2019/ADD/3 International Olympic Committee v. Stanislau Tsivonchyk

ARBITRAL AWARD

delivered by the

ANTI-DOPING DIVISION
OF THE COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Prof. Jens Evald, Professor of Law, Aarhus, Denmark

in the arbitration between

International Olympic Committee, Switzerland

Represented by Mr. Jean-Pierre Morand, Attorney-at-Law with Kellerhals Carrard in Lausanne, Switzerland, acting on delegation from the International Testing Agency

Claimant

and

Stanislau Tsivonchyk, Belarus

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. Stanislau Tsivonchyk (the "Athlete" or "Respondent") is a Belarusian pole vaulter and a team member of the National Olympic Committee of Belarus 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 7 August 2012, the Athlete provided an out-of-competition urine sample (sample no. 2720997) as part of the Doping Control Program at the 2012 London Olympics (the "Sample").

5. On 8 August 2012, the Athlete competed in the qualification round of the Men's Pole Vault Event, finishing 23rd 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 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 2 November 2018, this revealed the presence of Dehydrochlormethyltestosterone metabolites (also known as "oral turinabol"), which belongs to Class S1.1a (Exogenous Anabolic Androgenic Steroids) of the 2012 and 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 17 December 2018, 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 3 January 2019, the Athlete signed and returned the Athletes Rights Form noting that he did not accept the AAF and wished to proceed with the opening of the B Sample while receiving 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. On 10 January 2019, the Athlete was provided with the A Sample document package.

14. On 30 January 2019, the Athlete was informed that the B Sample opening and analysis would take place on 6 February 2019 at the Lausanne Laboratory.

15. On 6 February 2019, the B Sample was opened and analysed.

16. On 12 February 2019, the results of the B Sample, which confirmed the results of the A Sample, were reported to the Athlete. The Athlete was thereafter requested to state whether he would like a copy of the B Sample document package. The Athlete did not respond.

17. On 20 February 2019, the Athlete was provisionally suspended.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

18. On 6 June 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").

19. 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.

20. The ADD then duly forwarded the Request for Arbitration by courier to the Athlete at his known address in Belarus. However, for unknown reasons, the courier was blocked at customs.

21. On 14 June 2019, the ADD informed the parties of the situation with the blocked couriered documents. The Athlete was then informed that unless the ADD was informed otherwise, it would be understood that all future correspondence and documents would be sent to him by email at his known email address.

22. On that same day, 14 June 2019, the ADD forwarded the Athlete the Request for Arbitration to the Athlete by email and in doing so, invited the Athlete to file an Answer to the Request for Arbitration within twenty (20) days.

23. On 27 June 2019, the ADD, on behalf of the President of the ADD, confirmed the appointment of Prof. Jen Evald, Professor of Law, Aarhus, Denmark, as Sole Arbitrator in accordance with Article A16 of the ADD Rules.

24. On 4 July 2019, the ADD confirmed that following a second attempt to send the Request for Arbitration to the Athlete, the courier delivery was accepted at customs and successfully delivered to the Athlete. As a result, the ADD re-set the deadlines applicable to the Athlete so as to give him another opportunity to file an Answer and participate in this procedure.

25. On 25 July 2019, the ADD confirmed that the Respondent did not file an answer in accordance with Article A14 of the ADD Rules. In this same correspondence, the ADD, 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.

26. On 5 August 2019, the ADD confirmed that no party requested a hearing, and on behalf of the Sole Arbitrator who had considered the entire file, he was sufficiently well informed to render a decision without a hearing.

27. On 5 August 2019, the Claimant signed and returned the order of procedure. The Respondent did not sign or return the order of procedure, or otherwise object to its contents.

IV. SUBMISSIONS OF THE PARTIES

28. 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.

- This substance was found in the Athlete's A Sample and confirmed in his B Sample. Such presence constitutes an ADRV in accordance with Article 2.1.2 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 to date as to the presence of the Prohibited Substance in his sample and there is no indication that the Athlete bore No Fault or Negligence.

- The presence of the Prohibited Substance on 7 August 2012 will have affected his results on the pole vault event the next day (8 August 2012) for purposes of Art. 8.1.1 of the WADC. Consequently, all results obtained by the Athlete during the 2012 London Olympics should disqualified with all resulting consequences.

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

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

30. The Athlete did not file an answer, provide a defence or otherwise make any formal requests for relief.

V. JURISDICTION

31. 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.

32. On 21 May 2019, the parties executed an Arbitration Agreement referring this matter to the ADD.

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

VI. APPLICABLE LAW

34. 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.

35. 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.

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

37. 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

38. 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.

39. 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 analysis of the Athlete's B Sample confirms the presence the Prohibited Substance or its metabolites … found in the Athlete's A Sample*".

40. The results of the B Sample, which confirmed the results of the A Sample, were reported to the Athlete on 12 February 2019. The Athlete was thereafter requested to state whether he would like a copy of the B Sample document package. He did not respond to such invitation and otherwise did not defend himself from the allegations against him.

41. Moreover, the substance found in the Sample (a steroid) is specifically used for doping purposes within the meaning of Article 2.2 of WADC and the Athlete offered no other explanation for its presence in the Sample.

42. Accordingly, the Sole Arbitrator finds that the Athlete committed an anti-doping rule violation under both WADC Article 2.1 (presence) and Article 2.2 (use).

B. The Applicable Sanction

43. 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.

44. 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

49. 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 4 April 2019 against Mr. Stanislau Tsivonchyk is upheld.

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

4. (…).

5. (…).

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

Seat of arbitration: Lausanne, Switzerland
Date: 14 August 2019

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

Jens Evald
Sole Arbitrator