

INTERNATIONAL OLYMPIC COMMITTEE

IOC DISCIPLINARY COMMISSION

DECISION

**REGARDING KHASAN BAROEV
BORN ON 1 DECEMBER 1982, RUSSIAN FEDERATION, ATHLETE, WRESTLING**

(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. Khasan BAROEV (hereinafter the “**Athlete**”), participated in the Games of the XXIX Olympiad in Beijing in 2008 (the “**2008 Olympic Games**”).
2. On 14 August 2008, the Athlete competed in the Men’s 96-120 kg Greco-Roman wrestling event (1/8 Final, Quarterfinal, Semifinal and Final) in which he ranked 2nd and for which he was awarded a silver medal.
3. On the same day, the Athlete was requested to provide a urine sample for a doping control. Such sample was identified with the number 1845045.
4. The A-Sample 1845045 was analysed during the 2008 Olympic Games by the WADA-accredited Laboratory in Beijing. Such analysis did not result in an adverse analytical finding at that time.
5. After the conclusion of the 2008 Olympic Games, all the samples collected upon 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 using more sensitive equipment and/or searching for new metabolites in order to possibly detect Prohibited Substances which were not identified by the analysis performed at the time of the 2008 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 a 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 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 11 July 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, the sealing of the B2-Sample and the analysis of the B1-Sample. The process was initially scheduled to take place between 18 and 26 July 2016.
17. On 12 July 2016, the IOC was informed that an IF representative would attend the opening, splitting of the B-Sample and the sealing of the B2-Sample.
18. On 15 July 2016, the Athlete through his NOC sent to the IOC his completed PAAF Notification Appendix in which he indicated that he would not attend, neither personally nor through a representative, the opening, splitting of the B-Sample, the sealing of the B2-Sample and the analysis of the B1-Sample.
19. On the same day, the Athlete sent a letter to the IOC in which he stated as follows:

“I object against the opening and splitting of my B Sample since the Anti-Doping Rules for OG 2008 clearly provided that the B Sample may only be opened and analyzed if the analysis of A Sample resulted in ADVERSE ANALYTICAL FINDING. As I understand, this is not the case. Therefore, in the absence of ADVERSE ANALYTICAL FINDING the IOC may not open and analyze B Sample. ISL 2016 may not apply to retesting of OG 2008 samples and ISL 2016 obviously contradicts the ADR for OG 2008.”
20. On 15 July 2016, the IOC acknowledged receipt of the letter sent by the Athlete. The Athlete was advised that his comments would be brought to the attention of the Disciplinary Commission. In the same communication, the IOC informed the Athlete that the process was confirmed to be conducted as indicated in the letter dated 11 July 2016. The Athlete was granted an additional deadline until 18 July 2016 to indicate whether he would attend the process personally and/or through a representative. The IOC informed him that the

process would be attended in any event by an independent witness and by an IF representative.

21. The Athlete did not reply.
22. On 18 July 2016, the IOC informed the Athlete through his NOC that the opening, splitting of the B-Sample and the sealing of the B2-Sample would occur on 22 July 2016 followed by the analysis of the B1-Sample. The Athlete was further advised that the process would also be attended by an NOC representative.
23. The opening and splitting of the B-Sample, the sealing of the B2-Sample occurred on 22 July 2016 at the Laboratory.
24. The Athlete did not attend the opening and splitting of the B-Sample and was not represented on this occasion.
25. Mr Victor Berezov, Deputy Chief of the Russian Olympic Committee Legal Department, attended on behalf of the NOC. Mr Carols Roy attended the process on behalf of the IF.
26. As provided in the ISL, the opening and splitting was attended by an independent witness.
27. The results of the B1-Sample analysis were reported on 28 July 2016. These results establish the presence of the metabolites of a Prohibited Substance, namely dehydrochloromethyltestosterone (turinabol).
28. Such results constitute an Adverse Analytical Finding. They were reported to the IOC in accordance with article 7.2.1 of the Rules.
29. 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.
30. 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 Legal Affairs Commission;
 - Mrs Gunilla Lindberg (Sweden)
 - Mr Ugur Erdener (Turkey)
31. On 29 July 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 8 or 9 August 2016. The Athlete was finally informed of his right to request a copy of the laboratory documentation package.
32. In the same communication, the Athlete was advised that failing to request the opening and analysis of the B2-Sample, he would be considered as having waived his right to have the B2-Sample analysed.
33. The Athlete did not reply.

34. On 8 August 2016, the IOC granted the Athlete an additional deadline until 10 August 2016 to indicate whether he accepted the Adverse Analytical Finding, whether he requested the opening and analysis of the B2-Sample and whether he requested a copy of the laboratory documentation package.
35. In the same communication, the IOC advised the Athlete that in accordance with Art. 7.3.3 of the Rules, notice to an athlete might be accomplished by delivery of the notice to the NOC and that therefore the previous correspondences were deemed notified to him. The Athlete was further advised that in the event he did not respond, the IOC might elect not to proceed with the analysis of the B2-Sample and to proceed directly to the disciplinary proceedings on the B1-Sample analysis results only.
36. On the same day, the IOC requested the NOC and IF to be provided with the full contact details of the Athlete.
37. Neither the NOC nor the IF replied.
38. On 12 August 2016, the IOC sent a reminder to the Athlete through his NOC. The content of Art. 7.3.3 of the Rules was reminded to the Athlete. The IOC also advised the Athlete that due to the lack of response, it had been decided not to proceed with the analysis of the B2-Sample. The IOC invited the Athlete to indicate by 17 August 2016 whether he would attend the hearing of the Disciplinary Commission and/or he would submit a defence in writing.
39. On the same day, the NOC and the IF were invited once again to provide the IOC with the full contact information of the Athlete.
40. The NOC and the IF did not reply.
41. On 26 September 2016, the IOC granted the Athlete through his NOC an additional deadline until 5 October 2016 to complete and return the Disciplinary Commission Form. The Athlete was advised that in the event no reply was given to this correspondence, the Disciplinary Commission would issue a decision on the basis of the file.
42. The Athlete did not reply.
43. On 11 October 2016, the IOC advised the Athlete through his NOC that the Disciplinary Commission would issue a decision on the basis of the file. The Athlete was invited to submit a written defence by 21 October 2016.
44. On the same day, the NOC and the IF were invited to file written observations by 21 October 2016.
45. The Athlete did not reply.
46. On 24 October 2016, the IOC granted the Athlete, through his NOC, an additional deadline until 26 October 2016 to submit a defence in writing.
47. The Athlete did not reply.
48. The NOC and the IF did not file any written observations.

II. APPLICABLE RULES

49. These proceedings are conducted in application of the Rules.

50. 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.”*

51. 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.”*

52. 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 the 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.”

53. Art. 7.2.5 of the Rules provides as follows:

“The IOC President or a person designated by him shall, in confidence, promptly notify the Athlete or other Person concerned, the Athlete’s or other Person’s chef de mission, the

International Federation concerned and a representative of the Independent Observer Program of:

- a) the adverse analytical finding;*
- b) the Athlete's right to request the analysis of the B sample or, failing such request, that the B sample analysis may be deemed waived;*
- c) the right of the Athlete and/or the Athlete's representative to attend the B sample opening and analysis if such analysis is requested;*
- d) the Athlete's right to request copies of the A and B sample laboratory package, which includes information as required by the International Standard for Laboratories;*
- e) the anti-doping rule violation or of the additional investigation that will be conducted as to whether there is an anti-doping rule violation;*
- f) the composition of the Disciplinary Commission.*

It shall be the responsibility of the chef de mission to inform, in confidence, the relevant National Anti-Doping Organisation of the Athlete."

54. 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 the General Secretary of the NOC of the Athlete or other Person shall be deemed to be a delivery of notice to the NOC."

55. 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."

56. 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."

57. 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."

58. 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."

59. Art. 16.1 of the Rules provides as follows:

"These Rules are governed by the Olympic Charter, by the Code and by Swiss law."

60. Art. 16.5 of the Rules provides as follows:

“These Rules have been adopted pursuant to the applicable provisions of the Code and shall be interpreted in a manner that is consistent with applicable provisions of the Code.”

61. The Introduction of the World Anti-Doping Code (version 2003, p2) provides as follows:

“International Standards and all revisions shall become effective on the date specified in the International Standard or revision.”

62. The Introduction of the International Standard (2016 ISL - Version 9, “ISL”), provides as follows:

“The International Standard for Laboratories first came into effect in November 2002. Further revisions were made after that date. The enclosed International Standard for Laboratories was approved by the WADA Executive Committee on 11 May 2016. The effective date of ISL version 9.0 is 02 June 2016.”

63. Art. 5.2.2.12.6 ISL provides as follows:

“During transport and long-term storage, Samples shall be maintained at a temperature sufficient to maintain the analytical integrity of the Sample. In any anti-doping rule violation case based on the Further Analysis of a stored Sample, the issue of the temperature at which the Sample was transported or stored shall only be considered where failure to maintain an appropriate temperature could have caused the Adverse Analytical Finding or other result upon which the anti-doping rule violation is based.”

64. Art. 5.2.2.12.8 ISL provides as follows:

“Samples held in long-term storage may be selected for Further Analysis at the discretion of the Testing Authority.”

65. Art. 5.2.2.12.9 ISL provides as follows:

“Further Analysis of Samples shall be performed under the ISL and Technical Documents in effect at the time the Further Analysis is performed.”

66. Art. 5.2.2.12.10 ISL provides as follows:

“Further Analysis on long-term stored Samples shall proceed as follows:

- *At the discretion of the Testing Authority, the “A” Sample may not be used or it may be used for initial testing (as described in Article 5.2.4.2) only, or for both initial testing and confirmation (as described in Article 5.2.4.3.1). Where confirmation is not completed in the A Sample the Laboratory, at the direction of the Testing Authority shall appoint an independent witness to verify the opening and splitting of the sealed “B” Sample (which shall occur without requirement that the Athlete be notified or present) and then proceed to analysis based on the “B” Sample which has been split into 2 bottles.*
- *At the opening of the “B” Sample, the Laboratory shall ensure that the Sample is adequately homogenized (e.g. invert bottle several times) before splitting the “B” Sample. The Laboratory shall divide the volume of the “B” Sample into two bottles (using Sample collection equipment compliant to ISTI provision 6.3.4) in the presence of the independent witness. The splitting of the “B” Sample shall be documented in the chain of custody. The independent witness will be invited to seal one of the bottles using a tamper evident method.”*

III. DISCUSSION

67. The results of the analysis of the sample provided by the Athlete establish the presence in his sample of the metabolites of a Prohibited Substance, i.e. dehydrochloromethyltestosterone (turinabol).
68. The substance detected in the Athlete's sample is an anabolic steroid. It is listed in the WADA 2008 Prohibited List and in all subsequent lists.
69. The Disciplinary Commission is satisfied that the sample which has been re-analysed by the Laboratory is unequivocally linked to the Athlete and that no relevant departure from the WADA International Standards occurred.
70. Regarding the notifications to the Athlete, the Disciplinary Commission observes that the Athlete received the notifications which were addressed to him. The fact that he completed and returned his PAAF Notification Appendix to the IOC supports this consideration. It was his choice not to reply to the subsequent communications.
71. In any event, in accordance with Art. 7.3.3 of the Rules, notifications to an Athlete may be accomplished through notifications to his/her NOC.
72. Therefore in this case the Athlete is deemed to have been duly notified of all the communications, which were addressed to him through his NOC.
73. This applies in particular to the notification of the AAF and of the question regarding the exercise of the Athlete's right to request the analysis of the B2-Sample.
74. Since the Athlete did not request the analysis of the B2-Sample, such may therefore be deemed waived in accordance with Art. 7.2.5 let. b of the Rules.
75. The process applied to analyse the Athlete's samples was conducted in application of the ISL in force at the time of the analysis (ISL 2016 – version 9).
76. The Athlete contends that the ISL in force at the time of the sample collection in 2008 should have been applied and that such did not allow to conduct the analysis on a split B-sample.
77. The Disciplinary Commission observes that the Rules themselves do not specify the version of the ISL, which is to be applied to the analytical process.
78. However, the Rules refer to the World Anti-Doping Code (in this case the 2003 version, p.2) which expressly sets forth that *International Standards and all revisions shall become effective on the date specified in the International Standard or revision.*
79. The ISL 2016 – Version 9 came into effect on 2 June 2016 and is therefore the ISL applicable to the analysis of the Athlete's samples conducted in July 2016.
80. The applicable ISL expressly provide for the possibility to conduct the analysis on a split B-sample.
81. For the sake of completeness and although this is actually not relevant in regard of an analysis conducted in 2016, the Disciplinary Commission observes that the possibility to perform the analysis on a split B-Sample was already provided for in the ISL in force at the

time of sample collection, i.e. the ISL 2008 – Version 5, in force since January 2008 (see art. 5.2.2.12.1.2).

82. The analytical results establish the presence of a Prohibited Substance, i.e. dehydrochlormethyltestosterone (turinabol) in the sample, which the Athlete provided upon the occasion of the 2008 Olympic Games.
83. Since, in the absence of an Athlete's request to analyse the B-2 sample, the IOC decided not to conduct the B2-Sample analysis, these results are based on the results of the B1-Sample.
84. In view of the above analytical results, the Disciplinary Commission finds that the Athlete has in any event committed an anti-doping rule violation pursuant to Art. 2.1 of the Rules consisting in the presence of a Prohibited Substance in his bodily sample.
85. In addition, the Disciplinary Commission observes that the circumstances also support a finding of anti-doping rule violation based on art. 2.2 of the Rules.
86. The nature of the substance which was found in the Athlete's sample is consistent with intentional use of Prohibited Substances specifically ingested to deliberately improve performance. The fact that metabolites of a doping substance, which is a "classical" doping substance was found, supports this consideration.
87. 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.
88. 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.
89. In application of Art. 8.1 and/or Art. 9 of the Rules, the results achieved by the Athlete at the Men's 96-120 kg Greco-Roman wrestling event in which he ranked 2nd during the 2008 Olympic Games, shall be annulled, with all resulting consequences (notably withdrawal of medal, diploma, pin etc.).
90. In application of Art. 9.3 of the Rules, 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 Olympic Games 2008 shall be conducted by the United World Wrestling ("**UWW**").

* * * * *

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, Khasan BAROEV:
 - (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 Men's 96-120 kg Greco-Roman wrestling event in which he participated upon the occasion of the Olympic Games Beijing 2008,
 - (iii) has the medal, the medallist pin and the diploma obtained in the Men's 96-120 kg Greco-Roman wrestling event withdrawn and is ordered to return the same.
- II. The UWW 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 medal, the medallist pin and the diploma awarded in connection with the Men's 96-120 kg Greco-Roman wrestling event to the Athlete.
- V. This decision enters into force immediately.

Lausanne, 10 November 2016

In the name of the IOC Disciplinary Commission



Denis Oswald, Chairman



Gunilla Lindberg



Ugur Erdener