

# UWW ANTI-DOPING PANEL

## DECISION

### Case

United World Wrestling (UWW)

v.

Mr Aibek Usupov (Athlete - Freestyle Wrestling - member of the Kyrgyzstan national team)

#### Panel:

- Dr Daniel Wozniak
- Dr Milica Vukasinovic-Vesic
- Ms Carla Morais

- Prosecutor: UWW

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#### I. Introduction

1. This is the final Decision of the UWW Anti-doping panel as between UWW and Mr Aibek Usupov 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 Aibek Usupov (herein after the “Wrestler”) is a 29 years old Freestyle wrestler (97 kg) from Kyrgyzstan. He is an active wrestler since 2008 and participated in numerous international competitions, including World and Asian Championships (Junior and Senior) as well Olympic Qualifying tournaments in 2012 and 2016. His best achievement is a silver medal at the Asian Championship in 2013.
4. 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

5. On 3 March 2018, after his defeat in the 3-5 finals of the 2018 Asian Championships, the Wrestler was approached by a chaperone and notified for a doping control. The Wrestler asked for a moment to calm down after his defeat in that match and did not sign the form. According to the chaperone, who stayed with him all the time after he asked for a moment, his younger brother Saiakbai Usupov came and informed the chaperone that he would not provide a sample. The chaperone explained to the Wrestler what the consequences for refusing the test would be. Despite this warning, the Wrestler walked away with his brother. It was attempted to give him a chance to come back and provide a sample but the Doping Control Officers, assisted by representatives of the Wrestler’s national federation, could not reach him.

6. These facts were reported by the Sample Collection Authority. A report was drafted by the Doping Control Officers and signed by the Secretary General of the Kyrgyzstan Wrestling Federation.
7. These facts were also confirmed by the UWW Medical delegate and the UWW Technical Delegate.
8. On 28 March 2018, the wrestler was formally charged with the commission of an anti-doping rules violation (herein after 'ADRV') for *refusing to submit to sample collection*, in violation of Article 2.3 ("*Evading, Refusing or Failing to Submit to Sample Collection*") of the [UWW Anti-doping Rules](#) (herein after the "Rules").
9. The Wrestler was provisionally suspended from the date of the notice and the right was offered to him to apply to have the provisional suspension lifted prior to the determination of this matter. This offer was not regarded by the wrestler.
10. In parallel, the wrestler's brother, Saiakbay Usupov was also charged on the same day with the commission of an anti-doping rules violation for *Complicity*, in violation of Article 2.9 of the Rules. As he is also an active wrestler, and in accordance with article 7.9 of the Rules, Mr Saiakbay Usupov was provisionally suspended from the date of the notice and the right was offered to him to apply to have the provisional suspension lifted prior to the determination of this matter.
11. On 13 April 2018, the wrestler's written explanations were forwarded to UWW by the Kyrgyz Wrestling Federation. The wrestler's brother also sent written explanations to UWW on the same day.
12. In substance, the wrestler explained that he got injured during his bout, that he went outside the venue and "*sat in a friend's car*", adding that "*at this point, people approached me, but because of the terrible pain and my loss, I have heard nobody, I was very upset [...]. I thought that you do not need to undergo doping control procedures when you are in 5<sup>th</sup> place*". The Wrestler also explained that the person who was actually accompanying him was not his brother, Saiakbay Usupov, but an individual called Mr Osmonaliev Ulanbek.
13. No statement was received from that Mr Osmonaliev Ulanbek to support this allegation.
14. The *Unsuccessful Attempt Report Form* ("UAF") was signed by the Secretary General of the Kyrgyz Federation and its content was not challenged.
15. The testimonies of two doping control officers were received on 2 May 2018 to further document the case.
16. No injury was reported by the Official Medical Delegate for the wrestler. This was confirmed in writing the UWW Medical delegate, Dr Elena Abaeva.

### III. Applicable rules

17. These proceedings are conducted in application of the Rules.
18. Art. 2.3 of the Rules provides as follows:

#### **2.3 Evading, Refusing or Failing to Submit to *Sample* Collection**

Evading *Sample* collection, or without compelling justification refusing or failing to submit to *Sample* collection after notification as authorized in these Anti-Doping Rules or other applicable anti-doping rules.

*[Comment to Article 2.3: For example, it would be an anti-doping rule violation of "evading Sample collection" if it were established that an Athlete was deliberately avoiding a Doping Control official to evade notification or Testing. A violation of "failing to submit to Sample collection" may be based on either intentional or negligent conduct of the Athlete, while "evading" or "refusing" Sample collection contemplates intentional conduct by the Athlete.]*

19. 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.

20. 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.*

21. Art. 10.3 of the Rules provides as follows :

**10.3 Ineligibility for Other Anti-Doping Rule Violations**

*The period of Ineligibility for anti-doping rule violations other than as provided in Article 10.2 shall be as follows, unless Articles 10.5 or 10.6 are applicable:*

*10.3.1 For violations of Article 2.3 or Article 2.5, the period of Ineligibility shall be four years unless, in the case of failing to submit to Sample collection, the Athlete can establish that the commission of the anti-doping rule violation was not intentional (as defined in Article 10.2.3), in which case the period of Ineligibility shall be two years.*

22. Art. 12.3 of the Rules provides as follows :

*12.3 If an anti-doping rule violation is committed by an Athlete during an official competition on the UNITED WORLD WRESTLING calendar, a 20.000 Swiss Francs fine will be imposed on the Athlete's National Federation. A 20.000 Swiss Francs fine will also be imposed on the National Federation for any anti-doping rule violation committed by an Athlete included in the registered testing pool.*

**IV. Discussion**

23. All documents and submissions were carefully reviewed by the panel and the following considerations were made.

24. The report of the Doping Control Officer (“DCO”) Mr Assem Shalgumbayeva, based on the information provided by the chaperone, as well as his own assessment of the situation after having been informed, his and the second DCO’s statement made upon request by the UWW prosecutor as a result of this procedure, clearly establish the sequence of events between the end of the wrestler’s bout, his notification by the chaperone and ultimately the report of unsuccessful attempt. The panel does not question the reliability of the report and is confident that the wrestler - who did not sign the notification form - was duly notified and informed of his obligation to submit to sample collection and the consequence for refusing.

25. On the other hand, the explanations provided by the wrestler are confused and not convincing. He alleges that due an injury and pain, he “*could no longer walk to the locker room on [his] own*” and had to be transported by car to the hospital by a friend. However, not any reference to an injury has been made neither by the chaperone nor the DCOs in their first report, i.e. the Unsuccessful Attempt Report Form. In their statement, the DCOs denies any injury suffered by the wrestler which would have prevented him to submit to sample collection.

26. The panel presumes here that a reference to such injury would have appeared on the UAF should the wrestler had complained about it and asked for a treatment before submitting to the doping control, as “*obtaining necessary medical treatment*” it is considered as a “*valid reason*” in WADA’s *International Standard for Testing and Investigation* (article 5.4.4) for a DCO or chaperone to allow a delay in reporting to the Doping Control Station.
27. In addition to this the video of the bout lost by the wrestler before notification by the chaperone does not provide any sign of injury or major injury which would prevent the athlete from walking to the doping control station and for providing a sample. This is confirmed by the fact that no injury was reported by the UWW Medical Delegate through the UWW online injury reporting system.
28. The description of the facts on the UAF report was neither challenged nor amended by the Secretary General of the wrestler’s national federation who signed the report. The statement made by the DCOs are supported by the UWW Medical Delegate present in the competition hall at that moment and who was informed of the situation on the evening of the attempt.
29. The question of whether the wrestler’s brother and any other person was involved is not relevant to determine whether there was a refusal by the athlete or not. This question is to be discussed in proceedings for a violation of complicity by a third party.
30. The panel is comfortably satisfied that all elements constituting a violation for refusal are present in this case, i.e. the refusal to submit to sample collection without compelling justification after notification of the obligation to submit to sample collection and meet the standard of proof required by UWW to establish the anti-doping rules violation.
31. For these reasons, considering that there are no grounds for a reduction of the period of ineligibility, the wrestler must be sanctioned with a four (4) year period of ineligibility.

## V. Decision

Considering the above, pursuant to the Rules, the UWW Anti-doping panel decides that the wrestler, Mr Aibek Usupov:

- I. Is found to have committed an anti-doping rules violation, namely article 2.3 of the Rules;
- II. Is imposed a period of ineligibility of four (4) years, starting from 29 March 2018 until 28 March 2022 included.
- III. The results obtained in the Asian Championship senior are disqualified.
- IV. The Kyrgyz Wrestling Federation is imposed a fine of 20’000 Swiss Francs.

## VI. 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.

## VII. 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).

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This decision is to be notified to the Athlete c/o his National Federation.

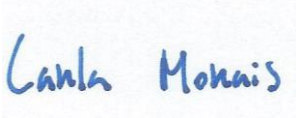
Corsier-sur-Vevey, 23 July 2018



Dr. iur. Daniel Wozniak



Dr. Milica Vukašinović-Vesić, PhD



Ms Carla Morais