

**Anti-Doping Hearing Panel**  
of the  
**International Biathlon Union**

Decision  
in the matter of  
**Ms. Teja Gregorin**

The Anti-Doping Hearing Panel ("ADHP"), according to Article 8.1.3 of the IBU Anti-Doping Rules ("IBU ADR") (2015 edition), in the composition of Christoph Vedder, Professor of Law, Munich, Germany (Chair), Lars Kolsrud, Medical Doctor, Oslo, Norway, and Markus Manninen, Attorney-at-Law, Helsinki, Finland tried the case of Ms. Teja Gregorin and, having duly deliberated the facts and the law, renders the following decision:

**I. Statement of Facts**

1

Ms. Teja Gregorin (the "Athlete"), an athlete under the jurisdiction of the Ski Association of Slovenia Biathlon Assembly ("SASBA"), competed in several competitions during the Olympic Winter Games Vancouver 2010 (the "Vancouver Games") between 13 and 23 February 2010. The Athlete was subject to three in-competition doping tests during the Vancouver Games, where the sample No. 1899932 was provided on 6 February 2010. Since the quantity of urine in sample No. 1899932 was not sufficient, the Athlete provided a second sample with No. 1902329. The Athlete provided the third sample, No. 1902525, on 7 February 2010.

2

The three A samples were analysed during the Vancouver Games by the WADA-accredited Laboratory in Vancouver. No Adverse Analytical Finding ("AAF") was identified at that time. After the Vancouver Games, all samples collected in the Vancouver Games were transferred to the WADA-accredited laboratory for doping analysis in Lausanne, Switzerland (the "Lausanne Laboratory") for long term storage. Re-tests on the remaining part of the Athlete's three A samples took place at the Lausanne Laboratory in Summer 2017. The results were communicated to the International Olympic Committee (the "IOC") on 24 August 2017 and revealed the presence of the prohibited substance Growth Hormone Releasing Peptide -2 ("GHRP-2") metabolites (GHRP-2 M2).

3

By letters of 29 September 2017, the IOC informed the Athlete and the International Biathlon Union (the "IBU") about the finding of GHRP-2 M2 in the Athlete's samples and provided her with an opportunity to request the opening and analysis of the B samples.

4

On 4 October 2017, the IBU provisionally suspended the Athlete. On the same day, the Athlete declared to the IOC that she did not accept the AAF and requested the opening and analysis of the B samples, but that she would not attend this event in person or by a representative.

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On 10 October 2017, the Athlete accepted the provisional suspension imposed by the IBU.

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The B samples were opened and analysed on 19 October 2017. The Athlete did not attend the opening in person, nor was she represented on this occasion. The analysis of the B samples confirmed the presence of GHRP-2 M2 in the Athlete's samples.

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On 25 October 2017, the IOC informed the Athlete about the AAF of her samples. On 27 October 2017, the Athlete accepted the AAF in her B samples.

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By decision of 18 December 2017, the IOC Disciplinary Commission (the "IOC DC") found that the Athlete had committed an Anti-Doping Rule Violation ("ADRV") pursuant to Article 2 of the IOC Anti-Doping Rules for the Vancouver Games (the "IOC ADR") and retrospectively disqualified her from all competitions in which she participated during the Vancouver Games. Moreover, the IOC invited the IBU to take notice of the AAF and to take action within its own competence.

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On 29 January 2018, the IBU referred the matter to the ADHP and submitted its reasoned statement together with 8 exhibits.

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On 15 February 2018, the Parties were notified that, according to Article 8.1.3 of the IBU ADR (2015 edition), a Panel was established to hear the Athlete's case; namely: Christoph Vedder, Germany, acting as Chairman, Lars Kolsrud, Norway and Markus Manninen, Finland.

## **II. Proceedings before the Anti-Doping Hearing Panel**

### **1. The IBU ADHP**

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According to Article 8 of the IBU ADR 2015, 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 of the IBU ADR 2015, the decisions of the ADHP may be appealed directly to the Court of Arbitration for Sport ("CAS") in Lausanne, Switzerland.

12

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 of the IBU ADR 2015 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 it.

13

Neither Party has challenged the IBU ADHP's jurisdiction to hear the case.

### **2. The Proceedings before the Panel and the Submissions of the Parties**

#### **a. Summary of the IBU's Submissions**

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In its written statement dated 29 January 2018, the IBU submitted a request for relief that was subsequently amended.

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In its written statement dated 29 January 2018, the IBU presented that since the rules on the statute of limitation are not procedural rules, the IBU ADR 2009 are applicable for this question. The samples causing AAFs were collected from the Athlete on 6 and 7 February 2010. Therefore, as the Athlete took the prohibited substance in order to illegitimately enhance her performance during the Vancouver Games and it was found in her body at that time, the ADRV shall be deemed to have been committed then. The IBU took note of the IOC's actions due to the AAF and commenced proceedings against the Athlete by provisionally suspending her on 4 October 2017. The limitation period was interrupted by

the provisional suspension on 4 October 2017 within the time limit of eight years imposed in Article 17 of the IBU ADR 2009.

16

The IBU acknowledged that it bears the burden of proof for an ADRV and noted that facts related to an ADRV may be established by any reliable means. WADA-accredited laboratories are presumed to have conducted sample analysis and custodial procedures in accordance with the WADA International Standard for Laboratories (the "ISL"). With respect to the Athlete's ADRV, the IBU relies on the information provided by the IOC. The IBU finds that the IOC has validly demonstrated the presence of a prohibited substance in the Athlete's samples, which constitute violations of the IOC ADR and of Article 2.1 of the IBU ADR 2009.

17

According to the IBU, the AAFs with respect to the three samples constitute one single violation. The Athlete has never been found guilty of an ADRV before the one committed during the Vancouver Games. According to Article 10.2 of the IBU ADR 2009, the period of ineligibility for a violation of Article 2.1 shall be two years.

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The IBU referred to Article 10.9 of the IBU ADR 2009, according to which the period of ineligibility shall 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.

19

On 28 May 2018, the Chairman of the Panel invited the IBU to submit a response to the Athlete's submission of 11 April 2018. The IBU submitted a response on 5 June 2018 containing the following amended request for relief:

*"1. The Athlete shall be declared ineligible for a period of two years starting on the date of the decision of the ADHP because of an Anti-Doping Rule Violation ("ADRV") according to Art. 2.1 IBU Anti-Doping Rules in their version which entered into force on 1 January 2009 ("ADR 2009").*

*2. The period of the provisional suspension which began on 4 October 2017 shall be credited against the period of ineligibility.*

*3. All results achieved by the Athlete between 7 February 2010 and 4 October 2017 shall be disqualified with all resulting consequences, including forfeiture of any medals, points and prizes.*

*4. The costs of the hearing before the ADHP shall be borne by the Athlete."*

20

The IBU submitted that, as the Athlete agrees that the IBU ADR 2009 are applicable to the present matter, the statute of limitation is eight years. Article 17 of the IBU ADR 2009 stipulates that an action may be commenced within eight years from the date of the ADRV. The commencing dates are the dates of sample collection i.e. 6 and 7 February 2010. "*Action (...) under these Anti-Doping Rules*" means the initiation of a proceeding under Article 7 of the IBU ADR, and in particular the notification of the Athlete of an AAF according to Article 7.1.4 of the IBU ADR 2009.

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According to the IBU, the IOC notified the Athlete about the AAFs on 29 September 2017. The IBU notified the Athlete of her provisional suspension on 4 October 2017. The Athlete's counsel confirmed these notifications on 10 October 2017. The IBU then initiated the proceedings with the ADHP on 29 January 2018. The statute of limitation was validly interrupted on 4 October 2017. Also the proceedings before the ADHP were initiated before the expiration of the statute of limitation. Doping

proceedings under the ADR are commenced with the first step or action by the relevant anti-doping organization (“ADO”). That is the notification to the Athlete.

22

The IBU put forth that it remains uncontested that the ordinary sanction for an ADRV shall be two years. The start date of the suspension is not, however, clear. According to Article 10.9 of the IBU ADR 2009, the period of ineligibility shall start on the date of the hearing decision providing for ineligibility or on the date the ineligibility is accepted or imposed. The start date may be earlier in three scenarios.

23

According to the jurisprudence of the ADHP, the substantial delay provision (Article 10.9.1 of the IBU ADR) does not apply in the event of re-testing, where the substantial delay is attributable to the Athlete. The Athlete made special efforts in order to conceal the ADRV. The IBU did not prolong the proceedings. It notified and provisionally suspended the Athlete as soon as it had the results of the re-testing and initiated the disciplinary proceedings shortly after it was notified of the decision of the IOC DC.

24

With regard to prompt admission (Article 10.9.2 of the IBU ADR), in her letter accepting the provisional suspension, the Athlete explicitly refused to admit that she was guilty of an ADRV.

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Hence, the IBU submits that, the start date of the suspension shall be the date of the decision of the ADHP and a credit for the period of the provisional suspension shall be granted.

26

The IBU submitted that the ADHP has to decide on the disqualification of all results in competitions outside the Olympic Games. According to the jurisprudence of the ADHP, the fairness exception provided for in Article 10.8 of the IBU ADR 2009 goes against the rationale of re-testing. The long time span between the sample taking and the discovery of the AAF is imputable to the Athlete only. By using advanced methods to conceal the use of a prohibited substance, the Athlete could have foreseen that a positive finding would sooner or later be detected. Because the long period during which the ADRV remained undetected is attributable to the Athlete, the period of disqualification cannot be considered excessive. The negative doping tests of the Athlete in the period after 7 February 2010 until 10 October 2017 do not change the fact that Article 10.8 of the IBU ADR 2009 must be strictly applied, also in the interest of clean athletes.

27

On 27 June 2018, the Chairman of the Panel invited both Parties to comment on Article 20.7.2 of the IBU ADR 2015, which entered into force on 1 January 2015.

28

The IBU submitted on 6 July 2018 that according to Article 20.7.2 of the IBU ADR 2015, Article 17 is a procedural rule and must be applied retroactively. However, if the claim was already time barred under the ADR in force at the effective date of the ADR 2015, the prescription time may not be prolonged to ten years.

29

The ADRVs were committed on 6 and 7 February 2010. Under the IBU ADR 2009, they would have been time barred only on 6 and 7 February 2018. The limitation period was extended to ten years by the IBU ADR 2015. The extension applies to all claims, which were not already time barred by the applicable ADR on 1 January 2015. The present claim was not time barred by the IBU ADR 2009. With the entry into force of the IBU ADR 2015, the Athlete’s ADRVs’ statute of limitation was extended to 6 and 7 February 2020.

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According to the IBU, the limitation period of 10 years applies to the present proceedings and the claim is not time barred.

**b. Summary of the Athlete's Submissions**

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On 11 April 2018, the Athlete filed her submission with the following requests for relief:

*“(1) No further sanction (penalty) or indeed any other action after 07.02.2018 can be taken against the Athlete Teja Gregorin, following her single Anti-Doping Rule Violation (“ADRV”) committed on 06.02.2010 and on 07.02.2010 at the Olympic Games Vancouver 2010.*

*(2) All Athlete's Results from all IBU competitions, except her Results from Olympic Games Vancouver 2010, are preserved.*

*(3) Both parties carry their own costs of ADHP proceedings.*

*or in the alternative:*

*(1) The Athlete Teja Gregorin shall be declared Ineligible, following her single Anti-Doping Rule Violation (“ADRV”) according to Art. 2.1 IBU Anti-Doping Rules in their version which entered into force on 1<sup>st</sup> January 2009 (“ADR 2009”), for a period of two (2) years, starting retroactively two years before the date of the decision of the ADHP and expiring on the date of the decision of the ADHP.*

*(2) The Athlete's Results from all IBU competitions from 06.02.2010 to 21.02.2010, with all resulting consequences, including forfeiture of any medals, points and prizes, shall be Disqualified.*

*(3) Both parties carry their own costs of ADHP proceedings.”*

32

The Athlete does not contest the presence of a prohibited substance in her samples from 6 and 7 February 2010. She emphasizes that the ADHP's competence does not cover the Olympic Games.

33

The Athlete agrees with the IBU that rules on the statute of limitations are not procedural rules and that the IBU ADR 2009 is applicable. In any case, since the IBU ADR 2015 extended the statute of limitations from eight to ten years, the principle of “*lex mitior*” as per Article 20.7.2 of the IBU ADR 2015 has to be applied. IBU ADR 2009 states that no action may be commenced after eight years from the date the violation occurred. This must be understood that nothing can be done after eight years. Therefore, any further sanction or any other action after 7 February 2018 cannot be taken. It is inadmissible for the ADHP to further sanction the Athlete or to take any other action regarding the Athlete after the limitation period has expired. The commencement date of these proceedings is irrelevant as the prescription period is absolute and set to eight years from the date of the ADRV.

34

The Athlete agrees with the IBU that the three samples constitute one single ADRV. The Athlete also agrees that the period of ineligibility imposed for a violation of Article 2.1 of the IBU ADR 2009 shall be two years. However, with regard to the start date of the ineligibility period, the IBU has omitted the exceptions to the main rule. First, on 4 October 2017, the IBU provisionally suspended the Athlete and the Athlete voluntarily accepted the provisional suspension. The Athlete has not violated the provisional suspension and must receive credit against any period of ineligibility, which may ultimately be imposed. By taking this into account, the ineligibility could therefore start on 4 October 2017 and end on 4 October 2019 at the latest.

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The Athlete further submitted that she has not contested the ADRV. Therefore, Article 10.9.2 of the IBU ADR regarding timely admission has to be applied. Considering that the Athlete shall serve at least one-half of the period of ineligibility going forward from the date of the decision imposing a sanction, the ineligibility could start on 4 October 2017 and end on 4 October 2018.

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According to the Athlete, re-testing the samples after 7.5 years constitutes a substantial delay not attributable to the Athlete. Correct implementation of Article 10.9.1 of the IBU ADR to the case at hand requires that the ineligibility could start on 7 February 2010 and must end on 7 February 2012. The Athlete proposes that the ADHP interprets Article 10.9.1 of the IBU ADR 2009 in the way that the ineligibility starts on the date of re-testing the results i.e. 24 August 2017 and ends in one year (as per Article 10.9.2 of the IBU ADR 2009). As this proceeding is also attributed to the substantial delay, the Athlete sees fit that the ADHP sets the start date on the day that precedes the ADHP decision for two years and ends the ineligibility on the date of the ADHP decision.

37

While the IBU suggests the disqualification of the Athlete's results over a period of 6 years and 8 months, the Athlete contends that this would be extremely unjust to the Athlete when compared with other than re-test cases. It would also mean more than a triple punishment, which would not be proportional. The Athlete was never found guilty of an ADRV before the one committed during the Vancouver Games. She is therefore presumed innocent of any other ADRV since 7 February 2010. The Athlete has been tested 35 times since 7 February 2010 and all of the results were negative. Furthermore, the Athlete's biological passport has been valid since 24 October 2012. In this case, the Athlete's sample taken on 21 February 2010 is negative. It is therefore clear that only the period between 7 and 21 February 2010 may be subject to disqualification.

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On 28 May 2018, the Athlete was invited to respond to the IBU's second submission. On 14 June 2018, the Athlete filed her response.

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The Athlete held that the statute of limitations in Article 17 of the IBU ADR 2009 shall be interpreted as an absolute prescription, which forbids any action commenced after eight years from the date the violation occurred. It is not relevant when the IBU started the proceedings against the Athlete. It is only relevant that after 7 February 2018 any action against the Athlete is time barred. Further, the proceedings before the ADHP were not initiated before 7 February 2018 as the Athlete was notified for the first time on 9 March 2018.

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With regard to the sanction start date, the Athlete put forth that it is not true that the IBU initiated the disciplinary proceedings shortly after it was notified of the decision of the IOC DC. The IOC DC decision was issued on 18 December 2017 but the IBU proceedings commenced on 9 March 2018. As of the date of the Athlete's second submission, more than eight months have passed since the date of the provisional suspension, but the ADHP decision is not even in sight. Such a delay is not attributable to the Athlete.

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The Athlete noted that it is not true that she used sophisticated doping methods, which prevented the finding of the prohibited substance. This was a one-time mistake in a direct connection with the Vancouver Games for which the Athlete has already been severely punished. The ADRV was not detected because of the short influence of GHRP-2 on the Athlete's performance and because the testing methods improved through time, on which the Athlete had no influence. The timing of the decision to re-test Athlete's samples is not attributable to the Athlete. The testing methods effectively detecting GHRP-2 were developed late 2010 and presented in 2011.

42

Concerning timely admission, the Athlete pointed out that she did not explicitly refuse to admit that she was guilty of an ADRV. She was merely quoting the comment to Article 10.11.3.2 of the IBU ADR 2015, which also states that such action by the Athlete shall not be used to draw an adverse inference against the Athlete. The Athlete's admission was prompt as she has not competed after 17 September 2017, whereas the B sample confirmed the AAF on 19 October 2017 and the first notification from the IBU that actually reached the Athlete was on 4 October 2017.

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With regard to disqualification, the Athlete submitted that because the ADHP does not have the competence to disqualify her results from the Olympic Games, IBU's request to disqualify all results from 7 February 2010 to 4 October 2017 would lead to an illogical outcome where the Athlete would keep her results at the Sochi Olympic Games but lose all other results before and after Sochi.

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According to the Athlete, the fairness exception is widely recognised by the CAS and the ADHP. The Loginov and Sednev cases cannot be compared to the present case, because in Mr. Loginov's case the disqualification period was 12 months and in Mr. Sednev's case 23 months. Further, in Mr. Loginov's case neither party relied on the fairness clause, and in the same case the ADHP explicitly mentioned that the application of the IBU ADR 2009 does not lead to a disproportionate sanction. Further, the substance used by the Athlete has an effect of a maximum of 72 hours. Numerous tests at a later time show no ADRVs and the Athlete's biological blood passport is clean.

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The Athlete noted that she may be sanctioned with a two-year ineligibility period in the very end of her career. She already lost the opportunity to defend her bronze medal of Sochi in PyeongChang and may not be able to make a come-back after her ineligibility period. These consequences only may be seen disproportional considering the time lapsed since the ADRV. However, if in addition all the Athlete's results from 2010 until this day are disqualified, the penalty is even harsher than the ineligibility.

46

According to the Athlete, Article 20.7.2 of the IBU ADR 2015 refers to the statute of limitations (Article 17 of the IBU ADR 2015) as a procedural rule. This is incorrect and does not apply here. Both Parties have acknowledged that the statute of limitations is a substantive rule. As the IBU ADR 2009 is clearly *lex mitior* in this dispute, and as the statute of limitations is a substantial rule, it must be applied. Applying Article 17 or Article 20.7.2 of the IBU ADR to this dispute would constitute a breach of Article 7 of the ECHR.

### **3. Hearing**

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The Parties agreed that there is no need to arrange a hearing and that the Panel may adjudicate the matter based on the documentation of the case.

### **III. In Law**

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

#### **1. Applicable Law**

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The Athlete, who operates under the jurisdiction of the SASBA, is bound by the IBU ADR which, according to their introductory "Scope" (IBU ADR 2009; IBU ADR 2015 contains a similar clause)

*“apply to IBU, each National Federation of IBU and each Participant in the activities of IBU or any of its National Federations by virtue of the Participant’s membership, accreditation, or participation in IBU, its National Federations, or their activities or Events.”*

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

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The IBU ADR 2015 shall be applied to the procedural issues. The law applicable to the substantive issues consists of the rules in force at the time when the alleged ADRV was committed, i.e. on 6 and 7 February 2010. Hence, the IBU ADR as adopted in 2008 apply unless the IBU ADR 2015 is *lex mitior*. However, considering that a first ADRV concerning a non-specified substance leads to a four-year ineligibility period under the IBU ADR 2015, unless an athlete can establish that the ADRV was not intentional, it cannot be held *lex mitior* in the present case.

## **2. Statute of Limitations**

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The Athlete has put forth that the IBU is precluded from commencing an action against her because the claim is time-barred. In addition to other arguments summarized above, the Athlete has invoked Article 17 of the IBU ADR 2009, which reads as follows:

*“No action may be commenced under these Anti-Doping Rules against an Athlete or other Person for a violation of an anti-doping rule contained in these Anti-Doping Rules unless such action is commenced within eight years from the date the violation occurred.”*

52

The Panel disagrees with the Athlete’s position. First, based on Article 20.7.2 of the IBU ADR 2015, the above stipulation is not applicable in the present proceedings. Article 20.7.2 of the IBU ADR 2015 reads as follows:

*“(…) the statute of limitations set forth in Article 17 are procedural rules and should be applied retroactively; provided, however, that Article 17 shall only be applied retroactively if the statute of limitations period has not already expired by the effective date.”*

53

According to Article 17 of the IBU ADR 2015, the limitation period is 10 years:

*“No anti-doping rule violation proceeding may be commenced against an athlete or other person unless he or she has been notified of the anti-doping rule violation as provided in Article 7, or notification has been reasonably attempted, within ten years from the date the violation is asserted to have occurred.”*

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The Panel notes that the statute of limitations period provided in Article 17 of the IBU ADR 2009 had not expired by the effective date of the IBU ADR 2015: the alleged ADRVs occurred on 6 and 7 February 2010 and, pursuant to Article 20.7 of the IBU ADR 2015, the effective date of the IBU ADR 2015 is 1 January 2015. Thus, the eight-year limitation period had not expired before the entry into force of the IBU ADR 2015 and the 10-year limitation period applies. Considering that the 10-year limitation period expires in February 2020, the IBU’s claim is not time-barred.

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The Panel is mindful of the Athlete’s view that the qualification as a *“procedural rule”* by Article 20.7.2 is erroneous. The Panel however finds that the ADHP, which was established under the IBU ADR, has the task to decide disputes between the IBU and the athletes concerned on the basis of the IBU ADR. The particular Panels, therefore, have to apply the IBU ADR and have no jurisdiction to deviate from the IBU ADR and to declare rules of the IBU ADR null and void. The Panels may interpret the rules,



but the characterization of the statute of limitations included in Article 20.7.2 as a "procedural rule" gives no margin of interpretation to the contrary.

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The Athlete further submits that the Parties "agreed" that the statute of limitation is not a procedural rule. The Panel notes that the IBU indeed made such statement in its first written submission. However, that statement does not amount to an agreement of the Parties, which would be legally binding upon the Panel. The IBU ADR does not provide for the opportunity of a choice of law by the Parties. Hence, the ADHP must apply the IBU ADR as they stand. Furthermore, upon the invitation by the Panel to specifically address Article 20.7.2 of the IBU ADR 2015, the IBU validly amended its view and expressly noted that according to IBU ADR 2015, the statute of limitations is a procedural rule.

57

In conclusion, Article 20.7.2 of the IBU ADR 2015 applies and the Panel accepts the qualification of Article 17 of the IBU ADR 2015 as a "procedural rule". Therefore, the Panel applies Article 17 of the IBU ADR 2015 retroactively. This approach on the statute of limitations has also been applied in CAS 2017/O/5039 *Pyatykh* (para 73-76).

58

Second, the Panel notes, for the sake of argument, that even if it applied the eight-year limitation period provided for in Article 17 of the IBU ADR 2009, the claim would not have been time-barred.

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The key argument of the Athlete in this respect is that the decision of the Panel must be rendered before the expiration of the limitation period. The Panel does not agree with this view.

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The relevant parts of Article 17 of the IBU ADR 2009 read as follows:

*"No action may be commenced under these Anti-Doping Rules against an Athlete (...) for a violation of an anti-doping rule (...) unless such action is commenced within eight years from the date the violation occurred."*

61

As shown by the above quotation, the language of Article 17 does not refer to the decision of the Panel. The legal rule speaks of "commencing" an "action", not of deciding the matter. Therefore, the question to be resolved by the Panel was what is meant by "action" in the context of "commencing" and taking into consideration what is regulated under the IBU ADR.

62

There are two steps, which can be understood as "actions": (1) the notification of an AAF, according to Article 7.1.4 of the IBU ADR, together with the provisional suspension by virtue of Article 7.6.1 of the IBU ADR, and (2) the referral to the ADHP for adjudication according to Article 8.1.2 of the IBU ADR. The notification to the Athlete was carried out on 4 October 2017 and the referral to adjudication took place on 29 January 2018. Both "actions" were thus performed before the limitation period lapsed on 6 or 7 February 2018.

63

In addition, the Panel takes note of the wording of Article 17 of the IBU ADR 2015, according to which:

*"No anti-doping rule violation proceeding may be commenced against an athlete or other person unless he or she has been notified of the anti-doping rule violation as provided in Article 7, or notification has been reasonably attempted, within ten years from the date the violation is asserted to have occurred." (Emphasis added.)*

64

This rule (which as such would not be applicable if the Panel would not accept that statute of limitations is a procedural rule) unambiguously shows that the date of the notification is the crucial date for the calculation of the limitation period. In the Panel's view, there is no reason to believe that the WADA Code 2015 and the IBU ADR 2015, which implements the WADA Code, changed the operating of the statute of limitation in substance.

65

Anti-doping proceedings are disciplinary, not criminal, proceedings. Therefore, no analogy may be drawn from criminal law where, in some jurisdictions, applicable statutes of limitation require that the sentence must be rendered within the limitation period. With regard to fairness, the IBU did not unfairly delay the proceedings. The IBU was notified by the IOC of the initiation of the proceedings against the Athlete, which gave rise to the proceedings before the IBU, on 29 September 2017. The IBU notified the Athlete of the proceedings before the IBU less than a week later i.e. on 4 October 2017.

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In conclusion, even if the eight-year limitation period applied (*quod non*), the IBU's claim would not have been time-barred since the IBU commenced an action against the Athlete within the limitation period of eight years by the notification dated 4 October 2017, see CAS 2017/O/5039 *Pyatykh* para 77.

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

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Doping, by virtue of Article 1 of the IBU ADR 2009, is defined as the occurrence of one or more of the anti-doping rule violations set forth in Article 2.1 through Article 2.8 of the IBU ADR 2009.

68

According to Article 2.1 of the IBU ADR 2009,

*"The presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample"*

constitutes an ADRV. The prohibited substances are contained in the WADA Prohibited List which, according to Article 4.1 of the IBU ADR 2009, is incorporated into the IBU ADR 2009.

69

The 2010 Prohibited List, which applied at the time of the sample collection, under S2 lists releasing factors of human growth hormone. The re-analysis of the Athlete's A and B samples performed in autumn 2017 showed the presence of GHRP-2 metabolites (GHRP-2 M2).

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The Athlete accepted the finding of the metabolites of a prohibited substance in her samples on 27 October 2017. On 18 December 2017, the IOC DC rendered a decision disqualifying her from all of her competitions at the Vancouver Games and requesting the IBU to consider any further action within its own competence.

71

The finding of GHRP-2 metabolites in the Athlete's samples constitutes an ADRV in the form of the presence of a metabolite of a prohibited substance under Article 2.1 of the IBU ADR 2009. The commission of an ADRV is not disputed. The Athlete, in her most recent written explanations, did not challenge the finding of the AAF nor did she claim that a departure from the ISL occurred which could have reasonably caused the AAF.

72

In conclusion, the IBU has discharged its burden of proving that an ADRV occurred *"to the comfortable satisfaction"* of the Panel, according to Article 3.1 of the IBU ADR. According to Article 2.1.1 of the IBU ADR 2009, it is not necessary that intent, fault, negligence or knowing use on the Athlete's part be demonstrated in order to establish an ADRV under Article 2.1 of the IBU ADR 2009.

#### **4. Sanction for the ADRV committed on 6 and 7 February 2010**

73

For a first ADRV in the form of the presence of a metabolite of a prohibited substance, Article 10.2 of the IBU ADR 2009 provides a regular sanction of two years' ineligibility. The Parties agree that, despite the Athlete having provided altogether three positive samples, the Athlete has committed a single ADRV and that the sanction for such violation shall be two years.

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After having examined the facts of the case, the Panel concurs with the Parties.

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According to Article 10.7.4 of the IBU ADR 2009, an ADRV will only be considered a second violation if the IF can establish that the Athlete committed the second ADRV after the Athlete received notice pursuant to Article 7, or after IF made reasonable efforts to give notice, of the first ADRV. If the IF cannot establish this, the violations shall be considered together as one single first violation.

76

The Athlete's violations in the form of positive samples occurred on 6 and 7 February 2010. The IBU has not even alleged that the Athlete received notice of the first ADRV – or that a notice was attempted – before committing the second ADRV. Thus, the Athlete shall be deemed to have committed a one single first violation.

77

The Panel expressly notes that the Athlete has not invoked any facts or presented any arguments justifying the elimination or a reduction of the ineligibility period. It follows that the period of ineligibility to be imposed on the Athlete for the ADRV committed on 6 and 7 February 2010 is two years' ineligibility as set forth by Article 10.2 of the IBU ADR 2009.

#### **5. Commencement of the Period of Ineligibility**

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According to Article 10.9 of the IBU ADR 2009, the period of ineligibility shall commence on the date of the decision of the Panel. However, as provided for in Article 10.9.3 of the IBU ADR 2009, the duration of a provisional suspension shall be credited against the period of ineligibility ultimately imposed. The Athlete has been provisionally suspended since 4 October 2017 and the Athlete's two-year ineligibility period shall thus end on 4 October 2019 at the latest.

79

The Athlete has, however, requested that the ineligibility period be ordered to commence early enough that she does not need to serve any further ineligibility period. Articles 10.9.1 and 10.9.2 of the IBU ADR 2009 would allow that as follows:

##### *“10.9.1 Delays not Attributable to the Athlete or other Person*

*Where there have been substantial delays in the hearing process or other aspects of Doping Control not attributable to the Athlete (...), the IBU or Anti-Doping Organization imposing the sanction may start the period of Ineligibility at an earlier date commencing as early as the date of Sample collection or the date on which another anti-doping rule violation last occurred.*

##### *10.9.2 Timely Admission*

*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 IBU, the period of Ineligibility may start as early as the date of Sample collection (...). In*

*each case, however, where this Article is applied, the Athlete (...) shall serve at least one-half of the period of Ineligibility going forward from the date the Athlete (...) accepted the imposition of a sanction, the date of a hearing decision imposing a sanction, or the date the sanction is otherwise imposed."*

**a. Substantial delay**

80

With regard to the substantial delay rule, the Panel first notes that Article 10.9.1 of the IBU ADR 2009 is aimed at a situation where the IBU caused an unnecessary substantial delay to the detriment of the Athlete. Bearing that in mind, the Panel however observes that the opportunity to re-test samples is specifically provided, among other stipulations, by virtue of Article 6.5 of the IBU ADR 2009 and therefore justified by the rules:

*"A Sample may be reanalyzed for the purposes described in Article 6.2 at any time exclusively at the direction of IBU or WADA, starting from January 1, 2009."*

81

First, the Panel finds that by making use of the legal right to re-test samples, the IOC or the IBU do not delay the proceedings.

82

Moreover, the Panel deems that had it considered the re-testing of the samples to constitute a substantial delay (*quod non*), the delay in detecting the metabolites of GHRP-2 would nevertheless be attributable to the Athlete. Indeed, she has administered a substance that was not detectable early 2010. The Panel concludes that the delay is necessarily implied in the re-test procedure and therefore not "*not attributable to the Athlete*".

83

An application of Article 10.9.1 of the IBU ADR 2009 in re-test situations would lead to the consequence that the period of ineligibility ultimately imposed would have elapsed already, or to a great extent. In such situation, the athletes, as a matter of fact, were free to compete until the notification of the re-analysis result and only run the risk of losing their results and to be declared ineligible for a period of time which already had lapsed in full or in part. In the Panel's view, such an unbalanced outcome should, as a starting point, prevent the application of Article 10.9.1 of the IBU ADR 2009 or its equivalents in re-test cases.

84

This approach has been endorsed also by the CAS. The CAS Panel noted in the re-test case *Klemencic* (CAS 2016/A/4648 paras 150-151) as follows:

*"150. In the Appealed Decision, the Single Judge recognised that the situation as regards the delay in other aspects of doping control was 'somewhat exceptional' because of the retesting of the Rider's sample. The period that elapsed between the sample collection in March 2012 and the provisional suspension in September 2015 was very long and was affected by parameters beyond the Rider's control such as the change in the Technical Document for EPO on 1 September 2014 and the subsequent decision of UCI to have the Rider's sample retested in the summer of 2015. However, against this background the Single Judge found that the Rider had not been adversely affected by this long period, since she had continued to compete and obtain financial gains for her results as a rider. Therefore, the Single Judge did not agree with the Rider's request that the period of ineligibility should start in March 2012 and, in the absence of any other relevant delay, the Single Judge held that the period of ineligibility should commence on 18 September 2015 and expire on 17 September 2017.*

*151. Having carefully analysed the original intent behind the provision regarding delays not attributable to the Licence-Holder and possible credit for provisional suspension, the Panel concurs with the findings of the Single Judge, since it cannot be the purpose of Article 315 to*

*fix the commencement of the period of ineligibility to the date of sample collection in 2012, which in effect would render the sanction for the ADRV meaningless, since the Rider would already have passed the two-year sanction period in March 2014. That result would not sit well with the possibility of retesting an athlete's urine sample under an improved testing regime for the detection of EPO. Consequently, the Panel confirms that the period of ineligibility must be held to commence on 18 September 2015 and expire on 17 September 2017."*

85

The Panel adds that if an athlete would not need to serve a ban at all in a case where the ADRV is based on a re-test of a sample that has been given years ago, this would attenuate the current anti-doping regime leaning on re-tests, investigative measures, Athlete Biological Passports and an extended statute of limitations period. In order to the anti-doping codes to have a preventive effect, the hearing panels should not backdate the ineligibility periods lightly.

86

After the failure of the first analysis of the Athlete's samples to detect the prohibited substance, the Athlete *bona fide* could not have the belief that she was legally free to compete. On the contrary, she must have been conscious that, due to a possibility of a re-test, the ADRV could be detected at a later stage.

87

Based on these considerations, the Panel does not find any reason to apply Article 10.9.1 of the IBU ADR 2009. The IBU ADR neither expressly nor implicitly contain particular rules concerning the commencement of the sanction in re-test cases. Therefore, the period of ineligibility shall commence on the date of the IBU ADHP decision, in practice on the date of the commencement of the provisional suspension i.e. on 4 October 2017.

88

This conclusion is supported by the relevant rules of the IBU ADR 2015. Articles 10.11 and 10.11.1 of the IBU ADR 2015 on the commencement of the sanction are identical in substance with Articles 10.9 and 10.9.1 of the IBU ADR 2009. However, Article 10.11.1 of the IBU ADR 2015 was amended by a comment, which reads as follows:

*"In cases of anti-doping rule violations other than under Article 2.1, the time required for an anti-doping organization to discover and develop facts sufficient to establish an anti-doping rule violation may be lengthy, particularly where the athlete (...) has taken affirmative action to avoid detection. In these circumstances, the flexibility provided in this Article to start the sanction at an earlier date should not be used."*

89

The Panel understands this comment to the effect that delays in the process of establishing sufficient proof of an ADRV shall not entail the application of Article 10.11.1 of the IBU ADR 2015, which is identical to Article 10.9.1 of the IBU ADR 2009.

90

This principle has been accepted also by the CAS. The CAS Panel in *Chepalova* (CAS 2010/A/2041, para 179) noted that:

*"No substantial delays in hearing process or other aspects of the doping control appear to have occurred: indeed the complexity of the analyses (and the time taken for their completion) seems to be linked to the nature of the substance found in the Appellant's sample. No reason therefore exists to set the starting date of the ineligibility period at a date earlier than the date of the Appellant's provisional suspension."*

See also CAS 2017/O/5376 *Grechishnikova* para 64.

91

The Panel finally notes that Article 10.9.1 of the IBU ADR 2009 vests it with discretion: even if the prerequisites for backdating were fulfilled (*quod non*), the Panel is not obliged to backdate the ineligibility period. This becomes evident from the language of Article 10.9.1 of the IBU ADR 2009, according to which the Panel “*may start the period of Ineligibility at an earlier date*”.

#### **b. Timely admission**

92

Concerning the timely admission rule, the Panel takes note that in her letter dated 10 October 2017, the Athlete expressly refused to admit the ADRV: “*(...) such acceptance is, at this time, not an admission of guilt*”. In the same letter, the Athlete has also referred to the “*alleged anti-doping rule violations*”. Instead of coming forward and admitting the ADRV that she knew she had committed, the Athlete forced the anti-doping organisations to open and analyse the B samples. The B samples were opened and analysed on 19 October 2017, confirming the presence of a metabolite of a prohibited substance GHRP-2 M2 in the Athlete’s samples.

93

The Athlete has subsequently put forth that accepting the provisional suspension shall not be used as to draw an adverse inference against her and that is what the IBU now tries to do. The Panel cannot agree with the Athlete. The drawing of an adverse inference would mean that the Panel would use the acceptance of a provisional suspension as evidence of an ADRV. This is not the case here. The Athlete has had the right to request the analysis of the B sample. However, such an action also entails that the Athlete may not be deemed to have admitted the ADRV promptly.

94

Based on the above account, the Panel finds that there was no timely admission by the Athlete.

95

Accordingly, the starting date of the Athlete’s ineligibility period remains the date of this decision, with the period of provisional suspension, i.e. as of 4 October 2017, credited. (See also CAS 2017/A/5015 & CAS 2017/A/5110 *Johaug* para 232-234.)

#### **6. Disqualification of results**

96

Based on its jurisdiction over the Olympic Games, the IOC DC has disqualified all of the Athlete’s results obtained in the Vancouver Games. The IBU has jurisdiction for the disqualification of results obtained by the Athlete outside the Olympic Games.

97

The IBU has requested the disqualification of the Athlete’s results obtained at any of the IBU competitions between 7 February 2010 and 4 October 2017. The IBU’s request is based on Article 10.8 of the IBU ADR 2009, which reads in its essential parts as follows:

*"In addition to the automatic Disqualification of the results in the Competition which produced the positive Sample under Article 9 (...), all other competitive results obtained from the date a positive Sample was collected (...), 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."*

98

The Athlete has contested the IBU’s view and emphasized the fairness exception.

99

The Panel notes that the IBU's request on disqualification, together with the two-year ineligibility period commencing, in practice, from the date of the imposition of the provisional suspension, would lead to a sanction extending to no less than approximately nine years and eight months. While such an outcome would comply with the language of the IBU ADR 2009, the circumstances of the case as well as the principle of fairness does not support that.

100

First, the Athlete has committed an ADRV on 6 and 7 February 2010. After that, she has been tested altogether 35 times with all samples producing negative results. The Panel is painfully aware that negative samples do not always signify that an athlete has not administered prohibited substances or used prohibited methods – as we have seen in this particular case. However, the IBU has not alleged, and even less evidenced to the comfortable satisfaction of the Panel, that the Athlete has committed further ADRVs during the period of almost seven years and eight months.

101

Second, even though (1) the ADOs are entitled to re-test samples at any time within the applicable statutes of limitations, (2) the Athlete has administered a substance that could not be traced early 2010, and (3) she has not contributed in the uncovering of her ADRV, she has not been able to affect the timing of re-testing either.

102

The Panel deems that the mere fact that re-testing has taken a significant time does not automatically – or even customarily – entitle a doped athlete to a backdated ineligibility period, or to the upholding of their sporting results (see above). However, the fairness exception included in the IBU ADR 2009 allows the Panel to take the time between the commission of an ADRV and the re-testing of the respective sample into account in assessing fairness.

103

The Athlete has suggested that none of her results should be disqualified between the Vancouver Games and the commencement of her provisional suspension. The Panel does not accept this position either.

104

The Athlete has committed an ADRV with a very potent growth hormone releasing peptide. Considering the main effects of GHRP-2 – GH secretion stimulation, appetite promotion, fat mass decrease and muscle mass increase – it is obvious that the Athlete has gained advantage also outside the two-day period of 6-7 February 2010 by administering GHRP-2. She has been able to practice harder and to recover faster. Therefore, the Panel finds that it would not be fair to the other athletes who have competed against the Athlete that all of her results from 2010 to 2017 remain untouched in spite of her ADRV. Such an outcome would also be against the rationale of re-testing and expand the fairness exception to its extreme.

105

The Panel concludes that had the Athlete's ADRV been uncovered immediately in February 2010, she would have been unable to participate in competitions and to obtain sporting results for the next two years because of her ineligibility period. The Panel feels satisfied that disqualifying the Athlete's results for a two-year period from her ADRV onwards is a fair and proportionate outcome for the Athlete's ADRV. Thus, the Athlete's results shall be disqualified from 7 February 2010, as requested by the IBU, to 6 February 2012. (See also CAS 2016/O/4463 *Ugarova* para 138, CAS 2017/O/5330 *Pogorelov* para 70 and CAS 2017/O/5332 *Slesarenko* para 93). For the sake of clarity, the Panel reiterates that the IBU has jurisdiction for the disqualification of the results obtained by the Athlete outside the Olympic Games only, and notes that the IOC has already disqualified the results obtained by the Athlete in the Vancouver Games. This decision by the IBU ADHP does not constitutively pertain to the results obtained under the jurisdiction of the IOC related to the Vancouver Games.

## **7. Costs**

Athlete in the Vancouver Games. This decision by the IBU ADHP does not constitutively pertain to the results obtained under the jurisdiction of the IOC related to the Vancouver Games.

#### **7. Costs**

106

Both parties have presented a claim regarding the legal costs related to these proceedings.

107

The Panel notes that Article 10.10 (a) of the IBU ADR 2015 entitles the IBU to "*recover from the athlete or other person costs associated with the anti-doping rule violation*". Considering that said rule is presented in the context and under the heading of "*Sanctions*", the Panel deems that such rule is substantial (not procedural) and that it does not form *lex mitior*. Therefore, Article 10.10 of the IBU ADR 2015 shall not be applicable retroactively to the Athlete's case.

108

The Panel further notes that the IBU ADR 2009 do not contain a stipulation on legal costs either explicitly or implicitly. A decision on costs is not implied in a "*fair hearing*" constructed in a "*fair and impartial manner*" as required by Article 8.1.9 of the IBU ADR 2009. Article 8.2.1 of the IBU ADR 2009, which provides for the content of a ADHP decision, does not mention costs.

109


Based on the above considerations, in the absence of any legal basis to make an order on legal costs, the Panel rejects the requests of each Party.

#### **IV. Decision**

On these grounds the Panel decides that:

- 1) Ms. Teja Gregorin is found to be guilty on an anti-doping rule violation in the form of the presence of a prohibited substance in accordance with Article 2.1 of the IBU ADR 2009.
- 2) Ms. Teja Gregorin is declared ineligible for a period of two years commencing on the date of this decision, with the period of provisional suspension, i.e. as of 4 October 2017, credited.
- 3) Apart from the Vancouver Games, to which the IBU does not have jurisdiction and to which this ADHP decision does not pertain, all competitive results obtained by Ms. Teja Gregorin from 7 February 2010 to 6 February 2012 are disqualified, with all resulting consequences in accordance with Article 10.8 of the IBU ADR 2009.
- 4) The IBU's and Ms. Teja Gregorin's requests for costs are dismissed.

The Anti-Doping Hearing Panel  
28 September 2018

  
Christoph Vedder  
Chairman of the Panel

Lars Kolsrud  
Member of the Panel

Markus Manninen  
Member of the Panel