



Arbitration CAS 2019/ADD/2 International Olympic Committee (IOC) v. Ruslan Nurudinov, award of 21 May 2019

Panel: Mr Murray Rosen QC (United Kingdom), Sole Arbitrator

Weightlifting

Doping (dehydrochloromethyltestosterone)

Jurisdiction of the CAS Anti-Doping Division (ADD)

Applicable law under the Arbitration Rules of the ADD (ADD Rules)

1. **According to Article A2 paragraph 1 of the ADD Rules, the Anti-Doping Division of the Court of Arbitration for Sport (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. The 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.**
2. **Under Article A20 of the Arbitration Rules of the ADD (ADD Rules), ADD panels shall decide a dispute primarily in accordance with the World Anti-Doping Code (WADC) and with the applicable Anti-Doping Rules 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.**

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. Mr. Ruslan Nurudinov (the “Athlete” or “Respondent”) is an Uzbekistani weightlifter and a team member of the National Olympic Committee of Uzbekistan 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, he only refers to the submissions and evidence he considers necessary to explain his reasoning.

4. On 4 August 2012, the Athlete provided a urine sample (sample no. 2721276) as part of the Doping Control Program at the 2012 London Olympics (“Sample 1”).
5. On 6 August 2012, the Athlete competed in the Men’s 105 kg Weightlifting Event at the London Olympic Games, finishing in 4th place.
6. Following that event, the Athlete provided a second urine sample (sample no. 2721779) (“Sample 2”).
7. Sample 1 and Sample 2 are collectively referred to as the “Samples”.
8. The Samples were analysed at the World Anti-Doping Agency (“WADA”) accredited laboratory in London, United Kingdom (the “London Laboratory”) using the available detection methods applied by the London Laboratory. This did not result in an Adverse Analytical Finding (“AAF”) at that time.
9. At the IOC’s request, the remains of the Samples (partial A Samples and full B Samples) were subsequently transferred to the WADA-accredited laboratory in Lausanne, Switzerland for long-term storage.
10. Under Article 5.1 of the IOC’s anti-doping rules applicable to the 2012 London Olympics (the “IOC ADR”), the IOC was entitled to re-analyse samples collected during the 2012 London Olympics.
11. As part of this process, a further analysis of the Samples was conducted by the Lausanne Laboratory and as it reported to the International Testing Agency (the “ITA”) on 2 November 2018, this revealed the presence of Dehydrochlormethyltestosterone (also known as “oral turinabol”), which belongs to Class S1.1a (Exogenous Anabolic Androgenic Steroids) of the 2012 and 2019 WADA Prohibited List. Such a finding constituted an AAF.
12. 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 substance and that no apparent departures from the International Standard for Testing and Investigations or the International Standard for Laboratories could undermine the AAF.
13. On 17 December 2018, 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”). The ITA also informed the Athlete that results obtained on the Samples would be treated as a single violation.
14. On 18 December 2018, the Athlete was provisionally suspended.

15. On 2 January 2019, the Athlete completed an “Athlete Rights Form” whereby he accepted the AAF, declined the opening and testing of his B Samples, and declined the need for the laboratory documentation packages for the Samples.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

16. On 4 April 2019, the Claimant filed a Request for Arbitration with the Anti-Doping Division of the Court of Arbitration for Sport (the “ADD”) in accordance with Article A13 of the Arbitration Rules of the ADD (the “ADD Rules”).
17. 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.
18. On 17 April 2019, the ADD, on behalf of the President of the ADD, confirmed the appointment of Mr. Murray Rosen QC as Sole Arbitrator in accordance with Article A16 of the ADD Rules.
19. On 2 May 2019, the ADD confirmed that the Respondent did not file an answer in accordance with Article A14 of the ADD Rules. In this same correspondence, the ADD, on behalf of the Sole Arbitrator, informed the parties that the Sole Arbitrator did not deem any further written submissions necessary and invited the parties to state whether they requested a hearing.
20. On 7 May 2019, the ADD confirmed that no party requested a hearing, and on behalf of the Sole Arbitrator who had considered the entire file, he was sufficiently well informed to render a decision without a hearing.
21. On 7 and 8 May 2019, the Claimant and Respondent, respectively, signed and returned the order of procedure.

IV. SUBMISSIONS OF THE PARTIES

22. The IOC’s submissions, in essence, may be summarised as follows:
 - Dehydrochlormethyltestosterone belongs to Class S1.1a (Exogenous Anabolic Androgenic Steroids) of the 2012 and 2019 WADA Prohibited List.
 - This substance was found in the Athlete’s A Samples and confirmed in the Athlete’s B Samples. 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 substance found in the Samples is specifically used for doping purposes and this evidenced intentional use by the Athlete.

- The Athlete expressly accepted the ADRV and waived his right to the analysis of the B Samples.

23. 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) *Ruslan Nurudinov is found to have committed an anti-doping rule violation in accordance with the IOC Anti-Doping Rules.*
- 3) *Ruslan Nurudinov's results from the 2012 London Olympics are disqualified, along with all other consequences, including forfeiture of any medals, points, and prizes.*

24. The Athlete did not file an answer, provide a defence or otherwise make any formal requests for relief.

V. JURISDICTION

25. 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.

26. On 26 February 2019, the parties executed an Arbitration Agreement to refer this matter to the ADD.

27. The parties further confirmed ADD jurisdiction by signing the orders of procedure.

28. In consideration of the foregoing, the Sole Arbitrator confirms the jurisdiction of the ADD to decide this matter.

VI. APPLICABLE LAW

29. 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.

30. 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.

31. No party objected to the application of the IOC ADR and indeed, the parties agreed with their application when signing the order of procedure.
32. 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

33. As mentioned above, the Prohibited Substance belonging to Class S1.1a of the WADA 2019 Prohibited List was found in the Sample on reanalysis.
34. Sufficient proof of an anti-doping violation under Article 2.1.2 of WADC is established by the presence of a Prohibited Substance or its metabolites in the A Samples "... where the analysis of the Athlete's B Sample confirms the presence the Prohibited Substance or its metabolites ... found in the Athlete's A Sample". This has been admitted by the Athlete in the present case.
35. Moreover, the substance found in the Samples is specifically used for doping purposes for the purpose of Article 2.2 of WADC and the Athlete offered no other explanation for its presence in the Samples.
36. Accordingly, the Sole Arbitrator finds that the Athlete committed an anti-doping rule violation under both WADC Article 2.1 (presence) and Article 2.2 (use).

B. The Applicable Sanction

37. 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.
38. Accordingly the Athlete's results at the 2012 London Olympics are disqualified and all medals, points and prizes awarded to him (if any) are forfeited.

VIII. COSTS

(...).

IX. APPEAL

43. 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 4 April 2019 against Mr. Ruslan Nurudinov is upheld.
2. Mr. Ruslan Nurudinov 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 Mr. Ruslan Nurudinov at the XXX Olympiad, London 2012 are disqualified with all resulting consequences including, if applicable, forfeiture of any medal, points and prizes.

(...)

6. All other motions or prayers for relief are dismissed.