appeal under Article 13.2.3, and shall promptly report it into ADAMS. The decision may be appealed as provided in Article 13.*

88. Pursuant to Article A21 of the ADD Rules, this award may be appealed to the CAS Appeals Arbitration Division within 21 days from receipt of the notification of the final award with reasons in accordance with Articles R47 *et seq.* of the CAS Code of Sports-Related Arbitration, applicable to appeals procedures.

## ON THESE GROUNDS

### The Court of Arbitration for Sport rules that:

1. The request for arbitration filed by the International Testing Agency on behalf of the International Olympic Committee on 19 October 2022 is upheld.
2. Ms. Valentyna Kaminska is found to have committed an anti-doping rule violation pursuant to Article 2.1 and/or Article 2.2 of the IOC Anti-Doping Rules applicable to the Games of the XXIV Olympic Winter Games Beijing 2022.
3. The results obtained by Ms. Valentyna Kaminska in the Women's Sprint Free, the Women's 10km Classic shall be disqualified, with the resulting forfeiture of any and all medals, diplomas, points or prizes.
4. The results obtained by the team of the Olympic Athletes from Ukraine in Women's 4 x 5km Relay of 12 February 2022 event at the Olympic Winter Games Beijing 2022 are disqualified with the resulting forfeiture of any and all medals, diplomas, points or prizes.
5. With the issuance of this Partial Arbitral Award, the IOC's participation in this proceeding is hereby terminated.
6. (...).
7. (...).
8. All other motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Date: 6 March 2023

## THE ANTI-DOPING DIVISION OF THE COURT OF ARBITRATION FOR SPORT

Raphaëlle Favre Schnyder  
Sole Arbitrator