



Arbitration CAS 2005/A/997 International Skating Union (ISU) v. Anzhelika Kotiuga & Skating Union of Belarus, award of 1 February 2006

Panel: Mr Michele Bernasconi (Switzerland), President; Mr Stephan Netzle (Switzerland); Mr Olivier Carrard (Switzerland)

Speed skating

Doping (nandrolone, testosterone, human chorionic gonadotropin)

Pregnancy as exculpatory circumstance for the finding of exogenous norandrosterone

An alleged early pregnancy cannot explain a level of norandrosterone far higher than the threshold of 2 ng/ml found in an athlete's samples. Moreover, a pregnant woman has only endogenous values of norandrosterone and not exogenous values.

On 12 February 2005, Ms Anzhelika Kotiuga (the "Respondent 1"), an experienced competitor in speed skating and a registered member of the Skating Union of Belarus, was subject to in-competition testing. The results of the analysis were negative.

Ms Anzhelika Kotiuga participated in the World Cup Final in speed skating which took place on 18, 19 and 20 February 2005, at Heerenveen, the Netherlands. She finished fourth in the 1000 meters race, division A, and first in the 500 meters race.

On 19 February 2005, Ms Anzhelika Kotiuga was subject to in-competition testing in accordance with Art. 5.1.1 of the ISU Anti-Doping Rules compiled in accordance with the World Anti-Doping Code.

The anti-doping control form gives the following indications:

- Regarding the medication she had taken in the three preceding days, Ms Anzhelika Kotiuga confirmed that she had taken "*Amino. L-carnitina, T3 Tribulus*".
- The "*Urine Bottle Code A/B*" was 310195.
- No comment was made on the sample collection procedure.
- Ms Kotiuga signed the following statement: "*I declare that I am satisfied with the sample taking procedure and that I have declared all medication taken*".

The Institut für Biochemie in Köln, Germany is a WADA accredited laboratory for doping analysis (hereinafter "the Köln Laboratory"). On 22 February 2005, it received the collected samples, which were marked with the code number 310195.

In its report dated 21 March 2005, the Köln Laboratory confirmed the following:

“The sample was analysed as agreed according to the rules of the World Anti-Doping Code taking into account differing rules of the International Federation. Analyses are based on accredited mass spectrometric and immunological methods.

Adverse analytical finding:

<u>Code number</u>	<u>Substance</u>
31019	norandrosterone > 2ng/ml human chorionic gonadotropin

Annotation: Detection of norandrosterone is consistent with the administration of the prohibited substance nandrolone or a probormone of nandrolone.

Remark: Remark to the sample with the code number 310195

This sample was found to contain an abnormal concentration of hCG. The World Association of Anti-Doping Scientists recommends that the following information be considered before any further action is taken. An abnormal concentration of hCG may be caused by hCG administration, an hCG secreting tumour or pregnancy. Since many pregnancies resorb during the first month of gestation, special care should be taken in handling this finding. WAADS also recommends that this be treated as you would any other confidential medical information”.

On 29 March 2005, the International Skating Union (“ISU” or the “Appellant”) informed the Skating Union of Belarus (the “Respondent 2”) of the fact that Ms Anzhelika Kotiuga’s urine A-sample was found to contain norandrosterone at a concentration of more than 2ng/ml as well as “*an abnormal concentration of human chorionic gonadotropin (hCG)*”. The Appellant requested from the Respondents a written explanation within 15 days as from the notification and confirmed that “*If required, the analysis of the “B” sample will be carried out at a time determined by the ISU in the same laboratory*”.

On 1 April 2005, the Respondent 2 wrote to the ISU to request a confirmatory analysis to be carried out and produced written testimonies from Ms Anzhelika Kotiuga, from Ms Liudmila Lukyanskaya, the doctor of the national Speed Skating team of Belarus and from Ms Madzina Safina, the Deputy Chief of gynaecological Clinic in Minsk. Those documents were dated 1 April 2005 and contained the following information:

- The athlete has been suffering from regular gynaecological disorder, in particular menstrual cycle disturbances and irregular menstrual bleeding. In March 2002, she underwent a hormonal treatment. In April 2003, she had to get an abortion.
- Regarding the positive findings of the sample with the code number 310195, Ms Liudmila Lukyanskaya explained that there “*was a medical situation caused by the delay of the menstruation. Having considered the fact that the skater had had menstrual cycle disturbances for three years, no measures were taken by me for two weeks. Afterwards, the pregnancy test was made, which confirmed the condition of pregnancy. (...) In order to terminate the pregnancy, on February 14, 2005 the skater took Mifegin (Mifepristone) in the dosage of 600 mg (one-time use), which was prescribed to her by her gynaecologist. No prohibited substances were listed in the annotation to the medicine. This medicine is generally used to terminate early pregnancy and to provide emergency contraception*”.

- Ms Madzina Safina confirmed that *“On March, 9 2005 Kotyuga A. has visited the clinic with complaints on uterine bleeding started 19.02.05 after taking mifepristone 600 mg on 14.02.05. within 14 days of missed period. After downfall on March, 5 bleeding has increased and abdominal pain has occurred. Uncomplete abortion was diagnosed and promptly by vacuum aspiration managed”*.
- Ms Anzhelika Kotiuga declared that she has never taken any prohibited substances.

In further explanations dated 13 April 2005, Ms Liudmila Lukyanskaya confirmed that the athlete's health was in danger because of her condition and that she had no choice but to take Mifegin. According to Ms Lukyanskaya, abortion happened on the fifth day after Mifegin administration. In other words, it occurred on 19 February 2005.

On 14 April 2005 and at the request of the ISU, the Respondent 2 provided the Appellant with a translation of the results of the ultrasound scanning performed on Ms Anzhelika Kotiuga on 9 March 2005. It reads in relevant part: *“Diagnosis: Abortus incompletus at early pregnancy (...) 9/03/2005 – vacuum aspiration was performed. Chorionic tissue and blood were evacuated”*.

On 15 April 2005, the Köln Laboratory wrote to the ISU that the steroid profile of the sample 310195 gives no indication of a pregnancy.

On 18 April 2005, the members of the Council of the Skating Union of Belarus took unanimously the following decision:

- “1. The fact of the unintentional Anti-Doping Rules violation was stated.*
- 2. The medicine “Mifegin” was administered due to medical reasons to protect the skater's health and not to enhance sport performance.*
- 3. (...) the skater is sanctioned with a warning and reprimand with no ineligibility from future events”*.

On 20 April 2005, the Köln Laboratory confirmed that:

- the sample 310195 had been analysed with GC/C/IRMS and the results indicate an exogenous source of norandrosterone;
- the GC/C/IRMS results of the testosterone metabolites indicate an application of testosterone or testosterone prohormones, but that these results have not been reported because the urine volume in the A-sample was not sufficient to confirm them;
- the laboratory has no experience regarding the relation between the application of mifepristone and urinary norandrosterone and could not find any data from the literature.

In a report dated 4 May 2005, the Ministry of Healthcare of the Republic of Belarus confirmed the possible detection of norandrosterone in the human organism after the administration of mifepristone/mifegin, which is a registered medicine in Belarus.

The analysis of the B-sample took place in the Köln Laboratory, on 18 May 2005. Mr Vladimir Bud, Ms Lyudmyla Penkova and Ms Madzina Safina represented Ms Anzhelika Kotiuga at the B-sample opening. They signed a declaration according to which the analytical result of the A-sample was

explained to them, the code numbers of the A and B-samples and the corresponding forms were identical and the container and bottle of the B-sample were correctly closed and sealed.

The Köln Laboratory issued its analysis report of the B-sample on 23 May 2005 and confirmed that the results indicate the application of testosterone or testosterone prohormones and nandrolone or nandrolone prohormones.

On 23 May 2005, Ms Anzhelika Kotiuga wrote a letter to the ISU to express how upset she was by the results of the analysis of the urine samples she gave in competition on 19 February 2005. She repeated that she had never intentionally ingested prohibited substances and blamed the team's medical staff for her failed drug test. She said she had always been taking all the tablets and different drinks given to her by the team doctor, being sure that the latter controlled that they were permitted for usage in accordance with the doping regulations. She explained that she has dedicated her life to the sport of speed skating and expected the ISU to be supportive in its decision taking.

Between 24 and 25 May 2005, the Council of the Skating Union of Belarus formally admitted the guilt of Ms Liudmila Lukyanskaya and dismissed her from her position as a team doctor of the Skating Union of Belarus. It considered Ms Anzhelika Kotiuga as not guilty of intentional Anti-Doping Rules violation.

On 27 May 2005, the Respondent 2 sent to the ISU a written statement from Ms Liudmila Lukyanskaya accepting to take full responsibility for having unintentionally given banned substances to the athlete.

On 25 July 2005 the Köln Laboratory confirmed to the ISU Disciplinary Commission the following:

- The formation of norandrosterone after application of mifepristone (the active compound of Mifegin) is not known. The literature on which is based the report dated 4 May 2005 of the Ministry of Healthcare of the Republic of Belarus, does not show that mifepristone is metabolised by the human organism to the norandrosterone precursors 19-nor-4-androstendione and 19-nor-5(10)-androstendione.
- The conclusion of its report dated 23 May 2005 is not impaired by the GC/C/IRMS results of the A-sample and the GC/C/IRMS results of the testosterone metabolites, which indicate an application of testosterone or testosterone prohormones, cannot be explained by an application of mifepristone.

On 28 July 2005, the Respondent 2 submitted a report of the Ministry of Healthcare of the Republic of Belarus, confirming that the direct chain of biochemical reactions that could guarantee the formation of norandrosterone and its precursors 19-nor-4-androstendione and 19-nor-5(10)-androstendione after mifepristone administration is not described in literature but claims that "*there is indirect evidence of the possibility of their formation*".

On 19 August 2005, the ISU Disciplinary Commission issued the following decision:

- “1. *Anzhelika Kotiuga is declared responsible for an Anti-Doping violation committed on [February] 19, 2005 during the ISU World Cup Final in speed Skating at Heerenveen.*
2. *Anzhelika Kotiuga’s results obtained during the 2005 World Cup Final in speed skating, i.e. her fourth place in the 1000 m race, division A, and her first place in the 500 m race and her medal, her points and prizes are forfeited.*
3. *A two year’s ineligibility, beginning on August 19, 2005, is imposed on Anzhelika Kotiuga. (...)*”.

On 1 September 2005, Ms Anzhelika Kotiuga filed an appeal before the Appeals Commission of the ISU.

The Appeals Commission held a hearing in Lausanne, Switzerland, on 27 November 2005 to consider the appeal of Ms Anzhelika Kotiuga against the decision of the ISU Disciplinary Commission dated 19 August 2005.

At the hearing, Ms Anzhelika Kotiuga’s representatives handed to the members of the Appeals Commission a document containing a list of 27 inconsistencies observed by experts, who investigated the complete documentation package related to the analysis procedure of the A and B-samples 310195. The said document is the result of an expertise, which began on 4 November and finished on 18 November 2005. It was not communicated to the ISU in advance for determination.

On 28 November 2005, the Appeals Commission issued the following decision, which reads in relevant part:

“The AC holds that the ISU has not met the burden of establishing that an Anti-Doping violation has occurred for the following reasons:

(...)

- b) The burden of proof in this case is shifted to the Skater to rebut the presumption of Doping and to establish facts and circumstances supporting that burden. The Appellant has sustained that burden by testimony of experts indicating 27 different indices of inconsistencies in the testing process. Most of them were not rebutted by the ISU. Whereas some could be resulting from error during transmittal of electronic data to paper or simply sloppy record keeping processes, many could lead one to believe of inaccuracies of the testing procedures and reporting procedures in this case. If only a few of the 27 indices are true, the entire testing and reporting process for this Skater raises questions of doubt.*

For example, the Skater has proven that the same analyst performed the analytical procedure on the A and B Sample. This action violates section 5.2.4.3.2.2 of the WADA International Standard for Laboratories, which under article 3.2.1 of the ISU Anti-Doping Rules indicate that “WADA/accredited Laboratories are presumed to have conducted sample analysis and custodial procedures in accordance with the International Standard for laboratories analysis. The Skater may rebut this presumption by establishing that a departure from the International Standard occurred. If the Skater rebuts the preceding presumption by showing that a departure from the International Standard occurred, then the ISU ... shall have the burden to establish that such departure did not cause the adverse analytical finding”. In this case, the Skater rebutted this presumption by showing the same analyst perform the procedure; however, the ISU did not meet this burden.

- c) *In this case, two substances which are listed in the 2004 Prohibited List of WADA, are in question: norandrosterone and testosterone. Norandrosterone has been found in the analysis report of the A Sample n° A 310195 of March 21, 2005, and in the analysis report of the B Sample n° B 310195 of May 18, 2005. Based on the testimony of Madzina Safina, gynaecologist and the pathology report from the Pathologo-anatomical Bureau of Minsk, it is proven that Appellant was pregnant during urine testing on February 19, 2005. Additionally, based on the testimony of Prof. Dr. Schänzer, Director of Institut für Biochemie, Deutsche Sporthochschule Köln, responsible for the test report, the accuracy of a norandrosterone test is questionable when a woman is pregnant.*
- d) *The AC concludes that the amount of norandrosterone could have been influenced by the pregnancy and/or the taking of an exogenous substance. It is not clear which occurred in this case.*

(...)

- f) *The DC, in part, based its findings regarding testosterone on both A and B Samples. After hearing the testimony of Prof. Dr. Schänzer, the AC comes to the conclusion that there is no consistency between the reports of the analysis of the A and B Samples. Whereas testosterone is demonstrated to be present in the report of the analysis of the B Sample, it is not mentioned in the report of the analysis of the A Sample of March 21, 2005. In a letter of the Köln Laboratory of April 20, 2005, it was mentioned that the additional result of the GC/C/IRMS tests of the testosterone metabolites indicate an application of testosterone or testosterone prohormones, but the Laboratory added that these results have not been reported because the urine volume in the A Sample was not sufficient to confirm them.*

The WADA World Anti-Doping Code, International Standard for Laboratories, Version 4.0, August 2004, in article 5.2.4.3.2.3 states the following:

“The B Sample result must confirm the A Sample identification for the Adverse Analytical Finding to be valid. The mean value for the B Sample finding for Threshold Substances is required to exceed that threshold including consideration of uncertainty”.

Normally in this situation the A and B Samples tested for testosterone indicate that this hormone shows equally in the A and B Sample, however in this unusual case the B Sample reports testosterone whereas the presence of testosterone in the A Sample, as a result of a lack of a urine volume, can not be reported. As a result of the inconclusive test, the requirement of the WADA rule 5.2.4.3.2.3 was not met.

For the reasons as cited above, the Appeals Commission of the ISU rules:

Final decision

1. *The AC reverses the decision of the DC, thereby reinstating the eligibility of Anzhelika Kotiuga, as well as medals, points and prizes.*
2. *According to article 15 n° 1 of the ISU AC Rules of procedure (Communication n° 1198), each party to the proceedings has to bear their own costs including all costs of witnesses and experts called.*
3. *There is no further appeal within the ISU from this decision. In accordance with Article 23, paragraph 1, of the Constitution an Appeal may be lodged with the Court of Arbitration for Sport in Lausanne, Switzerland within 21 days from the communication of the decision to the party”.*

On 15 December 2005, the Appellant filed a statement of appeal with the Court of Arbitration for Sport (“the CAS”).

In its appeal brief dated 23 December 2005, the Appellant challenged the decision issued by the Appeals Commission of the ISU on 28 November 2005, submitting the following request for relief:

“The Appellant ISU International Skating Union respectfully requests that the Panel:

1. *Cancels the Decision of the ISU Appeal Commission of November 28, 2005;*
2. *Declares that the Respondent Anzhelika Kotiuga has committed an Anti-Doping violation evidenced by the test made on February 19, 2005;*
3. *Declares that the Respondent Anzhelika Kotiuga is disqualified from the 2005 World Cup Final in Speed Skating 1000 meters race of February 19 and 500 meters race of February 20, and her results, medals, points and prizes forfeited in accordance;*
4. *Declares that a two years ineligibility be imposed on the Respondent Anzhelika Kotiuga starting on August 19, 2005;*
5. *Subsidiarily, that the Decision of the ISU Appeal Commission of November 28, 2005 be cancelled and that the Decision of the ISU Disciplinary Commission of August 19, 2005 be affirmed;*
6. *Declares that in any above event all costs of the proceedings before the CAS and all costs incurred by the ISU with the Institut for Biochemie be borne by the Respondent and the Interested ISU Member Skating Union of Belarus”.*

The appeal brief contains a statement of the facts, legal arguments, supporting documents and experts' opinions. The Appellant's submission, in essence, may be summarized as follows:

- In a fax dated 21 December 2005, the Köln Laboratory gave the comparative results of an earlier in-competition doping control test of Ms Anzhelika Kotiuga, which was carried out on 12 February 2005. The results of the analysis were negative and the *“norandrosterone value was of only 0,1 ng/ml, which makes the allegation that the February 19 Test norandrosterone findings would result from the alleged pregnancy inconsistent”*.
- The analysis of the A and B-samples confirms the presence of norandrosterone in Ms Anzhelika Kotiuga's urine.
- *“The laboratory has however established that the origin of norandrosterone was exogenous, based on an IRMS measurement. The IRMS analysis in that respect is scientifically fully reliable. Such scientifically reliable evidence of the exogenous origin creates an Adverse Analytical Finding which cannot therefore be subject to a demonstration of physiological or pathological condition”*.
- Ms Anzhelika Kotiuga's alleged pregnancy in February 2005 has not been satisfactorily proven and is inconsistent with the tests performed on her urines.
- The remarkable performances reached by Ms Anzhelika Kotiuga during the World Competition held in February 2005 make her alleged health and medical condition hardly plausible.
- *“The ISU is therefore led to believe that the level of hCG is more likely the sign of its administration in order to simulate pregnancy and mask the administration of nandrolone”*.
- The fact that mifepristone could have influenced the norandrosterone levels has not been substantiated by any conclusive elements or literature.

- Ms Anzhelika Kotiuga has never given any explanation as to a possible cause for the finding regarding the application of testosterone or testosterone prohormone. *“The findings in Sample A were not reported initially because they could not be confirmed but they exist and are conclusive as such. The B sample results, on their part, are fully confirmed and in accordance with the Rules and Procedures”*. This is enough to confirm that the athlete tested positive to testosterone or testosterone prohormone, which is a prohibited substance.
- It is only at the hearing before the Appeals Commission that the Appellant learned about the existence of the document putting into evidence 27 inconsistencies in the doping test analysis procedure. It has never had a chance to make a full determination. According to the “Supplementary Report” dated 21 December 2005 and issued by the Köln Laboratory, none of the alleged 27 deficiencies constitute serious departures in the sense that they could have put into question the positive findings.

On 29 December 2005, the Respondents filed a joint request for provisional measures, with the following petitions:

- “1. To appoint Dr. Stephan Netzle, Law Office Wenger Platter, Seestrasse 39, 8700 Küsnacht (ZH), as arbitrator.
2. To reverse the suspensive effect of the Appeal to the CAS on the decision of the ISU Appeals Commission and to reinstate said decision with all its consequences as provisional measures until the CAS will have rendered its final decision”.

On 6 January 2006, the Deputy President of the CAS Appeals Arbitration Division issued the following order:

- “1. Upholds the application for provisional measures filed by the Respondents on 29 December 2005.
2. States that the present order is rendered without costs”.

On 19 January 2006, the Respondents filed together an answer, with the following motions:

- “1. To confirm the decision of the ISU Appeals Commission of 28 November 2005.
2. To confirm the Respondents results obtained during the 2005 world cup final in speed skating, i.e. her 4th place in the 1000m race, division A, and her 1st place in the 500m race.
3. To confirm with immediate effect the annulment of the Respondent’s two years’ ineligibility decided by the ISU Appeals Commission.
4. To have a hearing with the following experts and witnesses listed in sec. 5 of this reply.
5. All costs and expenses in connection with these proceedings to be borne by the Appellants”.

The submissions of the Respondents may be summarized as follows:

- The Appellant failed to send to the Respondents the complete documentation in connection with the analyses of the A and B-samples 310195.
- The *“amendments (the correction of date, time, vials number) inserted into the Documentation Package after the production of the objections by the Respondent’s experts/witnesses (...) can hardly be serious*

fundaments for the Appellant's allegations. The Respondent is left with the bitter aftertaste of a careless handling of test results, if it is so easy to manipulate documents at the laboratory's free discretion".

- The urine instability test was carried out after the official deadlines. The results must be therefore disregarded.
- *"For the IRMS test the internal standard pregnandiol has not been applied, which leads to invalid results"*.
- Several inconsistencies of the doping test procedure are put into evidence. The Appellant has not shifted the burden of proof onto the Respondents to establish that an Anti-Doping violation has not occurred.
- At the hearing before the Appeals Commission of the ISU, the Appellant's expert, Mr Wilhelm Schänzer, had to admit that, in case of a pregnancy, a concentration value of up to 12 ng/ml of norandrosterone can easily be of endogenous origin.
- It has been proven that Ms Anzhelika Kotiuga was pregnant in February 2005 and her *"pregnancy explains the increasing of the norandrosterone level which is more than 2 ng/ml and chorionic gonadotropin at early stage of the pregnancy"*.
- It is undisputed that the test of 12 February 2005 did not show the use of prohibited substances. *"The testosterone and its metabolites level in sample A of 19 February 2005 reflected not more than the natural metabolism of hormones, a level not even reachable with a therapeutic dose administration of testosterone or its prohormones during the period of 12 to 19 February 2005"*.
- *"Because the laboratory was not running the tests on mifepristone and its metabolites, the Respondent cannot exclude the influence of mifepristone and its metabolites on IRMS results"*.
- The B-sample test results must confirm the A-sample test results. There was no need for the Respondents to contest the detection of testosterone in the B-sample, since this substance was not reported in the A-sample test results.
- Regarding the A-sample testing procedure, it is undisputed that the GC/C/IRMS results of the testosterone metabolites have not been reported because the urine volume in the said sample was not sufficient to confirm them. Ms Anzhelika Kotiuga *"gave 100 ml urine which is 25 ml more than required by the Rules (...). Since the B-sample coactively does not confirm the A-sample, where the Adverse Analytical Finding of testosterone was not reported, the analysis of the laboratory does not comply with the requirements of the applicable Rules and leads therefore to the invalidity of the test result"*.
- It is not scientifically proven that pregnancy is not compatible with high performances in sport.
- It is one of the Appellant's representatives, who suggested that it would be good for Ms Anzhelika Kotiuga's case to make Ms Liudmila Lukyanskaya bear full responsibility for having unintentionally given banned substances to the athlete. *"Because the Respondent could not explain the finding of forbidden substances this recommended action seemed to be her last hope"*.

A hearing was held on 31 January 2006 at the CAS premises in Lausanne. All the members of the Panel were present.

At the outset of the hearing, the parties declared that they had no objection to raise with regard to the composition of the Panel.

The Panel heard evidence from the following witnesses:

- Mr Hans Geyer, representative of the Köln Laboratory;
- Mr Harm Kuipers, ISU medical advisor;
- Ms Madzina Safina, deputy chief of a gynaecological clinic in Minsk;
- Ms Elena Danchenko, doctor and expert witness;
- Ms Christiane Ayotte, professor at the National Scientific Research Institute - Institut Armand-Frappier, Canada;
- Mr Vasili Fadeev, doctor and expert witness;
- Mr Dzmitry Razhdzestvensky, doctor and clinical pharmacologist.

At the hearing, Ms Anzhelika Kotiuga was heard via teleconference and Ms Christiane Ayotte via videoconference, with the agreement of the parties and of the Panel, and pursuant to Art. R44.2 par. 4 and R44.3 par. 2 of the Code of Sports-related Arbitration (hereinafter referred to as “Code”). Upon closure, the parties expressly stated that they did not have any objection in respect of their right to be heard and to be treated equally in these arbitration proceedings.

LAW

CAS Jurisdiction

1. The jurisdiction of the CAS, which is not disputed, derives from Art. 23 and Art. 24 of the ISU Constitution and Art. R47 of the Code. It is further confirmed by the order of procedure duly signed by the parties.
2. It follows that the CAS has jurisdiction to decide the present dispute.
3. Under Art. R57 of the Code, the Panel has the full power to review the facts and the law. The Panel did not therefore examine only the formal aspects of the appealed Decision but held a trial *de novo*, evaluating all facts and legal issues involved in the dispute.

Applicable law

4. Art. R58 of the Code specifies that the *“Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is*

domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.

5. In the present matter, there was no agreement among the parties regarding the application of any particular law.
6. According to Art. 1 par. 6 of the ISU Constitution *“The ISU constitutes an association having its own legal identity in accordance with Article 60 of the Swiss Civil Code. The ISU is therefore under the jurisdiction of Switzerland and the location of its legal residence is Lausanne”.*
7. It follows that the ISU Regulations and Swiss law are applicable to the present case.

Admissibility

8. The appeal was filed within the deadline provided by Art. 23 par. 3 of the ISU Constitution, that is within 21 days after notification of the Decision issued by the Appeals Commission of the ISU.
9. It follows that the appeal is admissible.

Procedural motions – New documents

10. At the hearing, some of the Respondents’ witnesses offered to substantiate their statement with scientific articles.
11. Pursuant to Art. R44.1 par. 2, second sentence of the Code *“After the exchange of the written submissions, the parties shall not be authorized to produce further written evidence, except by mutual agreement or if the Panel so permits on the basis of exceptional circumstances”.*
12. On the one hand, the Appellant was strongly opposed to the issuance of new documents by the Respondents. On the other hand, the Respondents did not present any exceptional circumstances justifying departure from the general principle set out by Art. R44.1 of the Code. Furthermore, the Panel observes that the documents were not recent and could have been handed out in an earlier stage of the procedure. In addition, the Panel notes that the documents did not support issues, which were new, i.e. which arose during the hearing.
13. As a result, the Panel rejected the Respondents’ motion requesting the production of new written evidence.

The merits

14. The main issues to be resolved by the Panel are:
- Was a prohibited substance present in Ms Anzhelika Kotiuga's samples?
 - If so, was the adverse analytical finding caused by the inconsistencies of the doping test procedure?
 - What is the sanction and how should it be calculated?

1. Was a prohibited substance present in Ms Anzhelika Kotiuga's samples?

15. Nandrolone and testosterone metabolites as well as an abnormal concentration of human chorionic gonadotropin (hCG) were identified in Ms Anzhelika Kotiuga's samples.

A. In General

16. According to Art. 2 of the ISU Anti-Doping Rules compiled in accordance with The World Anti-Doping Code (hereinafter referred to as the "ISU Anti-Doping Rules"), *"The following constitute ISU Anti-Doping Rule violations:*

2.1 The presence of a Prohibited Substance or its Metabolites or Markers in a Skater's bodily Specimen

2.1.1 It is each Skater's personal duty to ensure that no Prohibited Substance enters his or her body. Skaters are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their bodily Specimens. Accordingly, it is not necessary that intent, fault, negligence or knowing Use on the Skater's part be demonstrated in order to establish an ISU Anti-Doping Rule violation under Article 2.1 (...)"

17. The "Prohibited List" which is published and revised by the World Anti-Doping Agency (hereinafter referred to as the "WADA") is incorporated in the ISU Anti-Doping Rules pursuant to their Art. 4.

18. Nandrolone, testosterone and hCG are mentioned in the "Prohibited List". Regarding anabolic agents, the said list also provides the following:

"Where a Prohibited Substance (...) is capable of being produced by the body naturally, a Sample will be deemed to contain such Prohibited Substance where the concentration of the Prohibited Substance or its metabolites or markers and/or any other relevant ratio(s) in the Athlete's Sample so deviates from the range of values normally found in humans that it is unlikely to be consistent with normal endogenous production. A Sample shall not be deemed to contain a Prohibited Substance in any such case where the Athlete proves by evidence that the concentration of the Prohibited Substance or its metabolites or markers and/or the relevant ratio(s) in the Athlete's Sample is attributable to a physiological or pathological condition. In all cases, and at any concentration, the laboratory will report an Adverse Analytical Finding if, based on any reliable analytical method, it can show that the Prohibited Substance is of exogenous origin".

19. Regarding the concentration of hormones such as gonadotrophins, the “*Prohibited List*” contains a similar rule, according to which “*Unless the Athlete can demonstrate that the concentration was due to a physiological or pathological condition, a Sample will be deemed to contain a Prohibited Substance (...) where the concentration of the Prohibited Substance or its metabolites and/or relevant ratios or markers in the Athlete’s Sample so exceeds the range of values normally found in humans so that it is unlikely to be consistent with normal endogenous production*”.

- B. *Nandrolone metabolite – A-sample*

20. In Ms Anzhelika Kotiuga’s A-sample, norandrosterone was detected, which is consistent with the administration of the prohibited substance nandrolone or a prohormone of nandrolone.

21. According to the results of the analyses conducted by the Köln Laboratory, the concentration of norandrosterone in Ms Anzhelika Kotiuga’s A-sample was estimated to be 10,5 ng/ml.

22. In a technical document dated 28 May 2004, the WADA Executive Committee instructed the WADA accredited laboratories to report as an Adverse Analytical Finding, any urine sample from either a male or a female containing 19-norandrosterone (19-NA) at a concentration greater than 2 ng/ml.

23. On 13 May 2005, WADA issued an explanatory note in connection with its “*2005 Prohibited List*”. It gives the following clarification:

“For 19-norandrosterone, an Adverse Analytical Finding above 2ng/ml as reported by a WADA accredited laboratory, and after exclusion of unstable urine in accordance with applicable laboratory procedures, is considered to be scientific and valid proof of exogenous origin. Therefore, no subsequent investigation or longitudinal analysis is required to assess the exogenous origin of the substance”.

24. At the hearing, Mr Hans Geyer explained that a stability test was performed on Ms Anzhelika Kotiuga’s A-sample in March 2005, although such a test was formally not implemented by the WADA at the time. The test was made as an additional guarantee for the athlete not to be the victim of a misjudgement, which could lead to an undeserved sanction. According to the Köln Laboratory, the urine was stable.

25. Furthermore, the Köln Laboratory also analysed Ms Anzhelika Kotiuga’s A-sample with GC/C/IRMS. The results indicate an exogenous source of norandrosterone.

26. Ms Christiane Ayotte confirmed that, at the time it was performed, the stability test was not yet required. In her opinion, the GC/C/IRMS is one of the best methods to exclude the endogenous origin of the substance. According to her, there is no issue with respect to the urine stability test, as the norandrosterone findings suffice for themselves.

C. Nandrolone metabolite – B-sample

27. According to the results of the analyses conducted by the Köln Laboratory, the concentration of norandrosterone in Ms Anzhelika Kotiuga's B-sample was estimated to be 11,5 ng/ml.
28. At the hearing, Mr Hans Geyer and Ms Christiane Ayotte confirmed that the results of the B-sample are consistent with the results of the A-sample.
29. Mr Geyer explained that, with the consent of Ms Anzhelika Kotiuga's representatives, the Köln Laboratory chose not to confirm the exogenous source of norandrosterone found in the B-sample with the GC/C/IRMS. Due to the limited amount of urine, the persons attending the B-sample test agreed to run a GC/C/IRMS test to detect the endogenous or exogenous source of the testosterone.

D. The Respondents' position regarding the positive findings

30. Between March 2005 and mid-August 2005, the Respondents have never questioned the results of the Köln Laboratory.
31. It is only after the decision issued by the ISU Disciplinary Commission, that the Respondents asked for the complete documentation package related to the analysis procedure of the A and B-samples 310195. They put in place a commission of experts to investigate the said package and to report any inconsistency they could find. The investigation began on 4 November and finished on 18 November 2005. The results of the investigation were not communicated to the ISU before the day of the hearing held by the Appeals Commission of the ISU on 27 November 2005. At that time, the Respondents contested the validity of all the tests carried out by the Köln Laboratory.

E. The Panel's position

- a) The concentration and the exogenous source of norandrosterone
 - aa) The concentration of norandrosterone
32. According to the results of the analyses conducted by the Köln Laboratory, the concentration of norandrosterone in Ms Anzhelika Kotiuga's samples were by far higher than the threshold of 2 ng/ml. As a result, the burden of adducing exculpatory circumstances is shifted to the Athlete, who had to demonstrate that the concentration was due to a physiological or pathological condition.
33. At the hearing, Ms Madzina Safina confirmed that, on the 14 February 2005, the athlete was three weeks pregnant. Regarding the fact that the hCG values detected in the athlete's urine collected on 19 February 2005 were four times higher than the ones of the urine collected in the previous test performed on 12 February 2005, Ms Safina explained that it could be the

consequence of Ms Anzhelika Kotiuga's irregular menstrual cycles and her gynaecological disturbances. The low pregnandiol values detected in the athlete's samples could be caused by the use of mifepristone on 14 February 2005. Ms Madzina Safina stated that she was not in a position to comment the exogenous or endogenous source of norandrosterone.

34. At the hearing, Mr Hans Geyer and Ms Christiane Ayotte exposed that the levels of hCG and of norandrosterone found in the athlete's urine were not consistent with an early pregnancy. As a matter of fact, the hCG level is very high at the beginning of pregnancy, while the level of norandrosterone reaches its peak during the last trimester of pregnancy. The both experts were of the opinion that a pregnancy cannot explain the high level of norandrosterone found in Ms Anzhelika Kotiuga's urine samples.
35. According to Mr Hans Geyer and Ms Christiane Ayotte, the fact that Ms Anzhelika Kotiuga was pregnant in February 2005 cannot be excluded. Nevertheless, the metabolites found in her body were from an exogenous source. A pregnant woman has only endogenous values of norandrosterone and not exogenous values.
36. On the one hand, the Ministry of Healthcare of the Republic of Belarus confirmed that "*there is indirect evidence of the possibility*" of the formation of norandrosterone and its precursors 19-nor-4-androstendione and 19-nor-5(10)-androstendione after mifepristone administration. On the other hand, Mr Hans Geyer and Ms Christiane Ayotte were of the opinion that it is scientifically not plausible for the body to metabolise mifepristone into norandrosterone. Nothing in the scientific literature supports the Respondents' contention. In other words, the use of mifepristone cannot increase the level of the nandrolone metabolite.
37. Finally, Mr Vasili Fadeev explained to the Panel that tribulus can induce endogenous norandrosterone. Mr Harm Kuipers and Mr Hans Geyer claimed that such allegation was not supported by any data. According to them, it has been scientifically proven that tribulus cannot be the cause of endogenous production of norandrosterone.

bb) The exogenous source of norandrosterone

38. It is undisputed that the GC/C/IRMS permits the differentiation of the exogenous or endogenous origin of urinary androgens metabolites. In their answer, the Respondents actually state that "*this method is used only for establishing the exogenous and endogenous background of hormones*" (see N°2 of the answer).
39. The results of the GC/C/IRMS test conducted on Ms Anzhelika Kotiuga's A-sample indicate an exogenous source of norandrosterone.
40. At the hearing, Mr Vasili Fadeev and Mr Dzmityr Razhdzestvensky contested the reliability of the GC/C/IRMS results, which could have been influenced by the fact that the athlete took mifepristone and tribulus. They were of the opinion that the Köln Laboratory should have taken these substances into account while conducting the test.

41. The Panel puts into evidence the following:
- The GC/C/IRMS established the exogenous source of norandrosterone found in the A-sample. The representatives of the Respondents were present at the confirmatory analysis. They signed a form confirming that the analytical result of the A-sample was explained to them. They were able to assess appropriateness of the methodology used by the Köln Laboratory and the analyses, interpretations and presentation of data. They could have made positive suggestions concerning the procedure used. With regard to the A-sample, there is no trace of a reservation made as to the reliability of the GC/C/IRMS test. The Respondents' representatives accepted not to submit the B-sample to another GC/C/IRMS test in order to corroborate the exogenous source of norandrosterone.
 - It is very regrettable that Ms Anzhelika Kotiuga did not deem necessary to indicate on the anti-doping control form that she had taken mifepristone only four days before the doping test. The Panel admits that she was not formally required to make such a declaration, although it would have answered many questions. Under those circumstances, the Panel does not see how the Köln Laboratory could have taken into consideration this substance, of which it was not aware.
42. The statements made by the Ministry of Healthcare of the Republic of Belarus, by Mr Vasili Fadeev and by Mr Dzmitry Razhdzestvensky were contested by other experts present at the hearing. The Panel, based on objective criteria, must be convinced of the occurrence of the alleged effects of mifepristone or tribulus on the concentration of the norandrosterone or on the reliability of the GC/C/IRMS. In the present case, the exculpatory evidence required could have been disclosed in the form of scientific literature recognized as authoritative or in the form of a complete expertise. The assertions made by the Ministry of Healthcare of the Republic of Belarus, by Mr Vasili Fadeev and by Mr Dzmitry Razhdzestvensky were not substantiated by anything concrete. As a result, the Panel considers that their allegations are not credible and do not suffice to put into question the quality of the GC/C/IRMS test itself or to reverse the presumption implemented by Art. 3.2.1 of the WADA Code, according to which WADA-accredited laboratories are presumed to have conducted sample analysis in accordance with the international standards for laboratory analysis.
43. Based on the foregoing and after careful analysis of the facts and evidence submitted to it by the parties, the Panel finds as beyond doubt that the source of norandrosterone was exogenous. In reaching this conclusion, the Panel has no difficulty to put aside the Respondents' explanations according to which the high concentration of norandrosterone in Ms Anzhelika Kotiuga's urine samples can be explained by an endogenous production, caused by pregnancy or by the absorption of authorized substances. The Panel is convinced that the athlete's urine samples contained norandrosterone at a concentration greater than 2 ng/ml and that its source is exogenous.
44. In this context, the questions related to the abnormal concentration of human chorionic gonadotropin or to Ms Anzhelika Kotiuga's pregnancy in February 2005 appear to be not decisive and therefore can be left open.

45. Whether the testosterone findings should be held against the athlete is a legal matter, which the Panel finds unnecessary to deal with. As a matter of fact, the issue is pointless considering that it has been established that a prohibited substance was present in Ms Anzhelika Kotiuga's samples. Nevertheless, on the subject of the testosterone findings, the Panel was taken aback, to say the least, by the results of the various tests conducted by the Köln Laboratory and by the very laconic explanations of the Respondents with regard thereto.

2. *If so, was the adverse analytical finding caused by the inconsistencies of the doping test procedure?*

A. In General

46. According to Art. 3.2.1 par. 2 of the WADA Code, if the athlete shows that a departure from the International Standard occurred, the ISU shall have the burden to establish that such departure did not cause the adverse analytical finding.

B. In Particular

47. In its decision, the Appeals Commission of the ISU regarded as crucial the fact that, at the hearing, the representative of the Köln Laboratory did not rebut most of the 27 indices of inconsistencies in the testing process put into evidence by Ms Anzhelika Kotiuga's experts.

48. The Panel observes that the 27 inconsistencies were listed in a 6 pages long report (hereinafter also referred to as the "Expert Resolution"). This document is the result of 14 days of investigations lead by several experts and was handed to the representative of the Köln Laboratory on 27 November 2005, that is the day of the hearing held before the Appeals Commission of the ISU. Given the amount of data to process and their technical nature, the Panel does not see how the representative of the Köln Laboratory could have possibly been in the position to make a determination on each of the alleged 27 inconsistencies.

49. With its appeal brief, the ISU produced a "Supplementary Report", addressing each of the alleged inconsistencies. Moreover, at the hearing before the CAS, Mr Hans Geyer was put at the disposition of the authors of the Expert Resolution and answered all their questions.

50. The Panel reviewed thoroughly the Expert Resolution and the "Supplementary Report". The Respondents' criticisms against the testing process of the Köln Laboratory can be categorized in different groups:

- Some of the reproaches were related to issues in connection with tribulus, human chorionic gonadotropin (hCG) and testosterone, which were already dealt with here above and do not need to be addressed again.
- The Expert Resolution pointed out inconsistencies which were actually due to the way the data was presented in the documentation package related to the analysis procedure of

the A and B-samples 310195. The Panel considers the explanation found in the “Supplementary Report” and given at the hearing both credible and compelling.

- Some comments were made with regards to transcription errors. It appears that those mistakes were minor and could not influence the testing results.
- The Respondents were upset by the fact that they obviously did not receive the complete information and all the documents related to the positive findings.

The Panel observes the following:

- The Respondents had representatives attending the B-sample analysis. On that occasion they had access to all the desired information, which is undisputed.
- The “Expert Resolution” is the result of an expertise, which began on 4 November and finished on 18 November 2005. During and after this lapse of time the Respondents have not tried to contact the Köln Laboratory or the ISU in order to obtain the missing documents or information. They also did not ask for the permission to go back to the laboratory and to go through the data in the latter’s possession. Consequently, they cannot accuse the Köln Laboratory of having manipulated the documents at its free discretion. Such a statement should not be made absent a basis in fact. In casu, the Respondents do not put forward that manipulation occurred effectively and adduced no evidence to ascertain the eventual motive the Köln Laboratory could have had in manipulating the data.
- The requested documents were attached to the “Supplementary Report” dated 21 December 2005. Their scientific content was not challenged.
- The Respondents claimed that *“there is information about insufficient urine volume for confirming the GC/C/IRMS result”*. The Respondents argue that Ms Anzhelika Kotiuga gave more urine than required by the applicable regulations. According to them, this is the demonstration that the *“conclusion of the laboratory suffers from apparent material defects”*.

With this allegation, the Respondents actually revert to the letter dated 20 April 2005 in which the Köln Laboratory explained that the GC/C/IRMS results of the testosterone metabolites indicate an application of testosterone or testosterone prohormones, but that these results have not been reported because the urine volume in the A-sample was not sufficient to confirm them.

Very convincing explanations can be found in the “Supplementary Report” as well as in the statements made at the hearing. In particular, Mr Hans Geyer explained that, while running tests on the A-sample, the Köln Laboratory noticed the unexpected presence of testosterone metabolites. At the moment the laboratory made this observation, too much urine had already been used for other tests related to the confirmation of the exogenous source of norandrosterone and the high concentration of human chorionic gonadotropin. In other words, the urine volume in the A-sample was not sufficient to confirm the GC/C/IRMS results of the testosterone metabolites. Nevertheless, the urine volume in the A-sample was sufficient to confirm the results of the GC/C/IRMS, which indicate an exogenous source of norandrosterone.

- According to the Respondents, the documentation package contained several contradictions with regards to the assessment of quantities or volume of various substances. It appears that the explanation can be found in the fact that the said

assessment was the result of a rough visual estimate, which had no impact on the analytical data.

- The Respondents were of the opinion that Art. 5.2.4.3.2.2. of the International Standard for Laboratories (version 4.0) was not respected. This provision provides that *“The ‘B’ Sample confirmation must be performed in the same Laboratory as the ‘A’ Sample confirmation. A different analyst must perform the ‘B’ analytical procedure. The same individual(s) that performed the ‘A’ analysis may perform instrumental set up and performance checks and verify results”*.

In the present case, the “A” analytical procedure was performed by Mr Gregor Fusshöller and the “B” analytical procedure by Ms Nadine Haenelt. On the basis of the documents she had in her hand, Ms Christiane Ayotte was of the opinion that two different persons conducted the two analytical procedures.

51. The Panel came to the conclusion that the inconsistencies put into evidence in the “Resolution Report” were not conclusive, did not cast a doubt on the results of the Köln Laboratory and were not likely to cause the adverse analytical finding. The Panel has accepted to its comfortable satisfaction that the “Supplementary Report” and Dr Hans Geyer’s testimony are reliable and must be admitted into evidence. It is here stipulated that Ms Christiane Ayotte had also carefully reviewed the “Supplementary Report” and confirmed that it answered satisfactorily to all the questions left open by the documentation package related to the analysis procedure of the A and B-samples 310195.
52. Based on the totality of the evidence, it has been proven beyond reasonable doubt by the Appellant that Ms Anzhelika Kotiuga committed a doping offence prohibited by the applicable ISU Anti-Doping Rules and must take responsibility for it.

3. *What is the sanction and how should it be calculated?*

53. It is the first time that Ms Anzhelika Kotiuga is found guilty of an Anti-Doping Rule violation.
54. Art. 10.2 of the ISU Anti-Doping Rules provides the following:
“Except for the specified Substances identified in Article 10.3, the period of Ineligibility imposed for a violation of Article 2.1 (presence of Prohibited Substance or its Metabolites or Markers), Article 2.2 (Use or Attempted Use of Prohibited Substance or Prohibited Method) and Article 2.6 (Possession of Prohibited Substances and Methods) shall be: First violation: Two years’ Ineligibility”.
55. The prohibited substances found in Ms Anzhelika Kotiuga’s samples were not Specified Substances in the meaning of Art. 10.3 of the ISU Anti-Doping Rules.
56. The Respondents have also not established any exceptional circumstances justifying the reduction of the period of ineligibility, pursuant to Art. 10.5 of the ISU Anti-Doping Rules. In particular they have not established that Ms Anzhelika Kotiuga bears no fault or negligence for the violation of the ISU anti-Doping Rules. They have also not established how the prohibited substance entered Ms Kotiuga’s system. On the contrary. Since March 2005, the Respondents

altered several times their defence, reacting very quickly to every new element, which they were informed of:

- Three days after the communication of the adverse analytical finding, the Respondents were of the view that the results of the A-sample could find their explanations in Ms Anzhelika Kotiuga's regular gynaecological disorder and in the fact that the athlete had to take Mifegin on 14 February 2005 in order to interrupt an early pregnancy.
- On 14 April 2005, the Köln Laboratory explained that the steroid profile of the sample 310195 gave no indication of a pregnancy. Four days later, the Skating Union of Belarus decided that there was an unintentional Anti-Doping Rules violation and sanctioned Ms Anzhelika Kotiuga with a warning and reprimand.
- On 27 May 2005, which is the day following the results of tests conducted on the B-sample, the Skating Union of Belarus put the entire blame on Ms Liudmila Lukyanskaya.
- Once the decision by the ISU Disciplinary Commission was issued the Respondents only contested the validity of the entire tests carried out by the Köln Laboratory.

57. In the Proceedings before the CAS, the Respondents have exclusively contested the presence of prohibited substance in Ms Anzhelika Kotiuga. The Respondents expressly denied having admitted the use of any prohibited substance. On page 13 of their answer brief, the Respondents actually stated the following:

“Concerning the dismissal of the Belarus team doctor the Respondent would like to emphasize that such action has only been taken upon the advice of Dr. Harm Kuipers (ISU medical advisor). He pointed out that the penalty might be milder, if the athlete can prove that she was administered substances by the team doctor without her knowledge. He also mentioned that it would be helpful if the team doctor admitted guilt (...). Because the Respondent could not explain the finding of forbidden substances this recommended action seemed to be her last hope. The team doctor, wanting to help the athlete, agreed to file a letter with the ISU admitting full responsibility. It seems unfair of the ISU to first give questionable advice and then draw disadvantageous conclusions from the behaviour of the athlete who just followed this advice”.

58. Under those circumstances, no exceptional circumstances as provided by Art. 10.5 of the ISU Anti-Doping Rules have been established.
59. Art. 10.1 of the ISU Anti-Doping Rules establishes that an Anti-Doping Rule violation occurring during or in connection with an event shall lead to disqualification of all of the skater's results obtained in that Event with all Consequences, including forfeiture of all medals, points and prizes. Art. 10.1.1 of the same regulations provides that if the skater establishes that he or she bears no fault or negligence for the violation, the skater's individual results in the other events of the same competition or in another competition shall not be disqualified unless the skater's results in the other event of the same competition were likely to have been affected by the skater's Anti-Doping Rule violation. As already expressed here above, Ms Anzhelika Kotiuga has not established that she bears no fault or negligence. Further, the Anti-Doping Rule violation after the 1000 meters race of 19 February 2005 was likely to have affected Ms Anzhelika Kotiuga's results in the 500 meters race of 20 February 2005. She must therefore be disqualified for her results obtained in both races during the World Cup Finale at Heerenveen.

60. According to Art. 10.8 of the ISU Anti-Doping Rules *“The period of Ineligibility shall start on the date of the decision of the Hearing Panel providing for Ineligibility or, if the hearing is waived, on the date Ineligibility is accepted or otherwise imposed”*.
61. In the present case, ineligibility was imposed on 19 August 2005 with the Decision issued by the ISU Disciplinary Commission.

The Court of Arbitration for Sport rules that:

1. The appeal filed by the International Skating Union on 15 December 2005 is upheld.
2. The appealed decision of the ISU Appeals Commission issued on 28 November 2005 is set aside.
3. Ms Anzhelika Kotiuga is guilty of an Anti-Doping Rule violation committed on 19 February 2005, during the 2005 ISU World Cup Final in speed skating, at Heerenveen, the Netherlands.
4. Ms Anzhelika Kotiuga’s results obtained during the 2005 ISU World Cup Final in speed skating, at Heerenveen, the Netherlands, i.e. her fourth place in the 1000 meters race, division A, and her first place in the 500 meters race and her medal, her points and prizes are forfeited.
5. Ms Anzhelika Kotiuga shall be declared ineligible for two years. The period of ineligibility to be imposed upon her shall commence on 19 August 2005 and shall end on 18 August 2007.
6. (...).
7. (...).
8. (...).
9. All other motions or prayers for relief are dismissed.