

9<sup>th</sup> February 2005  
Lausanne, Switzerland

**ANTI-DOPING AWARD  
DELIVERED BY THE  
ANTI-DOPING HEARING PANEL OF FISA**

**sitting in the following composition**



**President: Denis Oswald**

**Members: Jean-Christophe Rolland  
Tricia Smith**

**In the case**

**Olena OLEFIRENKO (UKR)**

**On 9<sup>th</sup> February 2005**

**I. Facts**

1. On 22 August 2004, Ms. Olena Olefirenko (the athlete) competed in the Women's quadruple sculls event in Athens, in which her team placed third.
2. Immediately following her participation in the competition, she was requested to provide a urine sample for a doping control in Athens.
3. Pursuant to Article 7.2.1. of the *IOC Anti-Doping Rules applicable to the Games of the XXVIII Olympiad in Athens in 2004* (the "Rules"), Dr. Patrick Schamasch, IOC Medical Director and representative of the Chairman of the IOC Medical Commission, was informed in the evening of 24 August 2004 by the Head of the WADA Accredited Laboratory in Athens of an adverse finding on a "A" sample collected on 22 August 2004 in Athens.
4. Pursuant to Article 7.2.2. of the *Rules*, Dr. Schamasch determined that the above-noted "A" sample belonged to Ms. Olena Olefirenko, and verified that it did in fact give rise to an adverse analytical finding. He also determined that there was no apparent departure from the International Standards for Testing or the International Standards for Laboratories that undermined the validity of the adverse analytical finding.

5. Pursuant to Article 7.2.3. of the *Rules*, Dr. Schamasch immediately informed the IOC President Dr. Jacques Rogge of the adverse analytical finding and the essential details available to him concerning the case.
6. Pursuant to Article 7.2.4. of the *Rules*, the IOC President, by letter dated 25 August 2004, immediately set up a Disciplinary Commission, consisting of:
  - Mr. Thomas Bach (Chairman)
  - Mrs. Gunilla Lindberg
  - Mr. James Easton
7. Pursuant to Article 7.2.5. of the *Rules*, the IOC President by letter dated 25 August 2004 informed the athlete (represented by Ms. Nina Umanets, Coach), the Chef de Mission of the Ukraine Olympic Committee (Mr. Oleksandr Artemiev), the President of the FISA (President Denis Oswald) and the Head of the Independent Observer Programme (Prof. Ulrich Haas) of the adverse analytical finding and the time, date and place of the hearing of the Disciplinary Commission regarding this case.
8. The Disciplinary Commission held a hearing on 25 August 2004 at 17:00 hours, at the Divani Caravel Hotel in Athens in the presence of a delegation (hereinafter the “Delegation”) comprised of:
  - Mr. Oleksandr Artemiev, Chef de mission
  - Ms. Nini Umanets, Coach
  - Mr. Volodymyr Bud, Coach
  - Mr. Oleksiy Romanov, Translator
9. Prof. Rainer Stephany attended the hearing in his capacity as representative of the Independent Observer Programme.
10. Also attending the hearing was Dr. Patrick Schamasch, IOC Medical Director, Mr. Howard Stupp, IOC Director of Legal Affairs and Mr. François Carrard, IOC Legal Advisor.
11. The Delegation had been informed of the results of the laboratory analysis which indicated the presence of “Ethamivan”, a stimulant. The Delegation requested the analysis of the “B” sample.
12. By letter dated 25 August 2004, WADA officially confirmed to the IOC that “Ethamivan” is a prohibited stimulant. It is not expressly stated as such in the list of examples, however, it is classified as a substance with “similar chemical structure or similar pharmacological effect”.
13. The Delegation informed the Disciplinary Commission that Ms. Olena Olefirenko had already gone home but was represented by Ms. Umanets.

14. The Delegation declared that the athlete only took the medications listed on the Doping Control Official Record which she signed on 21 August 2004.
15. The Delegation also declared that these medications were given to the athlete by the team doctor Ms. Ganna Gryshchenko.
16. The Disciplinary Commission noted that, on the Doping Control Official Record filled out by the athlete at the time of the collection, one of the medications declared by the athlete, Instenon, contains the prohibited substance Ethamivan, found in her urine.
17. The representative of the NOC reminded the Commission that the NOC was implementing the World Anti-Doping Code and was serious about preventing doping.
18. The Delegation was advised that the Commission would apply the principle of strict liability with respect to a possible disqualification of the athlete.
19. After hearing the Delegation and the arguments it put forward, the Disciplinary Commission retired in order to deliberate.
20. The Disciplinary Commission unanimously concluded that Ms. Olena Olefirenko had committed a doping offence pursuant to Article 2.1 of the *Rules* in that there was Ethamivan in Ms. Olena Olefirenko's urine.
21. Women's quadruple scull is not a team sport. Article 11 of the *Rules*, last sentence, reads as follows: "*In sports which are not Team Sports but where awards are given to teams, Disqualification or other disciplinary action against the team when one or more team members have committed an anti-doping rule violation shall be as provided in the applicable rules of the International Federation*". According to Byelaw 11.1 to Rule 81 of the FISA Anti-Doping Regulations, if a member of a crew is found to have committed an anti-doping rule violation, the whole crew shall be disqualified from the competition.
22. Based on the recommendation of the Disciplinary Commission, the IOC Executive Board decided on August 26 2004 :
  - I. *that, due to the adverse analytical finding in the urine of the athlete Ms. Olena Olefirenko, the Ukraine team (women's quadruple sculls in final A) be disqualified from the Women's quadruple sculls event, in which they had placed third (Olena Olefirenko, Olena Morozova, Tetyana Kolesnikova and Yana Dementyeva);*
  - II. *that all bronze medals and diplomas be withdrawn from the above-noted athletes;*

- III. *that the International Rowing Federation be requested to modify the results of the above-mentioned event accordingly and to consider any further action within its own competence;*
  - IV. *the Ukraine Olympic Committee be ordered to return to the IOC, as soon as possible, the medals and diplomas awarded to the athletes in relation to the above-noted event;*
  - V. *that the International Rowing Federation consider possible action against Ms. Ganna Gryshchenko;*
  - VI. *that the Ukraine Olympic Committee consider possible action against Ms. Ganna Gryshchenko;*
  - VII. *that the IOC reserves the right to open a new procedure in front of the IOC with respect to any participation of Ms. Ganna Gryshchenko in the 2006 or 2008 Olympic Games; and*
  - VIII. *this decision shall enter into force immediately.*
23. On 1st November 2004, the National Olympic Committee of Ukraine indicated to Mr. Denis Oswald, President of FISA, that the National Olympic Committee of Ukraine accepted the IOC decision, strongly recommended that Doctor Ganna Gryshchenko should be suspended from participation at the Olympic Winter Games 2006 and that no sanction should be taken against the athlete Ms. Olena Olefirenko.
24. On November 15 2004, FISA informed the National Olympic Committee of Ukraine that it was going to consider the case of the athlete Olena Olefirenko and of the Doctor Ganna Gryshchenko and that these two persons had the opportunity to appear in person before the Anti-Doping Hearing Panel of FISA on November 21 or 22 2004 or at a later date or to submit a return statement.
25. On November 19 2004, the National Olympic Committee of Ukraine indicated to FISA that they agreed that the case could be heard without the presence of the two persons concerned and that the NOC of Ukraine had no additional statement to make. They confirmed their belief that no sanction should be imposed on Ms. Olena Olefirenko.
26. On December 1<sup>st</sup> 2004, FISA asked the NOC of Ukraine to provide the personal confirmations of the two persons concerned, the athlete Olena Olefirenko and the Doctor Ganna Gryshchenko, that they did not intend to appear before the FISA Anti-Doping Panel and that they were in agreement with the position expressed by the NOC of Ukraine on November 1<sup>st</sup> 2004.
27. On 1<sup>st</sup> February 2005, FISA did receive completed "FISA Possible Doping Case" questionnaires from the Athlete Ms. Olena Olefirenko and from the National Federation of Ukraine related to this case. In spite of several requests, the Doctor Mrs. Ganna Gryshchenko did not send any confirmation.

## **II. Applicable law**

This case is governed by the rules in force at the time of the offence (FISA Rule 81, para. 3), i. e. the World Anti-Doping Code adopted by FISA at the 2003 FISA Ordinary Congress effective 1<sup>st</sup> January 2004 and the corresponding FISA Bye-laws.

## **III. The Athlete's contentions**

The athlete claims that she did not take any other substance than those listed in the doping form that she had completed. The analytical finding of the lab is compatible with this statement and confirmed the intake of "Ethamivan", a stimulant. She insisted that she only took the medication given to her by the team doctor Ganna Gryshchenko, without any consideration that it could be prohibited.

## **IV. Merits**

The athlete has not questioned the result of the lab analysis. It is clearly established that the prohibited substance was in her body at the time of the competition. Therefore, she had to be automatically disqualified as well as her team-mates (FISA Bye-laws 11.1) regardless of the circumstances of the case.

The Anti-Doping Hearing Panel of FISA has now to decide whether there has been a doping violation and, if so, whether the athlete has established that she bears no fault or negligence for the violation, thus affecting the possible sanction for the violation.

The IOC disciplinary commission stated in the minutes of the hearing (page 2): *"The commission recognizes that the medicine has been recommended by the doctor; that the athlete had relied on the doctor. It was noted that even if one looked at the contents of the medicine, one would not have realised that it contained a prohibited substance, as it was not included on the prohibited list"*.

This comforts the FISA Anti-Doping Hearing Panel in its belief that Olena Olefirenko had no intention to artificially improve her performances but that she just followed the advice of her doctor in order to combat her medical condition.

The above mentioned statement made the IOC Disciplinary Commission establishes clearly that the athlete had no possibility of knowing that she was taking a prohibited substance and that she had no reason not to trust her doctor.

**FOR THESE REASONS****The FISA Anti-Doping Hearing Panel finds:**

1. Pursuant to Article 2.1 of the Rules, Ms. Olena Olefirenko committed a doping violation in that there was Ethamivan in her urine sample of August 22, 2004.
2. Ms. Olena Olefirenko has established that in this violation, she was not at fault and was not negligent in her behaviour.
3. Therefore, pursuant to Article 10.5.1 of the Rules, the period of ineligibility which would otherwise be the sanction for such a doping violation is eliminated and further, the violation shall not be considered a violation for the limited purpose of determining the period of ineligibility for multiple violations under Article 10.2, 10.3 and 10.6 of the Rules.
4. This award is rendered without costs.

Dubrovnik, Croatia, 5<sup>th</sup> February 2005

For the FISA Anti-Doping Hearing Panel

Denis Oswald  
President

Jean-Christophe Roland  
Member

Tricia Smith  
Member