

**At the Headquarters of the Malta Sports Council,
Cottonera Sports Complex, Cospicua.**

Decision of the National Anti-Doping Disciplinary Panel.

Case Ref: NADDP 07/2016

Anti-Doping Commission (Malta)

-vs-

Ishmael Grech (ID No. 491891M)

This is the decision of the National Anti-Doping Disciplinary Panel (hereinafter referred to as the "Panel"), in the case brought against Mr Ishmael Grech.

The Panel, is composed solely of Dr. Maria Azzopardi as Chairperson. Both parties to the case declared that they have no objection that the case is heard and decided solely by the Chairperson.

The Chairperson declared that she is not subject to any circumstance or conflict that can have a negative impact on her impartiality in this case.

Considered the Request (Ref No: 1TSTISHGRE-16/12) made by the National Anti-Doping Commission on the 26th April 2016 (Doc 15a) to the Chairperson of the Panel to appoint a sitting for the hearing of a case concerning an alleged breach of the Anti-Doping Regulations, L.N. 17 of 2015 of the Laws of Malta by football player Ishmael Grech specifically related to a positive test resulting on the 20th March 2016 in which Ishmael Grech resulted positive for cocaine metabolite benzoylecgonine, classed as stimulant according to the 2016 List of Prohibited Substances.

Took note and reviewed all the documents that were forwarded to the 'Panel' by the Chairperson, Anti-Doping Commission, including principally the following:

- i) Request to the 'Panel' to schedule an anti-doping disciplinary hearing dated 26th April, 2016 (Doc 15a);
- ii) Doping Control Officer Report Form dated 20th March 2016 (Doc 1 - 5);
- iii) Chain of Custody Form dated 20th March 2016 (Doc 6);
- iv) Test report (Doc 8 & 7)
- v) Initial Review by NADO regarding Adverse Analytical Finding (Doc 9);

vi) Report of Adverse Analytical Finding (Doc 11a)

vii) Letter of Notification of Adverse Analytical Finding to Ishmael Grech, Letter by NADO Requesting for Action by the MFA following an Adverse Analytical Finding and MFA to Ishmael Grech notifying him with a temporarily suspension and 10a, 13a & 13b);

viii) Letter of Acceptance of the Provisional Suspension (Doc 16);

Took note of the Notification of hearing issued by the Chairperson of the National Anti-Doping Disciplinary Panel to Ishmael Grech, for him to appear before the 'Panel' on the 7th July, 2016 (Doc 17) copy of which had also been forwarded to the Anti-Doping Commission, the Malta Football Association and the Malta Sports Council.

The notification also served to inform the athlete of his rights, as stipulated by Article 9 of the Anti-Doping Regulations of 2015 (Legal Notice no. 17 of 2015), and more specifically: -

His right to assistance or legal representation by a lawyer;

His right to answer regarding the alleged breaching of Anti-Doping Regulations;

His right to present evidence, including the right to summon witnesses and examine said witnesses;

Preliminaries

In the case under review Ishmael Grech, a registered football player with the Malta Football Association was asked to provide a urine sample 'in-competition' immediately after the football match on the 20th of March, 2016.

According to the procedures the 'Doping Control Form' and the 'Chain of Custody Form' were completed. On the 20th of March 2016 the two urine samples were sealed in two containers marked 'A' and 'B'.

The urine samples were sent to a WADA accredited laboratory at the Sport University Cologne, Germany. On the 21st of April, 2016 this laboratory issued its analysis report whereby it declared, *inter alia*, that the analysis of the sample identified an Adverse Analytical Finding consistent of Stimulants/ cocaine metabolite benzoylecgonine.

According to the 2016 Prohibited List as published by WADA Cocaine is considered as one of the 'in-competition' prohibited substances, and in fact cocaine is specifically mentioned under the paragraph containing the list of the (prohibited) Non-Specific Stimulants.

On the 22nd of April, 2016 Ishmael Grech was informed that a prohibited substance was detected in the urine sample that was collected from him on the 20th of March 2016. Mr Grech was also given a Report of Adverse Analytical Finding in which it was stated that benzoylecgonine (cocaine metabolite) was identified in his urine sample according to

the laboratory analysis report. Mr Grech was informed that the presence of such substance was in violation of the WADA Code and LN 17 of 2015 of the Laws of Malta.

Merits

An oral hearing in respect of the charge took place in Tal-Qroqq on 7th of July, 2016. During the sitting the athlete admitted to the charge brought against him and wished to explain the circumstances of the case how the substance entered his body. Furthermore, the parties declared that there was a preliminary informal meeting between them whereby the Commission was pleased with the cooperation of the athlete and informed the Panel that the circumstances of the case merited a reduction from the four (4) year ban since the explanation given by the athlete convinced them that the taking of the substance was not accompanied by an intention to enhance performance.

During the sitting the athlete confirmed that the substance was taken two days before the match during the night St Patrick's Day. He was out for drinks with his friends and after consuming alcohol in quite some amounts he met a young lady who took him to the toilets and offered him cocaine. He refused to sniff the cocaine but instead he had put it in his drink and drank it. He claimed that this was his first time and he just wanted to have fun with the young lady and did not think about the consequences that such action could bring let alone about its impact on the game that he had the following Sunday. He reiterated that he took the substance without any intention to enhance his performance but out of curiosity and because he got carried away by the events of the night.

The Anti Doping Commission after having heard the declaration of the athlete and taking into consideration his cooperation is of the opinion that the ban should be a two year ban.

On the other hand, the athlete humbly requested that a one-year ban would be considered.

Considerations

The substance found in the athlete's urine sample, namely 'Cocaine', is considered a Non-Specified Substance and thus the applicable article regulating this anti-doping violation is that envisaged under Article 3 (2) (a) of L.N. 17 of 2015 of the Laws of Malta whilst the applicable sanction is that under Article 11 (2) (a) of L.N. 17 of 2015 of the Laws of Malta.

However, Article 11 (2) (a) contemplates a potential reduction or suspension from a 4-year ban in case the athlete can establish to the satisfaction of the Panel that the anti-doping rule violation was not intentional.

When taking into consideration the circumstances of the case, the explanation provided by the athlete, the submissions of the Anti-Doping Commission and the fact that this is the first violation of the athlete, the Panel believes the version of events of the athlete and that there was no intention to take the substance as performance enhancement and therefore there was no intention to cheat. The Panel believes that in this case, there are the necessary criteria to apply a reduction from the 4-year ban established under Article 11 (2) (a). Moreover, the Panel considers that the suspension shall take effect from the Note of acceptance filed by the athlete but since this has no date the Panel shall take the 29th of April, 2016 as the effective date of acceptance of the provisional suspension.

The Decision

On the basis of the foregoing, the National Anti-Doping Disciplinary Panel decides this anti-doping case brought by the National Anti-Doping Commission against the athlete Mr Ishmael Grech by finding:

That Ishmael Grech has breached the Anti-Doping Regulations, L.N. 17 of 2015 Art 3(2) (a) and the WADA Code Art 2.1 as the prohibited substance 'cocaine' or its metabolites had been found in Ishmael Grech's urine sample A that had been collected from him on the 20th March, 2016.

And therefore the National Anti-Doping Disciplinary Panel as provided by the Anti-Doping Regulations, L.N. 17 of 2015 Art 11(2) and the WADA Code Art 10.2 is imposing on the athlete Ishmael Grech a suspension of ineligibility from any sports activities for a period of one (1) year and three (3) months commencing from the date of his provisional suspension being the 29th of April, 2016.



Dr Maria Azzopardi B.A. LL.D. LL.M (Sports Law)
Chairperson

This 27th day of July, 2016.

At Cospicua, Malta