

**DECISION OF THE INTERNATIONAL TENNIS FEDERATION  
PURSUANT TO ARTICLE 8.1.4 OF THE 2019 TENNIS ANTI-DOPING PROGRAMME**

**I. Introduction**

1. The International Tennis Federation (the **ITF**) is the international governing body for the sport of tennis. Further to its obligations as a signatory to the World Anti-Doping Code (the **Code**) and its responsibilities as custodian of the sport, the ITF has issued the 2019 Tennis Anti-Doping Programme (the **TADP** or the **Programme**), which sets out Code-compliant anti-doping rules applicable to players competing in '**Covered Events**' (as defined in TADP Article 1.10).<sup>1</sup>
2. Beibit Zhukayev (the **Player**) is a 19-year old tennis player from Kazakhstan. He has competed on the ITF Pro Circuit since 2016 and has a career-high ranking of 360 in singles and 742 in doubles. He is currently ranked at 365 in singles. When he registered for an International Player Identification Number (**IPIN**) in 2013 and re-registered for each subsequent year, the Player expressly agreed to be bound by and to comply with the Programme. By virtue of that agreement, and by virtue of his participation in events on the ITF World Tennis Tour ('**Covered Events**' under the TADP), the Player was bound by and required to comply with the 2019 TADP.
3. The ITF charged the Player with the commission of an anti-doping rule violation under the 2019 TADP. The Player has admitted the anti-doping rule violation charged and acceded to the Consequences that the ITF proposed based on its analysis of the degree of fault borne by the Player for that violation. The ITF therefore issues this decision further to TADP Article 8.1.4, which provides: '**In the event that [...] the Participant admits the Anti-Doping Rule Violation(s) charged and accedes to the Consequences specified by the ITF [...], a hearing before the Independent Tribunal shall not be required. Instead the ITF shall promptly issue a decision confirming [...] the commission of the Anti-Doping Rule Violation(s) and the imposition of the specified Consequences (including, if applicable, a justification for why the maximum potential sanction was not imposed) [...]**'.

**II. The Player's commission of an anti-doping rule violation**

4. On 15 July 2019, while competing in the Singles Qualifying Draw at the President's Cup event held in Nur-Sultan, Kazakhstan, from 15 to 21 July 2019 (the **Event**), the Player was required to provide a urine sample for drug testing under the TADP. The sample was given reference number 3134700 and split into an A sample and a B sample, which were sealed in tamper-evident bottles and transported to the WADA-accredited laboratory in Montreal (the **Laboratory**) for analysis. The Laboratory reported an Adverse Analytical Finding in respect of the A Sample for methylhexaneamine, octodrine, and heptaminol (a metabolite of octodrine). Methylhexaneamine, octodrine and heptaminol are stimulants, and '**[a]ll stimulants... are prohibited**' under Section S6.b of the 2019 WADA Prohibited List.<sup>2</sup> Each of them is classified in the Prohibited List as a Specified Substance. The Player does not have a therapeutic use exemption permitting use of methylhexaneamine, octodrine, and/or heptaminol.

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<sup>1</sup> Any term in this Decision that begins with a capital letter and that is not otherwise defined in this Decision has the meaning given to it in the Programme.

<sup>2</sup> Methylhexaneamine and heptaminol are listed by name, whereas octodrine is a synonym for the stimulant 1,5 dimethylhexylamine, aka 6-methyl-2-heptylamine or 6-methyl-2-heptanamine, and is also a substance with a '**similar chemical structure**' and '**similar biological effect**' to stimulants prohibited by name on the 2019 Prohibited List. (Octodrine is listed by name in Section S6.b of the 2020 Prohibited List).

5. The results of the A sample analysis were considered by an independent Review Board in accordance with TADP Article 7.3. The Review Board did not identify any apparent departures from the sample collection procedures set out in the International Standard for Testing and Investigations or from the sample analysis procedures set out in the International Standard for Laboratories that could have caused this Adverse Analytical Finding. It therefore decided that the Player had a case to answer for breach of TADP Article 2.1.
6. The Laboratory analysed sample B3134700 on 29 August 2019. That analysis confirmed the Adverse Analytical Finding made in respect of the A sample.
7. The ITF sent the Player a Notice of Charge on 22 August 2019, charging him with the commission of a TADP Article 2.1 anti-doping rule violation (presence of Prohibited Substances in his sample). Given that methylhexanamine, octodrine and heptaminol are classified as Specified Substances under the TADP, the Player was not subject to a mandatory provisional suspension under TADP Article 8.3.1. On 4 November 2019, the Player accepted a voluntary Provisional Suspension, with immediate effect, pursuant to TADP Article 8.3.5.
8. TADP Article 2.1 is a strict liability offence that is established simply by proof that a Prohibited Substance was present in the sample, i.e., the ITF does not have to prove how the substance got into the Player's system or that the Player took the substance intentionally (or even knowingly).
9. In his preliminary response to the Notice of Charge, the Player accepted that he had committed the Article 2.1 anti-doping rule violation charged.

### **III. Consequences**

#### **III.A Period of Ineligibility**

##### **(a) How the methylhexanamine, octodrine and heptaminol got into the Player's system**

10. In his response dated 31 August 2019, the Player asserted that his violation was an unintentional mistake and his positive test had likely been caused by his ingestion of a pre-workout supplement called 'Nox Pump' sold by Dorian Yates Nutrition Limited (the **Supplement**) that was contaminated with methylhexanamine and octodrine. In order to investigate and assess the Player's account, the ITF sent the Player a series of follow up questions, the detailed responses to which now comprise the Player's full account in answer to the Notice of Charge. In summary, the Player contends that on 2 November 2018 his cousin ordered the Supplement via eBay (30 sachets of 15g each), and in or around December 2018 his cousin gave him a few sachets of the Supplement. The Supplement was recommended to the Player's cousin as a highly effective pre-workout formula by his friend, an MMA fighter, and the Player's cousin recommended it to the Player on the same basis. The Player did not conduct any research or consult anyone else before using the Supplement. During a training camp in December 2018, the Player took the Supplement two or three times, each time ingesting it 30 minutes before training, having mixed half of the 15g sachet with water. After the December training camp, the Player had two sachets left and he forgot about them. In July 2019, while packing for the Event, the Player saw the remaining two sachets and decided to take them to the Event because he was a little nervous about playing in the Event (it was the biggest that he had participated in) and he wanted to feel more confident about it. Before his match on 15 July 2019, the Player ingested half of a sachet of the Supplement, mixed with water. The Player lost the match, felt he had played badly, and was nervous during the match. He thought his poor performance

might have been a result of his ingestion of the Supplement, so he did not take the Supplement again. Later the same day, he gave the urine sample that subsequently produced the Adverse Analytical Finding.

11. The ITF notes that in a number of separate anti-doping proceedings over the past ten years, anti-doping rule violations have been attributed to ingestion by the charged athlete of the Supplement, and it was accepted that the Supplement in each case contained one or more undisclosed, prohibited stimulants, such as methylhexaneamine and octodrine. The ITF asked the Player to send the remaining sachet of the Supplement in his possession to the Laboratory for testing. The Laboratory tested the sachet and it was found to contain 74 mg of octodrine and 0.05mg of methylhexaneamine. According to Prof. Christiane Ayotte, Director of the Laboratory, if the Supplement had been ingested as asserted by the Player, then the levels of methylhexaneamine and octodrine detected in the sachet could have caused the concentrations of those substances (and of the octodrine metabolite, heptaminol) detected in the Player's Sample.
12. The ITF notes that when the Player's urine sample was collected on 15 July 2019, he was asked to declare on the Doping Control Form (DCF) 'any prescription/non-prescription medications or supplements, including vitamins and minerals, taken over the past 7 days'. The Player stated on the DCF that he had 'Nothing to declare'. In his supplemented responses to the Notice of Charge, the Player asserted that he did not declare (among other things) the Supplement because he did not understand the Doping Control Officer's instructions and was unaware that he could have a representative assist with translation.
13. Given all the circumstances of this case, and in particular considering that the Laboratory detected methylhexaneamine and octodrine in the remaining sachet of the Supplement, the levels of which were broadly consistent with the circumstances of the Player's asserted ingestion of the Supplement and the estimated concentration of methylhexaneamine, octodrine and heptaminol detected in the Player's sample, the ITF accepts that the Player has established that it is more likely that not that the presence of the methylhexaneamine, octodrine and heptaminol found in his urine sample 3134700 was caused by his ingestion of the Supplement containing methylhexaneamine and octodrine (as undisclosed ingredients) earlier on the day that his urine sample was collected.<sup>3</sup>

**(b) TADP Article 10.2**

14. This is the Player's first doping offence.
15. TADP Article 10.2.1 specifies that a TADP Article 2.1 violation that is 'intentional' and is a first offence carries a mandatory four-year ban, but it also specifies that if the prohibited substance is classified as a Specified Substance, the ITF has the burden of proving that the violation was 'intentional'. If it cannot do so, then TADP Article 10.2.2 provides for a two-year ban. TADP Article 10.2.3 explains that in this context 'the term "intentional" is meant to identify those Participants who cheat. The term, therefore, requires that the Participant engaged in conduct that he/she knew constituted an Anti-Doping Rule Violation or knew that there was a significant risk that the conduct might constitute or result in an Anti-Doping Rule Violation and manifestly disregarded that risk'. The jurisprudence is clear that what counts in this context is what the

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<sup>3</sup> The ITF notes that in a number of separate anti-doping proceedings over the past ten years, anti-doping rule violations have been attributed to ingestion by the charged athlete of the Supplement (and it was accepted that the Supplement in each case contained one or more undisclosed, prohibited stimulants, such as methylhexaneamine and octodrine).

Player actually knew, not what he should have known.<sup>4</sup>

16. Methylhexaneamine, octodrine and heptaminol are Specified Substances, and the ITF does not have any basis on the above facts to contend that the offence was 'intentional' within the meaning of TADP Articles 10.2.1 and 10.2.3. On the above facts, the Player did not know that the Supplement was contaminated with prohibited substances and nor did he in fact consider (whether or not he should have done) that it might be contaminated. Therefore, the two-year period of ineligibility prescribed by TADP Article 10.2.2 applies, subject to possible reduction in accordance with TADP Article 10.4 or Article 10.5.

**(c) TADP Article 10.4 and 10.5**

17. In order to get the sanction eliminated or reduced below two years, the Player must show that he bears 'No Fault or Negligence' for the violation, or (alternatively) that he bears 'No Significant Fault or Negligence' for the violation under TADP Article 10.5.
18. TADP Article 10.4 provides that if a player establishes that he bears No Fault or Negligence for the anti-doping rule violation in question, the otherwise applicable period of ineligibility will be eliminated. No Fault or Negligence is defined in the TADP as follows: 'The Player or other Person establishing that he/she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he/she had Used or been administered the Prohibited Substance or Prohibited Method or otherwise violated an anti-doping rule'.
19. TADP Article 10.5.1(a) provides that where prohibited substances found in a player's sample are classified as Specified Substances under the TADP (as here), and the player can establish that he bears No Significant Fault or Negligence for their presence in his system, then the otherwise applicable two-year period of ineligibility may be reduced by between 0 and 24 months (i.e., by up to 100%, in which case there would be a reprimand only). No Significant Fault or Negligence is defined in the TADP as follows: 'The Player or other Person establishing that his/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'.
20. TADP Article 10.5.1(b) provides for the same discretion – to reduce an otherwise applicable two-year period of Ineligibility by between 0 and 24 months, also based on the degree of the player's Fault – where the player establishes that the detected Prohibited Substance came from a Contaminated Product. A 'Contaminated Product' is defined in the TADP as a 'product that contains a Prohibited Substance that is not disclosed on the product label or in information available in a reasonable Internet search'.<sup>5</sup>
21. It is a precondition of any mitigation of a sanction for No (or No Significant) Fault or Negligence that the player proves on the balance of probabilities (see Article 8.6.2) how the prohibited substance(s) found in their sample entered their system. Otherwise, it is impossible to assess the degree of fault that the player bears for the substances being in their system. Here, as

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<sup>4</sup> [ITF v Sharapova](#), Independent Tribunal decision dated 6 June 2016 ('It is clear from the wording of article 10.2.3 that whether conduct is intentional is to be judged on the actual knowledge of the player, not on the basis of what she ought to have known or understood').

<sup>5</sup> The ITF notes that it does not need to decide whether or not TADP Article 10.5.1(b) applies, because it has the same discretion to reduce the Player's sanction for No Significant Fault or Negligence under TADP Article 10.5.1(a).

detailed above, the Player has met that burden.

22. Once that first condition is met, a plea of No Fault or Negligence or No Significant Fault or Negligence is assessed by considering how far the player departed from his duty under the TADP to use 'utmost caution' to ensure that he did not ingest any prohibited substances or otherwise do anything that might constitute or result in the commission of an anti-doping rule violation.<sup>6</sup> 'The difference between the two [...] is one of degree: to establish No Fault or Negligence, the athlete must show that he took every step available to him to avoid the violation, and could not have done any more; whereas to establish No Significant Fault or Negligence, he must show that, to the extent he failed to take certain steps that were available to him to avoid the violation, the circumstances were exceptional and therefore that failure was not significant'.<sup>7</sup>
23. The CAS jurisprudence is clear that the standard of 'utmost caution' is very onerous, and requires a player to show that they 'made every conceivable effort to avoid taking a prohibited substance'.<sup>8</sup> It follows that 'even in cases of inadvertent use of a Prohibited Substance, the principle of the Athlete's personal responsibility will usually result in a conclusion that there has been some degree of fault or negligence'.<sup>9</sup>
24. Where No Significant Fault or Negligence is found, the amount of reduction to be given depends upon the degree of the player's Fault. The TADP definition of 'Fault'<sup>10</sup> makes clear that the first question is how far the player departed from the duty of utmost caution (objective fault) and the second question is whether there is any acceptable explanation for that failure (subjective fault).<sup>11</sup>
25. The Player requested in his response to the Notice of Charge that he receive the 'minimal punishment'. In support of that position, he relied on the following: (i) before use, he read some

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<sup>6</sup> See, e.g., Kutrovsky v ITF, CAS 2012/A/2804, para 9.49 ('the athlete's fault is measured against the fundamental duty that he or she owes under the Programme and the WADC to do everything in his or her power to avoid ingesting any prohibited substance'); FIFA & WADA, CAS 2005/C/976 & 986, paras 73-75 ('The WADC imposes on the athlete a *duty of utmost caution* to avoid that a prohibited substance enters his or her body. [...] It is this standard of utmost care against which the behaviour of an athlete is measured if an anti-doping violation has been identified').

<sup>7</sup> IBAF v Luque, IBAF Anti-Doping Tribunal decision dated 13 December 2010, para 6.10.

<sup>8</sup> Knauss v FIS, CAS 2005/A/847, para 7.3.1; WADA v NSAM et al, CAS 2007/A/1395, para 80 ('The burden is therefore shifted to the athlete to establish that he/she has done all that is possible to avoid a positive testing result').

<sup>9</sup> Adams v CCES, CAS 2007/A/131, para 155.

<sup>10</sup> 'Fault is any breach of duty or any lack of care appropriate to a particular situation. Factors to be taken into consideration in assessing a Player or other Person's degree of Fault include, for example, the Player or other Person's experience, whether the Player or other Person is a Minor, special considerations such as impairment, the degree of risk that should have been perceived by the Player and the level of care and investigation exercised by the Player in relation to what should have been the perceived level of risk. In assessing the Player or other Person's degree of Fault, the circumstances considered must be specific and relevant to explain the Player or other Person's departure from the expected standard of behaviour. Thus, for example, the fact that a Player would lose the opportunity to earn large sums of money during a period of Ineligibility, or the fact that the Player only has a short time left in his or her career, or the timing of the sporting calendar, would not be relevant factors to be considered in reducing the period of Ineligibility under Article 10.5.1 or 10.5.2'.

<sup>11</sup> See e.g. Cilic v ITF, CAS 2013/A/3327, para 71.

information about the Supplement on the internet; (ii) he believed a supplement produced/endorsed by a famous Mr Olympia winner (Dorian Yates) would not contain any Prohibited Substances; (iii) he is young (he was 19 years old at the time the Sample was collected); and (iv) he had received no anti-doping education prior to his use of the Supplement. These factors weigh in his favour.

26. However, the ITF takes note of the following factors that weigh against the Player:

26.1 It has long been well-known that supplements may contain substances that are not listed as a named ingredient. The CAS has clearly stated that any player who takes a supplement assumes the risk that it may contain one or more prohibited substances, and so cannot plead No Fault or Negligence.<sup>12</sup> The same is also set out in the comment to Code Article 10.4: 'No Fault or Negligence would not apply in the following circumstances: (a) a positive test resulting from a mislabeled or contaminated vitamin or nutritional supplement (Athletes are responsible for what they ingest (Article 2.1.1) and have been warned against the possibility of supplement contamination) [...]'.<sup>13</sup>

26.2 Accordingly, the CAS has recognised that 'in theory, almost all anti-doping rule violations relating to the taking of a product containing a prohibited substance could be prevented'.<sup>13</sup>

26.3 Before using the Supplement (either on 15 July 2019, or previously) the Player failed (among other things) to read the label of the Supplement and cross-check the ingredients against the WADA Prohibited List; undertake adequate research of the Supplement on the internet (i.e., to ascertain whether there was any risk of the Player breaching his anti-doping obligations by taking it); ensure the Supplement was reliably sourced; or consult with a doctor, coach, other expert, or his national federation before using the Supplement. The Player therefore is deemed to have voluntarily assumed all risk associated with his ingestion of the Supplement.

26.4 In particular, the Player should have known that there was a risk in using – in competition – a pre-workout supplement that promises 'Energy', 'Endurance' and 'Focus', is endorsed by a bodybuilder (Dorian Yates), and specifically warns potential users on its packaging that 'tested athletes should consult with their trade federation before using this product'. Had the Player undertaken even basic research on the internet, he would quickly have become aware of the potential dangers of this particular supplement for athletes subject to anti-doping rules. In addition, the Player's belief that because Dorian Yates was a famous Mr Olympia winner he would not produce or sell products containing (even inadvertently) Prohibited Substances was regrettably misplaced, not least because Mr Yates has discussed openly with the media his own use of anabolic steroids during his bodybuilding career in the 1980s and 1990s.

27. Based on the foregoing, the Player could not sustain a plea of No Fault or Negligence. However, the same Code comment quoted above (at para 26.1) goes on to say: 'depending on the unique facts of a particular case, any of the referenced illustrations could result in a reduced sanction

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<sup>12</sup> See FINA v Cielo, CAS 2011/A/2495, para 8.8.

<sup>13</sup> Cilic v ITF, CAS 2013/A/3327, para 74 ('The athlete could always (i) read the label of the product used (or otherwise ascertain the ingredients), (ii) cross-check all the ingredients on the label with the list of prohibited substances, (iii) make an internet search of the product, (iv) ensure the product is reliably sourced and (v) consult appropriate experts in these matters and instruct them diligently before consuming the product').

under Article 10.5 based on No Significant Fault or Negligence'. The ITF accepts that, in the specific circumstances of this case, the Player's fault was not 'significant' within the meaning of TADP Article 10.5.1, justifying a reduction from the two-year starting point. But it was still high. While the Player is deemed to have accepted the risk that the Supplement might contain a prohibited substance (and did little to meet his duty of utmost caution), the ITF also accepts that the Player has shown that the prohibited substances were not disclosed on the product label. Further, the Player's youth and lack of anti-doping education must be considered. Separately, the ITF notes that since these disciplinary proceedings have been commenced, the Player has complied openly and promptly with the ITF as to his use of the Supplement and voluntarily sought out and completed an online anti-doping education course administered by his national anti-doping organisation. Therefore, the ITF has proposed, and the Player has acceded to, a period of ineligibility of 20 months.

28. Due to his prompt admission of his anti-doping rule violation, the Player is entitled to the benefit of TADP Article 10.10.3(b), such that his 20-month period of ineligibility will be deemed to have started running from 15 July 2019 (the date of collection of his Sample) and will expire at midnight on 14 March 2021.
29. During his period of ineligibility, the Player's status will be as set out under TADP Article 10.11, i.e., he may not play, coach or otherwise participate in any capacity in (i) any Covered Event; (ii) any other Event or Competition, or activity (other than authorised anti-doping education or rehabilitation programmes) authorised, organised or sanctioned by the ITF, the ATP, the WTA, any National Association or member of a National Association, or any Signatory, Signatory's member organisation, or club or member organisation of that Signatory's member organisation; (iii) any Event or Competition authorised or organised by any professional league or any international or national-level Event or Competition organisation; or (iv) any elite or national-level sporting activity funded by a governmental agency. Nor will he be given accreditation for or otherwise granted access to any Event referred to at points (i) and (ii). In accordance with TADP Article 10.11.1(b)(ii), the Player may use the facilities of a club or other member organisation of a Signatory's member organisation in the last two months of his period of ineligibility, i.e., from 15 January 2021 on.

### **III.B Disqualification of results**

30. The Player competed in numerous events between the date of his Sample collection (15 July 2019) and the date he accepted a voluntary provisional suspension (4 November 2019). Accordingly, the results obtained by the Player at the Event and all subsequent events prior to the date he accepted a voluntary provisional suspension are disqualified pursuant to TADP Articles 9.1 and 10.8, and the ranking points and prize money that he won at those events are forfeited in accordance with the same provisions. The Player is required to pay the forfeited prize money to the ITF by no later than 12 March 2021, as a condition of reinstatement following his period of ineligibility.

### **III.C Costs**

31. Each party shall bear its own costs of dealings with this matter.

### **III.D Publication**

32. In accordance with TADP Article 8.8.5, this decision will be publicly reported by being posted (in full and/or summary form) on the ITF's website.

### **III.E Acceptance by the Player**

33. The Player has accepted the consequences proposed above by the ITF for his anti-doping rule violation, and has expressly waived his right to have those consequences determined by the Independent Tribunal at a hearing.

### **IV. Rights of appeal**

34. This decision constitutes the final decision of the ITF, resolving this matter pursuant to TADP Article 8.1.4.
35. Further to TADP Article 12.2.1, each of WADA and the Kazakhstan National Anti-Doping Centre (**KAZ-NADC**) has a right to appeal against this decision to the CAS in Lausanne, Switzerland, in accordance with the procedure set out at TADP Article 12.6.
36. As part of this resolution of the matter, the Player has waived his right to appeal against or otherwise challenge any aspect of this decision (both as to the finding that the Player has committed an anti-doping rule violation and as to the imposition of the consequences set out above), whether pursuant to TADP Article 12.2.1 or otherwise. However, if an appeal is filed with the CAS against this decision either by WADA or KAZ-NADC, the Player will be entitled (if so advised) to exercise his right of cross-appeal in accordance with TADP Article 12.6.3.

London, 9 January 2020