

Decision of the UIPM Doping Review Panel ('the Panel') regarding

Viktoriya TERESHCHUK

In accordance with the decision dated 27 February 2017 of the IOC Disciplinary Commission decision in Case BRTIII-060, in respect of Viktoriya TERESHCHUK, Modern Pentathlon, Ukraine and having regard to the 2017 UIPM Anti-Doping Rules and the World Anti-Doping Code in force in 2008 the Panel determines as follows.

Introduction

1. Viktoriya TERESHCHUK ('the Athlete'), participated in the Games of the XXIX Olympiad in Beijing in 2008 ('the 2008 Olympic Games'). On 22 August 2008, the Athlete competed in the Women's individual modern pentathlon event.
2. For the reasons set out in its decision dated 27 February 2017 the IOC Disciplinary Commission held that:
 - a. The Athlete, Viktoriya TERESHCHUK:
 - i. is found to have committed an anti-doping rule violation pursuant to the IOC anti-doping Rules applicable to the Games of the XXIX Olympiad in Beijing in 2008 (presence and/or use, of a Prohibited Substance or its Metabolites or Markers in an athlete's bodily specimen),
 - ii. is disqualified from the events in which she participated upon the occasion of the Olympic Games Beijing 2008, namely, the Women's individual modern pentathlon event in which she ranked 3rd and for which she was awarded a bronze medal, and

- iii. has the bronze medal, the diploma and the medallist pin obtained in the Women's individual modern pentathlon event withdrawn and is ordered to return same.
 - iv. The UIPM is requested to modify the results of the above-mentioned event accordingly and to consider any further action within its own competence.
 - b. The National Olympic Committee of Ukraine shall ensure full implementation of this decision.
 - c. The National Olympic Committee of Ukraine shall notably secure the return to the IOC, as soon as possible, of the bronze medal, the diploma and the medallist pin awarded in connection with the Women's individual modern pentathlon even to the Athlete.
 - d. This decision enters into force immediately.
3. In accordance with the foregoing the UIPM has had regard to the appropriate further action and required the Panel to address the appropriate period of disqualification. The Panel notes the following.
4. The 2017 UIPM Anti-Doping Rules provide *inter alia* as follows:

ARTICLE 2 ANTI-DOPING RULE VIOLATIONS

The purpose of Article 2 is to specify the circumstances and conduct which constitute anti-doping rule violations. Hearings in doping cases will proceed based on the assertion that one or more of these specific rules have been violated.

Athletes or other Persons shall be responsible for knowing what constitutes an anti-doping rule violation and the substances and methods which have been included on the Prohibited List. The following constitute anti-doping rule violations:

2.1 Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample

2.1.1 It is each Athlete's personal duty to ensure that no Prohibited Substance enters his or her body. Athletes are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples. Accordingly, it is not necessary that intent, Fault, negligence or knowing Use on the Athlete's part be demonstrated in order to establish an anti-doping rule violation under Article 2.1.

2.1.2 Sufficient proof of an anti-doping rule violation under Article 2.1 is established by any of the following: presence of a Prohibited Substance or its Metabolites or Markers in the Athlete's A Sample where the Athlete waives analysis of the B Sample and the B Sample is not analyzed; or, where the Athlete's B Sample is analyzed and the analysis of the Athlete's B Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the Athlete's A Sample; or, where the Athlete's B Sample is split into two bottles and the analysis of the second bottle confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the first bottle.

2.1.3 Excepting those substances for which a quantitative threshold is specifically identified in the Prohibited List, the presence of any quantity of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample shall constitute an anti-doping rule violation.

5. In the light of the findings made on 27 February 2017 it is the duty of the Panel to consider what further sanctions, including any period of disqualification, are appropriate.

6. The 2017 UIPM Anti-Doping Rules provide *inter alia*:

20.6 These Anti-Doping Rules and the UIPM Anti-Doping Procedures, which latter are to be considered an integral part of the UIPM Anti-Doping Rules, have come into full force and effect on 1 January 2016 (the "Effective Date"). They shall not apply retroactively to matters pending before the Effective Date; provided, however, that:

20.6.2

Otherwise, with respect to any anti-doping rule violation case which is pending as of the Effective Date and any anti-doping rule violation case brought after the Effective Date based on an anti-

doping rule violation which occurred prior to the Effective Date, the case shall be governed by the substantive anti-doping rules in effect at the time the alleged anti-doping rule violation occurred unless the panel hearing the case determines the principle of “lex mitior” appropriately applies under the circumstances of the case.’

7. The World Anti-Doping Code 2003 applied at the time of the 2008 Olympic Games. Article 10 addressed ‘*Sanctions on Individuals*’. Article 10(2) envisaged a 2-year period of ineligibility for a First Violation, which this is. The possibility of ‘*Elimination or reduction of Period of Ineligibility Based on Exceptional Circumstances*’ envisaged by Article 10.5 is negated by the reasoning and conclusion inherent in the decision of 27 February 2017. After due consideration, the Panel initially considered that it should apply the regime prevailing at the time of the 2008 Olympic Games. Bearing in mind, in particular, the fact that the 2008 provisions anticipated less onerous potential penalties than those now applicable, the Panel considered that fairness to the Athlete required the application of that regime. Above all, it was the regime prevailing at the time of the breach.

Procedural matters

8. The Panel had full regard to the all the provisions of the 2017 UIPM Anti-Doping Rules, including as follows.

‘ARTICLE 8 RIGHT TO A FAIR HEARING

8.1 Principles for a Fair Hearing

8.1.1 When UIPM sends a notice to an Athlete or other Person asserting an antidoping rule violation, and the Athlete or other Person does not waive a hearing in accordance with Article 7.10.1 or Article 7.10.2 above, then the case shall be referred to the UIPM Doping Review Panel for hearing and adjudication.

.....

8.1.5 The UIPM Doping Review Panel shall act in a fair and impartial manner towards all parties at all times.’

9. The Panel considered that, not having heard from the Athlete, fairness required that the Athlete be specifically invited to consider and address the provisional views identified above which the Panel had formed as to its jurisdiction and the appropriate penalty. Accordingly in a letter dated 3 June 2017 it invited the Athlete to express her views, and specifically:

'1. Do you wish to present any further relevant facts or submission to the Panel? If so, please provide a signed and dated statement or statements verified by a statement of truth by email to be received by noon on 3. June 2017.

2. Do you ask for an oral hearing by video link? If so, how long do you contend is needed and what facts and matters and broader issues do you wish to address?

3. Are there any other matters you wish to raise for the Panel's consideration?'

10. No reply was received.

Decision and full reasons

11. The Panel has had full regard to all the matters before it. It decides that the Athlete shall be declared ineligible for a period of 2 years. *'Ineligibility'* is used as defined in the 2017 UIPM Anti-Doping Rules and means the Athlete is barred on account of her anti-doping rule violation for 2 years from participating in any Competition or other activity or funding as provided in Article 10.12.1 of those Rules. This penalty is to run from 29 July 2016 (the effective date when the Athlete's provisional suspension started) until and including 28 July 2018.
12. It is imposed in the light of the circumstances established by the overall terms of the decision dated 27 February 2017 of the IOC Disciplinary Commission and particularly the established presence of the metabolites of a Prohibited Substance (paragraphs 1-23; 31-32; 60-69) and the arguments and comments of the Athlete and their unpersuasive effect (paragraphs 123-139; 76).

13. Aggravating features are that:
- a. The offence took place at the highest level of the sport.
 - b. It must have been directed at unfairly winning a medal, as in fact occurred.
 - c. Cheating at the Olympic Games devalues the Olympic ideal.
 - d. The Athlete has expressed no regret for her actions or the circumstances for which she is responsible.
 - e. There is no sign of co-operation with anti-doping agencies.
14. No mitigating circumstance has been presented to the Panel.
15. If the breach occurred currently a 4-year period of ineligibility would be most likely. For the historic reasons set out at paragraphs 6 and 7 above, in fairness to the Athlete, the Panel concludes that a 2-year period of ineligibility is appropriate. These are the only reasons why the Panel has not imposed a 4-year period, which would otherwise be applicable were the offence committed now and which would currently be the least penalty for such wholly unacceptable behaviour.
16. The starting date of the date of this decision is justified because it would be inappropriate to antedate its effect and because there is no reason for postponement.
17. The Panel decided that it should not address the *Financial Consequences*' (a financial sanction imposed for an anti-doping rule violation) or to recover costs associated with the rule violation. It considers that *Public Disclosure*' or *Public Reporting*' of this decision to the general public is justified and authorises it accordingly.

Signed

Professor Hans Michael Ockenfels – Chair

Anthony Temple QC

Tan Sri Dr. M.Jegathesan

Eduardo Henrique De Rose

Dated 6 July 2017