

DECISION OF THE ATHLETICS INTEGRITY UNIT IN THE CASE OF MS NATALIYA KROL

Introduction

1. In April 2017, World Athletics¹ established the Athletics Integrity Unit ("AIU") whose role is to protect the integrity of the sport of Athletics, including fulfilling World Athletics' obligations as a Signatory to the World Anti-Doping Code. World Athletics has delegated implementation of the World Athletics Anti-Doping Rules ("ADR") to the AIU, including but not limited to the following activities in relation to International-Level Athletes: Testing, Investigations, Results Management, Hearings, Sanctions and Appeals.
2. Ms. Nataliia Krol is a 25-year old Ukrainian middle-distance runner who is an International-Level Athlete for the purposes of the ADR (the "Athlete").
3. This decision is issued pursuant to Article 8.4.7 ADR which provides that:

8.4.7 "[i]n the event that [...] the Athlete or Athlete Support Person admits the Anti-Doping Rule Violation(s) charged and accedes to the Consequences specified by the Integrity Unit, a hearing before the Disciplinary Tribunal shall not be required. In such a case, the Integrity Unit...shall promptly issue a decision confirming...the commission of the Anti-Doping Rule Violation(s) and the imposition of the Specified Consequences (including, if applicable, a justification for why the maximum potential sanction was not imposed)".

The Athlete's commission of an Anti-Doping Rule Violation

4. On 16 January 2020, the Athlete provided a urine Sample Out-of-Competition in Rivne (Ukraine), which was given code 3146973 (the "Sample").
5. On 6 February 2020, the World Anti-Doping Agency ("WADA") accredited laboratory in Lausanne (Switzerland) reported an Adverse Analytical Finding (the "AAF") for the presence of Hydrochlorothiazide in the Sample.
6. Hydrochlorothiazide is a Prohibited Substance under the WADA 2020 Prohibited List under the category S5. *Diuretics and Masking Agents*. It is a specified substance prohibited at all times.
7. The Athlete did not have a Therapeutic Use Exemption ("TUE") permitting the use of Hydrochlorothiazide.
8. On 14 February 2020, the AIU notified the Athlete of the AAF and requested her explanation for the presence of Hydrochlorothiazide in the Sample.
9. On 22 February 2020, 10 April 2020 and on 23 April 2020, the Athlete provided her explanation to the AIU. The Athlete set out that, on 11 January 2020, while getting a manicure at a city in the

¹ Formerly the International Association of Athletics Federations ("IAAF")

Ukraine, she experienced a severe headache, blurred vision, heaviness in the back of the head and tinnitus.

10. She visited a pharmacy that was close to the facility where she was having a manicure. Upon description of her symptoms, the pharmacist took her blood pressure and confirmed that she was experiencing hypertension. The Athlete then asked for a fast-acting hypertension medication and the pharmacist suggested “Captopres-Darnitsa” confirming that the Russian analog of this medication was Captopril.
11. The Athlete claimed to have checked Captopril immediately on the RUSADA² website and confirmed that it was not a prohibited medication. Having done so, she states that she took one tablet of Captopres-Darnitsa the same day without checking further with a doctor or personally checking the product label or packaging of the medication before using it.
12. The Athlete admitted the Anti-Doping Rule Violation (i.e., the presence of Hydrochlorothiazide in her sample) following the AIU’s notification on 14 February 2020, but asserted that she had No Fault or Negligence or at least No Significant Fault or Negligence for the Anti-Doping Rule Violation and requested that a reprimand and no period of ineligibility be imposed upon her.

Consequences

13. This is the Athlete’s first Anti-Doping Rule Violation.
14. Hydrochlorothiazide is a Prohibited Substance under the WADA 2019 Prohibited List under the category *S5. Diuretics and Masking Agents*. It is a Specified Substance for the purposes of the ADR, prohibited at all times.
15. Article 10.2.1 ADR provides that the period of ineligibility to be imposed for the presence of a prohibited substance in an Athlete’s sample shall be determined as follows:

“10.2 Ineligibility for Presence, Use or Attempted Use, or Possession of a Prohibited Substance or Prohibited Method
[...]

10.2.1 The period of ineligibility shall be four years where:

- (a) The Anti-Doping Rule Violation does not involve a Specified Substance, unless the Athlete or other Person establishes that the Anti-Doping Rule Violation was not intentional.*
- (b) The Anti-Doping Rule Violation involves a Specified Substance and the Integrity Unit establishes that the Anti-Doping Rule Violation was intentional.*

10.2.2 If Article 10.2.1 does not apply, the period of ineligibility shall be two years.

10.2.3 As used in Articles 10.2 and 10.3, the term "intentional" is meant to identify those Athletes or other Persons who cheat. The term therefore requires that the Athlete or other Person engaged in conduct that he knew constituted an Anti-Doping Rule Violation or knew that there was significant risk that the conduct might constitute or result in an Anti-Doping Rule Violation and manifestly disregarded that risk. An Anti-

² The Russian Anti-Doping Agency

Doping Rule Violation resulting from an Adverse Analytical Finding for a substance that is only prohibited In-Competition (a) shall be rebuttably presumed to be not "intentional" if the substance is a Specified Substance and the Athlete can establish that it was Used Out-of-Competition; and (b) shall not be considered "intentional" if the Substance is not a Specified Substance and the Athlete can establish that it was Used Out-of-Competition in a context unrelated to sport performance.

16. Hydrochlorothiazide is classified as a 'Specified Substance' i.e., as a substance that is more likely to have been consumed for a purpose other than enhancement of sport performance. Article 10.2.1 ADR specifies that a violation for such a substance carries a 4-year ban if the AIU is able to prove that the violation was "intentional". Article 10.2.3 ADR explains that, in the context, the term "intentional" is meant to identify those who cheat. The term therefore requires that the Athlete engaged in conduct that he/she knew constituted an Anti-Doping Rule Violation or knew that there was a significant risk that the conduct might constitute or result in an Anti-Doping Rule Violation and manifestly disregarded that risk. The jurisprudence is clear that what counts in this context is what the Athlete actually knew, not what he/she should have known.
17. Given the facts set out above and its investigation of those facts, the AIU does not have any basis to contend that the violation was 'intentional' within the meaning of Article 10.2.3 ADR.
18. The mandatory period of ineligibility to be imposed in the Athlete's case is therefore two (2) years, subject to a potential reduction in sanction pursuant to Article 10.4 ADR (No Fault or Negligence) or Article 10.5 ADR (No Significant Fault or Negligence), based upon the Athlete's level of Fault.³
19. It is a precondition of any mitigation of sanction for an Article 2.1 ADR violation based on No (or No Significant) Fault or Negligence that the Athlete must be able to establish (on the balance of probabilities) how the prohibited substance entered her system.
20. As described above, the Athlete's explanation is that Hydrochlorothiazide entered her system through the ingestion of the Captopres-Darnitsa medication on 11 January 2020. The AIU accepts the Athlete's explanation.

Mitigation of Sanction

21. To sustain a plea of No Fault or Negligence (Article 10.4 ADR), the Athlete must show that she did not depart from the duty imposed on her under the ADR to use 'utmost caution' to ensure that no prohibited substance entered her body. Alternatively, to sustain a plea of No Significant Fault or Negligence, (Article 10.5 ADR), she must show that her departure from the strict standard of care was not significant (objective analysis) and/or that there are legitimate reasons why she failed to take all the steps required (subjective analysis) such that her overall fault should not be regarded as significant.

³ **Fault:** Fault is defined in the ADR as any breach of duty or any lack of care appropriate to a particular situation. Factors to be taken into consideration in assessing an Athlete or other Person's degree of Fault include, for example, the Athlete's or other Person's experience, whether the Athlete or other Person is a Minor, special considerations such as impairment, the degree of risk that should have been perceived by the Athlete and the level of care and investigation exercised by the Athlete in relation to what should have been the perceived level of risk. In assessing the Athlete's or other Person's degree of Fault, the circumstances considered must be specific and relevant to explain the Athlete's or other Person's departure from the expected standard of behavior. Thus, for example, the fact that an Athlete would lose the opportunity to earn large sums of money during a period of Ineligibility, or the fact that the Athlete only has a short time left in his career, or the timing of the sporting calendar, would not be relevant factors to be considered in reducing the period of Ineligibility under Article 10.5.1 or 10.5.2.

22. A finding of No Fault or Negligence eliminates the period of ineligibility completely (Article 10.4 ADR) and a finding of No Significant Fault or Negligence triggers a discretion under Article 10.5.1(a) to impose a sanction between a reprimand and a two-year period of ineligibility, depending on the degree of Fault of the Athlete. The decision of the Court of Arbitration for Sport (“CAS”) in CAS 2013/A/3327 *Marin Cilic v. ITF*⁴ provides helpful guidance on where an athlete’s fault lies within that range. An athlete’s ‘objective fault’ is first assessed to determine into which category their fault falls – ‘light’ (0-8 months); ‘normal’ (8-16 months); or ‘considerable’ (16-24 months) – and then their ‘subjective’ fault is assessed to move them up or down within that category (or into a different category).
23. In assessing the ‘objective’ fault, the CAS Panel in *Cilic* stated⁵ that, in ordinary circumstances (including when using in-competition a product that is banned in-competition), Athletes should (i) read the label of the product used (or otherwise ascertain the ingredients), (ii) cross-check all the ingredients on the label against the list of prohibited substances, (iii) make an internet search of the product, (iv) ensure that the product is reliably sourced, and (v) consult appropriate experts in such matters and instruct them diligently before consuming the product.
24. Applying the above to the facts of the Athlete’s case:
- i. The AIU notes that Captopres-Darnitsa is a medication used to treat hypertension that was purchased by the Athlete in a pharmacy⁶.
 - ii. Although the manager of the pharmacy that provided the medication to the Athlete has confirmed the Athlete’s symptoms presented on 11 January 2020 and the consultation at the pharmacy on that date, the Athlete did not act on the advice or prescription of a qualified medical doctor in ingesting the product. The AIU is therefore not persuaded that the Athlete can satisfactorily demonstrate that she consulted the appropriate experts. Indeed, while she claims that she followed the advice of the pharmacist, the AIU notes that she took a full tablet of Captopres-Darnitsa whereas the leaflet indicates that the initial dose should be ½ tablet once a day.
 - iii. Although the Athlete asserts that she checked the name “Captopres” in Russian on the RUSADA website and established that it was not a prohibited medication, she also admitted that she (i) did not read the label of the Captopres-Darnitsa tablets and (ii) did not check the ingredients on the product label against the Prohibited List. It is clear that even the most rudimentary checks of the two main ingredients (Captopril and Hydrochlorothiazide) would have alerted her to the presence of Hydrochlorothiazide in the Captopres-Darnitsa tablets and confirmed that it was a prohibited substance.
25. It is therefore clear on the facts that the Athlete cannot establish that she bears No Fault or Negligence and the AIU considers that that her objective level of fault is significant, i.e., in the ‘considerable’ category by reference to the *Cilic* scale.
26. The Athlete is a highly experienced International-Level Athlete.⁷ However, she asserts that her symptoms on 11 January 2020 (severe headache, blurred vision, heaviness in the back of the

⁴ See CAS 2013/A/3327 *Marin Cilic v. ITF* and CAS 2013/A/3335 *ITF v. Marin Cilic*.

⁵ See paragraphs 74-75 of the CAS award.

⁶ In *Cilic*, the Panel noted that in circumstances involving medicines designed for therapeutic use, a particular danger arises that calls for a higher duty of care because medicines are known to have prohibited substances in them.

head and tinnitus) were so severe that she had no alternative but to source emergency medication in order to safely return home.

27. The AIU considers that the Athlete's state of distress, whilst of no impact on her objective level of Fault being significant in this case, does constitute a subjective factor that can be taken into account when determining the Consequences to be imposed⁸.
28. In considering the specific facts of this case, the AIU has determined the Athlete's subjective level of Fault to be in the middle of the significant/considerable degree of Fault range and therefore that the period of ineligibility should be 20 months.⁹
29. In light of the above, the AIU considers that a 20-month period of ineligibility is appropriate in the Athlete's case and the Athlete has accepted the sanction.
30. Given the Athlete's timely admission of the violation after being confronted by the AIU, there is discretion under Article 10.10.2(b) ADR to back-date the commencement of the period of ineligibility to the date of sample collection. The AIU agrees to exercise its discretion in the Athlete's case such that the period of ineligibility should run for 20 months from the date of sample collection on 16 January 2020, i.e., until 15 September 2021.
31. The Athlete's results from 16 January 2020 are disqualified pursuant to Article 10.8 ADR, with all resulting consequences, including forfeiture of any titles, medals, points and prize and appearance money.

Decision

32. On the basis that the Athlete has admitted to committing Anti-Doping Rule Violations under Article 2.1 ADR and Article 2.2 ADR, the AIU confirms by this decision the following consequences for a first Anti-Doping Rule Violation:
 - 32.1. a period of ineligibility of 20 months pursuant to Article 10.2.2 and 10.5.1(a) ADR, commencing on 16 January 2020; and
 - 32.2. disqualification of the Athlete's results since 16 January 2020 with all resulting consequences, including forfeiture of any titles, medals, points and prize and appearance money pursuant to 10.8 ADR.
33. The Athlete has accepted the above consequences for her Anti-Doping Rule Violations and has expressly waived her right to have those consequences determined by the Disciplinary Tribunal at a hearing.

Publication

34. In accordance with Article 8.4.7(b) ADR, the AIU shall publicly report this decision on the AIU's website¹⁰.

⁷ The Athlete has competed worldwide and in some of the highest profile competitions in the World Athletics Calendar including the Diamond League and the World Championships (see: <https://www.worldathletics.org/athletes/ukraine/natalia-krol-14426885>).

⁸ Although, as noted in paragraph 88 of the award in *Cilic*, this is not a factor to which the AIU attributes any significant weight.

⁹ In a case of significant or considerable degree of Fault, the "standard" normal degree of fault leads to a suspension of 20 months – see *Cilic* para 70.a.

Rights of Appeal

35. This decision constitutes the final decision of the AIU pursuant to Article 8.4.7 ADR.
36. Further to Article 13.2.4 ADR, WADA and the National Anti-Doping Organization of Ukraine have a right of appeal against this decision to the Court of Arbitration for Sport in Lausanne, Switzerland, in accordance with the procedure set out at Article 13.7.2 ADR.
37. If an appeal is filed against this decision by WADA or the National Anti-Doping Organization of Ukraine, the Athlete will be entitled to exercise her right of cross-appeal in accordance with Article 13.9.3 ADR.

Monaco, 3 August 2020

¹⁰ <https://www.athleticsintegrity.org/disciplinary-process/first-instance-decisions>