



**Arbitration CAS 2017/A/5099 Artur Taymazov v. International Olympic Committee (IOC), award of 4 December 2017**

Panel: The Hon. Michael Beloff QC (United Kingdom), President; Mr Aliaksandr Danilevich (Belarus); Mr Olivier Carrard (Switzerland)

*Wrestling*

*Doping (turinabol; stanozolol)*

*Automatic disqualification of results*

*Application of the principle nulla poena sine culpa*

*Burden of proof regarding fault or negligence*

*Proportionality of the sanction*

*Application of automatic disqualification of results in exceptional cases*

1. **Art. 8.1 of the IOC Anti-Doping Rules (ADR) provides for the so-called automatic disqualification of results following an in-competition positive doping control. Automatic disqualification of results of a competition in consequence of a positive in-competition test for a substance prohibited in that competition does not engage any consideration of fault or negligence or proportionality at all.**
2. **An anti-doping rule violation is in the language of the World Anti-Doping Code (WADC) a ‘violation’; and ‘automatic disqualification’ takes its place in a provision entitled ‘Sanctions’. Therefore, concepts relevant to crime and punishment are not entirely to be ignored to the detriment of the athlete. It is still incumbent on the relevant sports’ governing body to prove that a violation, as defined in the relevant regulations, has occurred and to place upon the athlete who has committed such violation only the prescribed consequences. Both the violation and its consequences are expressly and clearly provided for in the IOC ADR (and in the WADC, its source). There can be no departure from the presumption of innocence. The athlete is not presumed, but must be proven, to have committed an anti-doping rule violation. Therefore, there is no infringement of the principle *nulla poena sine culpa*.**
3. **Where the concepts of fault and negligence are material to the outcome of an appeal, the burden lies on the athlete to disprove their occurrence. Such burden cannot be discharged by reliance on a record of multiple clean tests or by the mere assertion by his or her counsel. At the very least an athlete must give evidence, preferably orally before the CAS panel, of the steps he or she took to discharge the “*personal duty to ensure that no prohibited substance enters his or her body*” (WADC Art 2.2.1). It is the athlete who holds the key cards where the cause as distinct from the correctness of the adverse analytical finding is in issue, since he (or she) either knows, or ought to know what he or she has ingested, and the sport’s governing body is unlikely to have either actual or constructive knowledge of this pivotal fact.**

4. **Disqualification is not only a proportionate penalty, but an inevitable one. Certain substances are prohibited under the WADC precisely because they are considered to have performance-enhancing properties. To allow an athlete to retain a medal in circumstances where such substances were present in his system would be unfair to his ‘clean’ competitors.**
5. **Art. 8.1 of the IOC ADR applies to all cases within its reach, whether admitted to be standard or said to be exceptional.**

## **I. INTRODUCTION**

1. This is an appeal by Mr. Artur Taymazov (the “Athlete”) against the decision of the International Olympic Committee (the “IOC”) Disciplinary Commission dated 31 March 2017, which, *inter alia*, removed the gold medal for wrestling that he won at the Beijing Olympic Games (the “Appealed Decision”).

## **II. PARTIES**

2. The Athlete is a former Olympic freestyle wrestler who represented Uzbekistan at the Sydney (2000) (silver), Athens (2004) (gold), Beijing (2008) (disqualified), and London (2012) (gold) Olympic Games. He is Uzbekistan’s most decorated Olympian.
3. The IOC is an international not-for-profit non-governmental organization, established as an association under Swiss law. Pursuant to the Olympic Charter, it is responsible for managing the Olympic Movement, which comprises, in addition to the IOC, the International Federations, the National Olympic Committees, the Organizing Committees of the Olympic Games, the national associations, clubs, and the persons belonging to them, particularly athletes, as well as other organizations and institutions recognized by the IOC.

## **III. FACTUAL BACKGROUND**

### **A. Background Facts**

4. Below is a summary of the relevant facts and allegations based on the parties’ written submissions. Additional facts and allegations found in the parties’ written submissions may be set out, where relevant, in connection with the legal discussion that follows. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the parties, they refer in their Order only to the submissions and evidence they consider necessary to explain their reasoning.

5. The Athlete competed in the Beijing (2008) Olympics where he was awarded a Gold Medal in the Men's 96-120 kg Freestyle wrestling event. Following the competition, on 21 August 2008, the Athlete was subject to an in-competition urine test, which did not reveal the presence of any prohibited substance (the "Sample"). In his Doping Control Form, the Athlete only disclosed the consumption of vitamins.
6. On 11 July 2016, the National Olympic Committee of the Republic of Uzbekistan was informed by the IOC that the initial analysis of the Sample had been reanalysed at the Swiss Laboratory for Doping Analysis in Lausanne. The Athlete was provided the opportunity to attend a sufficient part of the analysis and did so through his legal representative. The re-analysis resulted in an Adverse Analytical Finding for the presence of Chlorodehydromethyltestosterone (Turinabol) and Stanozolol in both his A and B Sample. Both substances are prohibited under the World Anti-Doping Agency's Prohibited List.

#### **B. Proceedings before the IOC Disciplinary Commission**

7. On 12 July 2016, the Athlete, through his NOC, was informed of his presumptive Adverse Analytical Finding.
8. On 20 February 2017, the Athlete, who denied having ingested any prohibited substances, submitted his written defence to the IOC Disciplinary Commission.
9. On 1 March 2017, a hearing was held at the IOC Headquarters before the IOC Disciplinary Commission where the Appellant maintained his innocence and presented arguments in his defence.
10. On 31 March 2017, the IOC Disciplinary Commission rendered its decision (the "Appealed Decision") as follows:

##### *I. The Athlete, Artur Taymazov:*

- (i) Is found to have committed an anti-doping rule violation pursuant to the IOC Anti-Doping Rules applicable to the Games of the XXIX Olympiad in Beijing in 2008 (presence and/or use, of a Prohibited Substance or its Metabolites or Markers in an athlete's bodily specimen),*
- (ii) Is disqualified from the event in which he participated upon the occasion of the Olympic Games Beijing 2008, namely, the Men's 96-120 kg Freestyle wrestling event in which he ranked 1<sup>st</sup> and for which he was awarded a gold medal, and*
- (iii) Has the gold medal, the diploma and the medallist pin obtained in the Men's 96-120 kg Freestyle wrestling event withdrawn and is ordered to return same.*

##### *II. The UWW is requested to modify the results of the above-mentioned event accordingly and to consider any further action within its own competence.*

##### *III. The National Olympic Committee of the Republic of Uzbekistan shall ensure full implementation of this decision.*

- IV. *The National Olympic Committee of the Republic of Uzbekistan shall notably secure the return to the IOC, as soon as possible, of the gold medal, the diploma and the medallist pin awarded in connection with the Men's 96-120 kg Freestyle wrestling event to the Athlete.*
- V. *This decision enters into force immediately.*

#### IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

11. On 21 April 2017, the Athlete filed his statement of appeal serving as appeal brief with the Court of Arbitration for Sport (the "CAS") in accordance with Article R47 *et seq.* of the Code of Sports-related Arbitration (the "Code"). In his statement of appeal/appeal brief, the Athlete nominated Dr. Aliaksandr Danilevich as arbitrator and requested a stay of the execution of the Decision as follows:

*"...[S]ince there is no urgency in immediate execution of the IOC Decision, yet there is a tangible risk of causing injustice by way of execution of the appealed Decision, Mr. Taimazov hereby applies for the stay the enforcement of the IOC Decision".*

12. On 25 April 2017, the CAS Court Office opened this procedure and invited the Respondent to comment on, *inter alia*, the Athlete's request for a stay in accordance with Article R37 of the Code.
13. On 4 May 2017, the Respondent nominated Mr. Olivier Carrard as arbitrator.
14. On 8 May 2017, the Respondent filed its response to the Appellant's request for a stay of the Appealed Decision, which it resisted.
15. On 18 May 2017, the Respondent filed its answer in accordance with Article R51 of the Code.
16. On 6 June 2017, the CAS Court Office, on behalf of the President of the Appeals Arbitration Division, confirmed the constitution of the Panel as follows:

President: Hon. Michael J. Beloff M.A. Q.C., Barrister in London, United Kingdom  
Arbitrators: Dr. Aliaksandr Danilevich, Attorney-at-Law in Minsk, Belarus  
Mr. Olivier Carrard, Attorney-at-Law in Geneva, Switzerland

17. On 5 September 2017, the Panel dismissed the application for a stay.
18. On 26 September 2017, a hearing was held at the CAS Court Office in Lausanne. The Panel was assisted by Mr. Brent J. Nowicki, Managing Counsel to the CAS. The following persons attended the hearing for the parties:
- i. for the Appellant: Mr. Denis Parchajev and Mr. Ramunas Audzevicius (by video conference)
  - ii. for the Respondent: Mr. Jean-Pierre Morand and Ms. Tamara Soupiron

19. At the opening of the hearing, both parties confirmed that they had no objection to the constitution of the Panel. At the conclusion of the hearing, the parties expressly stated that their right to be heard and to be treated equally in the proceedings had been fully respected.

## V. SUBMISSIONS OF THE PARTIES

20. The Athlete's submissions, in essence, may be summarized as follows:
- A. The IOC Decision must be set aside due to the IOC's failure to establish any Fault or Negligence on his part.
    - i. *Nulla poena sine culpa* principle applies by virtue of Article 6 ECHR and by virtue of 2008 Anti-Doping Rules and the CAS jurisprudence
    - ii. The Athlete bears no fault or negligence in the case at hand
  - B. IOC's procrastination to re-test the urine samples gravely hinders the due process. All doubts caused by the IOC's inaction must be resolved in favor of the Athlete.
    - i. IOC's inexcusable procrastination deprived the Athlete of any chance to conduct a meaningful investigation into the relevant events which took place almost a decade ago.
    - ii. The IOC has no excuse whatsoever for failing to re-test the samples in due time.
  - C. In any event, disqualification of the Athlete from the 2008 Olympics was disproportionate.
    - i. CAS had in exceptional cases departed from the strict application of the anti-doping rules in order to mitigate otherwise applicable unjust sanction.
    - ii. The Athlete's case falls squarely within the ambit of exceptional cases calling for departure from the strict application of the anti-doping rules.
    - iii. Application of proportionality principle in the case at hand will not require a challenge the 2008 Anti-Doping rules only the application of a just and appropriate exception.
21. The Athlete requests the CAS Panel to grant the following relief:
- 1. *Set aside the IOC Decision of 31<sup>st</sup> March 2017;*
  - 2. *Declare that Mr. Taimazov bears No Fault or Negligence for the violation;*
  - 3. *In the alternative declare that Mr. Taimazov bears No significant Fault or Negligence for the violation;*

4. *In further alternative, apply proportional sanctions the Panel deems appropriate in spite of the 2008 Anti-Doping Rules;*
  5. *Refrain from disqualifying Mr. Taimazov's results in the Games of the XXIX Olympiad, Beijing 2008;*
  6. *Order each party to bear their own costs, legal fees and other expenses incurred in connection with the proceedings.*
22. The IOC's submissions, in essence, may be summarised as follows:
- A. No Fault or Negligence
    - i. The case arises in the context of disciplinary proceedings of a private association, not criminal proceedings of the public organs of the state;
    - ii. The relevant IOC rule provides for automatic disqualification of results following an in-competition positive doping test;
    - iii. Accordingly, issues of fault or negligence were irrelevant;
    - iv. In any event, if and in so far (quod non) as such issues were relevant, the Athlete had the burden of proof to disprove any fault or negligence;
    - v. The Athlete had failed to discharge that burden: rather he had raised hypotheses (e.g. contamination) without evidence.
  - B. No Due Process
    - i. The retesting took place within the prescribed limitation period (Article 6.5 of the IOC ADR);
    - ii. The delay in retesting was the result of the unavailability of the appropriate techniques until 2014 and thereafter because of the volume of samples for which retesting was required;
    - iii. The delay did not disable the Athlete from challenging the results had he (which he had not) the material to do so;
    - iv. In the event, no issue was raised as to the validity of the results of the retesting of the Athlete's samples.
  - C. Proportionality
    - i. The order of automatic disqualification provided for by the rules did not allow for consideration of proportionality;
    - ii. In any event the disqualification was proportionate to the ADRV.

23. The IOC accordingly request the CAS Panel to grant the following relief:

- I. *The Appeal filed by Mr. Taimazov is dismissed;*
- II. *The IOC is granted an award for costs.*

## VI. JURISDICTION

24. In accordance with the Swiss Private International Law (Article 186), and generally well accepted principles of *kompetenz* in international arbitration, the CAS has the power to decide upon its own jurisdiction.

25. Article R47 of the Code provides that “[a]n appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of that body”.

26. The Athlete relies on Articles 12.2.1 and 12.2.2 of the IOC’s 2008 Anti-Doping Rules (“IOC ADR”). Article 12.2.1 of the IOC ADR provides as follows:

*12.2.1 In all cases arising from the Olympic Games, the decision may be appealed exclusively to the Court of Arbitration for Sport (“CAS”) in accordance with the provisions applicable before such court.*

27. Article 12.2.2 of the IOC ADR provides as follows:

*12.2.2 In cases under Article 12.2.1, only the following parties shall have the right to appeal to CAS; (a) the Athlete or other Person who is the subject of the decision being appealed; (b) the relevant International Federation and any other Anti-Doping Organisation under whose rules a sanction could have been imposed; and (c) WADA.*

28. The IOC does not object to CAS jurisdiction which is confirmed by the parties’ signature of the Order of Procedure.

29. Accordingly, the Panel finds that the CAS has jurisdiction to hear this appeal.

## VII. ADMISSIBILITY

30. Article R49 of the Code provides as follows:

*In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against.*

31. The Appealed Decision is dated 31 March 2017, and notified by the IOC thereafter, the Athlete filed his statement of appeal on 21 April 2017, within 21 days of such notification, and the IOC does not challenge its admissibility.
32. Accordingly, the Panel finds the appeal to be admissible.

### **VIII. APPLICABLE LAW**

33. Article R58 of the Code provides as follows:

*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.*

34. The arbitration has its seat in Lausanne. Since the Athlete is not domiciled in Switzerland, the present arbitration is governed by articles 176 et seq. of the Swiss Private International Law Act (“PILA”). Pursuant to art. 182, para. 2 PILA, the Code governs the procedural aspects of this arbitration.
35. On the merits, the IOC Anti-Doping Rules applicable to the Games of the XXIX Olympiad, Beijing 2008 (the “IOC ADR”) are applicable to the present case. Since the IOC is a Swiss association domiciled in Switzerland, Swiss law applies subsidiarily (art. R58 of the Code).

### **IX. MERITS**

#### **A. General**

36. In the Panel’s view, the submissions of the Athlete, powerfully expressed though they were, were based on a fundamental misconception: that is to say, that automatic disqualification of results of a competition in consequence of a positive in-competition test for a substance prohibited in that competition engages any consideration of fault or negligence or proportionality at all. In the Panel’s view, that position is misconceived.
37. All such considerations may be highly germane where periods of ineligibility (or other sanctions) are at stake, but this Panel is not concerned whether such sanctions are appropriate.

#### **B. No Fault or Negligence**

38. According to Art. 8.1 of the IOC ADR (which mirrors art. 9 of the WADC to the letter) “a violation of these Rules in connection with Doping Control automatically leads to Disqualification of the Athlete with all other consequences, including forfeiture of any medals, points and prizes”. It provides for the so-called automatic disqualification of results following an in-competition positive doping control.



39. In the present case, the doping control took place in-competition, following the Men's 96-120 kg Freestyle wrestling event. Therefore, art. 8.1 of the IOC ADR applies in this case and, as an inevitable consequence, the Athlete's results must be disqualified.
40. In CAS's consistent jurisprudence, art. 8.1 of the IOC ADR (and its analogues) has always been applied in this way.
41. In case CAS 2016/A/4746, the Sole Arbitrator held the following (para. 25 et seq.):

*“25. Article 2.1 of the Rules makes the presence of a metabolite of a prohibited substance in the Athlete's system an ADRV. Stanozolol is such a substance.*

*26. Article 8 of the Rules makes disqualification and forfeiture of medals, points and prizes an automatic sanction for such an ADRV.*

*27. The appeal must therefore be dismissed.*

*28. Issues of how and why Stanozolol was in the Appellant's system or the existence or degree of fault, if any, on the part of the Athlete for its presence, are therefore irrelevant to the outcome of the appeal. The Sole Arbitrator sees no need to address them or to resolve the competing arguments of the parties on such issues nor, in his view, would any useful purpose be served by his so doing”.*

42. In another award, CAS 2017/A/4927, a CAS Panel reached the same conclusion with more elaborate reasoning:

*67. This dispute concerns the Challenged Award, rendered by the Sole Arbitrator, which found the Athlete responsible for an anti-doping rule violation and disqualified the results he had obtained at the Rio OG, with all ensuing consequences. The Athlete disputes this conclusion, and requests that the Panel set aside the Challenged Award and declare that the results he obtained at the Rio OG shall not be disqualified.*

*68. In support of his contention, in essence, the Appellant submits that his case, in light of its peculiarities, can be considered as one of the “rarest cases” which, as recognized by the Sole Arbitrator, would allow a departure from the rule of automatic disqualification contemplated by Article 9 of the IOC ADR. The Respondent submits that Article 9 of the IOC ADR does not leave any room for discretion and that the Appellant's case is not unique, since, inter alia, his explanations of the adverse analytical finding are not credible.*

*69. The Panel notes, on the basis of the parties' contentions, that it is undisputed that the A sample collected from the Athlete on 21 August 2016 returned an adverse analytical finding for the presence of the Substance. Therefore, since the Athlete did not request the analysis of the B sample, the anti-doping rule violation contemplated by Article 2.1 of the IOC ADR is established. The disputed issue of this appeal is whether the effect provided for by Article 9 of the IOC ADR [“Automatic Disqualification of Individual Results”] is triggered as a result of such anti-doping rule violation.*

*70. As a result, the Panel would have in principle to answer two questions: the First Issue is whether Article 9 of the IOC ADR leaves any room for discretion, i.e. whether there are situations in which a finding of an anti-doping rule violation does not trigger the “Automatic Disqualification of Individual*

Results” under Article 9 of the IOC ADR; [...].

71. The Panel, however, finds that Article 9 of the IOC ADR leaves no room for any form of discretion to verify whether a finding of an anti-doping rule violation should not trigger the “Automatic Disqualification of Individual Results”. [...].

72. The Panel is compelled to this conclusion by a number of reasons.

73. First of all, the Panel notes the wording of Article 9 of the IOC ADR: it refers to the “automatic” disqualification of results and does not mention any way to avoid such “automatic” consequence of an anti-doping rule violation. As indicated by a Panel in CAS OG 00/011, [...], with respect to a rule of comparable content, the text is “clear and unambiguous” and “automatic means «following necessarily» (Oxford Advanced Learner’s Dictionary, 1995)”. What follows “necessarily” is not by definition subject to any discretionary evaluation or flexibility. As a result, this Panel’s conclusion is supported by a literal interpretation of Article 9 of the IOC ADR.

74. In that respect, the Panel remarks that under Swiss law (which applies to the IOC ADR) the interpretation of the statutes and rules of a sport association has to be rather objective and should always start with the wording of the rule, which falls to be interpreted. The adjudicating body – in this instance the Panel – will have to consider the meaning of the rule, looking at the language used, and the appropriate grammar and syntax. In its search, the adjudicating body will have further to identify the intentions (objectively construed) of the association which drafted the rule, and such body may also take account of any relevant historical background which illuminates its derivation, as well as the entire regulatory context in which the particular rule is located (CAS 2008/A/1673; CAS 2009/A/1810; CAS 2009/A/1811; see also ATF 87 II 95 consid. 3; ATF 114 II 193, p. 197, consid. 5.a; decision of the Swiss Federal Tribunal of 3 May 2005, 7B.10/2005, consid. 2.3; decision of the Swiss Federal Tribunal of 25 February 2003, consid. 3.2).

75. The Panel underlines further that the conclusion it reaches is supported by the entire regulatory context in which Article 9 of the IOC ADR operates. The Panel in fact notes that the IOC ADR (and the WADC) distinguishes (i) the “Automatic Disqualification of Individual Results” obtained at the competition at which an athlete tested positive from (ii) the other consequences deriving from such finding: they are mentioned in different provisions (the first at Article 9, the others at Article 10); they are subject to different regimes; they appear to have a different nature. Indeed, the “Automatic Disqualification of Individual Results” appears to be nothing else than an objective consequence of an objective fact, i.e. of the finding of an anti-doping rule violation, and an effect of a retroactive assessment of a condition of ineligibility: no athlete using a prohibited substance (unless authorized on the basis of a valid TUE) can compete; if an athlete is later found having competed while a prohibited substance was in his/her body, his/her individual results are disqualified. The disqualification is not a sanction, but only the reinstatement of an objective condition, which explains why its application is “automatic”. On the other hand, the other consequences deriving from the finding of an anti-doping rule violation have the character of a sanction, and therefore engage consideration of the athlete’s fault, which falls to be assessed by the adjudicating body according to the rules.

76. The interpretation advanced by the Panel, in addition, is confirmed by a consistent CAS practice, starting from the early cases. The CAS jurisprudence shows that the disqualification of the individual

*results obtained in the competition in connection with which an anti-doping rule violation was found to follow as an unavoidable consequence of that finding, without any scope for the hearing body to avoid its imposition, even in those exceptional cases where no sanction was inflicted, because the athlete bore no fault or negligence. It was underlined that when an athlete wins a medal with a prohibited substance in his or her system, this is held to be unfair to the other athletes in that competition, regardless of whether the medallist was at fault in any way; only a “clean” athlete is allowed to benefit from his or her competitive results. For instance:*

- i. in CAS OG00/011, [...] (§ 27), the CAS Panel considered the applicable rules providing for an automatic disqualification of results and supported them “as a matter of fairness to all other athletes”;*
- ii. another CAS Panel in CAS 2002/A/376, [...] (§ 3.29) indicated that: “disqualification is the minimum sanction that automatically follows a doping offence, in accordance with Article 3.3 of the OMAC [Olympic Movement Anti-doping Code]. ... the disqualification of an athlete for the presence of a prohibited substance, whether or not the ingestion of that substance was intentional or negligent and whether or not the substance in fact had any competitive effect, has routinely been upheld by CAS Panels. It is reasonable for the IOC to have determined that it may not always be possible to prove or disprove fault or performance-enhancing effect, but that in order to ensure the integrity of results the mere presence of a prohibited substance requires disqualification”;*
- iii. in CAS 2001/A/317, [...] (p. 17), the Panel underlined that “it is ... perfectly proper for the rules of a sporting federation to establish that the results achieved by a ‘doped athlete’ at a competition during which he was under the influence of a prohibited substance must be cancelled irrespective of any guilt on the part of the athlete. This conclusion is the natural consequence of sporting fairness against the other competitors. The interests of the athlete concerned in not being punished without being guilty must give way to the fundamental principle of sport that all competitors must have equal chances”.*

*77. The Appellant’s counsel conceded in fairness at the hearing that he could not identify any case hitherto in which a CAS Panel had departed from the rule of automatic disqualification, while the Respondent referred to a number of awards in which Article 9 of the IOC ADR (or of the WADC) was applied without hesitation and/or exceptions.*

*78. In addition, the Panel notes that the legality and nature of the rule of “Automatic Disqualification of Individual Results” was confirmed by the Swiss Federal Tribunal in at least two occasions:*

- i. in the decision of 4 August 2006, 4P.105/2006, consid. 8.2, distinguishing the automatic disqualification from actual sanctions (“Art. 9 WADA-Code sieht eine entsprechende Folge vor. Damit wird das sportliche Resultat wegen der Tatsache eines positiven Dopingbefunds korrigiert. Davon zu unterscheiden ist eine eigentliche Bestrafung des Sportlers, wie Sperrung oder Busse, mit der ein fehler- und schuldhaftes Verhalten sanktioniert wird” – translation by the Panel: “Art. 9 WADC provides for a corresponding consequence [of an adverse analytical finding]. On its basis the sporting results will be corrected because of the factual circumstance of a positive finding of doping. From it has to be distinguished an actual sanction of the athlete, such as an ineligibility or a fine, by which a faulty or reproachable behaviour is sanctioned”);*
- ii. in the decision of 23 August 2007, ATF 134 III 193, consid. 4.6.3.2.2, in which the Federal Tribunal underlined that the purpose of the rule is to avoid endless discussions as to the potential enhancing effects of the prohibited substance detected.*

79. *In that regulatory context, therefore, no discretion is left to the disciplinary body (or the CAS Panel) to evaluate on a case-by-case basis, for instance, whether an actual competitive advantage was gained by the athlete as a result of the use, even though inadvertent, of a prohibited substance: as the rules now stand, the results achieved in the given competition shall always be disqualified”.*

43. The Panel respectfully adopts the approach proposed in these cases. It would, however, observe that, whatever taxonomy is adopted, an ADRV is in the language of WADC a ‘violation’; and ‘automatic disqualification’ takes its place in a provision entitled ‘Sanctions’ which is certainly how removal of an Olympic medal would be perceived both by the athlete, who suffers it, and by the sporting world at large. Therefore, concepts relevant to crime and punishment are not entirely to be ignored to the detriment of the Athlete. It is still incumbent on the relevant sports’ governing body, here the IOC, to prove that a violation, as defined in the relevant regulations, has occurred and to place upon the Athlete who has committed such violation only the prescribed consequences.
44. In the instant case, the following matters of law and fact are indisputable and sufficient to justify the Decision:
- (i) The presence of prohibited substances in an athlete’s body in competition is an ADRV (WADC Art. 2.1; IOC ADR 2.1).
  - (ii) The Athlete did not contest the results of the re-analysis or, accordingly, that such presence was established in his case.
  - (iii) Whether the presence of such substances in his sample was the product of sabotage, contamination or some other cause for which the athlete bore no or only partial responsibility was irrelevant to the prescribed consequence of that presence, i.e. the disqualification and removal of the medal.
45. There was contrary to the Athlete’s submission, no infringement of the principle *nulla poena sine culpa* (enshrined in Article 7, no punishment without law) rather than Article 6 (a fair trial) of the ECHR and indubitably a principle of the *lex ludica* (CAS 2017/A/5017 paras. 156-157). Both the violation and its consequences are expressly and clearly provided for in the IOC ADR (and in the WADC, its source). There can be no departure from the presumption of innocence. The IOC was obliged to establish the ADRV and did so. The Athlete was not presumed, but proven, to have committed an ADRV.
46. Fault and negligence are, the Panel repeats, immaterial to the outcome of this appeal. But it is constrained to observe that given that, where such concepts are material, the burden lies on the Athlete to disprove their occurrence. Such burden cannot be discharged by reliance on a record (such as this Athlete has) of multiple clean tests or by the mere assertion by his counsel. At the very least an Athlete must give evidence, preferably orally before the Panel, of the steps he or she took to discharge the “*personal duty to ensure that no prohibited substance enters his or her body*” (WADC Art 2.2.1). (*See* CAS 2017/A/5017 paras 59-63; CAS 2017/A/4758 paras 24(ii) and (iii), paras 47-48). It is the Athlete who holds the key cards where the cause as distinct from the correctness of the AAF is in issue, since he (or she) either knows, or ought to know what he or

she has ingested, and the sport's governing body is unlikely to have either actual or constructive knowledge of this pivotal fact.

### C. Due Process

47. As to due process, the Athlete has accepted the re-test results and has not contended that the fact that the analysis was carried out in 2016 rather than in 2008 somehow and (if so, in what way) prevented him from challenging that analysis. As to whether, and to what extent, such delay would have prevented him from obtaining evidence which showed that the admitted presence of the prohibited substance in his sample was the result of circumstances for which he bore no or no significant responsibility (and therefore was guilty of no or no significant fault) the Panel need not consider.

### D. Proportionality

48. As to proportionality, the Panel respectfully adopts what was said in CAS 2017/A/4927:

*“80. As a result, there is no room for the application of the principle of proportionality or any other general principles. In that respect, the Panel notes that all CAS precedents in which discussions were conducted as to the relevance of the principle of proportionality and actually applied it to a sanction, made no mention of the proportionality when applying the automatic disqualification of results: see CAS 2006/A/1025, [...], § 11.9.1.*

*81. In any case, this Panel fully endorses the finding made, also with regard to the reach of the principle of proportionality, in the award rendered in CAS AD 16/09 & 16/13, at § 85:*

*“The Sole Arbitrator is of the opinion that within the framework of Art. 9 IOC DRC [sic], and as part of the anti-doping system and the need of the fight against doping in sports, the issue of proportionality has already been taken into account. Indeed, within this system the possibility exists that an athlete who bears no fault or negligence, nor she or he had a known intention to enhance the sportive performance will be automatically disqualified for an established anti-doping rule violation in connection with an In-Competition test. However, it is not a question of culpability, but a consequence of circumstances in which an athlete did not meet the equal standards applicable to all the participants in the competition. The mere participation of the athlete in a competition while a prohibited substance was present in his or her body by itself establishes a situation of non-equality between him or her and the other participants in the competition, regardless of the question of culpability or intention”.*

*82. The Panel recalls in this context that the WADC 2015 was the product of wide consultation and represented the best consensus of sporting authorities as to what was needed to achieve as far as possible the desired end. It sought itself to fashion in a detailed and sophisticated way a proportionate response in pursuit of a legitimate aim. At the request of WADA, Jean-Paul Costa, former President of the European Court of Human Rights, wrote a Legal Opinion regarding the draft World Anti-Doping Code, which examines the issue of the compatibility of several provisions of the draft revision of the WADC 2015 with the accepted principles of international law and human rights (published in June 2013) and found them in harmony with those principles. Article 9 of the IOC ADR, even if considered in form, if not in law, a sanction is no exception*

*to that overall compatibility”.*

49. Disqualification is, in the Panel’s view, not only a proportionate penalty, but an inevitable one. Certain substances are prohibited under the WADC precisely because they are considered to have performance-enhancing properties. To allow an athlete to retain a medal in circumstances where such substances were present in his system would be unfair to his ‘clean’ competitors.
50. None of the classic cases on which the Athlete relied (CAS 2004/A/624, CAS 2006/A/1025, CAS 2009/A/1926 & 1930) to establish the potential reliance of a free-standing principle of proportionality, potentially overriding a discrepant rule or filling a perceived gap in the regulatory regime, in any way assist him since all were concerned with discretionary (to an extent) sanction of ineligibility, not with automatic disqualification.

#### **E. Exceptional Case?**

51. If and in so far as the Athlete pleads that his is an exceptional case, the argument has no purchase. Art. 8.1 of the IOC Rules applies to all cases within its reach, whether admitted to be standard or said to be exceptional (*See* CAS 2017/A/4927).
52. The IOC speculated that where (i) the Athlete tested positive for two different anabolic steroids DHCMT (Turinabol) and Stanozolol; (ii) such steroids were found in a significant proportion of the positive results arising from the re-testing of the samples of the 2008 and 2012 Olympic Games; (iii) such steroids were used by athletes precisely for their very short detection window (which is why it is only through a re-testing that the athletes were caught); and (iv) where the laboratory not only detected the two prohibited substances, but a total of six metabolites, three of each substance, in the Athlete’s sample, his may be a case of straightforward intentional doping.
53. The Panel declined to comment on this speculation which goes beyond the scope of this appeal. Likewise, it confirms that all issues related, for instance, to the “route of ingestion” of the prohibited substances, or to the existence of Fault or Negligence (as defined by the WADC) and its degree are left open. It will be for the International Weightlifting Federation to take such steps, and reach such conclusions as it sees fit, in the light of the outcome of this appeal and other relevant matters (Article 7.1.2 IOC ADR).
54. For the above reason the appeal must be dismissed.

## ON THESE GROUNDS

### **The Court of Arbitration for Sport rules that:**

1. The appeal filed by Mr. Artur Taymazov against the International Olympic Committee concerning the decision of the IOC Disciplinary Commission dated 31 March 2017 on 21 April 2017 is dismissed.
2. The decision rendered by the IOC Disciplinary Commission on 31 March 2017 is upheld.
3. (...).
4. (...).
5. All other motions or prayers for relief are dismissed.