



2020/ADD/8 International Olympic Committee v. Martina Ratej

ARBITRAL AWARD

delivered by the

**ANTI-DOPING DIVISION
OF THE COURT OF ARBITRATION FOR SPORT**

sitting in the following composition:

Sole Arbitrator: The Hon. Martina Spreitzer-Kropiunik, Judge in Vienna, Austria

in the arbitration between

International Olympic Committee, Switzerland

Represented by Mr. Jean-Pierre Morand, Attorney-at-Law with Kellerhals Carrard in Lausanne, Switzerland

Claimant

and

Martina Ratej, Slovenia

Represented by Mr. Mitja Kastivnik, Attorney-at-Law with Odvetniki Malovrh & Kastivnik in Ljubljana, Slovenia

Respondent

I. PARTIES

1. The International Olympic Committee (the “IOC” or “Claimant”) is the world governing body of Olympic sport having its registered offices in Lausanne, Switzerland. The IOC is incorporated as an association pursuant to articles 60 *et seq.* of the Swiss Civil Code).
2. Ms. Martina Ratej (the “Athlete” or “Respondent”) is a Slovenian javelin thrower and a team member of the National Olympic Committee of Slovenia who participated in the Games of the XXX Olympiad, London 2012 (the “2012 London Olympics”).

II. FACTUAL BACKGROUND

3. Below is a summary of the relevant facts and allegations based on the Parties’ written submissions, pleadings and evidence adduced in this procedure. Additional facts and allegations found in the Parties’ written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, she only refers to the submissions and evidence she considers necessary to explain her reasoning.
4. On 9 August 2012, the Athlete competed in the Women’s Javelin Throw Finals Event (the “Event”) at the 2012 London Olympics, finishing in 7th place overall.
5. Under Article 4.1 of the IOC’s Anti-Doping Rules applicable to the 2012 London Olympics (the “IOC ADR”), the IOC was responsible for doping control during the period of the 2012 London Olympics.
6. Following the event, the Athlete provided a urine sample (sample no. 2717034) as part of the Doping Control Program at the 2012 London Olympics (the “Sample”).
7. The Sample was analysed at the World Anti-Doping Agency (“WADA”) accredited laboratory in London, United Kingdom using the available detection methods. This did not result in an Adverse Analytical Finding (“AAF”) at that time.
8. At the IOC’s request, the remains of the Sample (the remaining portion of the A Sample and full B Sample) were subsequently transferred to the WADA-accredited laboratory in Lausanne, Switzerland (the “Lausanne Laboratory”) for long-term storage.
9. Under Article 5.1 of the IOC ADR, the IOC was entitled to re-analyse samples collected during the 2012 London Olympics.
10. As part of this process, a further analysis of the Sample was conducted by the Lausanne Laboratory. This analysis revealed the presence of Clostebol metabolites, which belongs to Class S1.1a (Exogenous Anabolic Androgenic Steroids) of the 2012 and 2020 WADA Prohibited List. Such a finding constituted an AAF.
11. The International Testing Agency (the “ITA”), by delegation from the IOC, reviewed the AAF and confirmed *inter alia* that the Athlete did not possess a Therapeutic Use Exemption for the relevant substances and that no apparent departures from the International

Standard for Testing and Investigations or the International Standard for Laboratories could undermine the AAF.

12. On 14 January 2020, the ITA notified the Athlete of the AAF and, in accordance with Article 6.2.6 of the IOC ADR, charged the Athlete with an anti-doping rule violation (“ADRV”).
13. On 6 March 2020, the Athlete completed an “Athlete Rights Form” whereby she accepted the AAF, and did not request the opening and testing of her B Sample or a copy of her A-Sample documentation package. Furthermore, the Athlete signed the Arbitration Agreement attached thereto referring the case to the Anti-Doping Division of the Court of Arbitration for Sport (the “ADD”).
14. Annexed to the Athlete’s Rights Form, the Athlete stated the following additional comments:

(i) Martina Ratej after careful and exact examination of the medications she took before and during London Olympic Games, 2012 found out that the substance entered her body by using medicament Trofodermin 0.5g Cream, which contains Clostebol acetate.

(ii) During medical treatment between 09th July 2012 and 11th July 2012 Martina Ratej visited private clinic “Villa Maria Rimini” in Rimini/Italy because of sudden bleeding in uterus. The attending doctor prescribed her Trofodermin 0.5g cream.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

15. On 6 May 2020, the Claimant filed a Request for Arbitration with the ADD in accordance with Article A13 of the Arbitration Rules of the ADD (the “ADD Rules”).
16. In its Request for Arbitration, and in accordance with Article A16 of the ADD Rules, the Claimant requested that this procedure be referred to a Sole Arbitrator appointed by the President of the ADD.
17. On 20 May 2020, the ADD, on behalf of the President of the ADD, confirmed the appointment of The Hon. Martina Spreitzer-Kropiunik as Sole Arbitrator in accordance with Article A16 of the ADD Rules.
18. On 11 June 2020, the Athlete filed her answer in accordance with Article A14 of the ADD Rules.
19. On 12 June 2020, the ADD requested the Parties to state whether they considered a hearing necessary, whereas a party’s silence would be considered that no hearing was necessary. No Party requested a hearing.
20. On 30 June 2020, the ADD, on behalf of the Sole Arbitrator, informed the Parties that a hearing would not be convened but did offer the Parties an opportunity for a final round of written submissions in accordance with Article A19.1 of the Rules.

21. On 7 July 2020, considering that no party requested a further round of written submissions in accordance with Article A19 of the ADD Rules, the CAS ADD, on behalf of the Sole Arbitrator, confirmed that no further written submissions would be accepted.
22. On 13 July 2020, the Parties signed and returned the order of procedure.

IV. SUBMISSIONS OF THE PARTIES

23. The IOC's submissions, in essence, may be summarised as follows:
 - Clostebol metabolites belong to Class S1.1a (Exogenous Anabolic Androgenic Steroids) of the 2012 and 2020 WADA Prohibited List.
 - The substance was found in the Athlete's A Sample. Such presence constitutes an ADRV in accordance with Article 2.1.2 of the World Anti-Doping Code ("WADC").
 - A further violation under Article 2.2 of the WADC could be established considering that the Athlete admitted to have used the Prohibited Substance found in the Athlete's sample are specifically used for doping purposes and this evidenced intentional use by the Athlete.
 - The justifications presented by the Athlete are not relevant in the context of these proceedings since this aspect falls beyond the scope of jurisdiction of the ADD.
24. In its Request for Arbitration, the IOC requested the following relief:

The International Olympic Committee hereby respectfully asks the Court of Arbitration for Sport to rule that:

 - 1) *The International Olympic Committee's request is admissible.*
 - 2) *Martina Ratej is found to have committed an anti-doping rule violation in accordance with the IOC Anti-Doping Rules.*
 - 3) *Martina Ratej's results from the 2012 London Olympics are disqualified, along with all other consequences, including forfeiture of any medals, points, and prizes.*
25. The Athlete's submissions, in essence, may be summarised as follows:
 - The Athlete does not contest the AAF, but declares that the ADRV is the consequence of the use of the medicament Trofodermin 0.5g Cream, which contains Clostebol acetate and which was used for the urgent treatment of a serious gynecological condition ("*sudden bleeding in uterus*") suffered by the Athlete in July 2012.
 - Following medical treatment for her gynecological condition, the Athlete informed the Slovenian Anti-Doping Organization ("SLOADO") about the medicines she was prescribed by her doctor and SLOADO confirmed that she did not need a therapeutic use exemption.

- The Athlete did not appreciate that the use of Trofodermin 0.5g Cream could have any consequence on her sports activity, and being in a situation of medical urgency and in a state of fear for her health, the Athlete trusted the medical staff prescribing her the cream treatment.
- The Athlete has a clear record with respect to her antidoping controls and has never tested positive for a prohibited substance. Furthermore, Trofodermin 0,5g Creme is notably not used as a doping substance in sport and, in any case, the quantities of the Prohibited Substance found in her samples are so minimal that in no way could her sporting performance during the Olympic Games been be altered.
- The Athlete considers that these circumstances represent “other acceptable justification” pursuant to Article 2 of the IOC ADR and, as a consequence, that she did not commit an ADRV.

26. The Athlete thus requests that the ADD finds that she did not commit an ADRV.

V. JURISDICTION

27. Article A2 of the ADD Rules provides as follows:

CAS ADD shall be the first-instance authority to conduct proceedings and issue decisions when an alleged anti-doping rule violation has been filed with it and for imposition of any sanctions resulting from a finding that an anti-doping rule violation has occurred. CAS ADD has jurisdiction to rule as a first-instance authority on behalf of any sports entity which has formally delegated its powers to CAS ADD to conduct anti-doping proceedings and impose applicable sanctions.

These Rules apply whenever a case is filed with CAS ADD. Such filing may arise by reason of an arbitration clause in the Anti-Doping Rules of a sports entity, by contract or by specific agreement.

These Rules apply only to the resolution by first instance arbitration of alleged anti-doping rule violations filed with CAS ADD. They neither apply with respect to appeals against any other decision rendered by an entity referred to in this Article nor against any decision rendered by CAS ADD.

Decisions rendered by CAS ADD shall be applied and recognized in accordance with the WADC.

CAS ADD shall also have jurisdiction in case of alleged doping violations linked with any re-analysis of samples.

28. On 6 March 2020, the Parties executed an Arbitration Agreement to refer this matter to the ADD.

29. The Arbitration Agreement provides as follows:

The present Arbitration Agreement is entered into between the IOC and the Athlete to govern the resolution of the disciplinary dispute in connection with the analytical findings related to sample number 2717034 collected from the Athlete on 9 August 2012, on the occasion of the XXX Olympiad London 2012 (the “Case”).

In accordance with article 6.2.5 of the IOC Anti-Doping Rules applicable to the Games of the XXX Olympiad London 2012 (the “Anti-Doping Rules”), the Case would be submitted to a Disciplinary Commission set up by the IOC.

Notwithstanding the above the IOC and the Athlete have expressly agreed to submit the Case to the Anti-Doping Division of the Court of Arbitration for Sport (“CAS ADD”) in Lausanne, Switzerland which shall act as first instance authority (Art. 2 CAS ADD Arbitration Rules) instead of the Disciplinary Commission.

30. The Parties further confirmed that the ADD has jurisdiction over the present matter by signing the order of procedure.
31. In consideration of the foregoing, the Sole Arbitrator confirms the jurisdiction of the ADD to decide this matter.

VI. APPLICABLE LAW

32. Article A20 of the ADD Rules provides as follows:

The Panel shall decide the dispute in accordance with the WADC and with the applicable ADR or with the laws of a particular jurisdiction chosen by agreement of the Parties or, in the absence of such a choice, according to Swiss law.

33. The IOC ADR applicable to the 2012 London Olympics applies, without limitation, to all doping controls conducted during the 2012 London Olympics. More specifically, the Preamble to the IOC ADR provides as follows:

All participants (Athletes and Athlete Support Personnel) and other Persons accept these Rules as a condition of participation and are presumed to have agreed to comply with the Rules.

34. No party has objected to the application of the IOC ADR and indeed, the Parties agreed with their application when signing the order of procedure.
35. The Sole Arbitrator therefore confirms that the IOC ADR, in conjunction with the WADC as provided for in the IOC ADR, applies to this procedure.

VII. MERITS

A. The Anti-Doping Rule Violation

36. As mentioned above, a metabolite of a Prohibited Substance belonging to Class S1.1a of the WADA 2020 Prohibited List (Exogenous Anabolic Androgenic Steroids) was found in the Athlete’s A-Sample on reanalysis. Said Prohibited Substance was already contained in the WADA 2012 Prohibited List.
37. According to Article 2.1.1 of WADC, “[i]t 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?"

38. Pursuant to Article 2.1.2. of WADC, sufficient proof of an anti-doping violation under Article 2.1. of WADC is established by the presence of a Prohibited Substance or its metabolites in the A Sample *"where the Athlete waives analysis of the B Sample and the B Sample is not analysed..."*.
39. The Prohibited Substance was unequivocally found in the Athlete's A Sample, the Athlete expressly waived her right to test the B Sample, and the B Sample was subsequently never tested.
40. Consequently, an ADRV under Article 2.1.1. of WADC is established.
41. Furthermore, Article 2.2.1 of WADC provides that "[i]t is each Athlete's personal duty to ensure that no prohibited substance enters his or her body and that no prohibited method is used", whereas it is not required, to establish an ADRV, *"intent, fault, negligence or knowing use on the Athlete's part"* to be demonstrated.
42. The Athlete, in justifying the ADRV, confirms the ingestion of the prohibited substance by way using Trofodermin 0,5g Creme.
43. Accordingly, the commission of an ADRV is consequently also established based on Article 2.2.1 of WADC.
44. Consequently, the Sole Arbitrator finds that the Athlete committed an ADRV under WADC Article 2.1.1 and 2.2.1.
45. Notwithstanding the foregoing, the Sole Arbitrator notes the mitigating circumstances invoked by the Athlete in defense of her adverse analytical finding. This said, these circumstances are not relevant to establish whether an ADRV was committed. Indeed, according to the WADC, an athlete's fault or negligence are elements taken into consideration in determining the consequences of an ADRV, not the commitment of the violation itself. As noted below, the Athlete will have an opportunity to explain the circumstances leading to her ingestion of the Prohibited Substance at a later stage of the prosecution of her violation.

B. The Applicable Sanction

46. Under Article 7.1 of the IOC ADR, a violation in individual sports in connection with doping control automatically leads to disqualification of the athlete's results in the competition in question, with all other consequences related thereto as applicable including forfeiture of any medals, points and/or prizes.
47. The sanctioning system provided for by the IOC ADR - once an ADRV has been established - prevents the Sole Arbitrator from considering mitigating circumstances, as requested by the Athlete.
48. Consequently, the Athlete's results at the 2012 London Olympics shall be disqualified and all medals, points and prizes awarded to her (if any) shall be forfeited.

49. Separately, the Athlete shall note that pursuant to Article 8.3 of IOC ADR, “[t]he consequences of Anti-Doping Rule Violations and the conduct of additional hearings as a consequence of hearings and decisions of the IOC, including **with regard to the imposition of sanctions over and above those relating to the London Olympic Games, shall be managed by the relevant International Federations**”.
50. Pursuant to the IOC ADR, without delegation of its powers to the CAS ADD to conduct further anti-doping proceedings and impose applicable sanctions, the CAS ADD does not have jurisdiction to hear any aspect related to sanctions over and above those relating to the London Olympic Games. This aspect of the procedure is in the exclusive jurisdiction of World Athletics.

VIII. COSTS

(...).

IX. APPEAL

55. Pursuant to Article A21 of the ADD Rules, this award may be appealed to the CAS Appeals Arbitration Division within 21 days from receipt of the notification of the final award with reasons in accordance with Articles R47 *et seq.* of the Code of Sports-Related Arbitration, applicable to appeals procedures.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The request for arbitration filed by the International Olympic Committee on 6 May 2020 against Ms. Martina Ratej is upheld.
2. Ms. Martina Ratej committed an anti-doping rule violation in accordance with the International Olympic Committee's Anti-Doping Rules applicable to the XXX Olympiad, London 2012.
3. The results obtained by Ms. Martina Ratej at the XXX Olympiad, London 2012 are disqualified with all resulting consequences including, if applicable, forfeiture of any medal, points and prizes.
4. (...).
5. (...).
6. All other motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Date: 16 July 2020

THE ANTI-DOPING DIVISION OF THE COURT OF ARBITRATION FOR SPORT

Martina Spreitzer-Kropiunik
Sole Arbitrator