



**Arbitration CAS 2021/ADD/32 International Olympic Committee (IOC) v. Askhat Dilmukhamedov, award of 22 December 2021**

Panel: Mr David Grace QC (Australia), Sole Arbitrator

*Wrestling*

*Doping (methasterone, oxymetholone)*

*Jurisdiction of the CAS ADD*

*Applicable law*

*Establishment of the presence of a prohibited substance in the athlete's sample*

- 1. Pursuant to Article A2 and Article 8.2 of the CAS ADD Arbitration Rules, the CAS ADD is the first-instance authority that has jurisdiction to conduct proceedings and issue decisions when an alleged Anti-Doping Rule Violation (ADRV) has been filed with it. The CAS ADD Arbitration Rules provide, *inter alia*, that if any of the parties has been duly called and fails to appear at the hearing, the CAS ADD panel may nevertheless proceed with the hearing and deliver an award.**
- 2. Pursuant to Article 8.1 of the CAS ADD Arbitration Rules, the CAS ADD is required to conduct proceedings and to issue decisions as per the CAS ADD Arbitration Rules.**
- 3. Sufficient proof of an ADRV under Article 2.1.2 of the IOC Anti-Doping Rules applicable to the Games of the XXXII Olympiad Tokyo 2020 (ADR), is established by the presence of a prohibited substance or its metabolites in the athlete's A-Sample when the athlete's B-Sample analysis confirms the presence of the prohibited substance found in the A-Sample or when the athlete waives his right to request the opening and the analysis of the B-sample and confirm that he would not challenge the commission of the ADRV.**

**I. PARTIES**

- 1. The Claimant is the International Olympic Committee ("IOC") represented by the International Testing Agency of Lausanne, Switzerland. The IOC has delegated some of its responsibilities related to the implementation of the Doping Control in relation to the Games of the XXXII Olympiad (the "Olympic Games Tokyo 2020") to the International Testing Agency (the "ITA"). The ITA is an international organisation constituted as a not-for-profit foundation which is tasked by International Federations and Major Event Organisers to deliver independent anti-doping programs on their behalf. The delegation by the IOC includes the**

results management and subsequent prosecution of potential Anti-Doping Rule Violations (“ADRV”) from samples collected under the jurisdiction of the IOC.

2. The Respondent is Askhat Dilmukhamedov, a Wrestler from Kazakhstan, who represents the National Olympic Committee of the Republic of Kazakhstan.

## II. FACTUAL BACKGROUND

3. By Application dated 26 August 2021, the ITA, on behalf of the IOC, pursuant to Article 8.1.1 of the IOC Anti-Doping Rules applicable to the Games of the XXXII Olympiad Tokyo 2020 (as of March 2021) (“the ADR”), charged the Respondent (pursuant to Article 8.1.1 of the ADR the Application stands as the Notice of Charge) with an Anti-Doping Rule Violation (“ADRV”). The Respondent, by virtue of him being a potential participant in the Olympic Games Tokyo 2020, had agreed, through his National Olympic Committee, to be subject to the ADR.
4. The Application (and thereby the Charge) arises out of the analysis conducted on a urine sample collected from the Respondent in an Out-of-Competition Doping Control test on 17 June 2021 under the Testing Authority of the IOC. The analysis of the A-Sample resulted in an Adverse Analytical Finding (“AAF”) for the prohibited anabolic steroids methasterone and its metabolite, and oxymetholone metabolite.
5. On 12 July 2021, the WADA-accredited laboratory in Tokyo Japan reported an AAF for the prohibited substances named in paragraph 4 above, such substances being prohibited by WADA at all times and classified as non-specified substances under S1.1 (Anabolic Androgenic Steroids) of the 2021 WADA Prohibited List.
6. On 14 July 2021, the Respondent was notified by the ITA of the AAF and that it was being brought forward as an ADRV.
7. On 26 July 2021, the Respondent emailed the ITA to confirm that he would not be requesting the opening and analysis of the B-Sample and that he would not be challenging the commission of the ADRV. Pursuant to Article 2.1.2 of the ADR, sufficient proof of an ADRV is established “*where the athlete waives analysis of the B-Sample and the B-Sample is not analysed*”.
8. On 6 August 2021, the Respondent signed a written Acceptance of Consequences Agreement pursuant to Article 7.8.1 of the ADR which document was countersigned by the ITA on behalf of the IOC on 18 August 2021. The Agreement documented that the Respondent acknowledged the occurrence of an ADRV under Article 2.1 of the IOC ADR for the presence of the two prohibited substances in his urine sample. As the sample was taken before the Olympic Games commenced, but during the period of the pre-Olympic Games Tokyo 2020 (which was the period commencing on 13 May 2021 up until and including the date prior to the opening of the Athlete Village for the Olympic Games Tokyo 2020, namely, 12 July 2021, inclusive), and by reason of the fact that the Respondent was not selected to participate in the Olympic Games Tokyo 2020 and, consequently, did not partake in any competitions or events

at those Games, there were no consequences under the IOC ADR such as exclusion of the athlete from the Olympic Games Tokyo 2020, disqualification and/or the loss of accreditation. The Agreement also provided pursuant to Article 7.1.2 of the IOC ADR that the matter would be referred to his International Federation, United World Wrestling (“UWW”), to determine the applicable consequences that may be imposed under its Anti-Doping Rules including the appropriate period of ineligibility.

9. The Agreement further noted that the Respondent had freely consented to the Agreement and thereby was deemed to have waived his right of appeal against the finding of the ADRV and the consequences as a result thereof pursuant to Article 12 of the ADR. The Respondent also agreed to the disposition of the ADRV, including his identity, being published in accordance with Article 13.3 of the ADR.

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

10. On 26 August 2021, the ITA, on behalf of the IOC, applied to the Anti-Doping Division of the Court of Arbitration for Sport (“CAS ADD”), acting as first-instance authority to conduct the proceedings and to issue a decision, pursuant to the CAS Anti-Doping Division Arbitration Rules. This Application was made pursuant to Article 8.1 of the ADR.
11. On 2 September 2021, the CAS ADD wrote to the ITA and to the Respondent advising that the Application by the ITA had been received and that a copy was enclosed for the Respondent’s attention. The Application was sent by email and courier with the exhibits being sent by email only. The letter advised that the Arbitration had been assigned to the CAS ADD and would therefore be dealt with according to the Arbitration Rules (“the ADD Rules”) of the CAS ADD.
12. The letter advised the Respondent that notwithstanding his indication that he did not seek to challenge the commission of the ADRV and did not request the analysis of his B-Sample, *“in order to guarantee his right to be heard and the principle of due process, pursuant to Article 14 of the ADD Rules, the Athlete shall file with the CAS ADD, within **fifteen (15) days** of receipt of this letter by **email** a Reply to”* the application. The letter specified that the Reply was required to contain a complete statement of the defence on the merits of the case and any defence of lack of jurisdiction. The Respondent was also advised details regarding costs, the formation of the Arbitration Panel, the language of the Arbitration and details concerning future communications.
13. No response was received by the CAS ADD from the Respondent. Proof of delivery by DHL Couriers of the letter dated 2 September 2021 and its enclosures, was provided to the Sole Arbitrator.
14. The ITA was unsuccessful in its attempts to liaise with the Respondent to agree upon a Sole Arbitrator and as a result, the President of the CAS ADD appointed Mr. David Grace QC, Barrister and Solicitor in Melbourne, Australia, to act as Sole Arbitrator in the procedure.

15. Due to the failure of the Respondent to provide his position on the IOC Application within the required period of time, the Sole Arbitrator caused a letter to be written by the CAS ADD to the Respondent, dated 21 September 2021, advising him again that he had been given the opportunity to participate in the procedure, notwithstanding his written acceptance of the consequences. The Respondent was given a final deadline of 24 September 2021 to respond and further to advise the CAS ADD office as to whether he requested a hearing be held in this matter. The ITA was also invited to inform the CAS ADD office whether it requested a hearing be held.
16. By letter dated 24 September 2021, the ITA advised that it did not request that a hearing be held in the matter. No response was received from the Respondent to any of the correspondence sent.
17. An Order of Procedure was prepared by the CAS ADD and provided to both the ITA and the Respondent by email on 13 October 2021. The Order of Procedure covered the following issues: jurisdiction, the appointment of the Sole Arbitrator, communications, the fact that the seat of Sole Arbitrator is Lausanne, Switzerland, that the language of the Arbitration would be in English, that the dispute be decided in the accordance with the World Anti-Doping Code and 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, the fact that the Sole Arbitrator may decide the matter based on the written submissions and that the parties confirm that their right to be heard has been respected. Other procedural matters were noted in the Order.
18. The ITA signed the Order of Procedure on 14 October 2021. The Respondent has failed to sign the Order.

#### **IV. SUBMISSIONS OF THE PARTIES**

##### **A. The Claimant**

19. The ITA submitted that its Application to the CAS ADD was admissible and that the Respondent had committed an ADRV contrary to Article 2.1 of the ADR. It further submitted that UWW be requested to consider any further action within its own jurisdiction. It submitted that clear jurisdiction of the CAS ADD was established pursuant to the ADR and that in this case an ADRV related to the Olympic Games arose on 14 July 2021, the date on which the Respondent was notified by the ITA of the AAF and that this AAF was being brought forward as an ADRV, within the period of 10 days preceding the Opening Ceremony of the Olympic Games, and accordingly, the CAS ADD had jurisdiction to hear the dispute.
20. It was further submitted that the signing by the Respondent of the Acceptance of Consequences on 6 August 2021, clearly put the matter beyond dispute.
21. The Respondent has not placed any written submissions, or indeed any documentation, before the CAS ADD.

## V. JURISDICTION

22. Article 8.1 of the ADR provides:

*“Where the ITA decides to assert an anti-doping rule violation, the ITA shall promptly file an application with the CAS Anti-Doping Division, acting as first-instance authority to conduct proceedings and to issue decisions, as per the CAS Anti-Doping Division Arbitration Rules. The application shall be filed in the name of the IOC by the ITA acting on the IOC’s behalf. A copy of such application (which shall be deemed as the notice of charge as defined in the International Standard for Results Management) will be provided to the Athlete, the Athlete’s NOC, the Athlete’s International Federation, the relevant National Anti-Doping Organisation of the Athlete, the IOC and WADA.*

*The composition of the hearing panel and procedures applicable to the CAS Anti-Doping Division shall be as per the CAS Anti-Doping Division Arbitration Rules”.*

23. Rule A2 (*Jurisdiction of CAS Anti-Doping Division*) of the Arbitration Rules provides:

*“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 WADC signatory 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 WADC signatory, by contract or by specific agreement”.*

24. It is clear the ADR applies generally in relation to the Olympic Games Tokyo 2020 and specifically applies to all Anti-Doping Activities and Doping Controls over which the IOC has jurisdiction in relation to the Olympic Games Tokyo 2020. The Respondent is an athlete who has been made subject to the authority of the IOC in connection with the Olympic Games Tokyo 2020 as he was put forward by the National Olympic Committee of Kazakhstan as a potential participant in advance of the Olympic Games Period. By his signing of the Acceptance of Consequences, the Respondent acknowledged the validity of the ADR, waived his right to a hearing and accepted the consequences of his ADRV that had been established by the ITA under the ADR, as described above. At the time of signing the Acceptance of Consequences Agreement, the Respondent was made aware that considering that he was not selected to participate in the Olympic Games Tokyo 2020, that apart from a finding that an ADRV had occurred, there was no further sanction applicable under the ADR and that thereafter the matter would be referred to the UWW for a determination of the appropriate period of ineligibility under the UWW ADR. As indicated above, the Respondent informed the ITA that he did not request the analysis of the B-Sample and Article 2.1.2 of the ADR provided that sufficient proof of an ADRV is established inter alia where the athlete waives analysis of the B-Sample and the B-Sample is not analysed.
25. The fact that the Respondent acknowledged the occurrence of an ADRV under Article 2.1 of the ADR for the presence of the two prohibited substances in his sample is sufficient to dispose

of the matter. Therefore, the assertion by the ITA that an ADRV has occurred, is accepted, and it is confirmed that all procedural requirements imposed upon the ITA, acting on behalf of the IOC, have been met.

26. The CAS ADD Arbitration Rules provide, *inter alia*, that if any of the parties has been duly called and fails to appear at the hearing, the Panel may nevertheless proceed with the hearing and deliver an Award. Although there is no oral hearing in this matter, the lack of participation and response by the Respondent does not deprive the CAS ADD of jurisdiction. The Respondent is to be taken as being fully aware of the Application of the ITA to assert an ADRV and its filing of an Application with the CAS ADD. Article 8.1.1 of the ADR, of which the Respondent has agreed to be bound, clearly provides for such a course. A person in the position of the Respondent, cannot avoid the exercise of jurisdiction by the CAS ADD by deliberately refraining from engaging in the process.
27. Pursuant to Article A2 of the CAS ADD Arbitration Rules, the CAS ADD is the first-instance authority to conduct proceedings and issue decisions when an alleged ADRV has been filed with it. Article 8.2 of the ADR makes it clear that the CAS ADD has the necessary jurisdiction to determine the matter at stake.

## VI. APPLICABLE LAW

28. As indicated above, pursuant to Article 8.1, the CAS ADD is provided with jurisdiction by the ADR and is required to conduct proceedings and to issue decisions as per the CAS ADD Arbitration Rules.
29. Pursuant to Article A20 of the CAS ADD Arbitration Rules, the Panel shall decide the dispute according to the applicable ADR or the laws of a particular jurisdiction chosen by agreement of the parties or, in the absence of such a choice, according to Swiss law. The Preamble to the CAS ADD Arbitration Rules provide that:

*“These Arbitration Rules have been established for the Olympic Games Tokyo 2020 in order to provide for the resolution by arbitration of all alleged anti-doping rule violations related to the Olympic Games, based on Rule 59.2.2.4 of the Olympic Charter, and insofar as they arise upon the occasion of Olympic Games Tokyo 2020 or during a period of 10 days preceding the opening ceremony of the Olympic Games. Such disputes shall be referred to the CAS Anti-Doping Division (the “CAS ADD”) in accordance with the IOC Anti-Doping Rules applicable to the Olympic Games Tokyo 2020”.*

30. Therefore, the applicable laws, pursuant to which this Application is to be determined, are:
  - (a) The Olympic Charter;
  - (b) IOC Anti-Doping Rules applicable to the Games of the XXXII Olympiad Tokyo 2020 (as of March 2021).

## VII. MERITS

31. Prohibited Substance belonging to Class S1.1 of the WADA 2021 Prohibited List (anabolic androgenic steroids) was found in the analyses of the Athlete's doping test samples. Such substance is a non-Specified Substance and is prohibited both in-competition and out-of-competition.
32. The Prohibited Substance was unequivocally found both in the Respondent's A-Sample and B-Sample.
33. According to Article 2.1.1 of the ADR, “[i]t is the Athletes' personal duty to ensure that no Prohibited Substance enters their bodies. Athletes are responsible for any Prohibited Substance ... found to be present in their Samples. Accordingly, it is not necessary that intent, Fault, negligence or knowing Use on the Athlete's part be demonstrated in order to establish an anti-doping rule violation under Article 2.1”.
34. Comment 7 of the WADA Code (“WADC”) specifically clarifies the Article 2.1.1 of the WADC as follows:

*“An anti-doping rule violation is committed under this Article without regard to an Athlete's Fault. This rule has been referred to in various CAS decisions as “Strict Liability”. An Athlete's Fault is taken into consideration in determining the Consequences of the anti-doping rule violation under Article 10. This principle has consistently been upheld by CAS”.*
35. Sufficient proof of an anti-doping rule violation under Article 2.1.2 of the ADR is established by the presence of a Prohibited Substance or its metabolites in the Athlete's A-Sample when the Athlete's B-Sample analysis confirms the presence of the Prohibited Substance found in the A-Sample.
36. According to Article 2.1.3 of the IOC ADR and considering that the Prohibited Substance found in the Athlete's test samples belongs to Class S1.1 of the WADA 2021 Prohibited List, the presence of any reported quantity of a Prohibited Substance in the Athlete's Samples constitutes an ADRV.
37. Furthermore, the Sole Arbitrator notes that the Respondent waived his right to request the opening and the analysis of the B-sample and that he would not challenge the commission of the ADRV. With such admission by the Athlete, the Sole Arbitrator considers that there is sufficient proof to establish the commission of an ADRV in accordance with Article 2.1 of the ADR.
38. Besides, the Sole Arbitrator further notes that the Respondent signed the “Acceptance of Consequences”, which was then counter-signed by the ITA, on behalf of the IOC.
39. In light of the above, it is clear, based on the above matters, that the Respondent is found to have committed an Anti-Doping Rule Violation pursuant to Article 2.1 of the IOC Anti-Doping Rules applicable to the Games of the XXXII Olympiad Tokyo 2020.

40. United World Wrestling is requested to consider any further action within its applicable Anti-Doping Rules in relation to any sanctions to be imposed upon the Respondent.

#### VIII. COSTS

(...).

#### IX. APPEAL

44. 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 on 26 August 2021 by the International Olympic Committee is upheld.
2. Mr. Askhat Dilmukhamedov is found to have committed an Anti-Doping Rule Violation pursuant to Article 2.1 of the IOC Anti-Doping Rules applicable to the Games of the XXXII Olympiad Tokyo 2020.
3. All individual results obtained by Mr. Askhat Dilmukhamedov on the occasion of the Olympic Games Tokyo 2020 shall be disqualified, with the resulting forfeiture of any and all medals, diplomas, points or prizes.
4. United World Wrestling is requested to consider any further action within its own jurisdiction and pursuant to its own Rules including determining any period of ineligibility.
5. (...).
6. (...).
7. All other motions or prayers for relief are dismissed.