

INTERNATIONAL OLYMPIC COMMITTEE

IOC DISCIPLINARY COMMISSION

DECISION

**REGARDING ALEXANDER POGORELOV
BORN ON 10 JANUARY 1980, RUSSIAN FEDERATION, ATHLETE, ATHLETICS**

(Rule 59.2.1 of the Olympic Charter)

Pursuant to the Olympic Charter and, in particular, Rule 59.2.1 thereof, and pursuant to the IOC Anti-Doping Rules applicable to the Games of the XXIX Olympiad in Beijing in 2008 (the “**Rules**”) and, in particular but without limitation, Articles 2, 5.1, 7.3.3, 8 and 9 thereof:

I. FACTS

1. Alexander POGORELOV (hereinafter the “**Athlete**”), participated in the Games of the XXIX Olympiad in Beijing in 2008 (the “**2008 Olympic Games**”).
2. From 21 August 2008 to 22 August 2008, the Athlete competed in the decathlon event, in which he ranked 4th and for which he was awarded a diploma.
3. On 22 August 2008, the Athlete was requested to provide a urine sample for a doping control. He arrived at the doping control station on 22 August 2008 at 10:27 pm and provided his urine sample on 23 August 2008 at 01:05 am. Such sample was identified with the number 1842788.
4. The A-Sample 1842788 was tested during the 2008 Olympic Games by the WADA-accredited Laboratory in Beijing, but did not result in an adverse analytical finding at the time.
5. After the conclusion of the 2008 Olympic Games, all the samples collected on the occasion of the 2008 Olympic Games were transferred to the WADA-accredited “Laboratoire suisse d’analyse du dopage” in Lausanne, Switzerland (“the **Laboratory**”) for long term storage.
6. The IOC decided to perform further analyses on samples collected during the 2008 Olympic Games. These additional analyses were notably performed with improved analytical methods in order to possibly detect Prohibited Substances which could not be identified by the analysis performed at the time of the Olympic Games.
7. In accordance with the provisions of the applicable International Standards for Laboratories (the “**ISL**”), the IOC decided that the reanalysis process would be conducted as follows:
 - An initial analysis was to be conducted on the remains of the A-samples
 - If such initial analysis resulted in the indication of the potential presence of a Prohibited Substance or its Metabolites or Markers (“Presumptive Adverse Analytical Finding” - PAAF), the full confirmation analysis process (double confirmation) was to be conducted on the B-Sample, which would be split for the occasion into a B1- and a B2 Sample (becoming thus the equivalent of an A- and B-Sample).
8. The decision to proceed based on split B-samples was made in principle for all the re-analysis.

9. This choice was made in view of the fact that during the transfer of the samples from the Beijing laboratory to the Laboratory, the A-samples were not individually resealed nor transported in sealed containers.
10. At that time, resealing of A-Samples (or transport in sealed containers) was not a requirement pursuant to the then applicable ISL (2008).
11. However, it was felt that the option to rely on the B-Sample constituted an additional precaution securing the strength and reliability of the analytical process.
12. A similar cautious approach was adopted with regard to the implementation of the analytical process and notably of its first phase (opening and splitting of the B-Sample into a B1- and B2-Sample, sealing of the B2-Sample and analysis of the B1-Sample).
13. Pursuant to the ISL, the presence of the Athlete is not a requirement for such first phase of the B-Sample analysis.
14. The IOC nevertheless decided, once again as a matter of principle, that, whenever this was practically possible, the Athlete would be offered the opportunity to attend the above described first phase of the B-sample procedure.
15. The remains of the A-Sample of the Athlete were subject to initial analysis. Such analysis resulted in a Presumptive Adverse Analytical Finding (“**PAAF**”) as it indicated the potential presence of a Prohibited Substance: dehydrochloromethyltestosterone (turinabol).
16. On 18 May 2016, the Athlete through his NOC was informed of the PAAF and of the possibility to attend the opening and splitting of the B-Sample into a B1- and B2-Sample and the analysis of the B1-Sample.
17. On 25 May 2016, the IOC received through the NOC the completed PAAF Notification Appendix dated 24 May 2016 and signed by the Athlete, in which he indicated that he would not attend the opening, splitting of the B-Sample the sealing of the B2-Sample and the analysis of the B1-Sample, neither personally nor through a representative.
18. On the same day, the NOC informed the IOC that an NOC representative would attend the “B Sample procedure”.
19. On 26 May 2016, the IOC informed the Athlete through his NOC that the opening, splitting of the B-Sample, the sealing of the B2-Sample and the analysis of the B1-Sample would occur on 31 May 2016 at the Laboratory in the presence of an independent witness.
20. The opening and splitting of the B-Sample, the sealing of the B2-Sample and the analysis of the B1-Sample occurred on 31 May 2016 at the Laboratory.
21. The Athlete did not attend the process and was not represented on this occasion.
22. As provided in the ISL, the opening and splitting was attended by an independent witness.
23. Mr Victor Berezov, Deputy Chief of the Russian Olympic Committee Legal Department attended on behalf of the NOC.
24. The analysis of the B1-Sample was then conducted over the following day.

25. The results of this analysis were reported on 2 June 2016. They confirmed the presence in the B1-Sample of a Prohibited Substance, namely dehydrochlormethyltestosterone (turinabol).
26. Such results constitute an Adverse Analytical Finding (“**AAF**”). They were reported to the IOC in accordance with Art. 7.2.1 of the Rules.
27. Further to the verifications set forth in Art. 7.2.2 of the Rules and in application of Art. 7.2.3 of the Rules, the IOC President, Mr Thomas Bach, was informed of the existence of the AAF and the essential details available concerning the case.
28. Pursuant to Art. 7.2.4 of the Rules, the IOC President set up a Disciplinary Commission, consisting in this case of:
 - Mr Denis Oswald (Chairman, Switzerland), who is a member of the IOC Juridical Commission;
 - Mr Juan Antonio Samaranch (Spain)
 - Mr Ugur Erdener (Turkey)
29. On 3 June 2016, the IOC notified the Athlete through his NOC of the above-mentioned AAF and of the institution of disciplinary proceedings to be conducted by the Disciplinary Commission. The IOC also informed the Athlete of his right to request and attend the opening of the B2-Sample and its analysis, either in person and/or through a representative, which was initially scheduled to take place on 13 or 14 June 2016. The Athlete was finally informed of his right to request a copy of the laboratory documentation package.
30. Neither the Athlete, nor the NOC and the IF replied to the AAF Notification Letter dated 3 June 2016.
31. On 14 June 2016, the IOC requested the NOC to confirm that the AAF Notification Letter dated 3 June 2016 had been effectively notified to the Athlete and required the NOC to take action urgently in order to obtain an answer from the Athlete.
32. On the same day, due to the lack of reply from the Athlete, the IOC sent him a further letter through his NOC in which he was informed that the opening and analysis of the B2-Sample had been postponed and rescheduled to occur on 20, 21 or 22 June 2016. The Athlete was required to indicate immediately whether he would attend the process.
33. On 15 June 2016, the NOC informed the IOC that the Athlete had been immediately notified of the results of the B1-Sample analysis through his NF on 6 June 2016 and confirmed that he received all the documentation related to the AAF sent by the IOC.
34. On 16 June 2016, the NOC confirmed to the IOC that the Athlete acknowledged receipt of the AAF Notification Letter.
35. On 21 June 2016, the IOC asked the NOC once again to attempt to obtain an express reply from the Athlete confirming receipt of the AAF Notification Letter dated 3 June 2016.
36. In the same communication, the IOC reminded the NOC that, pursuant to Art. 7.3.3 of the Rules, notification to the NOC did in any event constitute deemed notification to the Athlete.
37. The IOC finally indicated that the absence of an express reply from the Athlete would be deemed as a waiver to request the opening and analysis of the B2-Sample in accordance with Art. 7.2.5 of the Rules.

38. On the same day, the NOC confirmed that the Athlete had been effectively notified of the AAF.
39. On 24 June 2016, the IOC informed the Athlete through his NOC, that it was noted that, as confirmed by his NOC, he had been effectively informed of the present proceedings.
40. The IOC noted that the lack of response meant that the Athlete was not requesting the opening and analysis of the B2-Sample. The IOC further informed the Athlete that the IOC had elected to rely on the B1-Sample results and would therefore proceed to the hearing phase.
41. In this respect, the Athlete was informed that he had the possibility to attend the hearing of the Disciplinary Commission, which was scheduled to take place on 1st July 2016 and/or to submit a defence in writing.
42. In parallel, the NOC and the IF were also invited to indicate whether they wished to attend the hearing.
43. On 28 June 2016, the NOC confirmed to the IOC that the Athlete had been informed of the hearing.
44. The NOC further informed the IOC that the NF confirmed that the Athlete would not attend the hearing of the Disciplinary Commission, neither personally nor through a representative.
45. On 29 June 2016, the NOC submitted written observations in which it noted that the presence of the Prohibited Substance had been established and asked the Disciplinary Commission to issue its decision accordingly.
46. The IAAF did not submit any observation.
47. No further communication were received from the Athlete.
48. The Disciplinary Commission held a hearing by teleconference on 1st July 2016. Mr Christian Thill was acting as Secretary of the Disciplinary Commission. The IOC was represented by Mr Howard M. Stupp, Director of Legal Affairs, and Dr Richard Budgett, Medical and Scientific Director. Mr Jean-Pierre Morand, attorney-at-law, took part to the teleconference as IOC counsel.

II. **APPLICABLE RULES**

49. Art. 2.1 of the Rules provides as follows:

“The presence of a Prohibited Substance or its Metabolites or Markers in an Athlete’s bodily Specimen.

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 bodily Specimens. 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 violation under Article 2.1.

2.1.2 *Excepting those substances for which a quantitative reporting threshold is specifically identified in the Prohibited List, the detected 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.*

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

50. Art. 2.2 of the Rules provides as follows:

"Use or Attempted Use of a Prohibited Substance or a Prohibited Method

2.2.1 The success or failure of the Use of a Prohibited Substance or Prohibited Method is not material. It is sufficient that the Prohibited Substance or Prohibited Method was Used or Attempted to be used for an anti-doping rule violation to be committed."

51. Art. 5.1 of the Rules provides as follows:

"The IOC is responsible for Doping Control during the Period of the Olympic Games. The IOC is entitled to delegate all or part of its responsibility for Doping Control to one or several other organisations.

The Period of the Olympic Games, or In-Competition Period, is defined as "the period commencing on the date of the opening of the Olympic village for the Olympic Games, namely, 27 July 2008 up until and including the day of the closing ceremony of the Olympic Games, namely, 24 August 2008.

All Athletes participating at the Olympic Games shall be subject, during the Period of the Olympic Games, to Doping Control initiated by the IOC at any time or place, with No Advance Notice. Such Doping Control may include Testing for all Prohibited Substances and all Prohibited Methods referred to in the Prohibited List.

The IOC shall have to right to conduct or cause to conduct Doping Control during the Period of the Olympic Games, and is responsible for the subsequent handling of such cases."

52. Art. 7.3.3 of the Rules provides as follows:

"Notice to an Athlete or other Person who has been accredited pursuant to the request of the NOC, may be accomplished by delivery of the notice to the NOC. Notification to the Chef de Mission or the President or Secretary General of the NOC of the Athlete or other Person shall be deemed to be a delivery of notice to the NOC."

53. Art. 8.1 of the Rules provides as follows:

"A violation of these Rules in connection with Doping Control automatically leads to Disqualification of the Athlete with all other consequences, including forfeiture of any medals, points and prizes."

54. Art. 9.1 of the Rules provides as follows:

“An Anti-Doping Rule violation occurring during or in connection with the Olympic Games may lead to Disqualification of all of the Athlete’s results obtained in the Olympic Games with all consequences, including forfeiture of all medals, points and prizes, except as provided in Article 9.1.1.”

55. Art. 9.1.1 of the Rules provides as follows:

“If the Athlete establishes that he or she bears No Fault or Negligence for the violation, the Athlete’s results in the other Competition 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.”

56. Art. 9.3 of the Rules provides as follows:

“The management 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 Olympic Games, shall be managed by the relevant International Federation”.

III. DISCUSSION

57. The presence of the metabolite of a Prohibited Substance has been established in 2016 in the sample 1842788 that the Athlete provided on 23 August 2008, upon the occasion of the 2008 Olympic Games.
58. The substance detected in the Athlete’s sample is an exogenous anabolic steroid. It is listed in the WADA 2008 Prohibited List and in all subsequent lists.
59. The Disciplinary Commission is satisfied that the samples which have been re-analysed by the Laboratory are unequivocally linked to the Athlete and that no relevant departure from the WADA International Standards occurred.
60. Based on the above, the Disciplinary Commission finds that the Athlete has committed an anti-doping rule violation pursuant to Art. 2.1 of the Rules consisting in the presence of Prohibited Substances in his body.
61. In addition, the Disciplinary Commission finds that an anti-doping rule violation is also established if the circumstances are considered in the perspective of art. 2.2 of the Rules.
62. In this respect, the Disciplinary Commission observes that the nature of the substance which was found in the Athlete’s sample is consistent with intentional use of Prohibited Substance specifically ingested to deliberately improve performance.
63. The fact that metabolites of a doping substance, which is a “classical” doping substance was found supports this consideration.
64. In conclusion, the Disciplinary Commission finds that an anti-doping violation is established pursuant to both Art. 2.1 and Art. 2.2 of the Rules.
65. The consequences of an anti-doping rule violation under the Rules are limited to consequences in connection with the 2008 Olympic Games. They are set forth in Art. 8 and 9 of the Rules and are the following.

66. In application of Art. 8.1 of the Rules (decathlon event) and respectively 9.1 of the Rules (for all other results), all the results achieved by the Athlete during the 2008 Olympic Games shall be annulled.
67. In application of Art. 9.3 of the Rule, the further management of the consequences of the anti-doping rule violations and in particular the imposition of sanctions over and above those related to the 2008 Olympic Games shall be conducted by the IAAF.

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CONSIDERING the above, pursuant to the Olympic Charter and, in particular, Rule 59.2.1 thereof, and pursuant to the IOC Anti-Doping Rules applicable to the Games of the XXIX Olympiad in Beijing in 2008 and, in particular, 2, 5.1, 7.3.3, 8 and 9 thereof.

THE DISCIPLINARY COMMISSION OF THE
INTERNATIONAL OLYMPIC COMMITTEE
DECIDES

- I. The Athlete, Alexander POGORELOV :
- (i) is found to have committed an anti-doping rule violation pursuant to the IOC Anti-Doping Rules applicable to the Games of the XXIX Olympiad in Beijing in 2008 (presence and/or use, of a Prohibited Substance or its Metabolites or Markers in an athlete's bodily specimen),
 - (ii) is disqualified from the decathlon event in which he participated upon the occasion of the Olympic Games Beijing 2008, and
 - (iii) has the diploma obtained in the decathlon event withdrawn and is ordered to return same.
- II. The IAAF is requested to modify the results of the above-mentioned event accordingly and to consider any further action within its own competence.
- III. The Russian Olympic Committee shall ensure full implementation of this decision.
- IV. The Russian Olympic Committee shall notably secure the return to the IOC, as soon as possible, of the diploma awarded in connection with the decathlon event to the Athlete.
- V. This decision enters into force immediately.

Lausanne, 15 August 2016

In the name of the IOC Disciplinary Commission

Denis Oswald, Chairman

Juan Antonio Samaranch

Ugur Erdener