**Arbitration CAS anti-doping Division (OG Rio) AD 16/007 International Olympic Committee (IOC) v. Izzat Artykov, award of 18 August 2016**

Panel: The Hon. Michael Beloff QC (United Kingdom), President; Prof. Michael Geistlinger (Austria); Justice Hugh Fraser (Canada)

*Weightlifting*
*Doping (strychnine)*

## I. FACTS

1. The elements set out below are a summary of the main relevant facts as established by the Panel by way of a chronology on the basis of the materials supplied by the parties. Additional facts may be set out, where relevant and to the extent necessary, in the other chapters of the present award.

2. Mr. Izzat Artykov (the "Athlete") is a representative of the Kyrgyzstan NOC. His sport is weightlifting. At the Olympic Games Rio 2016 ("Rio 2016"), the Athlete took part in the Men's 69 kg Weightlifting event on 9 August 2016, at 10am (all times in the award mean Rio times).

3. On 9 August 2016, after his competition, the Athlete underwent an in-competition doping control for a urine sample.

4. On 12 August 2016, the International Olympic Committee (the "IOC") notified the Athlete through his NOC that the results of the analysis of his A Sample revealed the presence of strychnine. This substance is a specified stimulant, prohibited under S6 of the WADA Prohibited List. It is a specified substance.

5. On 12 August 2016 at 17h44, the IOC filed an application at the Anti-Doping Division of the Court of Arbitration for Sport ("CAS ADD") asserting the following:

   (a) The results of the A sample analysis of the Athlete revealed the presence of strychnine;

   (b) The detected substance is a specified stimulant prohibited under S6 of the WADA Prohibited List. It is a specified substance; and

   (c) The Athlete committed an Anti-Doping rule violation.

6. In the Application, the IOC seeks the following relief:

   *1. The Application of the International Olympic Committee is admissible.*

   *2. The Athlete be found guilty of an anti-doping rule violation in accordance with Article 2.1 of the IOC Anti-Doping Rules applicable to the Olympic Games Rio 2016 (the "IOC ADR").*

3. *The results obtained by the Athlete in the Men's 69 kg Weightlifting event of the Olympic Games Rio 2016 be disqualified with all Consequences, including forfeiture of all medals, points and prizes.*

4. *All other results obtained by the Athlete in the Olympic Games Rio 2016 be disqualified with all resulting Consequences, including forfeiture of all medals, points and prizes.*

5. *The Athlete is declared ineligible to compete in all Competitions in which he has not yet participated at the Olympic Games Rio 2016.*

6. *The Athlete be excluded from the Olympic Games Rio 2016.*

7. *The Athlete's accreditation (number 1087397) be withdrawn.*

8. *The matter of the Athlete be referred to the International Weightlifting Federation to impose Consequences that extend beyond the Olympic Games Rio 2016 upon the Athlete.*

7. The Athlete asked for opening of the B Sample, which took place on 13 August 2016, at 10h00.

8. On 13 August 2016, at 16h03 the composition of the Panel was communicated to the Parties:

President: Hon. Michael Beloff QC

Arbitrators: Hon. Justice Hugh Fraser

Mr. Michael Geistlinger.

9. On 13 August 2016, at 17h58 the Parties were notified of an Order on Application of a Provisional Suspension issued by the Panel. The Athlete was suspended from Competition based on Art. 14 of the CAS ADD Rules read together with Art. 7.6.2 of the IOC ADR.

10. On 14 August 2016, at 12h00 the IOC provided the Panel with the report on the analysis of the B Sample. The analysis confirmed the result of the A Sample.

11. The IOC submitted the laboratory documentation package ("LDP") associated with the Athlete's A and B Sample on 15 August 2016, at 18h04.

12. None of the parties filed written submissions by the set deadline of 16 August 2016, at 12h00.

13. On 16 August 2016, at 16h33, since none of the parties had asked for a hearing by the set deadline of 12h00, the Panel, referring to Art. 15(c) and (e) of the CAS ADD Rules, informed the Parties that it considered itself sufficiently well informed to render a decision without an oral hearing.

## II. LEGAL ASPECTS

### A. Jurisdiction

14. Pursuant to Rule 59.2.4 of the Olympic Charter, the IOC Executive Board has delegated to the CAS ADD its power to decide upon any violation of the World Anti-Doping Code arising upon the occasion of the Olympic Games (Art. 8.2.2 IOC ADR).

15. Pursuant to Article 8.1.1 of the IOC ADR:

*"Where the IOC decides to assert an anti-doping rule violation, the IOC shall promptly file an application with the CAS Anti-Doping Division as per the CAS Anti-Doping Rules".*

16. Pursuant to Article 1 of the Arbitration Rules applicable to the CAS ADD:

*"The CAS ADD shall be the first instance authority for doping-related matters, responsible for the conduct of the proceedings and the issuance of decisions when an alleged anti-doping rule violation has been asserted and referred to it under the IOC ADR".*

17. The parties do not contest the jurisdiction of the CAS ADD to decide the dispute.

18. It follows that the CAS ADD has jurisdiction over the Application.

### B. Applicable Law

19. Article 17 CAS ADD Rules reads as follows:

*"The Panel shall rule on the dispute pursuant to the IOC ADR, the applicable regulations, Swiss Law and general principles of law".*

20. The Introduction to the IOC ADR refers *inter alia* to the scope of the Rules and stipulates the following:

*"These Rules apply in connection with the Olympic Games Rio 2016. They shall, without limitation, apply to all Doping Controls over which the IOC has jurisdiction in connection with the Olympic Games Rio 2016.*

*These Rules shall, without limitation, apply automatically to (a) the IOC; (b) Athletes entered in the Olympic Games Rio 2016 …*

*(…)*

*Athletes entered in the Olympic Games Rio 2016 or who have otherwise been made subject to the authority of IOC in connection with the Olympic Games Rio 2016 are bound by these Rules as condition of eligibility to participate in the Olympic Games Rio 2016…".*

21. The Panel hereby confirms that it will apply primarily the IOC ADR, and on a subsidiary basis as necessary, Swiss Law and general principles of law. The Panel further confirms that these proceedings are governed by the CAS ADD Rules. They are further governed by Chapter 12 of

the Swiss Private International Law Act of 18 December 1987 ("PIL Act"). The PIL Act applies to this arbitration as a result of the express choice of law contained in Article 17 of the CAS ADD Rules and as a result, the choice of Lausanne, Switzerland as the seat of the CAS ADD and the Panel, pursuant to Article 7 of the CAS ADD Rules.

## C. Legal Framework

22. The relevant articles of the Applicable Law for the discussion on the merits of this Application are the following:

23. Art. 2 IOC ADR reads as follows:

***ARTICLE 2 ANTI-DOPING RULE VIOLATIONS***

*The purpose of Article 2 is to specify the circumstances and conduct which constitute anti-doping rule violations. Hearings in doping cases will proceed based on the assertion that one or more of these specific rules have been violated.*

*Athletes or other Persons shall be responsible for knowing what constitutes an anti-doping rule violation and the substances and methods which have been included on the Prohibited List.*

*The following constitute anti-doping rule violations:*

***2.1 Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample***

***2.1.1*** *It is each Athlete's personal duty to ensure that no Prohibited Substance enters his or her body. Athletes are responsible for any Prohibited Substance or its Metabolites or Markers 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.*

***2.1.2*** *Sufficient proof of an anti-doping rule violation under Article 2.1 is established by any of the following: presence of a Prohibited Substance or its Metabolites or Markers in the Athlete's A Sample where the Athlete waives analysis of the B Sample and the B Sample is not analyzed; or, where the Athlete's B Sample is analyzed and the analysis of the Athlete's B Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the Athlete's A Sample; or, where the Athlete's B Sample is split into two bottles and the analysis of the second bottle confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the first bottle.*

***2.1.3*** *Excepting those substances for which a quantitative threshold is specifically identified in the Prohibited List, the presence of any quantity of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample shall constitute an anti-doping rule violation.*

***2.1.4*** *As an exception to the general rule of Article 2.1, the Prohibited List or International Standards may establish special criteria for the evaluation of Prohibited Substances that can also be produced endogenously.*

***2.2 Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method***

***2.2.1*** *It is each Athlete's personal duty to ensure that no Prohibited Substance enters his or her body and that no Prohibited Method is Used. 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 for Use of a Prohibited Substance or a Prohibited Method.*

24. Art. 3.1 IOC ADR reads as follows:

***3.1 Burdens and Standards of Proof***

*The IOC shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether the IOC has established an anti-doping rule violation to the comfortable satisfaction of the hearing panel bearing in mind the seriousness of the allegation which is made.*

*This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt. Where these Rules place the burden of proof upon the Athlete or other Person alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability.*

25. Art. 10 IOC ADR reads as follows:

***10.1 Disqualification of Results in the Olympic Games Rio 2016***

*An anti-doping rule violation occurring during or in connection with the Olympic Games Rio 2016 may, upon the decision of the CAS Anti-Doping Division, lead to Disqualification of all of the Athlete's individual results obtained in the Olympic Games Rio 2016 (or in one or more Events or Competitions) with all Consequences, including forfeiture of all medals, points and prizes, except as provided in Article 10.1.1.*

*Factors to be included in considering whether to Disqualify other results in the Olympic Games Rio 2016 might include, for example, the seriousness of the Athlete's anti-doping rule violation and whether the Athlete tested negative further to Testing conducted after other Competitions.*

***10.1.1.*** *If the Athlete establishes that he or she bears No Fault or Negligence for the violation, the Athlete's individual results in the other Competitions shall not be Disqualified, unless the Athlete's results in Competitions other than the Competition in which the anti-doping rule violation occurred were likely to have been affected by the Athlete's anti-doping rule violation.*

…

***10.2 Ineligibility and other consequences***

***10.2.1*** *Should an Athlete or other Person be found to have committed an anti-doping rule violation, the CAS Anti-Doping Division may declare the Athlete or other Person ineligible for such Competitions at the Olympic Games Rio 2016 in which he/she has not yet participated, along with other sanctions and measures which may follow, such as exclusion of the Athlete and other Persons concerned from the Olympic Games Rio 2016 and the loss of accreditation.*

*No Person who has been declared ineligible may, during the period of ineligibility, participate in any capacity in the Olympic Games Rio 2016.*

***10.2.2*** *In accordance with Article 7.1.2, responsibility for results management in terms of sanctions beyond the Olympic Games Rio 2016 itself shall be referred to the applicable International Federation.*

***10.3 Automatic Publication of Sanction***

*A mandatory part of each sanction shall include automatic publication, as provided in Article 13.3.*

## III. MERITS

26. The results of the analysis of the Athlete's A and B Sample revealed the presence of strychnine. This substance is a specified stimulant, prohibited under S6 of the WADA Prohibited List. It is a specified substance.

27. The Athlete has not challenged the result of the analysis or made any other submission to the effect that he is not guilty of an anti-doping rule violation.

## IV. CONCLUSION

29. In view of the above considerations, the Panel finds that the IOC met its burden of proof under Art. 3.1 IOC ADR. The documents adduced by the IOC establish sufficient proof, to the comfortable satisfaction of the Panel, that the Athlete committed an anti-doping rule violation under Art. 2 IOC ADR.

30. As the Athlete committed an anti-doping rule violation in connection with the Olympic Games Rio 2016, the Panel finds it appropriate to impose on the Athlete the following consequences:

    1. The Athlete has committed an anti-doping rule violation in accordance with Article 2.1 of the IOC Anti-Doping Rules applicable to the Olympic Games Rio 2016.
    2. All results obtained by the Athlete in the Olympic Games Rio 2016 are disqualified with all consequences, including forfeiture of all medals, points and prizes.
    3. The Athlete is excluded from the Olympic Games Rio 2016.
    4. The Athlete's Accreditation (number 1087397) is withdrawn.
    5. The responsibility for the Athlete's results management in terms of sanction beyond the Olympic Games Rio 2016 is referred to the International Weightlifting Federation being the applicable International Federation.

**The anti-doping Division of the Court of Arbitration for Sport renders the following decision:**

On the basis of the facts and legal arguments set forth above, the application is granted.

1. The Athlete has committed an anti-doping rule violation in accordance with Article 2.1 of the IOC Anti-Doping Rules applicable to the Olympic Games Rio 2016.

2. All results obtained by the Athlete in the Olympic Games Rio 2016 are disqualified with all consequences, including forfeiture of all medals, points and prizes.

3. The Athlete is excluded from the Olympic Games Rio 2016.

4. The Athlete's Accreditation (number 1087397) is withdrawn.

5. The responsibility for the Athlete's results management in terms of sanction beyond the Olympic Games Rio 2016 is referred to the International Weightlifting Federation being the applicable International Federation.