

INTERNATIONAL OLYMPIC COMMITTEE

IOC DISCIPLINARY COMMISSION

DECISION

**REGARDING NIZAMI PASHAYEV
BORN ON 2 FEBRUARY 1981, AZERBAIJAN, ATHLETE, WEIGHTLIFTING**

(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. Nizami PASHAYEV (hereinafter the “**Athlete**”), participated in the Games of the XXIX Olympiad in Beijing in 2008 (the “**2008 Olympic Games**”).
2. On 17 August 2008, the Athlete competed in the Men’s 94 kg weightlifting event in which he ranked 5th and for which he was awarded a diploma.
3. On 9 August 2008, the Athlete was requested to provide a urine sample for a doping control. Such sample was identified with the number 1846204.
4. The A-Sample 1846204 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 three Prohibited Substances: dehydrochlormethyltestosterone (turinabol), oxandrolone and stanozolol.
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.
17. On 14 July 2016, the Athlete sent to the IOC through his NOC his completed PAAF Notification Appendix in which he indicated that he would not 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, neither personally nor through a representative.
18. On the same day, the IOC informed the Athlete through his NOC that the opening and splitting of the B-Sample and sealing of the B2-Sample would occur on 18 July 2016 followed by the analysis of the B1-Sample.
19. The opening and splitting of the B-Sample, the sealing of the B2-Sample occurred on 18 July 2016 at the Laboratory.
20. The Athlete did not attend the opening and splitting of the B-Sample and was not represented on this occasion.
21. As provided in the ISL, the opening and splitting was attended by an independent witness.
22. The results of the B1-Sample analysis were reported on 22 July 2016. These results establish the presence of the metabolites of three Prohibited Substances, namely dehydrochlormethyltestosterone (turinabol), oxandrolone and stanozolol.
23. Such results constitute an Adverse Analytical Finding. They were reported to the IOC in accordance with article 7.2.1 of the Rules.

24. 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.
25. 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)
26. On 26 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 scheduled to take place on 8 or 9 August 2016 at the Laboratory. The Athlete was finally informed of his right to request a copy of the laboratory documentation package.
27. On 27 July 2016, the Athlete through his NOC provided the IOC with his completed AAF Notification Appendix in which he indicated that he did not accept the Adverse Analytical Finding and requested the opening and analysis of the B2-Sample. He indicated that he would not attend the process, neither personally nor through a representative. He further requested a copy of the laboratory documentation package.
28. On 10 August 2016, the IOC informed the Athlete that the opening of the B2-Sample had been postponed and had been rescheduled to take place on 15 August 2016 at the Laboratory followed by the analysis of the sample.
29. The opening of the B2-Sample occurred on 15 August 2016 in the presence of an independent witness followed by the analysis.
30. The results of the B2-Sample analysis were reported to the IOC on 19 August 2016. They confirmed the presence in the B2-Sample of the metabolites of three Prohibited Substances, namely dehydrochloromethyltestosterone (turinabol), oxandrolone and stanozolol.
31. On 22 August 2016, the IOC communicated to the Athlete the results of the B2-Sample analysis. The Athlete was invited to indicate whether he accepted the Adverse Analytical Finding, whether he would attend the hearing of the Disciplinary Commission and/or he would submit a defence in writing. The Athlete was also informed of his right to request a copy of the laboratory documentation package.
32. The Athlete did not reply.
33. On 30 August 2016, the IOC provided the Athlete with a copy of the B1-Sample laboratory documentation package and requested the Athlete to complete and return the Disciplinary Commission Form.
34. The Athlete did not reply.
35. On 26 September 2016, the IOC granted the Athlete an additional deadline until 5 October 2016 to complete and return the Disciplinary Commission Form. The Athlete was advised of the content of Art. 7.3.3 of the Rules and that therefore all notices sent to his NOC were

deemed to be notified to him. The IOC finally informed the Athlete that in the event no reply was given to this correspondence, the Disciplinary Commission would issue a decision on the basis of the file.

36. The Athlete did not reply.
37. On 11 October 2016, the IOC informed the Athlete that, due to the lack of reply, the Disciplinary Commission would issue a decision on the basis of the file. The Athlete was invited to file his written defence by 21 October 2016.
38. On the same day, the NOC and the IF were invited to file written observations by 21 October 2016.
39. On 24 October 2016, the Athlete through his NOC provided the IOC with his completed Disciplinary Commission Form in which he indicated that he did not accept the Adverse Analytical Finding and requested a copy of the B2-Sample laboratory documentation package. He also indicated that he would not attend the hearing of the Disciplinary Commission, neither personally nor through a representative, and that he would not present his defence in writing.
40. On 25 October 2016, the NOC informed the IOC that the Athlete would neither attend the hearing of the Disciplinary Commission nor submit any defence in writing. The NOC indicated that the Athlete was waiting for the decision to be issued by the Disciplinary Commission.
41. The NOC and the IF did not file any written observations.

II. **APPLICABLE RULES**

42. These proceedings are conducted in application of the Rules.
43. 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.”*

44. 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.”

45. 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.”

46. 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.”

47. 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.”

48. 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.”

49. 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.”

50. 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**

51. The presence of metabolites of three Prohibited Substance, i.e. dehydrochloromethyltestosterone (turinabol), oxandrolone and stanozolol, has been established in 2016 in the sample 1846204 that the Athlete provided on 9 August 2008, upon the occasion of the 2008 Olympic Games.
52. The substances detected in the Athlete’s sample are anabolic steroids. They are listed in the WADA 2008 Prohibited List and in all subsequent lists.
53. 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.
54. Whilst the Athlete states that he does not accept the analytical results, he does not bring forth any element, which could put the validity of the results in question.
55. The Disciplinary Commission thus 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 body.
56. In addition, the Disciplinary Commission finds that an anti-doping rule violation would also be established if the circumstances are considered in the perspective of art. 2.2 of the Rules.
57. The Disciplinary Commission observes that the nature of the substances which were 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 three doping substances, which are “classical” doping substances were found, supports this consideration.
58. 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.
59. In application of Art. 8.1 and/or Art. 9 of the Rules, the results achieved by the Athlete at the Men’s 94 kg weightlifting event in which he ranked 5th during the 2008 Olympic Games, shall be annulled, with all resulting consequences (notably withdrawal of diploma).
60. 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 International Weightlifting Federation (“**IWF**”).

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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, Nizami PASHAYEV:
 - (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 94 kg weightlifting event in which he participated upon the occasion of the Olympic Games Beijing 2008,
 - (iii) has the diploma obtained in the Men's 94 kg weightlifting event withdrawn and is ordered to return the same.
- II. The IWF is requested to modify the results of the above-mentioned event accordingly and to consider any further action within its own competence.
- III. The National Olympic Committee of the Azerbaijani Republic shall ensure full implementation of this decision.
- IV. The National Olympic Committee of the Azerbaijani Republic shall notably secure the return to the IOC, as soon as possible, of the diploma awarded in connection with the Men's 94 kg weightlifting event to the Athlete.
- V. This decision enters into force immediately.

Lausanne, 10 November 2016

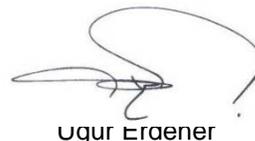
In the name of the IOC Disciplinary Commission



Denis Oswald, Chairman



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