

UWW ANTI-DOPING PANEL

DECISION

Case

United World Wrestling (UWW)

v.

Mr Muslim Evloev (Athlete - Freestyle Wrestling - Member of the National Wrestling team of Kyrgyzstan)

Panel:

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

- Prosecutor: UWW

I. Introduction

1. This is the final Decision of the UWW Anti-doping panel as between UWW and Mr Muslim Evloev 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 Muslim Evloev (herein after the “Athlete”) is a Freestyle wrestling from Kyrgyzstan. His competitions results include a Gold medal in the 2018 Asian Championship and a Bronze medal at the Ali Aliyev international tournament the same year. He also participated two other international tournaments in 2017.
4. In view of his result in the 2018 Asian Championship, the athlete was placed in UWW’s Registered Testing Pool from 1st July 2018. As such, he was asked to provide his whereabouts for each day of the quarter until further notice.
5. The athlete was the holder of a UWW licence in 2018 and as such 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

6. On 26 July 2018, UWW conducted an out-of-competition doping control on the athlete. The *Doping Control Officer* (“DCO”) collected a urine *Sample* from the athlete and after the splitting of the sample into two separate bottles, which were given reference number 4299572, both Samples were transported to the World Anti-Doping Agency (“WADA”)-accredited Laboratory in Dresden (Germany) (the “Laboratory”).
7. The Laboratory analyzed the A Sample in accordance with the procedures set out in WADA’s International Standard for Laboratories. On 24 August 2018, the analysis of the A Sample returned an Adverse Analytical Finding (“AAF”) for the following:
 - *S1.1A Exogenous AAS/dehydrochloromethyl-testosterone metabolite 4a-chloro-17B-hydroxymethyl-17a-methyl-18-nor-5a-androst-13-en-3a-ol.*

Dehydrochloromethyl-testosterone (and its metabolites) is an Exogenous Anabolic Androgenic Steroid under class S1.1A of the 2018 Prohibited List and is prohibited at all times (in and out-of-competition).
8. This substance is a non-specified substance.
9. According to UWW’s records, no Therapeutic Use Exemption (“TUE”) was delivered by UWW to justify the Presence of *Dehydrochloromethyl-testosterone* in the athlete’s system.
10. No apparent departure from the International Standard for Testing & Investigation or International Standard for Laboratories caused the Adverse Analytical Finding.
11. On 14 August 2018, the athlete was formally charged with the commission of an anti-doping rule violation. A one-day deadline was set to allow the athlete any statement before the provisional suspension would enter in force.
12. On 15 August 2018, UWW received copies of letters from the athlete, the athlete’s coach and a team doctor stating the origin of the prohibited substance might be the consumption by the athlete of contaminated meat. The athlete’s federation asked for a delay to decide on the opportunity to analyze the B sample.
13. On 17 August, in view of the athlete’s explanations (discussed below), the provisional suspension was confirmed and entered in force. A letter with the reasons for this decision was sent to the athlete. In that letter, it was reminded to the athlete that his decision with regards to the B sample was waited for.
14. On 29 August 2018, the wrestler, through his national federation, asked for an additional deadline to provide explanations and request the B sample analysis.
15. On 5 September 2018, UWW replied that a deadline for the defense could be granted, however the decision regarding the B sample analysis had to be made. A reply on this question was requested.
16. On 29 September 2018, the President of the Kyrgyz Wrestling Federation wrote a letter to the UWW President. In substance, it presented the same arguments whereby the athlete had not taken banned drugs but had been probably contaminated through food. He asked to test the athlete again. No formal request was made with regards to the B sample.
17. On 12 February 2019, as no other communication was received from the athlete, an email was sent to him (c/o his national federation) to inform that the case would be referred to this panel for a decision. A final deadline was set on 17 February 2019 for a final statement.

18. On 17 February 2019, a letter dated 14 February 2019 and signed by Mr Madzhinov was forwarded to UWW together with six documents in Russian language, without translation. The letter of 14 February 2019 briefly explains that these documents are “*abstracts of medical record and underwent surgeries, treatment regimen, and the list of medicines that he admitted*”.

III. Applicable rules

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

20. 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 analysed; or, where the Athlete’s B Sample is analysed 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.

21. 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.

22. Art. 7.9 of the Rules provides as follows:

7.9 Provisional Suspensions

7.9.1 *Mandatory Provisional Suspension:* If analysis of an A Sample has resulted in an *Adverse Analytical Finding* for a *Prohibited Substance* that is not a *Specified Substance*, or for a *Prohibited Method*, and a review in accordance with Article 7.2.2 does not reveal an applicable *TUE* or departure from the International Standard for Testing and Investigations or the International Standard for Laboratories that caused the *Adverse Analytical Finding*, a *Provisional Suspension* shall be imposed upon or promptly after the notification described in Articles 7.2, 7.3 or 7.5.

[...]

7.9.3 Where a *Provisional Suspension* is imposed pursuant to Article 7.9.1 or Article 7.9.2, the *Athlete* or other *Person* shall be given either: (a) an opportunity for a *Provisional Hearing* either before or on a timely basis after imposition of the *Provisional Suspension*; or (b) an opportunity for an expedited final hearing in accordance with Article 8 on a timely basis after imposition of the *Provisional Suspension*. Furthermore, the *Athlete* or other *Person* has a right to appeal from the *Provisional Suspension* in accordance with Article 13.2 (save as set out in Article 7.9.3.1).

7.9.3.1 The *Provisional Suspension* may be lifted if the *Athlete* demonstrates to the hearing panel that the violation is likely to have involved a *Contaminated Product*. A hearing panel's decision not to lift a mandatory *Provisional Suspension* on account of the *Athlete's* assertion regarding a *Contaminated Product* shall not be appealable.

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. 10.4 provides as follows:

10.4 Elimination of the Period of Ineligibility where there is No Fault or Negligence

If an Athlete or other Person establishes in an individual case that he or she bears No Fault or Negligence, then the otherwise applicable period of Ineligibility shall be eliminated.

25. Art. 10.5 provides as follows:

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

[...]

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.

26. Appendix I (Definitions) of the Rules provides as follows:

Contaminated Product: A product that contains a Prohibited Substance that is not disclosed on the product label or in information available in a reasonable Internet search.

No Fault or Negligence: The Athlete or other Person's establishing that he or she did not know or suspect and could not reasonably have known or suspected even with the exercise of utmost caution, that he or she had Used or been administered the Prohibited Substance or Prohibited Method or otherwise violated an anti-doping rule. Except in the case of a Minor, for any violation of Article 2.1, the Athlete must also establish how the Prohibited Substance entered his or her system.

No Significant Fault or Negligence: The Athlete or other Person's establishing that his or her Fault or negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or negligence, was not significant in relationship to the anti-doping rule violation. Except in the

case of a Minor, for any violation of Article 2.1, the Athlete must also establish how the Prohibited Substance entered his or her system.

27. Art. 12.3 of the Rules reads 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 [*emphasize added*].

IV. Discussion

28. The UWW Anti-doping panel observes that the results of the analysis of the sample provided by the Athlete establish the presence in his sample the metabolite of a prohibited substance, i.e. Dehydrochloromethyl-testosterone, also well known as oral turinabol.
29. The substance detected in the Athlete's sample is an anabolic steroid. It is listed in the WADA 2018 Prohibited List and is prohibited at all times. According to the prohibited list, the substance is a non-specified substance.
30. The panel is satisfied that the sample analysed by the WADA accredited laboratory in Dresden (Germany) is unequivocally linked to the Athlete and no departure from WADA's International Standards for Laboratories occurred.
31. The panel notes that no Therapeutic Use Exemption was granted to the Athlete for the use of the substance.
32. Given the analytical result by the WADA-accredited laboratory of Dresden, given that the athlete was offered on multiple occasions the right to request the opening and analysis of the B sample but never formally requested it, which may be considered as a waiver of this right, the Anti-doping Panel finds that an anti-doping rule violation pursuant to Art. 2.1 of the Rules consisting of the presence of a Prohibited Substance's metabolite in the Athlete's body is sufficiently established.
33. The substance involves a non-specified substance and is prohibited at all times. According to article 7.9 of the Rules, a provisional suspension was to be imposed on the athlete upon or promptly after the notification and providing an opportunity for a provisional hearing was offered to him either before or on a timely basis after imposition of the provisional suspension.
34. In the present case, given that the athlete was planning to compete at the 2018 Asian Games taking place from 19 August 2018, one day was granted for the athlete from the date of notification (14 August 2018) to be heard in written form before the imposition of the provisional suspension.
35. The athlete forwarded a statement (his coach and his team doctor also submitted their statement) on 15 August 2018. In these statements, the assumption was made that the result might be due to contaminated meat ingested by the athlete. No evidence was brought forward in support of this assumption.
36. The provisional suspension was finally imposed on the ground that the athlete was not able to bring any piece of evidence to prove his assumption. Additionally, according to WADA's and the laboratory's opinion, it seems not possible that the detection of the long-term metabolite alone in the athlete's sample supports a recent ingestion of contaminated meat (i.e. meat consumed 20 days at best before 26 July 2018, which is the date of the sample collection).
37. This panel, as well as WADA which was consulted on this subject, is also unaware of any cases reported where meat or dairy contamination with oral turinabol has been claimed and/or established. Finally, meat contamination does not come within the scope of Article 10.5.1.2 of the Rules and the definition

of contaminated product set forth in Appendix 1 of the Rules and thus the provisional suspension may not be eliminated based on article 7.9.3.1.

38. The athlete was offered time to prove his assumption, i.e. the presence of oral turinabol in his system was due to a contamination through meat. It appears that the athlete sent samples of “*medicines and food bio additives*” for analysis to the WADA accredited laboratory of Cologne. However the athlete did not disclose the results to this panel, most probably because the results were not conclusive.
39. Considering that the athlete was not able determine the origin of the presence of oral turinabol in his system, it is not necessary for this Panel to examine the degree of fault or negligence by the athlete.

V. Consequences

Considering the above, pursuant to the Rules:

A. Mr Muslim Evloev:

- 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 four (4) years, from 15 August 2018 until 14 August 2022;

B. Considering the inclusion of Mr Muslim Evloev in the UWW Registered Testing Pool from 1st July 2018, the Kyrgyz Wrestling Federation is imposed a fine a 20.000 Swiss Francs pursuant to article 12.3.

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).

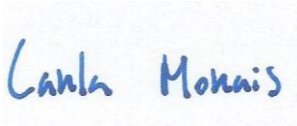
This decision is to be notified to the Athlete c/o his National Federation.



Dr. Milica Vukašinović-Vesić, PhD



Dr. iur. Daniel Wozniak



Ms Carla Morais

Corsier-sur-Vevey, 2nd May 2019