

## Translation of the Decision

**30 March 2017**

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The aforementioned, discovered substance, SIBUTRAMINE, was at the time of the facts legally defined as a prohibited substance on the list of prohibited substances, established by the Ministerial Decree of 26 November 2016, published in the BS of 7 December 2015 and taking its effect from the 1st of January 2016; it concerns a specified stimulator, prohibited in competition (article 1, § 4, 1°, b), 63).

And still now, this substance is mentioned in the current list of prohibited substances and methods 2016 (Ministerial Decree of 8 December 2016, establishing the prohibited list as mentioned in article 7 of the Government of Flanders Decree of 13 February 2015, implementing the Anti-Doping Parliament Act of 25 May 2012 and in force for the year 2017, as a specified stimulator, prohibited in competition (article 1, § 4, 1°, b), 64); this was announced to the non-elite athlete during the hearing of 17 February 2017, and for this he was given the right to defend himself.

The defence of the non-elite athlete in his appeal that: “probable anomalies inherent to a certain laboratory (for example calibration) can never arise, as both the A and B sample were tested in the same laboratory”, is aimless and not acceptable.

During the session of the disciplinary commission the non-elite athlete, supported by his counsellor, acknowledged the analysis; this is notified in the contested decision.

Moreover does the non-elite athletes not reveal any shortcomings concerning the performed analysis; the laboratory, that performed both the analysis (A and B) has been accredited to do so, and nothing points to shortcomings, likely to judge the analysis results as incorrect or untrustworthy; even the sample collection was proven right by the non-athlete, as is mentioned on the doping control form (OK on behalf of the athlete has been written down); even so was he invited to attend the performance of the B-sample by the same laboratory as was requested by himself (email of 9 August 2016: “may I politely request you to perform the analysis of the B-sample...”).

Finally it seems that the non-elite athlete, while the appeal was pending, made known through his counsellor that he found out the reason for the contamination; this makes us see, regardless of the eventual cause, (of which more details later on) that the non-elite athlete now accepts that the particular sample, coming from his body, was indeed contaminated with the prohibited substance; the analysis, supported by NADO Flanders can no longer be disproved; and, as a matter of fact, the non-elite athlete, in his final conclusion for the disciplinary council, does no longer protest it.

As far as the non-elite athlete asserts that the disciplinary commission erroneously laid the burden of prove on him and thus breached the presumption of innocence, misinterpreted his means of defence concerning the intentionality of the violation and unjustly didn't motivate the degree of culpability, it is now the disciplinary council, who has to judge to the merit, based on new investigations and considerations.

Having regard to what is mentioned sub (3) is certain and it is no longer arguable that the violation of which the non-athlete has been found guilty has been proven; in a urine sample, from his body and collected

conform the applicable anti-doping rules during a sport event (meaning in competition) and analysed conform the applicable anti-doping rules, the presence of aforementioned substance was found.

The doping practice has been proven and is no longer arguable.

The disciplinary counsel accepts that the prohibited substance entered the body of the non-elite athlete due to taking, out of competition, the dietary supplement "Perfect Shape";

The documents in the file, among which particularly the analysis report of 2 February 2017 from both the professors Maudens and Neels from the University of Antwerp, show that aforementioned product contains among others, the prohibited substance sibutramine.

(according to this report one capsule of "Perfect Shape" contains about 15,5 sibutramine).

The product was provided to him by his trainer Dino Spencer as part of a particular diet; the plastic box, which contains the capsules doesn't mention the presence of the prohibited substance, while it does lists up other substances.

As the doping rule violation is due to a specified substance and it is made clear this substance was used out of competition, the burden of prove of the intentional character lies with NADO Flanders;

Other than the Disciplinary Commission, the Disciplinary Council does except that this fact has not been proven; it hasn't been proven that the non-elite athlete intentionally wanted to cheat nor that he engaged in conduct which he 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;

As it is not refuted in the case of this non-elite athlete, that it concerns a first violation, article 42,§1,1° of the Anti-Doping Act is applicable;

However, the disciplinary counsel cannot align with the athletes defence that no fault or negligence could be imposed on him.

Every athlete is supposed to be cautious about possible contamination of dietary supplements and every athlete is responsible for his own entourage (meaning a trainer or other support personnel) Moreover is he responsible for what he takes in; consequently is it not acceptable that no fault or negligence can be imposed on him.

His statement, as should this particular product being authorized by the F.D.A. (Food and Drug Administration) and not being mentioned on the list of contaminated/false nutritional supplements, is not acceptable.

On the information wrapper of the particular container (page 6 of the brought forth report U.A. Antwerp) is clearly mentioned: "the statement on this label has not been evaluated by the Food and Drug Administrator" while, in the introductory phrase of the list, as brought forth by the athlete (under piece 5), is mentioned "this list includes a small fraction of the potentially products with hidden ingredients..."; the particular product was clearly not authorized by the F.D.A. and the specific list mentions only a fraction of the commercially available products, and which probably contain hidden ingredients; it is clear that this list is not comprehensive.

The disciplinary counsel though does except that no significant guilt or negligence can be imposed on the non-elite athlete as the product was recommended to him by his trainer and the product wasn't labelled with any specific information concerning its real contents.

The aforementioned information, and the fact that the non-elite athlete declares that he studied biology and physical education and that he is an international businessman , indicates that he has the intellectual capacities to take his own decisions and to form his own opinion; therefore the disciplinary counsel rules that there is an individually guilt concerning this doping rule violation.

Taken these facts into consideration, the disciplinary council rules the non-elite athletes degree of fault thus that, applying article 42,§5,2° of the Anti-Doping Parliament Act, the legally applicable ineligibility period of two years has to be reduced to a period of eighteen months; a mere reprimand for that purpose is absolutely insufficient; the fact that the non-elite athlete didn't mention that he used the particular substance on the doping control form is hereby taken into consideration.

The ineligibility period has to take its effect on the 6 December 2016 as properly decided by the disciplinary commission.