



**Disciplinary Anti-doping Commission
NATIONAL ANTI-DOPING CENTRE**

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January 10, 2023

Kyiv, Ukraine

**Disciplinary Anti-Doping Commission
of the National Anti-Doping Center
consisting of: head of the panel - M.P. Kostenko, members of the panel - D.V.
Zadorozhnii, O.P. Varvinsky**

DECISION

in case No. 21-1034228 Gaponenko Dmytro (athlete)

on violation of **Art. 2.1** "Presence of a Prohibited Substance or its Metabolites or Markers in any Sample taken from an Athlete" and **Art. 2.2.** "Using or attempting to use a prohibited substance or prohibited method."

1. Parties:

1.1. NADC is the national anti-doping organization of Ukraine. The NADC office is located in Kyiv, Ukraine.

1.2. Athlete - Dmytro Gaponenko, born on October 12, 1997, sport - Underwater Sports | Finswimming Pool, postal address: 50-527, Wrocław, str. Directorate, building 1, apartment 617, by e-mail - sharks.team.g@gmail.com, tigr4527@gmail.com - case No. A 1034228.

2. Factual Background and Evidence:

2.1. On May 7, 2022, the athlete was tested during the competitive period, urine sample number A 1034228.

2.2. The analysis of the sample was carried out in a laboratory in Warsaw (Poland), accredited by the World Anti-Doping Agency. According to the laboratory result of the analysis posted in the ADAMS system, sample A 1034228 showed an unfavorable result of the analysis for the presence of **Methylenedioxymethamphetamine** is included in the Prohibited List of WADA 2022 in group S6. "Stimulants". Methylenedioxymethamphetamine is a substance of abuse within the meaning of Article 4.2.3 of the World Anti-Doping Code in accordance with the WADA Prohibited List 2022. **Methylenedioxymethamphetamine, MDMA (3,4-methylenedioxy-N- methamphetamine)** is a semi-synthetic psychoactive compound of the amphetamine series belonging to the group of phenylethylamines, commonly known by the slang name "ecstasy".

2.3. The NADC's initial verification in accordance with the NADC Anti-Doping Rules (hereinafter referred to as the NADC ADR) and the international standard of the results management established that the Athlete does not have a valid Therapeutic Use Exemption for this substance and that there were no deviations from the International Standard for Laboratories (hereinafter referred to as the ISL) and the International Standard for Testing and Investigations (hereinafter referred to as the International Standard for Testing and Investigations) that caused an unfavorable result of the analysis.

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2.4. On 02.09.2022, NADC informed the athlete about the Adverse analytical finding and offered to submit a request to receive a laboratory package of documents regarding sample A, to submit a request for analysis of sample B by 22.09.2022, and to provide a written explanation regarding the adverse analytical finding of the analysis of sample A by 22.09.2022.

2.5. **On September 21, 2022, the** athlete provided written explanations regarding the entry of a prohibited substance into his body. According to the given explanations, he does not know the source of the prohibited substance in his body and the reasons for the negative test result, but he admits that during the party a week before the competition, the prohibited substance could have entered his body because he consumed a lot of alcohol. In addition, the athlete noted that he took part in competitions outside the competition and did not fight for prize places. In addition, he had to provide a photo of the drugs, the use of which he declared in the doping control report. After studying the provided documents, NADC did not find in the composition of the drugs the prohibited substances that could affect the test results. Also, the athlete did not admit the use of a prohibited substance and, accordingly, did not prove the use in the non-competitive period and the lack of influence on the result of the competition.

2.6. **On 06.12.2022,** NADC sent a notification to the athlete about the Notice of charge of articles 2.1. and 2.2. ADR, and proposed to accept a sanction in the form of a 2-year suspension, provided that the anti-doping rule violation is immediately recognized by **December 26, 2022**. In addition, NADC reported that the athlete can agree to the proposed sanction or object and provide his objections until **December 26, 2022**. The athlete did not sign the consent to voluntary temporary suspension, although he noted that he was **suspended by the Federation of Underwater Sports and Underwater Activities of Ukraine**.

2.7. **On December 24, 2022, the** athlete requested a hearing of his case by the NADC Disciplinary Anti-Doping Commission.

2.8. By the order of the head of the DAC dated **January 3, 2023 No. 35**, a hearing panel was appointed for the hearing and consideration of case **No. 21-1034228**, consisting of: the head of the panel - M.P. Kostenko, members of the panel - D.V. Zadorozhnii, O.P. Varvinskyi. The athlete provided confirmation of personal presence in the video conference mode, declared the presence of a witness.

3. Consideration and hearing of the case on the merits after processing by NADC:

3.1. In accordance with the Regulations on the Disciplinary Anti-Doping Commission of the National Anti-Doping Center is an independent disciplinary body, which is established by the NADC and acts in accordance with the Regulations on the Disciplinary Anti-Doping Commission in order to ensure compliance with the right to an impartial hearing of any person accused of violating anti-doping rules. In the course of the hearings, the DAC must determine whether such a violation has occurred and make a decision on the consequences of its commission.

3.2. In accordance with the Regulations on the DAC NADC acts fairly and impartially towards all parties to the case at all stages of the DAC review.

3.3. The DAC evaluates the evidence in the case according to its internal conviction, which is based on its direct, comprehensive, complete and objective investigation. No evidence has a predetermined force for the DAC. The DAC evaluates **BOTH** the propriety, admissibility, and reliability of each piece of evidence separately, **AND** the sufficiency and interrelationship of the pieces of evidence as a whole.

3.4. On 10.01.2023, the DAC, consisting of: chairman of the panel - M.P. Kostenko, members of the panel - D.V. Zadorozhnii, O.P. Varvinskyi, considered this case No. 21-1034228 and held a hearing using modern means of communication using Zoom, during which the Athlete and the declared witness and NADC were present. The Athlete's identity was established by the passport of a citizen of Ukraine, which was provided by the Athlete to the NADC, the witness provided the passport to confirm his identity.

3.6. During the hearing DAK NADC the athlete:

3.6.1. During the hearing of the DAC NADC, the **athlete** confirmed that he understood his rights and duties, proved the composition of the panel, did not express objections to the chairman

and the composition of the commission. It has been proven and understood to the athlete that the hearing of this case will be video recorded during the meeting. The athlete confirmed that he is familiar with the Anti-Doping Rules of the NADC, as well as with regard to holding seminars and clarifications on them; on cooperation with NADC and forwarding in 2022-2023 explanations, written information and other evidence contained in the case materials.

3.6.2. Regarding the presence of **Methylenedioxymethamphetamine** on the WADA Prohibited List 2022 in a group **S6. "Stimulants"** of the 2022 WADA Prohibited List, the athlete explained the following: "... I am Dmytro Gaponenko. At the end of 2021 - at the beginning of 2022, I finished my sports career. Ended his sports career due to health problems. After the start of the war, I was offered to go to the competition. My witness Delova Iryna Oleksandrivna can tell me more. After leaving for the competition, I trained in Poland alone, without a coach. When I was offered to perform at the Polish competition, I refused, because there was no sense, a competition outside the competition. I played for a Polish club, but my coaches were against it. The (polish) coach insisted on participating, because I train with them (in the Polish base)."

3.6.3. The witness of the athlete present at the meeting said: "... Dmytro Gaponenko wrote a statement to the President of the Federation on January 1, 2022 about the end of his sports career. The day before, he fulfilled the standard of master of sports of the international class. The war began. This year was the year of the World Games. The guys who were supposed to perform in the relay, who were selected and declared for the World Games, could not take part in the training of the national team. The federation appealed to the international federation with a request that Ukraine not speak. But since the international federation was managed at that time by a representative of Russia, she did not allow it, threatening a fine. We had to look for those who can perform, we found Dmytro Gaponenko, who ended his career. Dmytro agreed to join the relay team; he was included in the national team. Then they offered to take part in the meeting of the national team in Lithuania. Gaponenko left for Poland, remained there without the supervision of his coach, under the supervision of a Polish coach. It was our mistake. Gaponenko agreed to perform, although his coach was against it. He performed outside the competition and had no benefit or interest in doping. Today, he is not on the list of the national team of Ukraine."

3.6.4. The athlete, to the questions of the members of the SAC, provided answers, explanations and appealed to the members of the SAC collegium with a request to carefully consider all the evidence and explanations of the witness, which he provided in order to make a balanced decision on the case, and expressed a request that his case not be disclosed.

4. Finding out the facts and providing an assessment of the evidence in the case

4.1. Having familiarized and comprehensively studied the available documentary materials of case No. 21-1034228, and the evidence provided by the Athlete during the hearings, as well as considering the provided written and oral testimony of the witness, the DAC notes.

4.2. This admitted violation of ADR is the first for the Athlete. This case concerns a substance of abuse prohibited in competition. In accordance with Art. 10.2.2 ADR, the consequences to be applied to the Athlete shall be a period of Ineligibility of 2 years.

4.3. The athlete accepted the doping control procedure without comments or objections, which is confirmed by his signature on the Doping Control Protocol dated May 7, 2022.

4.4. In this case the athlete cooperated with NADC: provided explanations within the specified time limits regarding the adequate understanding of the entry of a prohibited substance into his body. It is worth noting that during the meeting of the DAC NADC, the Athlete's explanation was carefully investigated, namely regarding the way the prohibited substance entered his body: the drug and the method of application. To all questions of the commission, the answers of the Athletes were reliable and convincing.

4.7. The DAC, having analyzed the Athlete's answers to the questions raised during the DAC hearing, comes to the conclusion on the balance of probabilities that the Athlete was unable to prove with evidence how exactly the prohibited substance got into his body, he only made an assumption about the way it got into his body.

4.8. All materials available in the case provide an opportunity to make an objective decision on the case.

5. Grounds and justification of the applied sanction:

5.1. In order to make an objective decision on the case, the SAC applies the Anti-Doping Rules of the NADC, taking into account the principles of legality, objectivity and justice.

5.2. This case concerns a substance of abuse prohibited in competition. In accordance with Art. 10.2.2 ADR, the consequences to be applied to the Athlete shall be a period of Ineligibility of 2 years.

5.3. Articles 10.2.4 and 10.2.4.1 of the NADC ADR provide that an athlete may avoid the application of the 2-year period of Ineligibility by proving that any use took place during the non-competitive period and was not related to the improvement of athletic performance, then the period suspension may be three months. In this case, the athlete insisted that he performed at competitions outside the competition, at the request of the coach of the club where he is currently training, and that he ended his career as an athlete on January 1, 2022, about which he wrote a corresponding appeal to the underwater swimming federation. To the question about the substance of abuse entering the body, the athlete could not answer confidently, but only suggested that the substance had entered the body a week before the competition, but did not provide any evidence of the use of the substance of abuse in the non-competition period.

5.4. In this case, when the matter concerns a substance of abuse, in order for the suspension period to be shortened or canceled, based on the athlete's admission of substance use during the non-competitive period in accordance with Article 10.2.4.1. As stated in the normative definitions of these concepts, the prerequisite for their possible application is the establishment of the fact, or the athlete's confession, how exactly the prohibited substance entered the body. The obligation to establish on the balance of probabilities the source of concurrence of an adverse result rests with the Athlete, not with the Anti-Doping Organization or other persons. The athlete must do this with evidence and cooperation.

5.5. Taking into account the documentary materials and evidence, as well as the Athlete's explanations and answers to the questions raised during the hearings, the DAC came to the conclusion that the Athlete was unable to prove to the DAC how exactly the prohibited substance got into his body. All the athlete's evidence was not concrete and superficial and contained only assumptions.

The DAC considers it possible to recognize that this case does not fall under the category of minor Fault and Negligence (Article 10.6 of the ADR NADC).

6. Decision

6.1. This admitted violation of ADR is the first for the Athlete. This case concerns a substance of abuse prohibited in competition. In accordance with Art. 10.2.2 ADR, the consequences to be applied to the Athlete shall be a period of Ineligibility of 2 years.

6.2. According to Article 10.2.4. and 10.2.4.1 of the NADC ADR provides that an athlete can avoid the application of the 2-year Ineligibility period by proving that a prohibited substance entered the athlete's body during the out-of-competition period by specifying the specific date and method of entry. In this case, a period of Suspension of up to three months will be applied. In this case, the athlete did not provide any evidence as to how exactly the prohibited substance got into his body. All the athlete's evidence was not specific and superficial and contained only assumptions, which in turn do not fall under the above-mentioned articles of the ADR NADC.

6.3. According to the decision of the members of the panel, the athlete was unable to prove how, in what period and in what method the prohibited substance entered his body, and the explanations given to them and the testimony of the witness could not convince the panel at the DAC to apply Article 10.2.4 and 10.2. 4.1 ADR NADC. In addition, this case does not fall under the category of slight Fault and Negligence (Article 10.6 of the ADR NADC).

6.4. Having familiarize themselves with and comprehensively studied the available documentary materials of case No. 21-1034228, as well as the oral and written explanations, justifications and witness statements provided by the Athlete during the hearings, the members of the DAC panel unanimously decided to apply to the athlete **Dmytro Gaponenko, born on October 12, 1997, suspended for a period of 2 years from the moment of the decision on the case.**

6.5. The Athlete is ineligible to partake in any sport activity for a period of 2 years from January 10, 2023 to January 9, 2025.

6.6. In accordance with Art. 10.8 ADR NADC, the results achieved by the Athlete in sports competitions, starting from the date of sample collection (i.e., May 7, 2022) and until the decision on case No. 21-1034228 (i.e., January 10, 2023) must be annulled, including deprivation medals, prizes and points.

6.7. In accordance with Art. 14.3.2 ADR NADC information about the Athlete's identity (name, surname, type of sport), the anti-doping rule violated, the prohibited substance used, the sanction applied will be publicly disclosed on the official website of the NADC.

6.8. The right to appeal this decision is granted to all interested persons in accordance with Art. 13. Anti-doping rules of NADC.

Head of the DAC panel /Signature/ **Mykola KOSTENKO**

Member of the DAC panel /Signature/ **Oleksandr VARVINSKY**

Member of the DAC panel /Signature/ **Dmytro ZADOROZHNIY**

The full text of the decision was prepared on January 13, 2023.

Copy:

- 1) Underwater Swimming Federation of Ukraine,
- 2) International Swimming Federation,
- 3) Ministry of Youth and Sports of Ukraine,
- 4) WADA, Department of Results Management

Certified
Chief of result management department NADC
Kateryna Koval

