



2020/ADD/11 International Olympic Committee v. Vladimir Nikolov

ARBITRAL AWARD

delivered by the

**ANTI-DOPING DIVISION
OF THE COURT OF ARBITRATION FOR SPORT**

sitting in the following composition:

Sole Arbitrator: Ken Lalo, Attorney-at-Law in Gan-Yoshiyya, Israel

in the arbitration between

International Olympic Committee, Switzerland

Represented by Mr. Jean-Pierre Morand, Attorney-at-Law with Kellerhals Carrard in Lausanne, Switzerland

Claimant

and

Vladimir Nikolov, Sofia, Bulgaria

Respondent

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. Vladimir Nikolov (the “Athlete” or “Respondent”) is a Bulgarian volleyball player and a team member of the National Olympic Committee of Bulgaria (the “NOC”) who participated in the Games of the XXX Olympiad, London 2012 (the “2012 London Olympics”).
3. The Claimant and the Respondents are hereinafter referred to as the “Parties”.

II. FACTUAL BACKGROUND

4. 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.
5. The Athlete participated in the Men’s Olympic volleyball tournament at the 2012 London Olympics from 29 July 2012 to 12 August 2012 (the “Tournament”). The Athlete’s team finished in 4th place overall.
6. Under Article 4.1 of the IOC’s Anti-Doping Rules applicable to the 2012 London Olympics (the “IOC ADR”), the IOC was responsible for doping controls during the period of the 2012 London Olympics.
7. On 29 July 2012, during the Tournament, the Athlete provided a urine sample (sample no. 2720388) as part of the Doping Control Program at the 2012 London Olympics (the “Sample”).
8. The Sample was analysed at the World Anti-Doping Agency’s (“WADA”) accredited laboratory in London, United Kingdom using the then available detection methods. At that time, this did not result in an Adverse Analytical Finding (“AAF”).
9. At the IOC’s request, the remains of the Sample (the remaining portion of the A-Sample and full B-Sample) were subsequently transferred to the WADA-accredited laboratory in Lausanne, Switzerland (the “Lausanne Laboratory”) for long-term storage.
10. Under Article 5.1 of 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 Sample was conducted by the Lausanne Laboratory. This analysis revealed the presence of Methyltestosterone metabolite (17 α -methyl-5 β -androstan-3 α , 17 β -diol), which belongs to Class S1.1a (Anabolic Agent –

Anabolic Androgenic Steroids (AAS)) of the 2012 WADA Prohibited List and all subsequent lists, and as such resulted in a finding of an AAF.

12. The International Testing Agency (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 validity of the AAF.
13. On 14 January 2020, the ITA notified the Athlete, through the NOC, 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”).
14. On 28 February 2020, the Athlete completed an “Athlete Rights Form” whereby he did not accept the AAF and requested the opening and analysis of the B-Sample and a copy of the A-Sample documentation package. The Athlete also indicated that he would personally attend the opening and the analysis of the B-Sample and that he would be accompanied by Ms. Viktoriya Petrova Torzieva on this occasion. This completed “Athlete Rights Form” was sent back by the Athlete on 5 March 2020 and its receipt was acknowledged by the ITA on 10 March 2020.
15. On 12 March 2020, the Athlete executed the Arbitration Agreement referring the ADRV case to the Anti-Doping Division of the Court of Arbitration for Sport (the “ADD”). This executed Arbitration Agreement was sent to the ITA on 16 March 2020.
16. On 17 March 2020, the ITA informed the Athlete that due to the restriction imposed following the outbreak of COVID19, the opening and analysis of the B-Sample would be scheduled for a date after 19 April 2020.
17. On 16 April 2020, a copy of the A-Sample documentation package was provided to the Athlete.
18. On 7 July 2020, following notifications, the B-Sample was opened at the Lausanne Laboratory in the presence of the Athlete and was further analysed.
19. On 13 July 2020, the B-Sample Doping Control Report was provided to the Athlete, confirming the A-Sample positive result.
20. On 13 July 2020, the Athlete sent an email advising that he did not require a copy of the B-Sample documentation package.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

21. On 28 August 2020, the Claimant filed a Request for Arbitration with the ADD in accordance with Article A13 of the Arbitration Rules of the ADD (the “ADD Rules”).
22. 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.

23. The Request for Arbitration was sent to the Athlete at the NOC and was received by the NOC on 1 September 2020.
24. On 4 September 2020, the ADD, on behalf of the President of the ADD, confirmed the appointment of Mr. Ken Lalo as Sole Arbitrator in accordance with Article A16 of the ADD Rules.
25. No Answer was filed within the expiry of the 20-day period specified in Article 14 of the ADD Rules, namely 21 September 2020, and as set out in the ADD letter to the Athlete dated 1 September 2020.
26. On 24 September 2020, the Athlete send an email to the ADD confirming receipt of the Request for Arbitration and requesting the ADD to advise him as to “*the next steps to solve this case*”.
27. On 24 September 2020, the ADD, on behalf of the Sole Arbitrator, requested the NOC and the Athlete to advise and document the date of delivery to and receipt of the Request for Arbitration by the Athlete, advising that, subject to the Claimant’s position, the Athlete had 20 days from actual receipt of the documents to file his Answer.
28. On 24 September 2020, the Athlete confirmed in response that he received the paper documents on 23 September 2020, as he was “*outside Bulgaria from 02/09/2020 until 20/09/2020. I was in Italy and immediately after in Greece. I had a phone call from Bulgarian federation that package arrived for me in beginning of the month, but I was away*”. This was later supported by an email of 29 September 2020 from the NOC to the ADD, confirming that the documents were forwarded to the Athlete on 14 September 2020 to the Bulgarian Volleyball Federation.
29. On 25 September 2020, the IOC indicated that despite the expiry of the deadline to file an Answer it would not object to the Athlete’s late filing.
30. On 25 September 2020, the Athlete sent an email containing what appeared to be his Answer in accordance with Article A14 of the ADD Rules.
31. On 28 September 2020, the IOC indicated that this matter could be decided without a hearing.
32. On the same day, 28 September 2020, the ADD requested the Athlete to confirm that his email of 25 September 2020 indeed constituted his Answer in this matter.
33. On 28 September 2020 and in response, the Athlete confirmed that his email of 25 September 2020 “*is my official answer*”.
34. On 29 September 2020, the ADD noted the IOC’s preference that the matter be decided without a hearing, indicated that the Sole Arbitrator is of the view that the matter may be decided without a hearing but nevertheless requested the Athlete to confirm his position towards a hearing.
35. On 29 September 2020, the Parties signed and returned the Order of Procedure. The Order of Procedure acknowledged, *inter alia*, that:

“the Parties confirm their agreement that the Sole Arbitrator may decide this matter based on the Parties’ written submissions. The Parties confirm that their right to be heard has been respected. Pursuant to Article A19.3 of the Rules, the Sole Arbitrator considers himself to be sufficiently well informed to decide this matter without the need to hold a hearing.”

36. On 30 September 2020, the ADD advised the Parties that with the agreement of both Parties no hearing will be convened in this matter and that the Sole Arbitrator shall issue the Award in due course based on the Parties’ written submissions.

IV. SUBMISSIONS OF THE PARTIES

37. The IOC’s submissions, in essence, may be summarised as follows:

- Methyltestosterone metabolite (17a-methyl-5b-androstan-3a, 17b-diol) belongs to Class S1.1a (Anabolic Agent – Anabolic Androgenic Steroids (AAS)) of the 2012 WADA Prohibited List and all subsequent lists.
- The substance was found in the Athlete’s A-Sample and confirmed by the B-Sample results. Such presence constitutes an ADRV in accordance with Article 2.1.2 of the World Anti-Doping Code (“WADC”).
- The Prohibited Substance found in the Athlete’s samples is a substance specifically used for doping purposes, with no plausible reason to explain its presence, which presence is consistent with the intentional use by the Athlete of the Prohibited Substance deliberately ingested to improve performance.
- Given the likelihood of such intentional use, this violation could also constitute a further violation under Article 2.2 of the WADC, in regard to use of the Prohibited Substance found in the Athlete’s samples.

38. Apart from the establishment of the violation itself, the consequences of the violation are set out in Articles 7, 8, and 9 of the IOC ADR. This case concerns an athlete who was a member of a team in a Team Sport (i.e. the Bulgarian Volleyball Team) who finished in 4th place. Therefore, there are no “athlete results” at stake but only team results as set out in Article 9 of the IOC ADR. However, as a consequence to these team results, the Athlete was awarded an Olympic diploma and pin, and these elements must be returned to the IOC. 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) *Vladimir Nikolov is found to have committed an anti-doping rule violation in accordance with the IOC Anti-Doping Rules.*
- 3) *Vladimir Nikolov shall return the Olympic Diploma he received on the occasion of the 2012 London Olympics.”*

39. The Athlete’s submissions, in essence, may be summarised as follows:

- Having witnessed the opening of the B-Sample, the Athlete does not contest the AAF and accepts the ADRV (“yes, I am guilty”).
- The Athlete cannot specify an apparent reason for the AAF and indicates that he has never used any Prohibited Substances and that he only took supplements provided by the team doctors and that he “didn’t take anything without a doctor’s prescription; not even medication for a headache”.
- The Athlete can only assume that there may have been a contaminated supplement, but indicates that there is no ability at this time to check the supplements taken, as these were kept by the team doctors only for a month following the 2012 London Olympics.
- The Athlete has a clear record with respect to his anti-doping controls and has never tested positive for a prohibited substance.
- The Athlete highlights the small quantity of the Prohibited Substance found in his Samples which could not have influenced his sporting performance during the 2012 London Olympics.

V. JURISDICTION

40. 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.”

41. The Parties executed an Arbitration Agreement dated 12 March 2020, agreeing to refer this matter to the ADD.
42. The Arbitration Agreement dated 12 March 2020 provides *inter alia* as follows:

“The present Arbitration Agreement is entered into between the IOC and the Athlete to govern the resolution of the disciplinary dispute in connection with the analytical findings related to sample number 2720388 collected from the Athlete on 29 July 2012, on the occasion of the XXX Olympiad London 2012 (the “Case”).

In accordance with article 6.2.5 of the IOC Anti-Doping Rules applicable to the Games of the XXX Olympiad London 2012 (the “Anti-Doping Rules”), the Case would be submitted to a Disciplinary Commission set up by the IOC.

Notwithstanding the above the IOC and the Athlete have expressly agreed to submit the Case to the Anti-Doping Division of the Court of Arbitration for Sport (“CAS ADD”) in Lausanne, Switzerland which shall act as first instance authority (Art. 2 CAS ADD Arbitration Rules) instead of the Disciplinary Commission.

The proceedings shall be conducted in accordance with the CAS ADD Arbitration Rules.

Both the IOC and the Athlete confirm that they agree that the CAS ADD will have full power to decide the Case in application of the material provisions of the Anti-Doping Rules.

The award issued by the CAS ADD may be appealed in accordance with article 11 of the Anti-Doping Rules.

By signing this Agreement, the IOC and the Athlete hereby agree to submit the Case before the CAS ADD in accordance with the terms and conditions set forth herein.”

43. The Parties further confirmed that the ADD has jurisdiction over the present matter by signing the Order of Procedure.
44. In consideration of the foregoing, the Sole Arbitrator confirms the jurisdiction of the ADD to decide this matter.

VI. APPLICABLE LAW

45. 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.”

46. 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 *inter alia* as follows:

“Anti-doping rules, like competition rules, are sport rules governing the conditions under which sport is played. 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.”

47. Article 1.2 of the IOC ADR provides:

“Subject to the specific following provisions of the Rules below, the provisions of the Code and of the International Standards apply mutatis mutandis in relation to the London Olympic Games.”

48. Article 2 of the IOC ADR provides that *“Article 2 of the Code applies to determine anti-doping rule violations.....”*, referring to the WADC.
49. Neither of the Parties objected to the application of the IOC ADR and the WADC and indeed, the Parties agreed to the application of the WADC by signing the Order of Procedure.
50. 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

51. Under Article 3.1 of the WADC, the IOC has the burden of establishing *“to the comfortable satisfaction of the”* Sole Arbitrator that an ADRV has occurred. This *“standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt”*.
52. Under Article 3.2.1 of the WADC *“WADA-accredited laboratories are presumed to have conducted Sample analysis and custodial procedures in accordance with the International Standard for Laboratories”*. The burden shifts to Athlete to rebut this presumption *“by establishing that a departure from the International Standard for Laboratories occurred which could reasonably have caused the Adverse Analytical Finding.”*
53. A Methyltestosterone metabolite (17a-methyl-5b-androstan-3a, 17b-diol), belonging to Class S1.1a (Anabolic Agent – Anabolic Androgenic Steroids (AAS)) of the WADA 2020 Prohibited List was found in the Athlete’s A-Sample on reanalysis. This Prohibited Substance was already contained in the WADA 2012 Prohibited List.
54. The Prohibited Substance was detected by the Lausanne Laboratory, which is a WADA-accredited laboratory and the Athlete did not argue, let alone establish, a departure of the Lausanne Laboratory from the International Standard for Laboratories.
55. According to Article 2.1.1 of WADC, *“[i]t 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”*.
56. Pursuant to Article 2.1.2 of WADC, *“[s]ufficient proof of an anti-doping rule violation under Article 2.1 is established....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.”*
57. The Prohibited Substance was unequivocally found in the Athlete’s A-Sample, and was confirmed by the B-Sample analysis, opened in the presence of the Athlete.

58. The Athlete did not contest the positive finding. In his Answer the Athlete expressly stated that “[i]n short - yes, I am guilty. I was present for the B sample opening and the substance was in my urine.”
59. Consequently, an ADRV under Article 2.1.1 of WADC is established.
60. Furthermore, Article 2.2.1 of WADC provides that “[i]t is each Athlete’s personal duty to ensure that no Prohibited Substance enters his or her body”, whereas it is not required in order to establish an ADRV, that “intent, fault, negligence or knowing Use on the Athlete’s part be demonstrated”.
61. Under Article 2.2.2 of WADC the “use” of the Prohibited Substance suffices and “[i]t be success or failure of the Use . . . of a Prohibited Substance . . . is not material.”
62. The Athlete claims to have a clean record, to have never used prohibited substances and indicates that he only used supplements provided by his team’s doctors. The Athlete stated that:

“The real problem in this case is that I really don't have an idea how this happened.

Throughout my professional and international career I didn't take anything without a doctor's prescription; not even medication for a headache. I was tested regularly, 4/5 times every year, (and passed) and I knew that at the Olympic Games anti-doping tests would be carried out after every match.

Our team doctor provided us with numerous food supplements and those were the only additional supplements I took.

The only explanation I can think of is that one of the supplements we were administered was not clean.

Unfortunately, for me, our National Team doctors only kept the used supplement containers for one month after The Games; they have long since been disposed of, thus, I have no chance to defend myself by examining the supplements used during The Games.

To answer the other question, how did this happened?

My honest answer; I have no idea! I know it may sound ridiculous but I have no better explanation, my sincere answer is all I have at this time.”

63. Furthermore, the Athlete notes the small quantity of the Prohibited Substance found in his Samples:

“The quantity of the product detected in my sample was so low that it could not have any significant impact on my performance. I know that all athletes have to be clean from any prohibited substances/drugs, however, consider why I would take a prohibited substance that wouldn't positively affect my performance. As an experienced veteran athlete the risk to my career would be too high.”

64. Since the Prohibited Substance was detected in the Athlete's Sample and no explanation for its presence was demonstrated or evidenced by the Athlete, the commission of an ADRV is consequently also established based on Article 2.2.1 of WADC.
65. Consequently, the Sole Arbitrator finds that the Athlete committed an ADRV under WADC Article 2.1.1 and WADC Article 2.2.1.
66. While the Athlete's Answer appears to be candid, the Sole Arbitrator notes that any mitigating circumstances invoked by the Athlete in defense of his ADRV, such as lack of intent, lack of knowledge, possibility of consumption of supplements containing the Prohibited Substance and the small quantity of the substance detected, even if proven (which in this case have only be argued in most general terms but not substantiated in any way and not collaborated by any evidence), are not relevant to establish whether an ADRV was committed. Indeed, according to the WADC, an athlete's fault or negligence are elements taken into consideration in determining the consequences of an ADRV, not the commitment of the violation itself. As noted below, the Athlete may have an opportunity to explain the circumstances leading to the presence of the Prohibited Substance in his Samples at a later stage of the prosecution of the ADRV.

B. The Applicable Sanction

67. Article 7.1 of the IOC ADR applies in connection to a violation in individual sports and, consequently, is not applicable in this case.
68. Article 8.1 of the IOC ADR provides:

“An anti-doping rule violation occurring during or in connection with the London Olympic Games may lead to Disqualification of all of the Athlete's results obtained in the London Olympic Games with all consequences, including forfeiture of all medals, points and prizes, except as provided in Article 8.1.1.”

69. In case of a team's sport, such as the present one, there are no “Athlete's results”, but only team results. Nevertheless, Article 8.1 of the IOC ADR provides that such qualification effects also “all consequences, including...”, which means that the list provided is non-exclusive. The Athlete was awarded an Olympic diploma and pin as a result of his participation at the 2012 London Olympics. This is a “consequence” of his participation at these Olympic Games and must be returned to the IOC by the Athlete as a result of the ADRV.

70. Article 9.1 of the IOC ADR provides:

“Where more than one member of a team in a Team Sport has been notified of a possible antidoping rule violation under Article 6 in connection with the London Olympic Games, the team shall be subject to Target Testing for the London Olympic Games.

In Team Sports, if more than one team member is found to have committed an anti-doping rule violation during the Period of the London Olympic Games, the team may be subject to Disqualification or other disciplinary action, as provided in the applicable rules of the relevant International Federation.

In sports which are not Team Sports but where awards are given to teams, if one or more team members have committed an anti-doping rule violation during the Period of the London Olympic

Games, the team may be subject to Disqualification, and/or other disciplinary action as provided in the applicable rules of the relevant International Federation.”

71. Therefore, under Article 9.1 of the IOC ADR, in team sports, if more than one team member is found to have committed an ADRV during the 2012 London Olympics, the team may be subject to disqualification or other disciplinary action, as provided in the applicable rules of the relevant International Federation.
72. Based on the IOC submissions, the Athlete is currently the only member of the Bulgarian volleyball team found to have committed an ADRV during the period of the 2012 London Olympics. Accordingly, there are currently no consequences applicable in connection with the results achieved by the Bulgarian volleyball team. These proceedings and the issuance of this Award do not preclude the imposition of such sanctions should other member of the Bulgarian volleyball team be found to have committed an ADRV during the period of the 2012 London Olympics.
73. Separately, pursuant to Article 8.3 IOC ADR the “*consequences of Anti-Doping Rule Violations and the conduct of additional hearings as a consequence of hearings and decisions of the IOC, including with regard to the imposition of sanctions over and above those relating to the London Olympic Games, shall be managed by the relevant National Federations.*”
74. Therefore, pursuant to Article 8.3 of the IOC ADR, without delegation of its powers to the CAS ADD to conduct further anti-doping proceedings and impose applicable sanctions, the CAS ADD does not have jurisdiction to hear any aspect related to sanctions over and above those relating to the 2012 London Olympics. This aspect of the procedure is in the exclusive jurisdiction of Federation Internationale de Volleyball.

VIII. COSTS

(...).

IX. APPEAL

79. 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. Such appeal is to be filed 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 28 August 2020 against Mr. Vladimir Nikolov is upheld.
2. Mr. Vladimir Nikolov 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. Mr. Vladimir Nikolov shall return the Olympic diploma and pin he received on the occasion of the XXX Olympiad, London 2012.
4. (...).
5. (...).
6. All other motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Date: 15 October 2020

**THE ANTI-DOPING DIVISION
OF THE COURT OF ARBITRATION FOR SPORT**

Ken E. Lalo
Sole Arbitrator