

Anti-Doping Hearing Panel
of the
International Biathlon Union

Decision
in the matter of
IBU v. Ms. Olga Abramova

The Anti-Doping Hearing Panel, according to Article 8.1.3 IBU Anti-Doping Rules, in the composition of Christoph Vedder, Professor of Law, Munich, Germany (Chair), Wolfgang Schobersberger, Professor of sports Medicine, Innsbruck, Austria, and Markus Manninen, Attorney-at-Law, Helsinki, Finland heard the case of the IBU v. Ms. Olga Abramova and, having duly deliberated the facts and the law, renders the following decision:

I. Statement of Facts

1

Ms. Olga Abramova (“the Athlete”), an athlete under the jurisdiction of the Federation Biathlon of Ukraine (“FBU”), was submitted to an in-competition doping control initiated by the International Biathlon Union (“IBU”) on January 10, 2016 at Ruhpolding, Germany.

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The Athlete’s A sample A 3957344 was received by the WADA accredited laboratory in Cologne on January 11, 2016 and analysed during the following days. The analysis revealed the presence of Meldonium. The Cologne laboratory informed the IBU of the Adverse Analytical Finding (“AAF”) via letter of February 3, 2016. The Documentation Package was sent to IBU on the same day and forwarded by IBU to the Athlete.

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By letter of February 4, 2016 IBU notified the FBU and the Athlete of an AAF in the form of the finding of Meldonium in her A-sample. The Athlete was provisionally suspended pending the ADHP’s decision.

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By the said letter of February 4, 2016 the Athlete and the FBU were further notified of:

- the result of the analysis not being consistent with an applicable TUE
- the initial review conducted by the IBU not showing any apparent departure from the WADA International Standards for Testing and for Laboratories (“ISL”)
- the initiation, by the IBU, of the result management process for a possible Anti-Doping Rule Violation (“ADRV”) in the sense of Article 2.1. IBU ADR
- the right to request the analysis of the B-sample or, failing such request, that the B-sample analysis may be deemed waived
- the costs of the B-sample analysis and the opportunity of the Athlete and/or her representatives as well as representatives of the FBU to attend the B-sample analysis.

The Athlete was given the opportunity to submit a statement no later than February 28, 2016.

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By letter of February 10, 2016 FBU, on behalf of the Athlete, waived her right to the B-sample analysis.

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On February 16, 2016 the IBU Secretary General referred the matter to the ADHP.

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On February 18, 2016, according to Article 8.1.3 IBU ADR, the particular Panel to hear the Athlete's case was established. Under letters of March 3 and 4, 2016 the IBU served to the Panel the documentation package of the laboratory and the full set of correspondence with the Athlete and the FBU.

II. Proceedings before the Anti-Doping Hearing Panel

1. The IBU ADHP

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According to Article 8 IBU ADR, the ADHP is the competent body to decide whether or not, in a given case, an ADRV was committed. According to Article 47 of the IBU Constitution and Article 8.2.2 IBU ADR, the decisions of the ADHP may be appealed directly to the Court of Arbitration for Sport in Lausanne (CAS), Switzerland.

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Although the ADHP is part of the institutional framework of the IBU and renders, in matters of alleged ADRVs, the final decision for the IBU, it acts in complete independence. As Article 8.1.2 IBU ADR states "*(e)ach panel member must be otherwise independent of the IBU*". The Panel members appointed in the case pending have no prior involvement with the case.

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According to Articles 13.2.1, 13.2.3 and 13.7.1 IBU ADR, the Athlete has the right to appeal the decision rendered by the ADHP to the CAS within 21 days from the receipt of the decision with, however, no suspensory effect. The CAS proceedings are de novo.

2. Proceedings before the Panel and the Submissions of the Parties

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By the above mentioned letter of February 10, 2016 FBU informed the IBU that the Athlete

"had indeed taken this medicine for treatment and under a doctor's prescription from November 10 through December 12, 2015. However, she did not take this substance in 2016, since it had been added to the list of prohibited substances starting from January 1, 2016."

With reference to opinions by the Federal Medical and Biological Agency, Moscow, dated April 14, 2015 and the Railways State Administration, Kiev, dated October 26, 2015, respectively, which both contain "*recommendations*" for Mildronate, which is the drug containing Meldonium, FBU contended that the Athlete had taken Meldonium because of the diagnosis of "*bronchial asthma*" and "*dysmetabolic myocardiopathy*". The opinion of October 26, 2015 diagnosed "*dysmetabolic myocardiopathy*" and recommended the Athlete to take two capsules of Mildronate of 500 mg each per day for 60 days. Since Meldonium had not been prohibited in 2015 FBU had not applied for a TUE.

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In a second letter, dated February 17, 2016 which is similar to the one of February 10, 2016 FBU submitted that the Athlete had taken Mildronate from November 1 to December 20, 2015 instead of November 10 through December 12, 2015 as originally stated.

13

By letter of March 1, 2016 the Chairman of the ADHP notified FBU and IBU of the date of the hearing scheduled for March 30, 2016 and invited IBU to submit a statement no later than March 11, 2016. The Athlete and FBU were given the opportunity to make a statement in response until March 21, 2016.

14

On March 10, 2016, within the time-limit, IBU filed a written statement. IBU submitted that the rules applicable to the case are the IBU ADR 2014, effective as of January 1, 2015 together with the 2016 Prohibited List which applies to doping control, analysis and results management in 2016.

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According to IBU, it has demonstrated the presence of a prohibited substance in the Athlete's sample and, therefore, exonerated its burden of proving that an ADRV in the sense of Article 2.1 IBU ADR was committed. For that purpose IBU relies on the analysis results provided by the WADA-accredited Cologne laboratory. The substance found was a non-specified substance prohibited both in- and out-of-competition listed under S4 par. 5.3 of the 2016 Prohibited List. IBU further refers to the fact, that the Doping Control Form (DCF) was signed by the Athlete with no reservation.

16

IBU stated that the Athlete, through FBU's letter dated February 10, 2016, admitted to having administered the substance between November 10 and December 12, 2015 because of bronchial asthma and dysmetabolic myocardiopathy. These dates were later adjusted to November 1 and December 20, 2015. In this regard IBU submitted that Meldonium is not admitted as a medication for asthmatic conditions.

17

In reply to the Athlete's defense that she administered Meldonium in doses prescribed by her doctor in November and December 2015 at a time when it was not yet prohibited, IBU claimed that, as the presence of the substance in the Athlete's body on January 10, 2016 was uncontestedly demonstrated,

"it would be the Athlete's burden to demonstrate by a balance of probability that the positive finding was in fact a consequence of a permitted administration of Meldonium (Art. 3.1 IBU ADR 2014, last sentence). In other words, the Athlete must demonstrate that the positive finding was caused by the administration of Meldonium when this substance was not yet included in the 2016 Prohibited List."

18

IBU mentioned a study on the metabolism and degradation of Meldonium just initiated by WADA and referred to internet sources which indicate a half-life of Meldonium of a few hours but also to statements that

"such substances can ... lead to positive analysis results even after a much longer period of time."

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IBU concluded that it would be difficult or even impossible for the Athlete to provide reliable information on that issue and, therefore, proposed that the ADHP should collect an expert opinion on the following issue:

"Is it possible that Meldonium can be identified in the concentration found in the Athlete's sample taken on 10 January 2016 if it has been administered by 1 capsule of 500 mg of Mildronate twice a day between 1 November and 20 December 2015 (or 10 November and 12 December 2015, respectively)?"

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As a procedural request IBU submitted that the hearing should be postponed until a date after the expert opinion, which should also take the WADA study into account, had been communicated to the parties. Nevertheless, the provisional suspension should remain in place.

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In reply, on March 12, 2016 the Panel issued a procedural order to the effect that, first, Professor Mario Thevis, Cologne, is appointed to give, at the hearing, an expert opinion on the question raised by IBU and, second, the hearing is maintained as scheduled.

22

Neither the Athlete nor the FBU submitted a statement in defense within the time-limit or later. Instead, the FBU, by letter of March 22, 2016, forwarded a review by Sjakste and Kalvinsh (2006) on Mildronate.

3. The Hearing on March 30, 2016

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A hearing took place on March 30, 2016, 11.00 h until 16.50 h at the Arcotel Castellani in Salzburg. Present were:

on behalf of the Athlete:

- the Athlete herself
- Mr. Roman Bondaruk, Secretary General of FBU
- Mr. Vladymir Gerashenko, Interpreter
- Dr. Vladymir Bud, Toxicologist

on behalf of IBU:

- Dr. Stefan Netzle, Counsel to IBU
- Ms. Nicole Resch, Secretary General, IBU

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In his opening remarks the Chairman of the ADHP stated, first, that the Athlete did not submit a statement in defense and no further arguments are permitted and, second, that the presence of Meldonium in the Athlete's sample, the analytical results and the performance of the analysis by the Cologne laboratory in accordance with the ISL were not challenged. As the principal matter of dispute between the parties the Chairman identified the question whether or not the administration of Mildronate between November 1 and December 20, 2015 in doses as submitted by the Athlete can result in the finding of the prohibited substance as analysed by the Cologne laboratory. The parties were invited to consider the elements which constitute an ADRV, the question whether or not the Athlete acted intentionally and whether exceptional circumstances were present. The parties confirmed their satisfaction with the proceedings so far.

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In its opening statement IBU referred to the facts as described in its statement submitted on March 10, 2016. IBU submitted that it had demonstrated the presence of Meldonium as a prohibited substance, the relevant date being the presence of Meldonium rather than the date of the administration. With regard to the length of the sanction IBU submitted a graph showing the various options from four years to one year of ineligibility. The amount of the sanction to be imposed on the Athlete depends on the question whether the Athlete acted non-intentionally and without significant fault or negligence due to exceptional circumstances. IBU reserved the right to make particular requests for relief at a later stage.

26

On behalf of the Athlete the representative of the FBU submitted that the Federation had conducted an investigation on the Athlete's case with the result that she has administered Mildronate in a concentration of two capsules of 500 mg each per day from November 1 until December 10, 2015. Contrary to earlier submissions in the correspondence the Athlete confirmed that she took the last dosis on December 10, 2015. It was further submitted that the Athlete, in this period of time, took Mildronate following the prescription of October 26,

2015 under the instructions of the team doctor, Dr. Pisarenko. According to the result of FBU's investigation Meldonium can be accumulated and remain longer in the body. FBU concluded that, when terminating the administration on December 10, 2015, the Athlete acted in conformity with the information about the new Prohibited List.

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The Athlete requested for relief a minimum sanction to be imposed.

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In addition to the opening statement presented by FBU, the examination of the Athlete *in persona* by the Panel and IBU revealed the following: The information about the new Prohibited List issued by WADA on September 29, 2015 was received by FBU on October 1, 2015 and forwarded to FBU's athletes in writing in the first week of October. Furthermore, also in the first week of October, FBU organized a meeting for the athletes where they were informed about the 2016 Prohibited List. The Athlete attended that gathering. On December 10, *i.e.* earlier than originally scheduled for December 25, the Athlete stopped taking Mildronate on the instruction of the team doctor. She "*felt better*" and replaced Mildronate by Riboxin and Oxis. A TUE was not applied for because in 2015 Meldonium was not yet listed. The Athlete and the team doctor were in trust of the instructions available on the leaflet accompanying the medication that the substance will be eliminated from the body within a few hours. Furthermore, on December 10, 2015 the administration of Mildronate was terminated four weeks before the first World Cup in 2016, scheduled for January 8, 2016 in Ruhpolding, would commence. The Athlete further stated that she suffered from asthma since 2011 and, therefore, took Mildronate earlier in 2015. After a cardiological examination conducted on October 26, 2015 in the Railways Clinical Hospital No. 2, beginning on November 1, 2015, she administered Mildronate in a dosis of two capsules of 500 mg twice a day because of "*dysmetabolic myocardiopathy*", recommended for 60 days.

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Dr. Bud, a toxicologist, who was involved in the investigation conducted by FBU on the Athlete's case, declared, with reference to literature, that Mildronate could be accumulated in the body and, because of a non-linear elimination of Meldonium, that substance could last in the body longer as mentioned in the information accompanying the medication.

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Professor Dr. Mario Thevis, head of the Institute for Biochemistry at the Deutsche Sporthochschule Köln, Germany who was appointed independent expert on the pharmacokinetics of Meldonium by the Panel, gave his expert opinion after a break without having attended the hearing thus far. He evidenced that, according to the state of knowledge published in literature, Meldonium is excreted in a non-linear way. In the *alpha*-phase most of the Meldonium is excreted in hours (half-life of 4 to 8 hours) while small quantities of Meldonium remain in the body and are, in the following *beta*-phase (of 120 h), slowly eliminated over several days. Based on that, Prof. Thevis could "*not exclude*" that the finding of Meldonium in the Athlete's samples collected on January 10, 2016 could have been caused by an administration of Mildronate in quantities and during the period of time as declared by the Athlete.

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Professor Thevis reported on a Pilot Study recently conducted in his institute which revealed the following results. The application of a single dosis of 500 mg led to a finding of 0,5 microg/ml after 14 days. When Meldonium was administered in a dosis of 1,5 mg per day over 6 days, after 14 days the quantity of 1 microg/ml was found. This study was made on blood plasma but not on urine as it was the case with the Athlete's samples. Also based on that preliminary research he declared that, at the moment, he could "*not exclude*" that the administration of Mildronate in the dosage and within the time period indicated by the Athlete could have caused the finding of Meldonium in the Athlete's case.

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Professor Thevis informed the Panel that, with the support of WADA, a research study on the long-term pharmacokinetics of Meldonium in urine already started in his laboratory the results of which may be expected within three months.

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In their closing statement IBU referred to the undisputed facts and identified three issues as essential. First, the facts reveal that an ADRV in the form of the presence of a prohibited substance in the meaning of Article 2.1 IBU ADR 2014 and the 2016 Prohibited List was committed. Second, for the question whether the ADRV was non-intentional the burden of proving a medical justification lies with the Athlete. IBU expressed its doubts with regard to the alleged medical justification. However, assuming that a medical justification was given, a non-intentional use could lead to half the standard sanction. Third, IBU would tend to acknowledge exceptional circumstances by taking into account that Meldonium was newly introduced to the Prohibited List, that the excretion from the body took longer than the information on the leaflet accompanying the medication and that the Athlete believed to act in accordance with the applicable rules. This could lead to a sanction between two and one year.

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IBU concludes that the length of the sanction depends on the time-line of the degradation of Meldonium and that, according to the present state of knowledge, it cannot be excluded that the finding in the Athlete's sample could have been caused by the administration of Mildronate as declared by the Athlete. Therefore, the "WADA-Study" which will determine the duration time of Meldonium in the body should not be disregarded. Hence, IBU requests for relief:

1. *to suspend the proceedings until the "WADA-Study" is available,*
2. *to grant the parties 20 days simultaneously to comment on the results of the study and to complement their request for relief*
3. *that no further hearing is held*
4. *that the Athlete remains provisionally suspended."*

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In their closing statement FBU acknowledged a "*doping failure*" which, however, was non-intentional because of the medical prescription and the fact that the Athlete stopped taking Mildronate 20 days before it was prohibited. Hence, FBU requested the Panel to impose the minimum sanction. However, FBU, in the name and on behalf of the Athlete, agreed with IBU's request to suspend the hearing and to have the opportunity to comment on the results of the study.

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At the end of the hearing, the Athlete made a personal statement. She declared that she was shocked by the information of the AAF. Repeatedly she emphasized that she followed the medical prescription and that she stopped taking Mildronate one month before the World Cup in Ruhpolding. She expected that the WADA Study will prove her innocence.

4. Order of April 4, 2016

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Following the hearing the Panel issued the following order on April 4, 2016:

"The Anti-Doping Hearing Panel, according to Article 8.1.3 IBU Anti-Doping Rules, in the composition of Christoph Vedder, Professor of Law, Munich, Germany (Chair), Wolfgang Schobersberger, Professor in Sports Medicine, Innsbruck, Austria, and Markus Manninen, Attorney-at-Law, Helsinki, Finland, on March 30, 2016, held a hearing in the case of Ms. Olga Abramova.

At the hearing, the matter of whether or not the alleged administration of Mildronate

between November 1 and December 10, 2015 in a dosage of 2 capsules of 500mg each per day could have caused the presence of Meldonium in the Athlete's samples collected on January 10, 2016 was identified as essential. The Expert called by the Panel stated that, according to the present state of literature, most of Meldonium will be excreted from the body within hours. However, according to a pilot study conducted in his laboratory it cannot be excluded that small quantities of Meldonium may remain in the body longer. Based on this, IBU and the Athlete, by common agreement, requested, first, to suspend the proceedings until a study which was called "WADA-study" will be available and, second, that the parties will be given the opportunity to comment on the results of the study. According to the information available at the hearing the results of the study are expected for no later than September 2016.

Based on the above, the Anti-Doping Hearing Panel renders the following order:

- 1. The proceedings are suspended until the results of the scientific studies already initiated by WADA-accredited laboratories on the long-term pharmacokinetics of Meldonium (Mildronate) of healthy humans are available.*
- 2. The parties will be granted 20 days from the communication of the studies, simultaneously to comment on the results and to complement their requests for relief. Because the time-limit for the Athlete to submit a statement in defense has elapsed on March 21, 2016 no further factual evidence is permitted.*
- 3. The Panel will decide whether a hearing is deemed appropriate.*
- 4. The Athlete remains suspended as required by Article 7.11.1 IBU ADR 2014.*
- 5. The Panel reserves the right to issue a new order if appropriate."*

5. The WADA Notice - Meldonium of June 30, 2016

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On June 30, 2016 the WADA issued a second Notice on Meldonium which was based on

"the results from some of the urinary excretion studies that we had commissioned which enable us to provide the following updated guidance regarding the Results Management and Adjudication process to be followed for cases involving meldonium."

39

With reference to that Notice, on July 7 FBU, on behalf of the Athlete requested to "accelerate ... decision-making" and, under letter of July 18, provided an unspecified information by WADA that the concentration of 7.3 microg/ml found on January 10, 2016 "appears possible without the intake of meldonium since January 1, 2016".

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In reply the Panel, having considered the Notice, on July 27, 2016 ordered that the order dated April 4, 2016 is upheld.

6. Resumption of proceedings

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Early September informations became known that the results of the studies commissioned by WADA and a new information on Meldonium were not to be expected in a foreseeable period of time. The Panel's order of April 4, however, was based upon the assumption that WADA would issue fresh knowledge about Meldonium in September or, at least, before the

beginning of the biathlon WC season 2016/2017 which shall start on November 25, 2016.

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Having considered these circumstances the Panel issued the following order on September 15, 2016:

“The Panel refers the Parties to its order, dated April 4, 2016, which was upheld by order of July 27, 2016. Hereby, the Panel suspended the proceedings until the results of WADA commissioned scientific studies on the pharmacokinetics of meldonium are released. According to the then available information, one could expect the studies to become known by September. However, according to recent information, the results of the studies won’t be published in September or even October. The Panel takes into account that the Athlete, on July 6, 2016, requested to resume the proceedings and that the coming season will start on November 25, 2016 in Östersund.

Therefore, the Panel orders as follows:

1. *The proceedings is resumed.*
2. *The Parties are invited to provide final submissions including particular requests for relief no later than October 7, 2016, simultaneously. The Parties are advised that it is the burden of the Athlete to establish, by a balance of probability, the requirements to be met for a possible elimination or reduction of the sanction provided for by Articles 10.2.1.1, 10.2.3, 10.4, and 10.5.2 IBU ADR. The Athlete must provide factual evidence rather than allegations and assertions of innocence. The Panel invites the Athlete to provide evidence of, in particular, the quantities of Mildronate administered, the timing and the termination of its use.*
3. *A hearing will be held at a date to be set later.*
4. *The Panel will call upon an expert testimony.”*

43

On September 21, 2016 the FBU, on behalf of the Athlete, informed the Panel that it brought no further evidence and did not make a submission or requested a particular relief.

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Taking into account that it was not possible to schedule the intended hearing at a date earlier than mid-November, the Panel, on September 28, 2016 *inter alia* ordered:

“According to the present state of information, one cannot expect that the results of the WADA commissioned studies and, most likely, a new Notice issued by the WADA will be available in October and even November. Taking into account the lasting scientific uncertainty about the excretion time of Meldonium and for the sake of utmost fairness to the Athlete the Panel considers to lift the provisional suspension the Athlete serves as of February 4, 2016. Therefore the Parties are invited to submit a brief statement on that issue no later than Tuesday, October 4, 2016.

The Athlete is advised that in case the provisional suspension is lifted and, at a later stage, a period of ineligibility is imposed on her ultimately, all results may be cancelled and medals and prizes returned and the period of ineligibility is likely to start on the day of that decision with, however, credit given for the period of the suspension actually served.”

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In reply, under letter of October 3, 2016, *“in the interest of the upcoming start of the competition season 2016/2017”* the IBU asked the Panel *“to render its decision as soon as*

possible without awaiting further results of scientific research." IBU suggested not to hold a hearing. Based on the available information *"including the WADA notice on Meldonium of 30 June, 2016"* makes the following request for relief:

- “1. *Ms Olga Abramova shall be sanctioned with the period of ineligibility for all biathlon competitions (including all sporting activities organised by a member federation of the IBU) for the period of one year beginning on the date of the Decision by the ADHP.*
2. *Any period of ineligibility served because of her provisional ban of 16 February 2016 shall be taken into account.*
3. *Ms Olga Abramova shall pay an amount of EUR 2'000 to contribute to the costs associated with her anti-doping rule violation (Art. 10.10 ADR).*
4. *The provisional suspension imposed on 16 February 2016 shall remain in place until the date of the decision of the ADHP.”*

The date of the provisional suspension was rectified from February 16, 2016 to February 4, 2016 by letter of the ADHP to the Parties.

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On October 7, 2016 the Panel issued the following order:

- “1. *The provisional suspension imposed on Ms Abramova on February 4, 2016 is upheld.*
2. *The Panel will adjudicate on the matter in due time before the opening of the IBU World Cup season in Östersund.*
3. *The Panel will ask Professor Thevis to give an expert opinion on the state of scientific knowledge with regard to Meldonium, in writing.*
4. *The Panel intends to decide without a further hearing unless it deems necessary to discuss the results of the expert opinion at a hearing.”*

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On October 12, 2016, after the expiration of the time limit set the FBU provided an unspecified information from within the WADA.

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On October 19, 2016, Professor Thevis, the expert appointed by the Panel, delivered his opinion which was forwarded to the Parties the next day.

49

In reply the FBU, on behalf of the Athlete by letter of October 24, 2016 did not comment on the opinion but rather asked the Panel to make the decision.

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On October 25, 2016 the IBU submitted that it upheld its requests for relief as submitted on October 3, 2016 (only nos. 1 - 3). IBU interpreted the expert opinion, expressed doubts concerning the reliability of the statements of the Athlete and stated that, according to the applicable rules of evidence

“it would have been up to the athlete to provide convincing evidence of the date of last intake before 1 January 2016 and to demonstrate that the comparably high concentration of Meldonium on 10 January 2016 was caused by accumulation and inter-individual variations. ... Failing such evidence, the IBU is not convinced by the applicable standard of comfortable satisfaction (Article 3.1 IBU ADR) that the athlete

ingested Meldonium before 1 January 2016.”

IBU concludes that the Athlete committed an ADRV by taking the prohibited substance

“on a date much closer to the date of the sample taking, in any event on or after 1 January 2016, i.e. on a date on which Meldonium was listed on the WADA Prohibited List.”

With regard to the sanction according to Article 10.2 IBU ADR the IBU “accepts” that the ADRV was not intentional

“since it is likely that the medication was used in a medical context unrelated to sport and not with the goal to enhance performance.”

IBU further “accepts - not without hesitation” that there may be found no significant fault because there is no evidence of specific notification by the federation or other warning that the previously admissible substance was now on the list and the product information did not refer to the doping risk. IBU made reference to the decision of the CAS in the case of Ms Sharapova rendered on September 30, 2016. IBU considers a sanction of one year of ineligibility “an adequate and proportional sanction under the circumstances”.

51

In its request for the expert opinion the Panel assumed that the date of the last administration of Mildronate by the Athlete was December 20, 2015. However, the Panel was mistaken by the various dates of the last use of Mildronate offered on behalf of and by the Athlete throughout the proceedings: December 12 (letter of FBU dated February 10), December 20 (FBU’s letter of February 17), and December 10 (at the hearing). Being the date submitted lastly and discussed at the hearing, December 10, 2015 is to be treated as the definite submission by the Athlete.

52

Therefore, on November 7, 2016 the Panel asked the expert to adapt the conclusions of his opinion to assuming that December 10, 2015 was the date of the last administration of Mildronate. The expert responded on the same day as follows:

“In the light of this amendment, the probability of a urinary concentration of 7.3 µg/mL (now 31 days after cessation of the drug use) as a result of the reported drug use regimen warrants reconsideration. Naturally, the same factors as considered before (drug accumulation, interindividual variation) still apply, and again it cannot be excluded that the urinary meldonium concentration reported for the doping control sample originates solely from the 6-week drug administration period terminated on December 10, 2015. However, the probability of this scenario is expected to be lower than the initially estimated moderate likelihood and a substantial drug accumulation in the athlete’s tissue must have prevailed. “

This amendment was served to the Parties on November 8, 2016.

III. In Law

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The Panel considered the facts and the law as discussed both in the written proceedings and at the hearing.

1. Applicable Law

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The Athlete who is an Athlete under the jurisdiction of the FBU is bound by the IBU ADR which, according to their introductory “Scope”

“apply to the IBU and to each of its member federations. They also apply to the following athletes ...each of whom is deemed, as a condition of his/her membership, accreditation and/or participation in the sport, to have agreed to be bound by these Anti-Doping Rules, and to have submitted to the authority of the IBU to enforce these Anti-Doping Rules and to the jurisdiction of the hearing panels specified in Article 8 and Article 13 to hear and determine cases and appeals brought under these Anti-Doping Rules...”

Therefore, the IBU ADR are the law applicable to the dispute before the Panel.

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The law applicable consists of the rules applicable at the time when the alleged ADRV was committed, i.e. on January 10, 2016. Hence, the IBU ADR 2014 as in force as of January 1, 2015 apply. They include the WADA Prohibited List which is in force at the date of the alleged ADRV, i.e. on January 10, 2016.

2. State of the proceedings

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The factual and legal situation of the Athlete's case was discussed in writing before and during the hearing which took place on March 30, 2016. At the hearing, the Athlete's prayer for relief was a *“minimum sanction”* while the IBU pleaded for a sanction between two and one year. In anticipation of WADA commissioned studies on the pharmacokinetics of Meldonium the proceedings were suspended. In September and until today no such studies are available and the state of knowledge on Meldonium is, as the expert in his opinion of October/November 2016 confirmed, almost the same as at the time of the hearing. There is no new scientifically reliable evidence on the excretion of Meldonium.

57

However, on June 30, 2016 the WADA published its Notice-Meldonium which is meant to provide guidance for how to proceed in Meldonium-related cases.

58

After the resumption of the proceedings, IBU, in its submissions made in October 2016, requested a sanction of one year to be imposed, whereas no submissions or specific requests concerning the sanction were made on behalf of the Athlete.

3. Anti-Doping Rule Violation

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Doping, by virtue of Article 1 IBU ADR, is defined as the occurrence of one or more of the ADRVs set forth in Article 2 IBU ADR.

a. Presence of a prohibited substance

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According to Article 2.1 IBU ADR,

“the presence of a prohibited substance or its metabolites or markers in an athlete's sample”

constitutes an ADRV. The prohibited substances are listed in the WADA Prohibited List which, according to Article 4.1 IBU ADR, is incorporated to the IBU ADR.

61

The 2016 Prohibited List, which applied at the time of the sample collection, under S4 *“Hormone and Metabolic Modulators”* par. 5.3. lists *“Meldonium.”*

62

The analysis of the Athlete's A-samples performed by the Cologne laboratory after January 11, 2016 shows the presence of Meldonium. This analysis was conducted in conformity with the ISL.

63

In a situation where the Athlete waived the analysis of the B-sample, the finding of a prohibited substance in the Athlete's A-sample, according to Article 2.1.2 IBU ADR, establishes sufficient proof of an ADRV.

64

Based upon the laboratory's documentation the IBU has discharged its burden of demonstrating the presence of a prohibited substance "to the comfortable satisfaction" of the Panel, according to Article 3.1 IBU ADR. According to Article 3.2.2 IBU ADR, WADA accredited laboratories are presumed to have conducted the sample analysis in accordance with the ISL. The initial review in the course of the results management conducted by the IBU did not reveal any departure from the ISL. No TUE was present.

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The Athlete, through FBU's letter of February 10, 2016, at the hearing and throughout the entire proceedings, did not challenge the finding of Meldonium nor did she claim that a departure from the ISL occurred which reasonably could have caused the AAF actually detected. Although the Athlete claims to have followed the rules and considers herself "innocent" she admitted to have taken Mildronate which contains Meldonium and committed a "doping failure". The Meldonium Notice, too, starts out from the fact that the finding of meldonium after January 1, 2016 constitutes an ADRV.

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Therefore, the presence of Meldonium, which is a prohibited substance listed under S4 par. 5.3 of the 2016 Prohibited List, in the Athlete's A-sample has been proven. According to Article 2.1.1 IBU ADR no intent, fault, negligence, or knowing use is required in order to constitute an ADRV.

b. Administration of a not-yet prohibited substance

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However, the Athlete contends that the finding of Meldonium in her samples, collected on January 10, 2016, is the consequence of its administration, following the prescription of her doctor, from November 1 through December 10, 2015 which means at a period of time when Meldonium was not yet forbidden by the 2016 Prohibited List.

68

According to Article 1 in conjunction with Article 2.1 IBU ADR the mere

"presence of a prohibited substance ... in an Athlete's sample"

constitutes an ADRV. The presence of Meldonium in the Athlete's A-sample on January 10, 2016 is, as determined above, proven by the analysis of the Cologne laboratory and admitted by the Athlete. Therefore, the elements of an ADRV under Article 2.1 IBU ADR are met.

69

By virtue of the 2016 Prohibited List, the presence of Meldonium is prohibited by law from the first day of the effectiveness of the new list. The applicable rules do not explicitly or implicitly provide for a transitional period after January 1, 2016 for the ongoing effects of the administration of substances which were not on the list prior to the end of 2015. Furthermore, following the information issued by WADA on September 29, 2015 the Ukrainian biathlon athletes including the Athlete were informed about the inclusion of Meldonium in the List in the first week of October 2015. Therefore, the rule change came to no surprise for the

Athlete.

70

The argument that substances can be taken legally until the entry into force of the Prohibited List which lists them, does not find any ground in the applicable anti-doping rules. The fact that a substance is not listed, is not to be understood as a kind of silent positive list which allows its administration until the new list comes into effect notwithstanding the ongoing effects of the administration. Instead, the ADRV is constituted by the presence, *i.e.* the possible effects of a substance, in the Athlete's body.

71

In the event the administration of a substance not yet listed would be considered to be permitted until the end of December 2015, its presence including a possible performance-enhancing effects consequently were to be considered legal, *i.e.* would not constitute an ADRV without time limit, depending on the half-life and the degradation of the substance. This construction would run against the clear definition of an ADRV under Article 2.1 IBU ADR and actually delay the entry into force of the prohibition of a newly listed substance.

72

Based on the foregoing the Panel concludes that the mere presence of Meldonium found in the Athlete's sample collected on January 10, 2016 constitutes an ADRV in the sense of Article 2.1 IBU ADR in conjunction with the 2016 Prohibited List. The time of the administration of Meldonium - whether before or on or after January 1, 2016 - is irrelevant in this respect. The time of the administration may, however, have an impact on the determination of the sanction

4. Sanction

a. The Meldonium Notice of June 30, 2016

73

When the many AAFs for Meldonium occurred in early 2016 the athletes generally claimed that they stopped the use of that substance before January 1, 2016 and that, according to the information available at that time, Meldonium would be excreted within hours or in a few days time at the latest. The explanation delivered by most athletes was that, against that expectation, small detectable dosages of Meldonium would remain longer in the athlete's system. Therefore, WADA commissioned studies on the urinary excretion of Meldonium which are still underway. However, for the time being WADA issued two Notices on Meldonium to assist the federations in the handling of Meldonium cases.

74

The second and presently applicable Notice, dated June 30, 2016, was issued when WADA received the results from some urinary excretion studies. With this Notice WADA intends to

“provide (...) guidance regarding the Results Management and Adjudication process to be followed ... for cases where athletes claim that the substance was taken before 1 January 2016.”

WADA denotes *“this guidance (to) be helpful to all anti-doping organisations that are managing meldonium cases.”*

75

Although the Notice has no legally binding effect as such the Panel understands it as an interpretation of the applicable rules adopted with the authority of the WADA to clarify its rules which must be taken into consideration as *“guidance”* when adjudicating a Meldonium case. WADA has the inherent authority to provide clarification for the uniform application of its rules.

76

In fairness to the Athlete and for the sake of legal certainty as well as equal treatment of the athletes concerned the Panel comes to the view that the Notice on Meldonium issued by WADA on June 30, 2016 should apply to the case before it. IBU complies with the WADA Code when it follows the “*guidance*” recommended by the WADA itself.

77

According to the introductory chapeau the Notice is intended to apply to

“cases where athletes claim that the substance was taken before 1 January 2016”.

Pursuant to the Notice, the legal consequences of the finding of Meldonium differ following the time of the sample collection and the concentration of Meldonium found. The Athlete’s sample was collected on January 10, 2016 and the analysis revealed a concentration of 7,3 microgram/ml. For such situation the first table of the Notice provides:

“Normal results management, Anti-Doping Organization (ADO) may request the assistance of WADA to facilitate the scientific review and interpretation.”

WADA did not provide recent scientific results, yet.

78

The Notice, according to its second paragraph, applies where an athlete

“claims that the substance was taken before 1 January 2016”.

In its last submission IBU contends that Meldonium was taken on or after January 1, 2016. However, the expert opinion of October 19, 2016, based upon the scientific knowledge currently available, concludes that it “*cannot be excluded*” that the concentration found was caused by an administration which was terminated on December 20, 2015. Also in the amended opinion dated November 7, 2016, the expert states that “*it cannot be excluded*” that the concentration found “*originates solely from the 6-week drug administration period terminated on December 10, 2015*”. The expert concludes:

“However, the probability of this scenario is expected to be lower than the initially estimated moderate likelihood and a substantial drug accumulation in the athlete’s tissues must have prevailed.”

The panel does not consider this statement a sufficient proof that the Athlete actually took Mildronate on or after January 1, 2016 but, by a balance of probability, comes to the view that it is more likely that she terminated using Mildronate before than on or after January 1, 2016. Therefore, the Athlete’s case is generally covered by the scope of application of the Meldonium Notice.

79

However, for the Athlete’s situation the Notice does not provide for a particular conclusion such as “no fault” for lower concentrations. Instead, the Notice provides “*normal results management*”. This includes, as stated in the chapeau (see par. 74), “*the Adjudication process*”. Therefore, the Panel concludes that, in the absence of explicit guidance provided by the Notice for the Athlete’s case, the IBU ADR apply normally as they stand.

b. Regular sanction

80

For a first ADRV in the form of the presence of a prohibited substance Article 10.2.1 IBU ADR provides a regular sanction of four years-ineligibility. The doping offense under consideration is the Athlete’s first ADRV.

c. Reduction of the sanction for non-intentional use

81

If the first ADRV in the form of the presence of a prohibited substance involves a non-specified substance such as Meldonium, according to Article 10.2.1 in conjunction with Article 10.2.1.1 IBU ADR, the four year-period applies

“unless the athlete ... can establish that the anti-doping rule violation was not intentional.”

The then sanction would be a two years-period of ineligibility.

82

According to Article 10.2.3 IBU ADR, the objective of the term “*intentional*” is to single out “*those athletes who cheat*”. Article 10.2.3 IBU ADR defines “*intentional*” by specifying two elements: (1) the athlete knew that his conduct constituted an ADRV, or (2) “*knew that there was a significant risk that the conduct might constitute or result in an ADRV and manifestly disregarded that risk*”. Thus, an ADRV is to be considered “*not intentional*” if an athlete did not know at all or took a non-significant risk that his behaviour constituted an ADRV.

83

Hence, pursuant to Article 10.2.1.1 in conjunction with Article 3.1 IBU ADR, the Athlete must establish by a balance of probability that she, when administering Mildronate, did not know at all or actually knew that there was only a non-significant risk that her conduct constituted an ADRV.

84

The Athlete submitted in her defence that she administered Mildronate for medical reasons in order to cure bronchial asthma (diagnosed by the Russian Federal Medical and Biological Agency, Moscow) and dysmetabolic cardiomyopathy (diagnosed by the Ukrainian Railways Clinical Hospital No. 2 in Kiev) following the prescriptions and instructions by her team doctor. In 2015, for Mildronate a TUE was not required. She did not declare the administration of Mildronate on the DCF. However, she was not obliged to do so because the DCF only requires to name medications and substances which were taken during the last seven days before the sample collection. She and the team doctor trusted in the information on the leaflet accompanying the Mildronate medication that the substance would be excreted within hours or a few days. This was the state of the knowledge available at that time. She further claimed that she terminated, on the team doctor’s advice, the administration of Mildronate on December 10 instead of December 25, 2015 as planned originally, three weeks before the entry into force of the 2016 Prohibited List.

85

These circumstances are sufficiently supported by written and oral evidence provided throughout the proceedings and no counter-evidence was provided. Nevertheless, based upon the expert opinion as amended, the Panel is of the view that the Athlete did not establish by a balance of probability that she stopped using Mildronate on December 10, 2015 (see above par. 78). But the Panel finds a sufficient likelihood that she stopped the administration of Mildronate later in December 2015 in order to be clean of Meldonium before January 1, 2016.

86

Therefore, the Athlete has proven, by a balance of probability, that she took the prohibited non-specified substance non-intentionally in the sense of Article 10.2.3 IBU ADR. The Panel accepts that, by using a not yet-prohibited substance as long as it seemed legally possible at that time, she did not intend to cheat rather than taking the benefit from the legal situation. However, according to Article 2.1.1 IBU ADR she was fully responsible that no prohibited substance would be present in her body from January 1, 2016 onwards. The Athlete took that risk but that risk was not significant. Hence, the reduced sanction to be imposed on the Athlete is a two years-period of ineligibility.

d. Elimination or Reduction of the Sanction for exceptional circumstances

87

According to Article 10.2 in conjunction with Articles 10.4, 10.5, or 10.6 IBU ADR the period of ineligibility can be further reduced or eliminated in a situation of no or no significant fault or negligence or when substantial assistance was provided. The Athlete did not submit any information, not even evidence in support of a situation of no fault or negligence in the sense of Article 10.4 IBU ADR nor does the Notice provide for “no fault” in her case. The requirements established by the “Comment to Article 10.4” actually are not met. Furthermore, the Athlete did not rely on substantial assistance nor did she meet the relevant requirements in the sense of Article 10.6.1.1 IBU ADR.

88

If an athlete establishes by a balance of probability, as required by Article 3.1 IBU ADR, that, due to exceptional circumstances, he or she bears no significant fault or negligence Article 10.5.2 IBU ADR allows to reduce the period of ineligibility up to one-half of the period of ineligibility otherwise due.

89

In the event of an ADRV for the presence of a prohibited substance, according to the definition of “*no significant fault or negligence*” attached to the IBU ADR, an athlete must establish how the substance entered his or her body. The Athlete identified the substance she actually took and informed about how the substance entered her body.

90

Furthermore, the Athlete must establish exceptional circumstances in her individual case which may justify the reduction of the sanction. In Meldonium-related cases as the Athlete’s one exceptional circumstances are present in general because the use of a later-banned substance was not as such prohibited at the time of the administration. The Meldonium Notice, as WADA’s response to that situation of scientific uncertainty, for some situations establishes exceptional circumstances in the form of “*no fault*” depending on the amount of the concentrations found and the time of the sample collection. Although the Panel, based upon the amended expert opinion (“*a lower than moderate likelihood*”) does not believe that the Athlete terminated to administer Mildronate on December 10, 2015, the Panel accepts that she stopped using the substance some time later by or close to the end of December 2015 in order to be clean by January 1, 2016 (see above par. 85).

91

On the other hand, in the first week of October 2015 the Athlete was officially informed by the FBU of the new Prohibited List and therefore fully aware of the fact that her medication was prohibited as of January 1, 2016. In response to that and on the advice of her team doctor she stopped taking Mildronate, however too late. The Panel accepts that she did what she and her entourage believed sufficient to comply with the upcoming Prohibited List. She trusted in the information provided in the leaflet of the medication and the scientific knowledge available at that time which indicated excretion times of Meldonium of some hours or a few days. However, she was responsible for what remained in her body on or after January 1, 2016 and, therefore, acted negligently but her negligence was not significant.

92

Therefore, the Panel accepts that, in the Athlete’s case, exceptional circumstances were present which allow to reduce the sanction until no less than one-half of the sanction otherwise applicable which would amount to a two-years period of ineligibility. In order to determine the range of the reduction the Panel takes into account that the Meldonium Notice allows for a concentration of 5 microg/ml or lower found in samples collected on January 10, 2016 the full elimination of the sanction and the 15-months sanction imposed upon Maria Sharapova who admittedly had applied Meldonium after January 1, 2016 by the CAS Award of September 30, 2016 (CAS 2016/A/4643, Sharapova v. ITF). In the light of the above, the Panel finds that the degree of negligence shown by the Athlete is low and concludes that the

appropriate period of ineligibility to be imposed on the Athlete for the ADRV committed on January 10, 2016 is one year.

4. Disqualification of results

93

Pursuant to Article 9 IBU ADR, an in-competition test automatically leads to the disqualification of the results in that competition including forfeiture of medals, points and prizes.

94

In addition to that, according to Article 10.8 IBU ADR

“ all ... competitive results obtained from the date a positive sample was collected ..., through the commencement of any provisional suspension ..., shall, unless fairness requires otherwise, be disqualified”

The Athlete has not presented any grounds why it would be unfair to disqualify her results between January 10, 2016 and February 3, 2016. Therefore, all competitive results the Athlete may have obtained on January 10, 2016 through February 3, 2016 shall be disqualified.

5. Commencement of the Period of Ineligibility

95

According to Article 10.11 IBU ADR, the period of ineligibility shall commence on the date of the decision of the Panel. Pursuant to Article 10.11.3.1 IBU ADR, the time of a provisional suspension which was imposed upon the Athlete on February 4, 2016 is to be credited against the period of ineligibility ultimately imposed.

IV. Costs .

96

According to Article 10.10 IBU ADR, the IBU

*“may, in its discretion and subject to the principle of proportionality, elect to
(a) recover from the athlete ... costs associated with the anti-doping rule violation, regardless of the period of ineligibility imposed...”*

IBU requested a contribution of 2.000 Euro towards the costs occurred for the handling of the present doping-related case.

97

The Panel deems that sum appropriate taking into account the sample analysis and the complexity of the proceedings and orders the Athlete to pay 2.000 Euro to the IBU.

V. Conclusions

98

The A sample collected from the Athlete on the occasion of an in-competition test conducted on January 10, 2016 reveals the presence of Meldonium which is a prohibited substance on the 2016 WADA Prohibited List and, therefore, the Athlete committed an ADRV according to Article 2.1 IBU ADR.

99

At the state of scientific knowledge about the pharmacokinetics of Meldonium available today, the Panel further concluded: Due to the fact that the Athlete used the prohibited substance non-intentionally and that exceptional circumstances in the form of no significant fault or negligence were present the Athlete shall be declared ineligible to compete for a period of

one year commencing on the date of the issuance of this decision. The period of time elapsed since the Athlete's provisional suspension, i.e. February 4, 2016 must be credited to her.

100

All competitive results obtained by the Athlete as of January 10, 2016 are disqualified. All medals, points, and prizes are forfeited.

101

The athlete shall pay a contribution of 2.000 Euro towards the costs occurred for the IBU.


VI. Decision


On these grounds the Panel decides:

1. Ms. Olga Abramova committed an anti-doping rule violation in the form of the presence of a prohibited substance, according to Article 2.1 IBU ADR.
2. Ms. Olga Abramova is ineligible to compete for one year commencing on the date of the pronouncement of this decision.
3. The period of the provisional suspension served by Ms Olga Abramova as of February 4, 2016 shall be credited.
4. All competitive results obtained by Ms. Olga Abramova as of January 10, 2016 through February 3, 2016, if any, are disqualified with all resulting consequences including forfeiture of medals, points, and prizes.
5. Ms Olga Abramova shall pay to IBU a contribution of 2.000 Euro.

The Anti-Doping Hearing Panel
November 14, 2016


Christoph Vedder
Chairman of the Panel


Wolfgang Schobersberger
Member of the Panel


Markus Manninen
Member of the Panel