

UWW ANTI-DOPING PANEL

DECISION

Case

United World Wrestling (UWW) v. Mr Anzor Boltukaev (Athlete - FS 97 kg - member of the Russian Wrestling Federation)

Panel:

- Dr Wozniak Daniel
- Dr Szabolcs Molnar
- Ms Carla Morais

- Prosecutor: UWW

I. Introduction

1. This is the final Decision of the UWW Anti-doping panel as between UWW and Mr Anzor Boltukaev relating to an Anti-Doping Rule Violation (“ADRV”) arising from the UWW Anti-Doping Rules (“the Rules”).
2. United World Wrestling (UWW) is the governing body for the sport of Wrestling. It is based in Corsier-sur-Vevey, Switzerland.
3. Mr Anzor Boltukaev (herein after the “athlete” or alternatively the “wrestler”) is a Freestyle wrestler (96 kg) from the Russian Federation. His sports achievements include, among other: European Silver medallist in 2017 (where the sample at stake was collected), 11th place in the 2016 Olympic Games, European Gold medallist in 2016, World Bronze medallist in 2013. As a UWW licensed wrestler, he was subject to the jurisdiction of UWW and bound to comply with the Rules. Pursuant to the Rules, UWW was empowered to conduct Doping Controls, as those terms are used in the Rules, in respect of all Wrestlers subject to the jurisdiction of UWW.

II. Facts

4. On 3 May 2017, a *Doping Control Officer* (“DCO”) collected a urine *Sample* in-competition from the athlete. The *Sample* was split into two separate bottles, which were given reference numbers 4010246.
5. Both *Samples* were transported to the World Anti-Doping Agency (“WADA”)-accredited Laboratory in Seibersdorf (AUT) (the “Laboratory”). The Laboratory analyzed the A *Sample* in accordance with the procedures set out in WADA’s International Standard for Laboratories. Analysis of the A *Sample* returned an *Adverse Analytical Finding* (“AAF”) for the following: *Higenamine*. This result was reported by the laboratory on 29 May 2017.
6. Higenamine is a Beta-2 Agonist under class S3 of WADA’s 2017 *Prohibited List* and is prohibited at all times (in and out-of-competition). Higenamine is a *specified substance*.

7. According to UWW's records, no Therapeutic Use Exemption ("TUE") was delivered by UWW to justify the Presence of *Higenamine* in the athlete's system.
8. No apparent departure from the International Standard for Testing & Investigation or International Standard for Laboratories caused the Adverse Analytical Finding.
9. On 1st June 2017, the athlete was formally charged with the commission of an anti-doping rule violation (herein after 'ADRV') for the Presence of: Higenamine in a *Sample* provided by the Wrestler on 3 May 2017 numbered A 4010246, in violation of Article 2.1 of the [UWW Anti-doping Rules](#) (herein after the "Rules").
10. On 5th June, the Russian Wrestling Federation ("RWF") confirmed that all documents were forwarded to the athlete; they also informed that he requested the analysis of the B sample.
11. On 6th June, the athlete's national federation informed that due to a misunderstanding with the federation, he opted for the postponement of the B sample analysis but requested the *laboratory document package* instead. UWW requested this documentation from the laboratory on 7 June 2017.
12. On 16 June, the Laboratory Documentation Package was sent to the athlete c/o his national federation. The deadline to answer was extended until 30 June in view of the delay to obtain the laboratory documentation.
13. On 18 July, as no answer was received from the athlete or his national federation, UWW requested to be informed about his decision regarding the B sample and requested his written defense (with possibility to also request a hearing) until 23 July 2017.
14. On 19 July, an email was received from the RWF where it was confirmed that the wrestler did not request the B sample analysis, in view that no apparent technical mistake by the laboratory could be pointed out from the laboratory documentation package. It was also stated that the athlete immediately declared his acceptance of a voluntary suspension on 6th June when he received the notice of charge dated 1st June. However, according to the wrestler's statement of defense, this was not properly communicated to UWW due to some mistake and misunderstandings within the RWF.
15. In 18 August, on the occasion of the World Championship in Paris, Mr Roy met with a RWF's representative, Mr Derevyanko to discuss about this case. In view that the wrestler requested more time for his defense (and have his supplements analyzed to determine the origin of the substance) and the there was no particular objection, and while it was clarified to Mr Derevyanko that WADA accredited laboratories would not accept to analyze his supplements and that the results of a non-accredited laboratory would probably not be considered as a reliable argument by the panel, an undetermined extension of deadline was granted.
16. On 23 October 2017, as it had not received any news from the athlete, UWW sent a letter to the athlete requesting that he finally sends his written statement of defense and/or requests a hearing.
17. On 3 November 2017, the wrestler's written statement (and the exhibits) were received through his lawyer. The athlete also requested a hearing.

III. Relevant rules

18. These proceedings are conducted in application of the Rules.
19. Art. 2.1 of the Rules provides as follows:

2.1 Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample

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 Samples. 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 rule violation under Article 2.1.

2.1.2 Sufficient proof of an anti-doping rule violation under Article 2.1 is established by any of the following: presence of a Prohibited Substance or its Metabolites or Markers in the Athlete's A Sample where the Athlete waives analysis of the B Sample and the B Sample is not analyzed; or, where the Athlete's B Sample is analyzed and the analysis of the Athlete's B Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the Athlete's A Sample; or, where the Athlete's B Sample is split into two bottles and the analysis of the second bottle confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the first bottle.

20. Art. 3.1 of the Rules provides as follows:

3.1 Burdens and Standards of Proof

UNITED WORLD WRESTLING shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether UNITED WORLD WRESTLING has established an anti-doping rule violation to the comfortable satisfaction of the hearing panel bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt. Where these Anti-Doping Rules place the burden of proof upon the Athlete or other Person alleged to have committed an antidoping rule violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability.

21. Art. 9 of the Rules provides as follows:

ARTICLE 9 AUTOMATIC DISQUALIFICATION OF INDIVIDUAL RESULTS

An anti-doping rule violation in *Individual Sports* in connection with an *In-Competition* test automatically leads to *Disqualification* of the result obtained in that *Competition* with all resulting *Consequences*, including forfeiture of any medals, points and prizes.

22. Art. 10 of the Rules provides as follows:

ARTICLE 10 SANCTIONS ON INDIVIDUALS

10.1 *Disqualification* of Results in the *Event* during which an Anti-Doping Rule Violation Occurs
An anti-doping rule violation occurring during or in connection with an *Event* may, upon the decision of the ruling body of the *Event*, lead to *Disqualification* of all of the Athlete's individual results obtained in that *Event* with all *Consequences*, including forfeiture of all medals, points and prizes, except as provided in Article 10.1.1. Factors to be included in considering whether to *Disqualify* other results in an *Event* might include, for example, the seriousness of the Athlete's anti-doping rule violation and whether the Athlete tested negative in the other *Competitions*.

23. Art. 10.2 of the Rules provides as follows :

10.2 Ineligibility for Presence, Use or Attempted Use, or Possession of a Prohibited Substance or Prohibited Method

The period of Ineligibility for a violation of Articles 2.1, 2.2 or 2.6 shall be as follows, subject to potential reduction or suspension pursuant to Articles 10.4, 10.5 or 10.6:

10.2.1 *The period of Ineligibility shall be four years where:*

10.2.1.1 *The anti-doping rule violation does not involve a Specified Substance, unless the Athlete or other Person can establish that the anti-doping rule violation was not intentional.*

10.2.1.2 *The anti-doping rule violation involves a Specified Substance and United World Wrestling can establish that the anti-doping rule violation was intentional.*

10.2.2 *If Article 10.2.1 does not apply, the period of Ineligibility shall be two years.*

24. Art. 10.5 of the Rules provides as follows:

10.5 Reduction of the Period of Ineligibility based on No Significant Fault or Negligence

10.5.1 Reduction of Sanctions for Specified Substances or Contaminated Products for Violations of Article 2.1, 2.2 or 2.6.

10.5.1.1 Specified Substances

Where the anti-doping rule violation involves a Specified Substance, and the Athlete [...] can establish No Significant Fault or Negligence, then the period of Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two years of Ineligibility, depending on the Athlete's [...] degree of Fault.

10.5.1.2 Contaminated Products

In cases where the Athlete or other Person can establish No Significant Fault or Negligence and that the detected Prohibited Substance came from a Contaminated Product, then the period of Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two years Ineligibility, depending on the Athlete's or other Person's degree of Fault.

25. Art. 10.11 of the Rules provides as follows:

10.11 Commencement of *Ineligibility* Period

Except as provided below, the period of *Ineligibility* shall start on the date of the final hearing decision providing for *Ineligibility* or, if the hearing is waived or there is no hearing, on the date *Ineligibility* is accepted or otherwise imposed.

10.11.1 Delays Not Attributable to the *Athlete* or other *Person*

Where there have been substantial delays in the hearing process or other aspects of *Doping Control* not attributable to the *Athlete* or other *Person*, UNITED WORLD WRESTLING may start the period of *Ineligibility* at an earlier date commencing as early as the date of *Sample* collection or the date on which another anti-doping rule violation last occurred. All competitive results achieved during the period of *Ineligibility*, including retroactive *Ineligibility*, shall be *Disqualified*.

10.11.2 Timely Admission

Where the *Athlete* or other *Person* promptly (which, in all events, for an *Athlete* means before the *Athlete* competes again) admits the antidoping rule violation after being confronted with the anti-doping rule violation by UNITED WORLD WRESTLING, the period of *Ineligibility* may start as early as the date of *Sample* collection or the date on which another anti-doping rule violation last occurred. In each case, however, where this Article is applied, the *Athlete* or other *Person* shall serve at least one-half of the period of *Ineligibility* going forward from the date the *Athlete* or other *Person* accepted the imposition of a sanction, the date of a hearing decision imposing a sanction, or the date the sanction is otherwise imposed. This Article shall not apply where the period of *Ineligibility* has already been reduced under Article 10.6.3.

IV. Discussion

26. The substance found ("Higenamine") is a specified substance.

27. There is no evidence that this rules violation was intentional. The default sanction should be 2 years.

28. The athlete seeks a reduction of the period of ineligibility based on no significant fault or negligence, pursuant to article 10.5.1 (specified substances, contaminated products). To apply this article, the athlete must establish that he could not reasonably have known that he had used the substance and establish on a balance of probability how the substance entered his system.
29. In the case at hand, the athlete simultaneously invokes a contaminated product and the fact that the higenamine is a specified substance. A contaminated product is defined as a product that contains a prohibited substance that is not disclosed on the product label or in an information available in a reasonable internet search. The status of specified substance is expressly set in WADA's prohibited list.
30. In his submission, the athlete's counsel explains that the specified substance in his sample is found in a large variety of plants and can also be found in coffee and coffee-based products. He puts forward several studies and sources to document this assertion, and as well as a study¹ in particular, showing that the substance can be found in various nutritional supplements without being disclosed on the labels. The athlete states that he drinks "4-5 cups of strong coffee" per day from various coffee beans and that he could not reasonably imagine that his consumption of coffee could be at the origin of a positive test. He also states that he uses various nutritional supplements such as RedTest, Assault, Essential Amino Energy, Endurus Runners Serum and Epimedium Macun and that none of them disclose on their label the substance at stake or any of its other names. The athlete asserts that it is most probable that these products may have been contaminated.
31. The athlete declares that he consulted and relied on his team doctor to use the above listed supplements and that he was told that the supplements were safe to use. He also relied on his team doctor when indicating "polyvitamins" on the Doping Control Form instead of naming all the supplements and herbal products he was using.
32. In view of the foregoing, considering the substance and the probability that the substance may be found in a variety of plants and, hence in nutritional supplements without clear indication on the label, the panel finds that it is probable that the substance was ingested through a contaminated product consumed by the athlete.
33. The panel also finds that the athlete had been careful when consulting his team doctor about his supplements and that he could not reasonably suspect that he had used the specified substance *Higenamine*, whether through his consumption of coffee or nutritional supplements.
34. The panel is therefore satisfied that a reduction of the suspension period may be applied, based on a case of no significant fault or negligence.
35. To determine the period of ineligibility, the panel bases its assessment on the decision in *Cilic v ITF* (CAS 2013/A/2237) which sets three degrees of fault (significant, normal, light) and the range for each degree (16-24 months, 8-16 months, 0-8 months).
36. It first notes that athlete is an elite athlete who won a number of medals on the highest level. He was drug tested on several occasions and received, if not education, at least information on his responsibilities as an elite athlete on anti-doping. He must have been exposed to warnings on the dangers of nutritional supplements and contaminated products, although his assertion that he received no anti-doping education is credible in view of his place of residence (Chechen Republic) and language issues. In view of these elements, the panel finds that the athlete's degree of fault is normal and that a period of ineligibility of ten (10) months appears as a proportionate and fair sanction.
37. The athlete voluntarily accepted a provisional suspension on 6th June 2017, this possibility being suggested in the notice of charge of 1st June 2017. He did not participate in any competition since then,

¹ *Determination of higenamine in dietary supplements by UHPLC/MS/MS method*, published on 15 August 2017 in *Journal of Pharmaceutical and Biomedical Analysis* 146, (2017) 48-52

including the World Championships Senior held from 20 to 26 August 2017. A credit for the period of voluntary provisional suspension should therefore be taken into account.

38. The results achieved on the occasion of the European Championship where the athlete's sample was collected and ultimately revealed an adverse analytical finding must be annulled. The athlete must return his medal.

IV. Decision

Considering the above, pursuant to the Rules, the UWW Anti-doping panel decides that the wrestler, M. Anzor Boltukaev:

- I. Is found to have committed an anti-doping rules violation, namely article 2.1 of the Rules;
- II. Is imposed a period of ineligibility of ten (10) months, i.e. until 5 April 2018 included (this end date includes the credit for the voluntary suspension);
- III. The results achieved at the European Championship senior (2nd place in 97kg Freestyle) are disqualified with all resulting consequences, including the forfeiture of the medal, points and prizes. The Silver medal obtained in this competition must be returned to UWW headquarters within 30 days from the date the decision is received by the wrestler's national federation.
- IV. The cost incurred in these proceedings and described in the notice of charge (for example B sample analysis or laboratory documentation package) must be borne by the athlete and/or his national federation.

V. Status during ineligibility

In order to understand the athlete's rights during this period of ineligibility, please refer to article 10.12 of the United World Wrestling Anti-doping rules.

During the period of Ineligibility, the athlete shall not be permitted to participate in any capacity in a Competition or other activity (other than authorized anti-doping education or rehabilitation programs) organized, convened or authorized by:

- United World Wrestling or by any body that is a member of, or affiliated to, or licensed by United World Wrestling;
- any Signatory (as that term is defined in the ADR);
- any club or other body that is a member of, or affiliated to, or licensed by, a Signatory or a signatory's member organization; or
- any professional league or any international-or national-level Event organization.

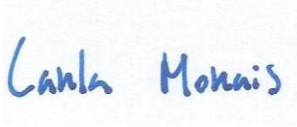
VI. Right to Appeal

Pursuant to article 13.2.1 of the United World Wrestling Anti-doping rules, this decision may be appealed to the Court of Arbitration for Sport within 21 days after reception of the decision (please refer to the procedural rule R47 and the following of the CAS Code).

Corsier-sur-Vevey, 2nd February 2018



Dr. iur. Daniel Wozniak



Ms Carla Morais

Dr Szabolcs Molnar