

INTERNATIONAL OLYMPIC COMMITTEE

DISCIPLINARY COMMISSION

DECISION

REGARDING OLEKSIY TOROKHTIY

**BORN ON 22 MAY 1986, UKRAINIAN FEDERATION, ATHLETE, WEIGHTLIFTING
(NATIONAL OLYMPIC COMMITTEE OF UKRAINE)**

In application of the Olympic Charter and, in particular, Rule 59.2.1 thereof, and the IOC Anti-Doping Rules applicable to the Games of the XXX Olympiad, London 2012 (the “**Rules**”) and, in particular, Articles 1,2, 6.3.3, 7, 8, and 9 thereof:

I. FACTS

1. Oleksiy TOROKHTIY (the “**Athlete**”), participated in the Games of the XXX Olympiad, London 2012 (the “**2012 Olympic Games**”) as a member of the team of the National Olympic Committee of Ukraine.
2. On 4 August 2012, the Athlete was requested to provide a urine sample for a doping control. Such sample was identified with number 2720952.
3. On the 6 August 2012, the Athlete competed in the Men’s 105kg Weightlifting event, in which he ranked 1st and was awarded the gold medal.
4. On 6 August 2012, the Athlete was requested to provide another urine sample for a doping control. Such sample was identified with the number 2718602.
5. The A-Sample 2720952 and A-Sample 2718602 were analysed during the 2012 Olympic Games by the WADA-accredited Laboratory in London. The analysis did not result in an adverse analytical finding at that time.
6. After the conclusion of the 2012 Olympic Games, all the samples collected upon the occasion of the 2012 Olympic Games were transferred to the WADA-accredited Laboratory in Lausanne, Switzerland (the “**Laboratory**”) for long-term storage.
7. The IOC decided to perform further analyses on samples collected during the 2012 Olympic Games. These additional analyses were notably conducted with improved analytical methods in order to possibly detect Prohibited Substances which could not be identified by the analysis performed at the time of the 2012 Olympic Games.
8. The IOC decided that the re-analysis process would be conducted as a regular A and B sample analysis, without resorting to a splitting of the B-Sample.
9. The remains of the A-Sample of both samples were analysed by the Laboratory and resulted in an Adverse Analytical Finding (“**AAF**”) as it showed the presence of Dehydrochloromethyltestosterone metabolites, a Prohibited Substance (Class S1.1a – Anabolic Androgenic Steroids).
10. The results were reported to the IOC in accordance with Art. 6.2.1 of the Rules.

11. Further to the verifications set forth in Art. 6.2.2 of the Rules and in application of Art. 6.2.3 of the Rules, the IOC President, Mr Thomas Bach, was informed of the existence of the AAF and the essential details available concerning the case.
12. Pursuant to Art. 7.2.4 of the Rules, the IOC President set up a Disciplinary Commission, consisting in this case of:
 - Prof. Denis Oswald, Chairman;
 - Mr. Juan Antonio Samaranch; and
 - Mr. Ingmar De Vos.
13. The IOC has delegated the implementation of the Doping Control program for the 2012 Olympic Games to the International Testing Agency (the “**ITA**”). Such delegation includes the conduct of re-analysis of the samples collected during the 2012 Olympic Games and the related results management.
14. On 17 December 2018, the ITA notified the Athlete, through the National Olympic Committee of Ukraine (the “**NOC**”), of the above-mentioned AAF and of the institution of disciplinary proceedings to be conducted by the Disciplinary Commission. By means of an Athlete Rights Form to be completed by the Athlete, the ITA informed the Athlete of his right to request the opening and analysis of the B-Sample and to attend this process, either in person and/or through a representative, and of his right to request a copy of the laboratory documentation package.
15. The Athlete was also given the possibility to refer the matter for adjudication before the Court of Arbitration for Sport in Lausanne, Switzerland, by means of an arbitration agreement.
16. On 17 December 2018, the ITA also notified the International Weightlifting Federation (the “**IWF**”).
17. On 2 January 2019, the Athlete completed the Athlete Rights Form. He declared that he did not accept the AAF and requested the opening and analysis of the B-Samples but that he would not be attending the opening and analysis of the B-Samples. Finally, the Athlete asked for a copy of the laboratory documentation packages.
18. On 10 January 2019, the ITA provided the Athlete with the Laboratory Documentation Packages for both A-Samples.
19. On 30 January 2019, the ITA informed the Athlete, NOC, and IWF that the B-Samples would be opened and analysed on 6 February 2019.
20. On 4 February 2019, the Athlete informed the ITA that a representative would be attending the opening of the B-Samples on his behalf.
21. On 6 February 2019, the B-Samples were opened and analysed at the Laboratory. The opening for both B-Samples was attended by the Athlete’s representative and an independent witness.
22. On 12 February 2019, the ITA provided the Athlete with the B-Sample Reports and requested the Athlete to confirm whether he wished to receive the B-Sample laboratory documentation packages for each of the B-Samples.

23. On 12 February 2019, the Athlete requested the B-Sample laboratory documentation packages.
24. On 1 March 2019, the ITA provided the Athlete with the B-Sample laboratory documentation packages.
25. On 26 August 2019, the Athlete through his legal counsel informed the ITA that the Athlete:
 - Does not dispute that the Prohibited Substance was found in his samples;
 - Accepts that he has committed an anti-doping rule violation pursuant to the Rules, specifically Presence of a Prohibited Substance within the meaning of Art.2.1 of the Code;
 - Accepts the consequences of the anti-doping rule violation, including that his results at the 2012 London Olympics be disqualified with all resulting consequences (including the withdrawal of the medals, diplomas, etc.); and
 - Renounces to have his case decided by the Court of Arbitration for Sport, and expressly accepts that the IOC Disciplinary Commission issues a decision in his case without a hearing.
26. On 23 September 2019, the ITA submitted its application to the Disciplinary Commission to issue its decision on the basis of the Athlete's admission and acceptance of the anti-doping rule violation.
27. On 9 October 2019, the Disciplinary Commission requested that the Athlete confirm the contents of its letter to the ITA of 26 August 2019.
28. On 23 October 2019, the Athlete through his legal counsel confirmed to the Disciplinary Commission the content of the letter of 26 August 2019.

II. APPLICABLE RULES

29. Art. 1 of the Rules provides as follows:

“Application of the Code – Definition of Doping – Breach of the Rules

 - 1.1 *The commission of an anti-doping rule violation is a breach of these Rules.*
 - 1.2 *Subject to the specific following provisions of the Rules below, the provisions of the Code and of the International Standards apply mutatis mutandis in relation to the London Olympic Games.”*
30. Art. 2 of the Rules provides that Article 2 of the Code applies to determine anti-doping rule violations.
31. Art. 2.1 of the Code provides that the following constitutes an anti-doping rule violation:

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

1.1.1 *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 violation under Article 2.1.*

1.1.2 *Sufficient proof of an anti-doping rule violation under Article 2.1 is established by either 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.*

1.1.3 *Excepting those substances for which a quantitative threshold is specifically identified in the Prohibited List, the presence of any quantity of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample shall constitute an anti-doping rule violation.*

1.1.4 *As an exception to the general rule of Article 2.1, the Prohibited List or International Standards may establish special criteria for the evaluation of Prohibited Substances that can also be produced endogenously."*

32. Art. 2.2 of the Code provides the following constitutes an anti-doping rule violation:

"Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method.

2.2.1 *It is each Athlete's personal duty to ensure that no Prohibited Substance enters his or her body. 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 for Use of a Prohibited Substance or a Prohibited Method.*

2.2.2 *The success or failure of the Use or Attempted Use of a Prohibited Substance or Prohibited Method is not material. It is sufficient that the Prohibited Substance or Prohibited Method was Used or Attempted to be Used for an anti-doping rule violation to be committed."*

33. Art. 6.3.3 of the Rules provides as follows:

"Notice to an Athlete or other Person who has been accredited pursuant to the request of the NOC, may be accomplished by delivery of the notice to the NOC. Notification to the Chef de Mission or the President or the Secretary General of the NOC of the Athlete or other Person shall be deemed to be delivery of notice to the NOC."

34. Art. 7.1 of the Rules provides as follows:

"A violation of these Rules in Individual Sports in connection with Doping Control automatically leads to Disqualification of the Athlete's results in the Competition in

question, with all other consequences, including forfeiture of any medals, points and prizes.”

35. Art. 8.1 of the Rules provides as follows:

“An anti-doping rule violation occurring or in connection with the London Olympic Games may lead to Disqualification of all the Athlete’s results obtained in the London Olympic Games with all consequences, including forfeiture of all medals, points and prizes, except as provided in Article 8.1.1.”

36. Art. 8.1.1 of the Rules provides as follows:

“If the Athlete establishes that he or she bears No Fault or Negligence for the violation, the Athlete’s results in the Competitions (for which the Athlete’s results have not been automatically Disqualified as per Article 7.1 hereof) shall not be Disqualified unless the Athlete’s results in Competitions other than the Competition in which the anti-doping rule violation occurred were likely to have been affected by the Athlete’s anti-doping rule violation.”

37. Art. 8.3 of the Rules provides as follows:

“The Consequences of Anti-Doping Rule Violations and the conduct of additional hearings as a consequence of hearings and decisions of the IOC, including with regard to the imposition of sanctions over and above those relating to the London Olympic Games, shall be managed by the relevant International Federation.”

III. DISCUSSION

38. The results of the analysis of the samples provided by the Athlete establish the presence in his sample of the metabolites of a Prohibited Substance, i.e. Dehydrochloromethyltestosterone metabolites.

39. The substance detected in the Athlete’s samples is an anabolic steroid. It is listed in the WADA 2012 Prohibited List and in all subsequent lists under S1.

40. The analysis of the B-Samples performed at the request of the Athlete and in the presence of his representative confirmed the results of the A-Samples, namely the presence of the metabolites of the Prohibited Substance (Dehydrochloromethyltestosterone).

41. In accordance with Art. 2.1 of the Code, an anti-doping rule violation is established when 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.

36. Based on the confirmed presence of a Prohibited Substance, the Athlete has thus to be found to have committed an anti-doping rule violation pursuant to Art. 2.1 of the Code consisting of the presence of a Prohibited Substance in his body.

37. Moreover, the Athlete does not dispute that the Prohibited Substance was found in his samples, accepts that he has committed an anti-doping rule violation pursuant to the Rules, and accepts the consequences of the anti-doping rule violation in connection with the Olympic Games, including in particular that his results at the

- 2012 London Olympics be disqualified with all resulting consequences (including the withdrawal of the medals, diplomas, etc.).
38. Under the Rules, the applicable consequences of the anti-doping rule violation specifically relate to the 2012 Olympic Games.
 39. In application of the Rules and in particular Art. 7.1, the 1st place result achieved by the Athlete in the Men's 105kg Weightlifting event during the 2012 Olympic Games shall be annulled, with all resulting consequences.
 40. The Athlete must further hand back the gold medal, diploma, and pin he received.
 41. In view of the above and of the fact that all consequences possible under the Rules are thus applied, the Commission does not need to make further determinations in respect of further circumstances of this case.
 42. In application of Art. 8.3 of the Rules, the further consequences of the anti-doping rule violations, and in particular the imposition of sanctions over and above those related to the 2012 Olympic Games, shall be managed by the IWF.

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CONSIDERING the above, pursuant to the Olympic Charter and, in particular, Rule 59.2.1 thereof, and pursuant to the IOC Anti-Doping Rules applicable to the Games of the XXX Olympiad in London in 2012 and, in particular, Articles 1, 2, 6.3.3, 7, 8, and 9 thereof

THE DISCIPLINARY COMMISSION OF THE
INTERNATIONAL OLYMPIC COMMITTEE
DECIDES

- I. The Athlete, Oleksiy Torokhtiy:
 - i) is found to have committed an anti-doping rule violation pursuant to the IOC Anti-Doping Rules applicable to the Games of the XXX Olympiad in London in 2012 (presence of Prohibited Substances or their Metabolites or Markers in the Athlete's bodily specimen),
 - ii) is disqualified from the events in which he participated upon the occasion of the 2012 Olympic Games, namely, the Men's 105kg Weightlifting event, and
 - iii) has the medal, diploma, and pin obtained in the Men's 105kg Weightlifting event withdrawn and is ordered to return them.
- II. The IWF is requested to modify the results of the above-mentioned event accordingly and to consider any further action within its own competence.
- III. The National Olympic Committee of Ukraine shall ensure full implementation of this decision.
- IV. The decision enters into force immediately.

Lausanne, 5 November 2019

In the name of the IOC Disciplinary Commission

Prof. Denis Oswald

Ingmar De Vos

Juan Antonio Samaranch