



Arbitration CAS 2019/ADD/4 International Olympic Committee (IOC) v. Supatchanin Khamhaeng, award of 18 October 2019

Panel: Mrs Carol Roberts (Canada), Sole Arbitrator

Weightlifting

Doping (etiocolanolone)

Jurisdiction of the CAS Anti-Doping Division

Applicable law under the CAS ADD Rules

1. According to Article A2 paragraph 1 of the ADD Rules, CAS ADD shall be the first-instance authority to conduct proceedings and issue decisions when an alleged anti-doping rule violation has been filed with it and for imposition of any sanctions resulting from a finding that an anti-doping rule violation has occurred. CAS ADD has jurisdiction to rule as a first-instance authority on behalf of any sports entity which has formally delegated its powers to CAS ADD to conduct anti-doping proceedings and impose applicable sanctions.
2. Under Article A20 of the ADD Rules, CAS ADD panels shall decide a dispute in accordance primarily with the World Anti-Doping Code and with the applicable Anti-Doping Rules or with the laws of a particular jurisdiction chosen by agreement of the parties or, in the absence of such a choice, according to Swiss law.

I. PARTIES

1. The International Olympic Committee (the “IOC” or “Claimant”) is the world governing body of Olympic sport having its registered offices in Lausanne, Switzerland. The IOC is incorporated as an association pursuant to articles 60 *et seq.* of the Swiss Civil Code.
2. Mrs Supatchanin Khamhaeng (the “Athlete” or “Respondent”) is a Thai weightlifter and a team member of the National Olympic Committee of Thailand who participated in the Youth Olympic Games Buenos Aires 2018 (the “2018 Youth Olympics”).

II. FACTUAL BACKGROUND

3. Below is a summary of the relevant facts and allegations based on the written submissions and the evidence presented by the IOC in this procedure. As noted below, although the Athlete was properly notified of her opportunity to participate, she did not file an answer to the Request for Arbitration.

4. Additional facts and allegations found in the written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the IOC in the present proceedings, she only referred to the submissions and evidence necessary to explain her reasoning.
5. On 13 October 2018, the Athlete competed in the Girls +63 kg Weightlifting event at the 2018 Youth Olympics. The Athlete finished in first place (Gold Medal).
6. Following the event, the Athlete provided an in-competition urine sample (sample no. 4346444) as part of the Doping Control Program at the 2018 Youth Olympics (the “Sample”). The Sample was analysed at the World Anti-Doping Agency (“WADA”) accredited laboratory in Rio de Janeiro, Brazil (the “Rio de Janeiro Laboratory”).
7. Analysis of the Athlete’s A Sample revealed the presence of Etiocholanolone, 5 α Adiol and/or 5 β Adiol (exogenous origin), a Prohibited Substance belonging to Class S1.1b (Anabolic Androgenic Steroids) of the 2018 WADA Prohibited List.
8. According to Article 2.1 of the IOC Anti-Doping Rules applicable to the 2018 Youth Olympics (the “IOC ADR”), the presence of a Prohibited Substance or its Metabolites or Markers in the Athlete’s sample resulted in an adverse analytical finding (“AAF”).
9. On 3 May 2019, the Rio de Janeiro Laboratory notified the International Testing Agency (the “ITA”), who had been tasked by delegation from the IOC with the results management of any AAF arising out of samples collected at the 2018 Youth Olympics, of the Athlete’s AAF.
10. The ITA reviewed the AAF and confirmed *inter alia* that the Athlete did not possess a Therapeutic Use Exemption for the relevant substance and that no apparent departures from the International Standard for Testing and Investigations or the International Standard for Laboratories could undermine the validity of the AAF.
11. On 5 June 2019, the ITA notified the Athlete of the AAF and in accordance with Article 7.2.4 of the IOC ADR, charged the Athlete with an anti-doping rule violation (“ADRV”). The Athlete, by means of an “AAF Notification Appendix” (the “Appendix”), was then requested to state whether she accepted the AAF, or alternatively, whether she wanted to proceed with the opening of the B Sample and analysis, and receive the accompanying document package.
12. On the same date, 5 June 2019, the ITA reported the Athlete’s AAF to the National Olympic Committee of Thailand.
13. On 14 June 2019, the Athlete signed¹ and returned the Appendix whereby she accepted the AAF, declined the opening and analysis of the B Sample and also declined a copy of the laboratory documentation package.

¹ As the Athlete was a minor at the time of the AAF, the Appendix was signed by both the Athlete and her mother.

14. On 27 June 2019, the Athlete was provisionally suspended by the International Weightlifting Federation.
15. On 15 August 2019, the Athlete, vis-à-vis the National Olympic Committee of Thailand, returned a signed Voluntary Admission and Acceptance of Consequences Form to the ITA. The Voluntary Admission and Acceptance of Consequences Form provided, in relevant part, as follows:

In accordance with Article 7.7.1 of the IOC Anti-Doping Rules applicable to the Buenos Aires 2018 Summer Youth Olympic Games, I admit the violation, waive a hearing and the right to a written defence, and accept the disqualification of the results obtained at the 2018 Buenos Aires 2018 Summer Youth Olympic Games, including forfeiture of any medals, diplomas, points and prizes. I therefore consent to the issuing of a decision by the Anti-Doping Division of the Court of Arbitration for Sport in Lausanne confirming the commission of the Anti-Doping Rule Violation and imposing the above-mentioned consequences.

The present admission and acceptance cover only the presence of the Prohibited Substance and the above mentioned consequences pursuant to IOC Anti-Doping Rules. They are without prejudice to any issue or defence which I may have or raise in proceedings conducted under the IWF Anti-Doping Policy regarding aspects other or beyond the ones specifically mentioned. Such are expressly reserved.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

16. On 29 August 2019, the Claimant filed a Request for Arbitration with the Anti-Doping Division of the Court of Arbitration for Sport (the “ADD”) in accordance with Article A13 of the Arbitration Rules of the ADD (the “ADD Rules”).
17. In its Request for Arbitration, and in accordance with Article A16 of the ADD Rules, the Claimant requested that this procedure be referred to a Sole Arbitrator appointed by the President of the ADD.
18. On 4 September 2019, the ADD, on behalf of the President of the ADD, confirmed the appointment of Mrs Carol Roberts, Attorney-at-Law in Vancouver, Canada, as Sole Arbitrator in accordance with Article A16 of the ADD Rules.
19. On 1 October 2019, the ADD confirmed that the Respondent did not file an answer in accordance with Article A14 of the ADD Rules. In this same correspondence, the ADD, on behalf of the Sole Arbitrator, invited the parties to state, no later than 4 October 2019, whether they requested a hearing. A party’s silence would be considered confirmation that no hearing was needed.

20. On 7 October 2019, the ADD confirmed that no party requested a hearing, and on behalf of the Sole Arbitrator who had considered the entire file, informed the parties that she was sufficiently well informed to render a decision without a hearing.
21. On 9 and 10 October 2019, the Claimant and Respondent signed and returned the Order of Procedure.
22. On 11 October 2019, an email was filed by “*TAWA* [Thai Amateur Wrestling Association] *co-operation officer*” on behalf of the Respondent, which provided various documents concerning the results of the Respondent’s AAF.
23. On 16 October 2019, the Claimant confirmed that it had no objection to the admission of the Respondent’s 11 October 2019 submission of documents, but highlighted that the current proceedings relate only to the automatic disqualification of the Respondent’s results pursuant to the IOC Anti-Doping Rules applicable to the 2018 Summer Youth Olympic Games.

IV. SUBMISSIONS OF THE PARTIES

24. The IOC’s submissions, in essence, may be summarised as follows:
 - Etiocholanolone, 5 α Adiol and/or 5 β Adiol (exogenous origin), a Prohibited Substance, was found in the Athlete’s A Sample. This substance belongs to Class S1.1b (Anabolic Androgenic Steroids) of the 2018 and 2019 WADA Prohibited List.
 - The Athlete accepted the AAF in accordance with Article 7.7.1 of the IOC ADR and waived her right to the analysis of the B Sample.
 - In accordance with Article 2.1 of the IOC ADR, an ADRV is established when the presence of a Prohibited Substance or its Metabolites or Markers in the Athlete’s A Sample where, as is the case here, the Athlete waived the analysis of her B Sample and the B Sample is not analyzed.
 - Such presence constitutes an ADRV in accordance with Article 2.1 of the IOC ADR.
 - The Athlete has not provided any explanation to date as to the presence of the Prohibited Substance in her sample and the finding of these substances is consistent with the intentional use to improve sporting performance.
 - Under the IOC ADR, the consequences of an ADRV are limited to consequences in connection with the 2018 Youth Olympics. Therefore, the results obtained by the Athlete during the 2018 Youth Olympic Games (*i.e.* first place in the +63 kg event) shall automatically be disqualified, with all resulting consequences.
25. In its Request for Arbitration, the IOC requested the following relief:

The International Olympic Committee hereby respectfully asks the Court of Arbitration for Sport to rule that:

- 1) *The International Olympic Committee's request is admissible.*
 - 2) *Supatchanin Khamhaeng is found to have committed an anti-doping rule violation in accordance with the IOC Anti-Doping Rules.*
 - 3) *Supatchanin Khamhaeng's results from the 2018 Youth Olympics are disqualified and is ordered to return her gold medal, along with all other consequences, including forfeiture of any diplomas, points, and prizes.*
26. Although the Athlete did not file an answer, provide a defence or otherwise make any formal requests for relief, the Secretary General of the Thai Amateur Wrestling Association (“TAWA”) submitted a number of documents, apparently at the request, and on behalf of, the Athlete. The documents included test results for prohibited substances of a number of Weightlifting Athletes who competed in international competitions during the 2017-2018 season, including the Athlete, conducted by the Doping Control Agency of Thailand. The documents also included an investigation report into how the prohibited substances entered the Athlete’s system.
27. The IOC did not object to the admission of these documents, noting however that the current proceedings relate only to the automatic disqualification of the Athlete’s results pursuant to the IOC Anti-Doping Rules applicable to the 2018 Summer Youth Olympic Games.

V. JURISDICTION

28. Article A2 of the ADD Rules provides as follows:

CAS ADD shall be the first-instance authority to conduct proceedings and issue decisions when an alleged anti-doping rule violation has been filed with it and for imposition of any sanctions resulting from a finding that an anti-doping rule violation has occurred. CAS ADD has jurisdiction to rule as a first-instance authority on behalf of any sports entity which has formally delegated its powers to CAS ADD to conduct anti-doping proceedings and impose applicable sanctions.

These Rules apply whenever a case is filed with CAS ADD. Such filing may arise by reason of an arbitration clause in the Anti-Doping Rules of a sports entity, by contract or by specific agreement.

These Rules apply only to the resolution by first instance arbitration of alleged anti-doping rule violations filed with CAS ADD. They neither apply with respect to appeals against any other decision rendered by an entity referred to in this Article nor against any decision rendered by CAS ADD.

Decisions rendered by CAS ADD shall be applied and recognized in accordance with the WADC.

CAS ADD shall also have jurisdiction in case of alleged doping violations linked with any re-analysis of samples.

29. On 15 August 2019, the Athlete, vis-à-vis the National Olympic Committee of Thailand, returned a signed Arbitration Agreement to the ITA, which conferred jurisdiction on the ADD to decide this procedure.
30. No party has otherwise objected to the jurisdiction of the CAS ADD.
31. In consideration of the foregoing, the Sole Arbitrator confirms the jurisdiction of the ADD to decide this matter.

VI. APPLICABLE LAW

32. Article A20 of the ADD Rules provides as follows:

The Panel shall decide the dispute in accordance with the WADC and with the applicable ADR or with the laws of a particular jurisdiction chosen by agreement of the parties or, in the absence of such a choice, according to Swiss law.

33. The IOC ADR applicable to the 2018 Youth Olympics applies, without limitation, to all doping controls conducted during the event.
34. The Athlete participated in the 2018 Youth Olympics and in doing so, signed an eligibility form binding her to the IOC Anti-Doping Rules.
35. Separately, Article 17.5 of the IOC Anti-Doping Rules provide that the WADA Code (“WADC”) and International Standards for Testing and Investigations (“ISTI”) shall be considered integral parts of the IOC Anti-Doping Rules and shall prevail in case of a conflict. As a result, the IOC Anti-Doping Rules, WADC and ISTI are applicable.
36. No party objected to the application of the IOC ADR, the WADC or the ISTI.
37. The Sole Arbitrator, therefore, confirms that the IOC ADR, in conjunction with the WADC and the International Standard for Testing and Investigations, as provided for in the IOC ADR, applies to this procedure.

VII. MERITS

A. The Anti-Doping Rule Violation

38. As mentioned above, the Prohibited Substance belonging to Class S1.1b of the 2018 and 2019 IOC ADR Prohibited List (exogenous anabolic androgenic steroids) was found in the Athlete’s A Sample.

39. Sufficient proof of an anti-doping violation under Article 2.1.2 of IOC ADR is established by the presence of a Prohibited Substance or its metabolites or markers in an Athlete's Sample *"where the Athlete waives analysis of the B Sample and the B Sample is not analyzed"*.
40. The Athlete expressly accepted the AAF and waived her right to the analysis of the B Sample. She did not respond to any further invitations to participate in this process and did not otherwise defend herself against the allegations against her. While TAWA did submit documents regarding the presence of prohibited substances in the Athlete's system following what appears to be random testing conducted on behalf of the Sports Authority of Thailand, those documents are not relevant to this appeal. The issue before the Sole Arbitrator concerns the presence of prohibited substances in the Athlete's Sample following the 13 October 2018 Girls +63 kg Weightlifting event at the 2018 Youth Olympics.
41. The prohibited substances found in the Athlete's Sample are specifically used for doping purposes and are consistent with the intentional use of substances specifically ingested to deliberately improve performance. The absence of any explanation from the Athlete strengthens the inference of intentional use of doping substances.
42. Furthermore, the Athlete waived the B Sample analysis and accepted the ADRV in accordance with Article 7.7.1 of the IOC ADR.
43. Accordingly, the Sole Arbitrator finds that the Athlete committed an anti-doping rule violation under Article 2.1 of the IOC ADR.

B. The Applicable Sanction

44. Under the IOC ADR, the consequences of an ADRV are limited to consequences in connection with the 2018 Youth Olympics.
45. Article 9 of the IOC ADR provide that an ADRV in individual sports automatically leads to disqualification of the athlete's results in the competition in question, with all other resulting consequences, including forfeiture of any medals, diplomas, points and prizes.
46. Accordingly, the Athlete's results at the 2018 Youth Olympics are disqualified. The Athlete is directed to return her gold medal and to forfeit any diplomas, points and prizes awarded to her (if any).

VIII. COSTS

(...).

IX. APPEAL

50. Pursuant to Article A21 of the ADD Rules, this award may be appealed to the CAS Appeals Arbitration Division within 21 days from receipt of the notification of the final award with

reasons in accordance with Articles R47 *et seq.* of the Code of Sports-Related Arbitration, applicable to appeals procedures.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The request for arbitration filed by the International Olympic Committee on 29 August 2019 against Supatchanin Kamhaeng is upheld.
2. Supatchanin Kamhaeng committed an anti-doping rule violation in accordance with the International Olympic Committee's Anti-Doping Rules applicable to the 2018 Youth Olympics.
3. The results obtained by Supatchanin Kamhaeng at the 2018 Youth Olympics are disqualified. She is ordered to return her gold medal and, if applicable, forfeit any diplomas, points and prizes.
4. (...).
5. (...).
6. All other motions or prayers for relief are dismissed.