



Arbitration CAS anti-doping Division (OG PyeongChang) AD 18/003 International Olympic Committee (IOC) & World Curling Federation (WCF) v. Aleksandr Krushelnitskii, partial award of 22 February 2018

Panel: The Hon. Mark Williams SC (Australia), Sole Arbitrator

Curling

Doping (meldonium)

Jurisdiction of the CAS Anti-Doping Division

Continuation of the proceedings

1. Pursuant to Rule 59.2.4 of the Olympic Charter, the IOC Executive Board has delegated to the CAS Anti-Doping Division (ADD) its power to decide upon any violation of the World Anti-Doping Code arising upon the occasion of the Olympic Games. Pursuant to Art. 8.1.1 of the IOC Anti-Doping Rules (ADR): *“Where the IOC decides to assert an anti-doping rule violation, the IOC shall promptly file an application with the CAS Anti-Doping Division as per the CAS Anti-Doping Rules”*. Article 1 of the CAS ADD Rules states that: *“[t]he CAS ADD shall be the first-instance authority to conduct proceedings and to issue decisions when an alleged anti-doping rule violation has been asserted and referred to it under the IOC ADR, and for imposition of any sanctions therefrom whether applied at the Games or thereafter. Accordingly, the CAS ADD has jurisdiction to rule as a first-instance authority in place of the IOC and/or the International Federation concerned”*.
2. After the anti-doping rule violation has been determined, the IOC is no longer a party to the procedure. The proceedings shall continue by and between the international federation concerned, who joined the proceedings as Co-Applicant, and the athlete, in regard to the consequences of the anti-doping rule violation which may be imposed on the athlete. The Sole Arbitrator, after consultation with the parties, shall determine the procedural directions applicable to the remaining part of the arbitration and shall issue, at the conclusion of the proceedings following the Olympic Games, a final award, all in accordance with Article 20 of the CAS ADD Rules.

I. FACTS

1. Aleksandr Krushelnitskii (the “Athlete”) is an Olympic Athlete from Russia. He competed in the mixed doubles curling competition which ended on 13 February 2018. His team won a bronze medal. He is not due to compete in any further events at the Olympic Winter Games PyeongChang 2018.

2. On 12 February 2018, the Athlete underwent an in-competition doping control (the “First Doping Control”) and provided urine sample number 6330170.
3. The result of the analysis of the Athlete’s A sample of the First Doping Control revealed the presence of Meldonium at an estimated concentration of 8069ng/mL.
4. On 13 February 2018 the Athlete underwent a second in-competition doping control (the “Second Doping Control”) and provided urine sample number 6330166.
5. The result of the analysis of the Athlete’s analysis of the Second Doping Control revealed the presence of Meldonium at an estimated concentration of 5721 ng/mL.
6. Meldonium is a Metabolic Modulator, prohibited under S4.5.5.3 of the WADA Prohibited List. It is a non-specified substance.
7. The Athlete was notified of the Adverse Analytical Findings by letter from the IOC of 18 February 2018.
8. On 18 February 2018, the Athlete did not accept the Adverse Analytical Findings and requested that the B samples be opened in the presence of the Athlete and his representative.
9. The B samples were opened on 19 February 2018 at the Doping Control Centre, Seoul. The analysis of each sample confirmed the presence of Meldonium.
10. On 19 February 2018 at 10h33 KST, the IOC filed an application at the Anti-Doping Division of the Court of Arbitration for Sport (“CAS ADD”) (the “Application”). In the Application, the IOC sought the following requests for relief:
 1. *The Application of the International Olympic Committee is admissible.*
 2. *The Athlete be found to have committed an anti-doping rule violation in accordance with Article 2.1 and/or 2.2 of the IOC Anti-Doping Rules.*
 3. *The results obtained by the Athlete in the Mixed Doubles Curling event at the Olympic Winter Games PyeongChang 2018 are disqualified with all resulting consequences including forfeiture of the medal, diploma, medallist pin, points and prizes.*
 4. *The results obtained by the team of the Olympic Athletes from Russia in the Mixed Doubles Curling event at the Olympic Winter Games PyeongChang 2018 are disqualified with all resulting consequences including forfeiture of the medal, diploma, medallist pin, points and prizes.*
 5. *The Chef de Mission of the Olympic Athletes from Russia delegation shall ensure full implementation of the award.*
11. Included with the Application were 10 Exhibits, including the results of the A Sample Documentation Package.

12. The IOC did not ask for the Athlete to be provisionally suspended.
13. On 19 February 2018 at 13h05 KST, the CAS ADD confirmed the appointment of His Honour Judge Mark Williams SC as Sole Arbitrator in this matter. The Sole Arbitrator issued Procedural Directions to the parties and potentially interested parties.
14. On 19 February 2018 12h32 KST, the World Curling Federation (the “WCF”) confirmed that it wished to join the procedure as a Co-Applicant. In such letter, World Curling requested that the Sole Arbitrator provisionally suspend the Athlete beyond the period the Games such that the Athlete would not be able to compete pending a final decision on any applicable sanction, if so determined.
15. On 21 February 2018 at 11h37 KST, the B Sample Documentation Packages were sent to the parties.
16. On 21 February 2018 at 12h15 KST, the Athlete requested a hearing in the matter.
17. On 21 February 2018 at 15h05 KST, the Sole Arbitrator determined that a hearing was necessary and the parties were notified accordingly that the hearing would take place on 22 February 2018 at 14h00 KST.
18. On 22 February 2018 in an email sent at 01h17 KST, the Athlete advised that he accepted the Adverse Analytical Findings concerning both samples, that he no longer requested a hearing, and reserved his right to seek elimination or reduction of the standard eligibility period based on “No Fault or Negligence” principle during disciplinary proceedings within the World Curling Federation.
19. On 22 February 2018 at 09h20 KST, the CAS ADD acknowledged the Athlete’s admission and invited the IOC to comment, based on the Athlete’s admission, as to the status of its Application. At the same time, the CAS ADD invited the Athlete to respond to World Curling’s request for a provisional suspension of the Athlete following the conclusion of the Games.
20. On 22 February 2018 at 10h19 KST, the IOC informed the CAS ADD that despite the Athlete’s admission of the violation, its remaining requests for relief in its application were maintained.
21. On 22 February 2018 at 11h36 KST, the CAS ADD noted the IOC’s position and requested the Athlete to respond to the WCF’s submission on the provisional suspension. The CAS ADD noted that until such time as the Sole Arbitrator heard from the Athlete on the WCF’s request for a provisional suspension, the hearing would be maintained.
22. On 22 February 2018 at 12h19 KST, the Athlete re-confirmed his admission of the violation, accepted a provisional suspension beyond the period of the Games, and reserved all rights accordingly to seek the elimination or reduction of any period of ineligibility based on “No Fault or Negligence” following the conclusion of the Games.

23. On 22 February 2018 at 12h36 KST, the CAS ADD accepted the parties' respective positions and cancelled the hearing.

II. JURISDICTION

24. Pursuant to Rule 59.2.4 of the Olympic Charter, the IOC Executive Board has delegated to the CAS ADD its power to decide upon any violation of the World Anti-Doping Code arising upon the occasion of the Olympic Games.

25. Pursuant to Art. 8.1.1 of the IOC ADR:

"Where the IOC decides to assert an anti-doping rule violation, the IOC shall promptly file an application with the CAS Anti-Doping Division as per the CAS Anti-Doping Rules".

26. Article 1 of the CAS ADD Rules states that: *"[t]he CAS ADD shall be the first-instance authority to conduct proceedings and to issue decisions when an alleged anti-doping rule violation has been asserted and referred to it under the IOC ADR, and for imposition of any sanctions therefrom whether applied at the Games or thereafter. Accordingly, the CAS ADD has jurisdiction to rule as a first-instance authority in place of the IOC and/or the International Federation concerned".*

27. The parties do not contest the jurisdiction of the CAS ADD to decide the dispute.

28. It follows that the CAS ADD has jurisdiction over the Application.

III. MERITS

29. The Athlete expressly accepts the adverse analytical findings against him and therefore the Sole Arbitrator confirms the Athlete committed an anti-doping rule violation in accordance with Article 2.1 of the IOC ADR.

30. As a consequence, the results obtained by the Athlete in the Mixed Doubles Curling event at the Olympic Winter Games PyeongChang 2018 are disqualified with all resulting consequences including forfeiture of the medal, diploma, medallist pin, points and prizes.

31. Further, the results obtained by the team of the Olympic Athletes from Russia in the Mixed Doubles Curling event at the Olympic Winter Games PyeongChang 2018 are disqualified with all resulting consequences including forfeiture of the medal, diploma, medallist pin, points and prizes.

32. It is understood that the Athlete has left the Olympic Village and returned his medal to his National Olympic Committee. The Chef de Mission of the Olympic Athletes from Russia delegation shall ensure full implementation of the award.

33. The Sole Arbitrator notes that the Athlete expressly reserves his right to seek the elimination or reduction of the ineligibility period on the basis of "No Fault or Negligence" in further disciplinary proceedings outside the period of the Olympic Games. Such reservation is the right of the Athlete and more information will follow concerning the next steps in this procedure in due course following the Games.
34. The anti-doping rule violation now having been determined, the IOC is no longer a party to this procedure.

IV. CO-APPLICANT WCF

35. Further to the WCF's request to participate as a Co-Applicant in this procedure, the Sole Arbitrator notes the WCF delegation of power to the CAS ADD in accordance with Articles 7.1.2 and 10.2.2 of the IOC ADR (as confirmed by the WCF in its email communication to the CAS dated 20 November 2017). In this regard, the WCF's request is granted.
36. These proceedings shall continue by and between the WCF, who joined these proceedings as Co-Applicant, and the Athlete, in regard to the consequences of the ADRV which may be imposed on the Athlete. The Sole Arbitrator, after consultation with the parties, shall determine the procedural directions applicable to the remaining part of the arbitration and shall issue, at the conclusion of these proceedings following the Olympic Games, a final award, all in accordance with Article 20 of the CAS ADD Rules.
37. In the interim, and considering the WCF's request that the Athlete be provisionally suspended following the conclusion of the Games, and noting the Athlete's agreement in this regard, the Athlete is hereby provisionally suspended until such time a final decision is rendered on his violations, or otherwise informed.

V. DECISION

38. On the basis of the submissions of the parties as set forth above, the application of the IOC is granted and therefore:
 - a. The Athlete is found to have committed an anti-doping rule violation in accordance with Article 2.1 of the IOC ADR.
 - b. The individual results obtained by the Athlete in the Mixed Doubles Curling event at the Olympic Winter Games PyeongChang 2018 are disqualified with all resulting consequences including forfeiture of the medal, diploma, medallist pin, points and prizes.
 - c. The results obtained by the team of the Olympic Athletes from Russia in the Mixed Doubles Curling event at the Olympic Winter Games PyeongChang 2018 are disqualified with all resulting consequences including forfeiture of the medal, diploma, medallist pin, points and prizes.

- d. The Athlete is excluded from the Olympic Winter Games PyeongChang 2018.
 - e. To the extent not yet done so, the Athlete shall leave the Village and return his accreditation (number 3043371-01) immediately.
39. With the issuance of this Order, the IOC's participation in this proceeding is hereby terminated.
40. Furthermore, the application of the WCF is granted and therefore:
- a. The Athlete is provisionally suspended from all Competition following the conclusion of the Olympic Winter Games PyeongChang 2018 pending a final decision on his violation.