

INTERNATIONAL OLYMPIC COMMITTEE

IOC DISCIPLINARY COMMISSION

DECISION

**REGARDING DENYS YURCHENKO
BORN ON 27 JANUARY 1978, UKRAINE, 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. Denys YURCHENKO (hereinafter the “**Athlete**”), participated in the Games of the XXIX Olympiad in Beijing in 2008 (the “**2008 Olympic Games**”).
2. From 20 August 2008 to 22 August 2008, the Athlete competed in the Men’s pole vault event (Qualification and Final) in which he ranked 3rd and for which he was awarded a bronze medal.
3. On 22 August 2008, on the occasion of the Final, the Athlete was requested to provide a urine sample for a doping control. Such sample was identified with the number 1846077.
4. The A-Sample 1846077 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: dehydrochlormethyltestosterone (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. The Athlete did not reply.
18. On 15 July 2016, the Athlete through his NOC was invited once again to indicate whether he would attend the opening and splitting of the B-Sample, the sealing of the B2-Sample and the analysis of the B1-Sample. The Athlete was advised that in the absence of an answer, the process would take place in any event and that in this case the opening, splitting of the B-Sample and the sealing of the B2-Sample would be attended by an independent witness. The Athlete was finally advised that in accordance with Art. 7.3.3 of the Rules, notice to an athlete was deemed to be accomplished by delivery of the notice to the NOC.
19. The Athlete did not reply.
20. On the same day, the NOC was requested by the IOC to confirm whether the Athlete had been informed of the present proceedings. The IOC reminded the NOC the content of Art. 7.3.3 of the Rules.
21. The NOC did not reply.
22. On 20 July 2016, the IOC asked to the NOC to confirm whether an NOC representative would be sent to attend the opening, splitting of the B-Sample and the sealing of the B2-Sample. The NOC was once again requested to indicate whether the Athlete had been informed of the present proceedings.

23. The NOC informed the IOC that an NOC representative would attend the process.
24. On 21 July 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 B-Sample would take place on 25 July 2016 at the Laboratory. The Athlete was reminded the content of Art. 7.3.3 of the Rules.
25. On the same day, the IOC requested the NOC to confirm whether the Athlete was informed of the proceedings.
26. The opening and splitting of the B-Sample, the sealing of the B2-Sample occurred on 25 July 2016 at the Laboratory.
27. The Athlete did not attend the opening and splitting of the B-Sample and was not represented on this occasion.
28. As provided in the ISL, the opening and splitting was attended by an independent witness.
29. 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).
30. Such results constitute an Adverse Analytical Finding. They were reported to the IOC in accordance with article 7.2.1 of the Rules.
31. 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.
32. 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)
33. 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.
34. 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.
35. The Athlete did not reply.
36. 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.

37. In the same communication, the IOC advised the Athlete that in accordance with Art. 7.3.3 of the Rules, 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.
38. On the same day, the NOC and the IF were requested by the IOC to take further actions with the National Federation (“**NF**”) concerned in order to contact the Athlete. The IOC reminded the NOC of the content of Art. 7.3.3 of the Rules.
39. The NOC and the IF did not reply.
40. 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.
41. On the same day, the NOC and the IF were invited to provide the IOC with the full contact information of the Athlete.
42. Neither the NOC nor the IF replied.
43. 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 that in the event no reply was given to this correspondence, the Disciplinary Commission would issue a decision on the basis of the file.
44. The Athlete did not reply.
45. 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.
46. On the same day, the NOC and the IF were invited to file written observations by 21 October 2016.
47. The Athlete did not reply.
48. 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.
49. The Athlete did not reply.
50. The NOC and the IF did not file any written observations.

II. APPLICABLE RULES

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

52. 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.”*

53. 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.”*

54. 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.”

55. 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."

56. 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."

57. 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."

58. 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."

59. 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."

60. 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

61. 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. dehydrochlormethyltestosterone (turinabol).
62. 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.
63. 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.
64. Regarding the notifications to the Athlete, the Disciplinary Commission observes that it is not established whether the Athlete did or not actually receive the notifications which were addressed to him.
65. However, in accordance with Art. 7.3.3 of the Rules, notifications to an athlete may be accomplished through notifications to his/her NOC.
66. 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.
67. 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.
68. 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.
69. In the absence of an Athlete's request and since the IOC decided not to conduct the B2-Sample analysis, the analytical results are in this case based on the results of the B1-sample.
70. Such 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.
71. Based on the above result, 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.
72. In addition, the Disciplinary Commission observes that the circumstances also support a finding of an anti-doping rule violation based on art. 2.2 of the Rules.
73. 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.
74. 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.
75. 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.

76. In application of Art. 8.1 and/or Art. 9 of the Rules, the results achieved by the Athlete at the Men's pole vault event in which he ranked 3rd during the 2008 Olympic Games, shall be annulled, with all resulting consequences (notably withdrawal of medal, diploma, pin etc.).
77. 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 Association of Athletics Federations ("**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, Denys YURCHENKO:
 - (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 pole vault 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 pole vault event withdrawn and is ordered to return the 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 National Olympic Committee of Ukraine shall ensure full implementation of this decision.
- IV. The National Olympic Committee of Ukraine 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 pole vault 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