

Anti-Doping Hearing Panel
of the
International Biathlon Union

AWARD

In the matter of

MS. EKATERINA IOURIEVA

The Anti-Doping Hearing Panel, sitting in the composition of Mr. Edward G. WILLIAMS, ESQ., (Chair), Dr. Gerard DINE and Mr. Juha VIERTOLA, according to Rule 8.1.3 IBU Anti-Doping Rules, handled the case of Ms. Ekaterina IOURIEVA on March 24, 2014 at the headquarters of the International Biathlon Union in Salzburg, Austria.

Having handled the submissions of the parties and having duly deliberated the facts and the law the Panel renders the following decision:

I.
Statement of Facts

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Ms. Iourieva (hereinafter referred to as the "Athlete"), an athlete under the jurisdiction of the Russian biathlon federation (hereinafter referred to as "RBU"), was tested in out of competition tests initiated by the International Biathlon Union (hereinafter referred to as "IBU") on December 23, 2013 and on January 1, 2014 in Pokljuka, Slovenia.

2

The "A" sample 2767129 (December 23, 2014) and the "A" sample 2767125 (January 1, 2014) were both analyzed in the WADA accredited laboratory in Selbersdorf, Austria, and both analyses showed the presence of recombinant erythropoietin (recEPO).

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Both two results of the analysis of the A samples and two Adverse Analytical Findings (hereinafter referred to as "AAF"), was informed by the laboratory of Selbersdorf to the IBU, on January 27, 2014 via ADAMS.

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By letter of January 28, 2014 the IBU Secretary General, Ms. Nicole Resch, notified the RBU and the Athlete of two AAF and the provisional suspension from IBU competitions.

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By the said letter of January 28, 2014 the Athlete, the RBU, the Russian Anti-Doping Agency and WADA were notified of

- a. two adverse analytical findings (Article 7.1.4 of the IBU Anti-Doping Rules);
- b. the possible anti-doping rule violations (Article 2.1 IBU Anti-Doping Rules);
- c. the athlete's right to promptly request the analysis of the "B" samples or, falling such request, that both of the B sample analysis may be deemed waived;
- d. the scheduled date, time and place of two B sample analysis, if the athlete or IBU chooses to request the analysis of two B samples (one of the following days: February 3,4,5,10,11 or 12, 2014);
- e. the opportunity of the athlete and/or the athlete's representative to attend two B samples opening and analysis at the scheduled date, time and place if such analysis are requested;
- f. the fee for each B sample analyses (1500 euro);
- g. the possibility to a provisional hearing by sending a written statement until the 4th of February 2014 (Articles 7.6.3 and 7.6.1 IBU Anti-Doping Rules).

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By letter of January 28, 2014 IBU also informed that the results from the analyses were sent to IBU in encoded forms. Reports were signed by authorized representatives of the laboratory. The results are not consistent with an applicable TUE. An initial review from the WADA International Standards for Testing and for Laboratories was conducted and did not show any apparent departures.

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By letter of January 31, 2014 the Athlete requested two B sample analysis.

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By letter of January 31, 2014 the Athlete requested the opening of two B samples. The Athlete asked to postpone the opening after 25 February 2014 because of the familial reasons.

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By email of January 31, 2014 the IBU secretary general notified that the opening of two B samples will be February 25, 2014.

The opening and analysis of two B samples took place on 25 to 27 February 2014 in the WADA accredited laboratory in Selbersdorf, Austria. Ms. Lourleva or her representatives were not present.

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The analysis of the sample 2767129 and the sample 2767125 revealed the presence of recombinant erythropoietin (recEPO) and, therefore confirmed the results of both two A samples. The analysis results were reported to IBU on 4 March 2014.

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By letter of March 4, 2014 the Athlete, the RBU, the Russian Anti-Doping Agency and WADA were notified the results of two B samples analysis, which confirmed the AAF.

II. Procedure before the Anti-Doping Hearing Panel

1. The IBU Anti-Doping Hearing Panel

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The IBU Anti-Doping Hearing Panel (hereinafter referred to as "ADHP" or the "Panel") is the competent body to hold the hearings according to Article 8 IBU Anti-Doping Rules, which gives the athletes the right to a fair hearing. Within the framework of the IBU the Panel is the body to decide whether or not, in a given case, an anti-doping rule violation was committed.

According to the Constitution of the IBU Article 11.2 and Article 8.1.8 IBU Anti-Doping Rules, the decisions of the IBU Anti-Doping Hearing Panel can be appealed directly to the Court of Arbitration for Sport in Lausanne, Switzerland.

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Following the Constitution and the Anti-Doping Rules, the IBU Executive Board has established the Panel according to Article 8.1.1 IBU Anti-Doping Rules. It consists of a list of a chairperson and nine other experts with experience in anti-doping. The Chair shall be a lawyer. Each panel member shall be otherwise independent of the IBU. Each panel member will serve a term of four years.

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Although the ADHP is part of the institutional framework of the IBU and renders, in matters of alleged anti-doping rule violations, the final decision for the IBU, it acts in complete independence of the IBU. According to Article 8.1.1 IBU Anti-Doping Rules "*Each panel member shall be otherwise independent of IBU.*"

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The proceedings before the ADHP are contentious trials between the IBU and the athlete concerned as parties. According to Article 8.1.2 IBU Anti-Doping Rules "*the case will be assigned to the IBU Anti-Doping Hearing Panel for adjudication*, which means a decision reached by judges. The *Principles for a Fair Hearing* led down in Article 8.3 IBU Anti-Doping Rules speak of the right of *each party* to present evidence and provide in its various items for a *fair and impartial hearing panel* and other guarantees which apply to judicial proceedings.

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According to the Article 8.1.3 IBU Anti-Doping Rules the chairperson of the IBU ADHP will appoint three members from the panel (which may include the chairperson) to hear each case. At least one appointed member must also be a lawyer. The appointed

members must have had no prior involvement with the case and must not have the same nationality as the athlete or other person alleged to have violated IBU Anti-Doping Rules.

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According to the Article 8.1.4 IBU Anti-Doping Rules, hearings will be held in Salzburg as soon as possible and at the absolute latest 30 days after the IBU has sent the complete documentation to the federation of the athlete regarding the positive A sample, if the B sample is waived, or regarding the positive B sample from the laboratory. Federation is responsible to inform the athlete upon the receipt of the complete documentation and to forward this complete documentation to the athlete.

2. The Proceedings prior to the Hearing

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According to Article 8.1.2 IBU Anti-Doping Rules the IBU referred the alleged anti-doping rule violation of the Athlete to the ADHP.

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The Chair of the ADHP, Dr. Christoph Vedder appointed Edward G. Williams, Dr. Gerard Fine and Mr. Juha Vliertola as the particular Panel to hear the case of the Athlete. Dr. Vedder appointed Mr. Williams chair of the Panel. As required by Article 8.1.3 IBU Anti-Doping Rules the Panel members have not been involved in the case previously and do not have the same nationality as the Athlete.

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The Chair of the ADHP determined the hearing/handling to be held on March 23, 2014 in Salzburg.

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By letter of March 11, 2014 the IBU Secretary General, Ms. Nicole Resch, invited the Athlete for a hearing before the IBU Anti-Doping Hearing Panel on Sunday, 23 March 2014 at 9.00 at the IBU Headquarters, Pereglnstrasse 14, 5020 Salzburg, Austria. The IBU secretary General also informed that the RBU is allowed to send an observer.

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By said letter of March 11, 2014, IBU and the athlete/representative were requested to submit a written position of their arguments by 19 March 2014, in order for the Panel to prepare their questions.

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By letter of March 19, 2014 the Athlete waived the hearing. The Athlete wrote: "*I, Ekaterina Iourieva, notify you herewith that I acknowledge the Anti-Doping Rule violation. Taking into account my personal sad experience in the legal proceedings like these as*

well as the fact that I finished my sports career, I waive my right to a hearing scheduled on March 23, 2014."

3. The Hearing/handling and the Submissions of the Parties

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The Athlete or the representative of the Athlete did not show up on March 23, 2014, as the Panel has been Informed before the Hearing/handling. The RBU did not send an observer.

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By said letter of March 19, 2014 the Athlete waived the Hearing and admitted having committed an anti-doping rule violation.

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Accordingly, the handling was postponed to March 24, 2014 at the headquarters of IBU In Salzburg, Austria. Mr. Williams and Mr. Viertola were present and Dr. Fine by phone.

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IBU was represented with the written submission of March 19, 2014 by Dr. Stephan Netzle. The IBU representative Martin Kuchenmeister was available, if needed.

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IBU submitted that the results of both A samples and both B samples analysis revealed the presence of recombinant Erythropoietin (recEPO) In the Athlete's body. The substance Is a prohibited substance listed In the WADA Prohibited List In chapter S2.

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IBU submitted that It has demonstrated the presence of the prohibited substance In the Athlete's sample, which constitutes a violation of the Article 2.1 IBU Anti-Doping Rules.

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IBU requested:

1. The Athlete shall be declared Ineligible to compete for the period of eight (8) years, starting on the date when the ADHP decision becomes enforce, from which the period of the provisional suspension is deducted;
2. All competitive results obtained from the date of the first sample was collected (i.e. 23 December 2013) shall be disqualified with all of the resulting consequences; and
3. The Athlete shall bear the costs of the hearing of the ADHP.

III. In Law

1. Applicable Law

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As the preface to the IBU Anti-Doping Rules indicates "*Anti-Doping Rules, like competition rules, are sport rules governing the conditions under which sport is played. Athletes and other persons accept these rules as a condition of participation and will be bound by them.*"

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As the scope to the IBU Anti-Doping Rules indicates "*Anti-Doping Rules will apply to the IBU, each national federation of the IBU, and each participant in the activities of the IBU or any of its national federations by virtue of the participant's membership, accreditation, or participation in IBU, its member federations, or their activities or Events.*"

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As a participant of the IBU's International events, the Athlete, who is an athlete under the jurisdiction of the IBU, is bound by the IBU Anti-Doping Rules. Therefore, these rules are the law applicable to the case before the Panel.

2. Anti-Doping Rule Violation

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The analysis of two A samples and two B samples collected from an out-of-competition test conducted on the Athlete on December 23, 2013 and on December 1, 2014 revealed the presence of recombinant erythropoietin (recEPO).

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According to the 2013 WADA Prohibited List and the 2014 WADA Prohibited List a recombinant erythropoietin (recEPO) is substance prohibited at all times (In-competition and out-of-competition) under class S 2.

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The WADA Prohibited List has been incorporated into the IBU Anti-Doping Rules by virtue of Article 4.1 IBU Anti-Doping Rules.

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The presence of recombinant erythropoietin (recEPO) in the Athlete's body constitutes an anti-doping rule violation under Article 2.1 IBU Anti-Doping Rules. According to Article 2.1.1 IBU Anti-Doping Rules, no intent, fault or negligence or knowing use on the Athlete's part is necessary, in the particular case. According to Article 2.1.2 IBU Anti-Doping Rules sufficient proof of the anti-doping rule violation has been established by the presence of recombinant erythropoietin (recEPO) in the A sample and in the B sample. The Athlete did neither object to the results of the sample analysis nor did she

challenge the validity of the finding by submitting any deviation from the required procedures. The Athlete expressly admitted the anti-doping rule violation.

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The Athlete was tested twice on two different times (23 December 2013 and 1 January 2014) and both A samples and B samples show the anti-doping rule violation. However, the IBU cannot exclude that both of the AAFs have been caused by the same application of recombinant erythropoietin (recEPO) which then had to be considered as one single anti-doping rule violation.

3. Sanction

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According to Article 10.2 IBU Anti-Doping Rules, the period of ineligibility imposed for a violation of Article 2.1 IBU Anti-Doping Rules (Presence of Prohibited Substances or its Metabolites or Markers) is two (2) years ineligibility, when the violation is first for the Athlete.

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The Athlete previously committed an Anti-Doping Rule violation in 2009 (IBU ADHD decision of August 11, 2009). According to the Decision of the ADHP, the samples taken from Ms. Lourleva on 4 and 5 December 2008 respectively revealed the presence of the prohibited substance of recEPO and, therefore, Ms. Lourleva was ineligible to compete for a period of two years commencing on 4 December 2008.

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According to Article 10.7.1 IBU Anti-Doping Rules, the period of ineligibility imposed for a second violation of Article 2.1 IBU Anti-Doping Rules is eight (8) years to lifetime period.

According to Article 10.7.5 IBU Anti-Doping Rules, for purposes of Article 10.7, each anti-doping rule violation must take place within the same eight-year (8) period in order to be considered multiple violations.

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The Panel noticed that the Athlete violated two times Article 2.1 IBU Anti-Doping Rules in the same eight-year (8) period.

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The Panel did not find exceptional circumstances in the sense of Article 10.5 IBU Anti-Doping Rules, which could justify an elimination or reduction of the regular sanction.

4. Commencement of the period of ineligibility

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According to Article 10.9 IBU Anti-Doping Rules, the period of ineligibility will start on the date of the hearing decision providing for ineligibility or, if the hearing is waived, on the date ineligibility is accepted or otherwise imposed.

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According to Article 10.9.2 IBU Anti-Doping Rules, where the athlete promptly (which, in all events, means before the athlete competes again) admits the anti-doping rule violation after being confronted with the anti-doping rule violation by the IBU, the period of ineligibility may start as early as the date of sample collection.

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As the Athlete, after being confronted with the possible anti-doping rule violation by IBU under letter dated January 28, 2014, "*promptly*", i. e. in the letter dated March 16, 2014 admitted the anti-doping rule violation and did not compete since the notification of the AAF, Article 10.9.2 IBU Anti-Doping Rules applies. This article stipulates that in such a situation the period of ineligibility may start as early as the date of the sample collection. Therefore, the period of ineligibility begins i.e. on December 23, 2013.

IV.

Conclusions

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The sample taken from the Athlete on the occasion of an out-of-competition test conducted on December 23, 2013 revealed the presence of the prohibited substance of recombinant erythropoietin (recEPO) and, therefore, the Athlete committed an anti-doping rule violation according to Article 2.1 IBU Anti-Doping Rules.

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Therefore, Ms. Ekaterina Iourieva is declared ineligible to compete for a period of eight (8) years, commencing i.e. on December 23, 2013.

V. Decision

On these grounds the Panel decides:

Ms. Ekaterina Iourieva is ineligible to compete for a period of eight (8) years, commencing on i.e. December 23, 2013;

All competitive results of Ms. Ekaterina Iourieva obtained from the date of the sample was collected (i.e. 23 December 2013) are disqualified with all of the resulting consequences; and

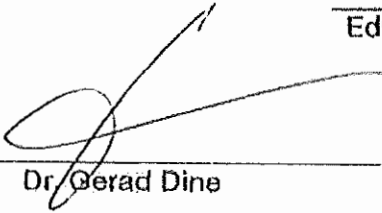
All Parties bear their own costs of the hearing/handling of the ADHP.

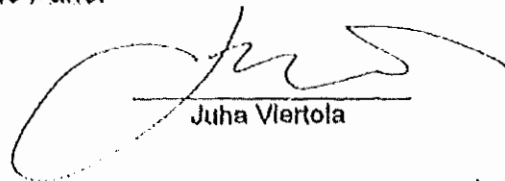
The Anti-Doping Hearing Panel

July 14, 2014

Edward G. Williams

Edward G. Williams, Esq.
Chair of the Panel


Dr. Gerard Dine


Juha Virtola