Arbitration CAS 2019/ADD/5 International Olympic Committee (IOC) v. Endri Karina, award of 28 January 2020

Panel: Mr Pekka Ilmivalta (Finland), Sole Arbitrator

Weightlifting
Doping (dehydrochlormethyltestosterone)
Jurisdiction of the CAS Anti-Doping Division
Proof of an anti-doping rule violation
Sanction

1. **According to Article A2 of the CAS Anti-Doping Division (ADD) Rules, 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. CAS ADD shall also have jurisdiction in case of alleged doping violations linked with any re-analysis of samples.**

2. **Sufficient proof of an anti-doping violation under Article 2.1.2 of World Anti-Doping Code is established by the presence of a prohibited substance or its metabolites in the A Sample where the athlete waives analysis of the B Sample and the B Sample is not analysed.**

3. **Under Article 7.1 of the IOC Anti-Doping Rules, 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, diplomas, points and/or prizes.**

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. Endri Karina (the "Athlete" or "Respondent") is an Albanian weightlifter and a team member of the National Olympic Committee of Albania 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 23 July 2012, the Athlete provided an out-of-competition urine sample (sample no. 2720817) as part of the Doping Control Program at the 2012 London Olympics (the "Sample").

5. On 4 August 2012, the Athlete competed in the Men's 94kg Weightlifting Event, finishing 7th overall.

6. The Sample was analysed at the World Anti-Doping Agency ("WADA") accredited laboratory in London, United Kingdom (the "London Laboratory") using the available detection methods applied at the time by the London Laboratory. This did not result in an Adverse Analytical Finding ("AAF") at that time.

7. At the IOC's request, the remains of the Sample (remaining part of the respective A-Sample and full intact B-Sample) was subsequently transferred to the WADA-accredited laboratory in Lausanne, Switzerland for long-term storage.

8. 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.

9. As part of this process, a further analysis of the Sample was conducted by the Lausanne Laboratory and as it reported to the International Testing Agency (the "ITA") on 7 August 2019, this revealed the presence of Dehydrochlormethyltestosterone metabolites (also known as "oral turinabol"), which belongs to Class S1.1a (Exogenous Anabolic Androgenic Steroids) of the 2019 WADA Prohibited List. Such a finding constituted an AAF.

10. 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.

11. On 21 August 2019, 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 Athlete, by means of an "Athlete Rights Form" was then requested whether he accepted the AAF, or alternatively, whether he wanted to proceed with the opening of the B Sample and analysis, and receive the accompanying document package.

12. On 30 October 2019, the Athlete signed and returned the Athlete's Rights Form noting that he did not accept the AAF. But he did not request the analysis of the B Sample or the accompanying documentation package. The Athlete further noted that he would not attend the opening and analysis of the B Sample (either personally or through a representative).

13. In an additional notation to the Athlete's Rights Form, the Athlete stated as follows:

I will not do anything else for this matter and I will wait for the completion of all procedures.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

14. On 10 December 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").

15. 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.

16. On 13 December 2019, the ADD opened this procedure and invited the Athlete to file an answer to the request for arbitration in accordance with Article A14 of the ADD Rules.

17. On 20 December 2019, the ADD, on behalf of the President of the ADD, confirmed the appointment of Mr. Pekka Ilmivalta, Attorney-at-Law, Helsinki, Finland, as Sole Arbitrator in accordance with Article A16 of the ADD Rules.

18. On 7 January 2020, the Athlete filed his answer to charges brought against him in the request for arbitration.

19. On 9 January 2020, the ADD confirmed receipt of the Athlete's answer and, on behalf of the Sole Arbitrator, invited the parties to state whether they requested a hearing. A party's silence would be considered confirmation that no hearing was needed.

20. On 16 January 2020, the ADD confirmed that no party requested a hearing, and on behalf of the Sole Arbitrator who had considered the entire file, informed the parties that he was sufficiently well informed to render a decision without a hearing.

21. On 20 & 21 January 2020, the Claimant and Athlete, 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.

- The substance was found in the Athlete's A Sample and the Athlete did not request the analysis of his B Sample (and the B Sample was not analyzed). This constitutes an ADRV in accordance with Article 2.1 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 has not provided any explanation as to the presence of the Prohibited Substance in his sample and there is no indication that the Athlete bore No Fault or Negligence.

- Steroids are used for build-up and preparation and have long-term and lasting effects. Therefore, the presence of the Prohibited Substance in his body on 23 July 2012 would have positively impacted his performance during his match on 4 August 2012 for purposes of Art. 8.1.1 of the IOC ADR. Consequently, all results obtained by the Athlete during the 2012 London Olympics should disqualified with all resulting consequences.

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) Endri Karina is found to have committed an anti-doping rule violation in accordance with the IOC Anti-Doping Rules.

3) Endri Karina's results from the 2012 London Olympics are disqualified, along with all other consequences, including forfeiture of any medals, diplomas, points, and prizes.

24. The Athlete's submission, in essence, may be summarized as follows:

- The Athlete denies using the Prohibited Substance and does not know how it entered his bodily system.

- The Athlete has been subjected to many anti-doping controls by the IWF and the IOC and has never tested positive.

- Leniency is requested so as to protect the Athlete's career.

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 3 October 2019, the parties executed an Arbitration Agreement to refer this matter to the ADD.

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

VI. APPLICABLE LAW

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

The Panel shall decide the dispute in 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.

29. 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.

30. No party objected to the application of the IOC ADR.

31. 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

32. As mentioned above, the Prohibited Substance belonging to Class S1.1a of the WADA 2019 Prohibited List (exogenous anabolic androgenic steroids) was found in the Sample on reanalysis.

33. 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 Sample *"where the Athlete waives analysis of the B Sample and the B Sample is not analysed …"*.

34. The Prohibited Substance was unequivocally found in the Athlete's A Sample, the Athlete expressly waived his right to test the B Sample, and the B Sample was subsequently never tested. And, when given an opportunity to explain the presence of the Prohibited Substance in his A Sample upon notification of the positive result, the Athlete simply stated *"I will not do anything else for this matter and I will wait for the completion of all procedures"*.

35. Moreover, the substance found in the Sample belonging to Class S1.1a of the WADA 2019 Prohibited List is not a Specified Substance within the meaning of 4.2.2. of WADC and is prohibited as doping at all times (both In-Competition and Out-of-Competition). The substance is specifically used for doping purposes within the meaning of WADC and the Athlete offered no other explanation for its presence in the Sample during this ADD procedure (instead, commenting that he had no idea how such a substance could enter his body).

36. Without any explanation or evidence to the contrary by the Athlete, the Sole Arbitrator finds that the Athlete committed an anti-doping rule violation under WADC Article 2.1.

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, diplomas, points and/or prizes.

38. Accordingly the Athlete's results at the 2012 London Olympics are disqualified and all medals, diplomas, 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 10 December 2019 against Mr. Endri Karina is upheld.

2. Mr. Endri Karina 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. Endri Karina at the XXX Olympiad, London 2012 are disqualified with all resulting consequences including, if applicable, forfeiture of any medal, diploma, points and prizes.

4. The award is pronounced without costs, except for the ADD Court Office fee of CHF 1,000 (one thousand Swiss Francs) paid by the International Olympic Committee, which is retained by the ADD.

5. (…).

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