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INTERNATIONAL TENNIS FEDERATION

INDEPENDENT ANTI-DOPING TRIBUNAL

DECISION IN THE CASE OF SESIL KARATANTCHEVA

Tim Kerr QC, Chairman

Dr Anik Sax

Professor Vivian James

Introduction

1. This is the decision of the independent Anti-Doping Tribunal (“the Tribunal”) appointed by the Anti-Doping Administrator of the International Tennis Federation (“the ITF”) under Article K.1.1 of the ITF Tennis Anti-Doping Programme 2005 (“the Programme”) to determine charges brought against Miss Sesil Karatantcheva (“the player”) following:
 - (1) a positive drug test result in respect of a urine sample no. 388888 provided by the player on 31 May 2005 at the French Open, Roland-Garros, Paris (“the Paris sample”; “the Paris test”); and
 - (2) a further positive drug test result in respect of a urine sample no. 919024 provided by the player out of competition in Tokyo on 5 July 2005 (“the Tokyo sample”; “the Tokyo test”).
2. The player was represented at the hearing on 14 and 15 December 2005 by Mr Nicholas de Marco, counsel instructed by Max Bitel, Greene, solicitors. The ITF was represented by Mr Jonathan Taylor of Hammonds, the ITF’s solicitors

in London. Both the advocates gave invaluable assistance to the Tribunal with submissions of high quality for which the Tribunal is very grateful.

3. The player did not dispute the presence in her body of 19-norandrosterone, a metabolite of nandrolone and a prohibited substance, in a concentration above the reporting threshold of 2 ng/ml. For the sake of simplicity, references below to “nandrolone” may include, where the context so requires, references to 19-norandrosterone. The concentration was found to be in the range 11.6-12.6 ng/ml in the case of the Paris sample and in the range 15.0-17.6 ng/ml in the case of the Tokyo sample.
4. The player asserted that the ITF lacks jurisdiction over the matter; that the tests were unlawfully administered; that the Programme does not apply to the player because she is a minor and did not agree to be tested; that the tests were conducted in material breach of the International Standard for Testing, which forms part of the Programme; and that the nandrolone found in the player’s body in the case of both tests occurred naturally [REDACTED].
5. By Article S.3 of the Programme, the proceedings before the Tribunal are governed by English law, subject to Article S.1, which requires the Tribunal to interpret the Programme in a manner that is consistent with applicable provisions of the World Anti-Doping Code (“the Code”). Article S.1 further provides that the comments annotating various provisions of the Code may, where applicable, assist in the understanding and interpretation of the Programme.

The Facts

6. The player was born on 8 August 1989 is therefore now aged 16. At the time of the Paris and Tokyo tests she was aged 15. She is a Bulgarian citizen living in Sofia. As a child she suffered various ailments and injuries and was given medication for them. She comes from an illustrious sporting family. Her

father, Mr Radoslav Karatantchev, was a rowing champion and her mother, Ms Nelly Naydenova, a volleyball champion. She is an extremely talented tennis player who has been ranked as high as 35th in the world.

7. The player's father, Mr Karatantchev, used to run a money changing business. His main occupation now is managing and looking after his daughter's tennis career. He accompanies her to most of her tournaments. He and the player's mother have been divorced for some years but they cooperate in matters relating to their daughter's well-being and tennis career. Unlike her father, the player speaks fluent English and can read English, though not as well as she speaks it. She gave oral evidence in English without difficulty.
8. The player has played tennis since the age of five. In 2004 she won the Roland-Garros juniors tournament as top seed. There she underwent a doping control test on 6 June 2004, which was negative. She turned professional in 2004 and made her Grand Slam debut at the US Open in 2004. She was again tested, on 31 August 2004, with negative result. She is intelligent, and understands about anti-doping rules in sport. She does not read small print on documents she signs but she understood from 2004 at the latest that those rules require players to submit to testing when required by the tennis authorities and that players are allowed to compete only on that basis.
9. On or about 12 November or 14 November 2004 the player and her father, as parent and legal guardian, both signed a document headed "2005 WTA Tour Mandatory Player Form" which included the player's signature beneath a written "Anti-Doping Consent", agreeing to comply with the WTA's rules including its anti-doping rules. Mr Karatantchev's signature also authorised relevant medical treatment and undertook to pay for it. The document stated above his signature that he had understood its contents and agreed to, inter alia, the Anti-Doping Consent.

10. At some point before 11 April 2005 the player signed the entry form for the 2005 Roland-Garros tournament. Her signature included confirmation that she had read and understood the agreement “set out at the back of this entry form and accept its terms and conditions”. Those terms included the statement at paragraph 16 that the agreement is governed by French law. The terms also included the statement at paragraph 1 that the women’s events at Roland-Garros are part of the WTA Tour and that the competition will be carried out in conformity with the Grand Slam Rules and Regulations 2005 and “any rule or regulation as agreed by the French Tennis Federation”.
11. Paragraph 10 specifically dealt with anti-doping rules. It provided that the player “must be prepared to undergo drug testing imposed upon the French Tennis Federation by authorities outside its control, or by the governing bodies of the game”. The relevant Grand Slam Rules provided at Article VI that player’s must submit to drug testing “imposed upon the event by authorities outside its [the Grand Slam Committee’s] control or as a result of a drug-testing programme approved by the GSC.” It was not disputed that the Programme is approved by the GSC.
12. [REDACTED]
13. The player took part in the Roland-Garros tournament in May 2005. There is an agreement between the ITF and the French Tennis Federation that drug testing will be carried out at Roland-Garros in a manner that satisfies the requirements of the French government and France’s anti-doping agency. We

accept the evidence of Mr Harris, of the ITF, that the process is closely monitored by the French authorities.

14. The player lost in the quarter final on 31 May. Her father was with her at the quarter final. She was then asked to undergo a doping test. The doping control officer was Mrs Clabbers-Klein, from the Netherlands. The ITF is represented in anti-doping matters by International Doping Tests and Management (“IDTM”), based at Lindigö, Sweden. The player signed the doping control form without incident. She also wrote “No coments” [sic] on it. The form included the words: “I’m informed that I may be accompanied by one person of my choice during testing”. A blood test was also administered.
15. The escort was a Ms Natacha Djordjevic, from Serbia. The player and Mr Karantchev say that she made a request to Ms Djordjevic that he should be allowed to accompany her, and that this was refused. Mrs Clabbers-Klein says she does not recall this and that if such a request had been made, it would have been granted. We do not find that it is established on the balance of probabilities that such a request was made and refused. Mr Karatantchev’s statement was made surprisingly late, in response to a comment from the ITF in its reply brief.
16. The player’s written evidence on the point was brief and the assertion not made until 21 November 2005. Her oral evidence on this aspect was not very clear. The suggestion that the request was made to the escort (Ms Djordjevic) and not to the doping control officer (Mrs Clabbers-Klein) was first made in the player’s father’s written statement dated 13 December 2005, the day before the hearing. That assertion did not appear in the player’s written witness statement, nor in that of her father, nor in the player’s written brief.
17. The International Standard for Testing provides at paragraph 6.3.3 that a player (adult or child) may be accompanied and that, in the case of a minor player, the

player and the witnessing chaperone may have a representative observe the chaperone while the player is giving the sample, but without directly observing the passing of the sample unless requested to do so by the minor player. Paragraph 7.4.6 requires a minor player's representative to sign the documentation but does not explicitly require that there must be a minor player's representative. Paragraph 7.4.6 concludes by providing that any failure to record concerns on the documentation shall constitute a waiver thereof.

18. It is more natural to interpret paragraph 7.4.6 as meaning that the player's representative must sign the documentation if there is a player's representative present, than to interpret it as conferring an implicit obligation on a minor player to have an adult representative present. We would expect such an obligation to be explicit. Moreover, there is no need for such an obligation, rather than a merely permissive provision, since parents or guardians of minor players will have already consented to their child being bound by the rules in general, as evidenced here by the signing of the WTA Mandatory Player form by Mr Karatantchev in November 2004.

19. The player then returned to Bulgaria, and then competed at Wimbledon in June 2005, losing to Maria Sharapova.
[REDACTED]
[REDACTED] Meanwhile on 16 June 2005 the player's A sample from the Paris test, having been analysed at the WADA accredited laboratory at Châtenay-Malabry, France, was certified as containing about 12.6 ng/ml of 19-norandrosterone.

20. The player took dietary supplements from time to time, including during the period after the French Open up to the beginning of July 2005 when she travelled to Tokyo. The extent to which she took such supplements was unclear. We do not have any reliable evidence of what exactly was taken, when

and in what doses. These supplements were not properly vetted to ensure that they were uncontaminated with any prohibited substances.

21. The player also probably took prednisolone during the period leading up to 25 June 2005 when she had medical treatment in Sofia. This appears from the translated medical records from the Medical Centre at St Panteleimon, Sofia, dated 25 June 2005. Prednisolone is a glucocorticosteroid which is prohibited in competition but not out of competition. The player had, and has, no therapeutic use exemption (“TUE”) in respect of prednisolone.

22. [REDACTED]

23. The player then travelled to Tokyo as part of the Bulgarian national team, to compete in the Federation Cup. Her father was with her at a practice session on 5 July 2005. She and her fellow team members were tested on that date. The doping control notification document included the statement that the player had the right to be accompanied. The player signed it.

24. The player wrote “No” on the doping control form against the “Comment” box, also declaring that she had taken prednisolone two days earlier. Under cross-examination by Mr Taylor the player suggested that she had not taken prednisolone and that it was “claritin” she had taken, for asthma. She was unclear about what medication she had been taking and she did not always distinguish clearly in her evidence between medication and dietary supplements.

25. Again the player asserts that a request was made that her father should be allowed to accompany her into the doping control station and that this request

was refused. Again we do not find this made out on the balance of probabilities. The doping control officer was Mr Shin Asakawa. The escort was Ms Setsuko Motonami. The evidence of the player and her father was not very clear. Mr Karatantchev's written statement does not mention the Tokyo test at all. He would not have understood any English conversation between the player or other members of the team and Mr Asakawa.

26. Mr Asakawa's evidence, written and oral was (once translation difficulties were resolved) clearer. His evidence was that he spoke in English to the team captain, Ms Magdalena Maleeva, explained that the players had the right to be accompanied and she responded that she was the team representative and that there was no need for any other representative. That evidence was not shaken in cross-examination and is consistent with the player's "No" written in the box for comment on the doping control form.
27. The Tokyo A sample was analysed at the WADA accredited laboratory in Tokyo and on 19 July 2005 was certified as containing 15.0 ng/ml of 19-norandrosterone.
28. Meanwhile, by 27 July all three members of a Review Board convened in accordance with the Programme by Mr Sahlström of IDTM, had concluded that there was a case to answer in respect of the A sample collected when the Paris test was done. Accordingly Mr Sahlström wrote to the player on 28 July so informing her and advising her that the B sample would, unless a doping offence were admitted, be analysed at the Paris laboratory on 6 September 2005. On 7 September the B sample was certified by the laboratory as containing about 11.6 ng/ml of 19-norandrosterone.
29. By 4 September 2005 all three members of the Review Board convened by Mr Sahlström in respect of the Tokyo test A sample had concluded that there was a case to answer. Accordingly Mr Sahlström wrote to the player on 16

September 2005 so informing the player and advising that the B sample would (unless a doping offence were admitted) be analysed in Tokyo on 27 September 2005, though the analysis actually occurred later, in early October 2005.

On 27 September 2005 the ITF, through Mr Harris, wrote to the player formally charging her with a doping offence in respect of the Paris sample.

[REDACTED]

31. On 12 October 2005 the player's B sample in respect of the Tokyo test was certified by the WADA accredited laboratory in Tokyo as containing 17.6 ng/ml. Mr Harris, on behalf of the ITF, then wrote to the player on 25 October 2005 (after the telephone directions hearing in respect of the first charge), formally charging the player with a further doping offence in respect of the Tokyo sample.
32. The player has continued competing since notified of the charges. The competitions in which she has taken part since the French Open, and the prize money (we presume in US dollars) and ranking points gained, were set out in a schedule produced by the ITF at the oral hearing before us. It was agreed that the player's solicitors would contact the Tribunal within about 24 hours of the conclusion of the hearing if there was any challenge to the accuracy of that record. They did not do so and accordingly the schedule is taken as agreed.

The Proceedings

33. By letter dated 27 September 2005 the ITF charged the player with a doping offence in respect of the Paris sample. By a further letter dated 25 October 2005 the ITF charged the player with a further doping offence in respect of the Tokyo sample. In each case the offence charged was the presence of 19-

norandrosterone in the player's system, which is an offence under Article C.1 of the Programme.

34. In accordance with Article K.1.7 of the Programme, a telephone directions hearing took place on 14 October 2005, attended by the Chairman of the Tribunal and the representatives of the parties. The ITF was represented by Mr Taylor, assisted by Mr Iain Higgins, both of Hammonds, the ITF's solicitors. The player was represented by Mr Nick Bitel, assisted by Ms Louise Roberts, both of the player's solicitors, Max Bitel, Greene. The player confirmed that she had no objection to any of the members of the Anti-Doping Tribunal. A preliminary indication of the player's anticipated defences was given by Mr Bitel.
35. A timetable was set for the submission of briefs in accordance with Article K.1.7 of the Programme, and the oral hearing fixed for 14 and 15 December 2005 in London. Then on 25 October 2005, after the telephone directions hearing had taken place, the further charge was brought in respect of the Tokyo sample. Without the need for a further directions hearing and without any objection from either party, the same Tribunal was asked to determine both charges together at the hearing fixed for 14-15 December. In their written briefs, the parties therefore addressed themselves to both charges.
36. The ITF submitted its written brief on 1 November 2005, arguing that two separate doping offences had been committed under Article C.1 of the Programme; that the player's anticipated defences of absence of contract, her minority, and alleged endogenous production of nandrolone [REDACTED], were all ill-founded; that the two doping offences should however be considered as one first offence for the purposes of imposing a period of ineligibility, because the player had not received notice of the first offence when she committed the second offence; and that subject to any other possible

defences disqualification of results, ranking points and prize money, and a period of ineligibility of two years, must be imposed.

37. In her written brief dated 22 November 2005, supported by documents including a statement signed by the player and an expert's report, the player responded to the charges. She argued that the Programme did not apply to the player on the basis that:
- (1) there was no contract established between her and the ITF to comply with the Programme in the case of the Roland Garros tournament;
 - (2) the player was and is a minor under Bulgarian law, or alternatively under English law if it applied, and this precluded the validity of any contract which might otherwise bind her to comply with the Programme;
 - (3) French law governed whether the ITF had legal power to take a sample from the player in the case of the Paris sample; under French law the ITF did not have such power because the test was an intrusive medical intervention to which the player had not consented;
 - (4) both the Paris sample and the Tokyo sample were taken in breach of the International Standard for Testing because the player's father was refused permission to be present and did not sign the relevant document indicating satisfaction with the documentation and the procedure; and
 - (5) the production of 19-norandrosterone on the balance of probabilities occurred naturally [REDACTED], on the basis of the written expert evidence of Dr John Honour, an expert biochemist and specialist in identification and measurement of steroids in biological samples of a clinical nature.

38. The ITF, through Mr Taylor, submitted its reply brief on 12 December 2005, supported by documents including a brief report of [REDACTED]; a report from Professor Hugh Makin, a professor of analytical biochemistry; a brief statement from Mr Jonathan Harris, the ITF's Anti-Doping Administrator, dealing with the requirements of the French authorities in relation to dope testing at Roland Garros; and statements from doping control officers responsible for the tests done in, respectively, Paris and Tokyo.
39. In its reply brief, the ITF rejected all the defences advanced by the player and argued in detail against any of them succeeding. It further disputed the proposition that the player's father had been prevented from attending either the Paris or Tokyo tests. It noted the absence of any statement from the player's father supporting the proposition. It further pointed to Article K.4.2 of the Programme which prevents departures from the International Standard for Testing from invalidating test results except in cases where the ITF cannot show that any such departure did not cause the adverse analytical finding. Finally, the ITF asserted on the basis of a report prepared by Professor Hugh Makin that it was implausible that endogenous production [REDACTED] was the cause of the positive test results.
40. On 13 December 2005, the day before the hearing, the player produced a short written statement from her father, Mr Karatantchev, corroborating the allegation that he had requested but been refused permission to accompany the player into the testing station when the Paris sample was taken. Mr Karatantchev's written statement did not deal with the circumstances in which the Tokyo sample was taken.
41. The hearing of the charges took place in London on 14 and 15 December 2005. At the outset, the player clarified that her challenge to the jurisdiction of the Tribunal founded on the assertion that the Programme does not bind her,

applied as much to the Tokyo test as to the Paris test. After brief openings, we heard oral evidence from Mr Harris; then from the player; then from Mr Karatantchev, her father; and then, by telephone, from Mrs Clabbers-Klein, the doping control officer when the Paris test was done.

42. On the second day we heard evidence by telephone from Mr Asakawa, the doping control officer when the Tokyo test was administered; then from Dr Honour, the expert biochemist instructed by the player; and then from Professor Makin, the expert instructed by the ITF. We then heard oral submissions from the ITF and from the player, followed finally by a very brief reply by Mr Taylor for the ITF.

The Tribunal's Conclusions, With Reasons

43. The player accepts that 19-norandrosterone is a prohibited substance and does not challenge the findings of the two laboratories that the substance was present in the player's body on both occasions. Nor is the chain of custody challenged.
44. The player makes a preliminary challenge to the jurisdiction of the Tribunal on four bases. The first is that the Programme did not apply to her because she did not either by signing the entry form for Roland-Garros or in any other way agree to be bound by it. The same submission is made also in relation to the Tokyo test.
45. The player submitted that the Programme was not "imposed" upon the French Tennis Federation by authorities outside its control or by the governing bodies of the game. She submitted that the French Tennis Federation had apparently agreed voluntarily to the applicability of the Programme, without any element of coercion or even pressure, as connoted by use of the verb "impose".
46. In the Tribunal's view, this point lacks any merit. The words "imposed upon" in paragraph 10 of the terms on the back of the entry form, in their context,

plainly bear the meaning “binding upon”. It would be extremely strange if they meant anything else. The terms of the Programme can only be “imposed” upon the French Tennis Federation if the latter agrees that they shall be. Even if that construction were wrong, the Programme is manifestly “a drug testing programme approved by the [Grand Slam Committee]” and thus falls within the concluding words of Article VI of the Grand Slam Rules and Regulations 2005.

47. In relation to both the Paris and Tokyo tests, the ITF submits further that players who take part in any events to which the Programme applies are bound by it under Article B.5 and (in respect of out of competition testing) Article G.2.5 until such time as they retire from the sport. Mr Taylor relied on the reasoning in cases such as *Modahl v. British Athletic Federation Ltd.* [2002] 1 WLR 1192, CA, in support of the proposition that a contractual obligation to abide by relevant anti-doping rules may be inferred from the player’s conduct in taking part in competitions and submitting to out of competition testing.
48. The Tribunal has no difficulty in accepting the ITF’s submissions on this aspect of the case. The player became bound by the Programme (subject to her other arguments dealt with below) by taking part in 2004 and 2005 in competitions to which it applies. It would be surprising if it were otherwise. Applying ordinary English law principles governing acceptance of contractual obligations (which the player did not submit were any different under French law which applies to the main contract to take part in Roland-Garros), the conclusion is inexorably reached that the player was and remains (subject to her other arguments) bound by the Programme.
49. Next, the player submits through Mr de Marco that any contract by which she would otherwise be bound, incorporating the Programme, is invalid because she is a minor and the contract is not in the class of contracts recognised in English law as being ones that can be enforceable against an infant if the contract is for the infant’s benefit. In her written brief the player submitted that Bulgarian law

applied to this issue, but at the oral hearing she conceded, rightly in our view, that English law applies to the issue, on the basis that English law is the law governing the Programme.

50. Both parties cited well known English case law in support of their submissions. Mr Taylor, for the ITF, relied on cases where a contract enabling a minor to practise the sport of boxing, and a contract enabling performance of musical entertainment by minors, had been upheld on the basis that they were of benefit to the infants who entered into them. Mr de Marco objected that in those cases the contracts at issue had only survived because they were analogous with contracts of employment or apprenticeship, a recognised form of contract capable of being upheld if of benefit to the infant concerned.
51. Mr de Marco therefore conceded that if the player had taken a job as a coach or engaged a manager she would be bound by the contract. In our view there is no material distinction between the player's contractual obligation to abide by the Programme to enable her to play tennis, and the contractual obligations of the young boxer in *Doyle v. White City Stadium* [1935] 1 KB 110, CA. The contract here is sufficiently similar to an employment contract in the sense that it enables the player to ply her trade. Consequently it is in principle capable of binding her if it benefits her. Manifestly, it does: she gains respect, fame and fortune from her mercurial talents on the tennis court. The contrary cannot seriously be suggested.
52. Thirdly, the player submits that the tests administered in Paris and Tokyo were unlawful because the player is a minor and the ITF therefore lacked power to administer them without parental consent. In relation to the Paris test, the player contends that French law applies. In relation to the Tokyo test, the player's submission must presumably be that Japanese law applies.

53. The ITF does not accept that the applicable law is the law of the country where the test took place, but submits in any event that the player cannot show that the tests were unlawful by the law of respectively France and Japan in this case. In the case of the Paris test, the evidence of Mr Harris is that the French authorities require to satisfy themselves that the testing done at Roland-Garros is in accordance with French law. That evidence does not, of course, establish what French law actually is.
54. Mr de Marco relies on Article 6 of the 1997 Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine (“the 1997 Convention”). Subject to immaterial exceptions, that provides that “an intervention may only be carried out on a person who does not have the capacity to consent, for his or her direct benefit”, and that in such cases parental consent must be obtained.
55. Mr Taylor does not accept that the 1997 Convention, an international treaty, is necessarily part of French law, nor that the urine test in Paris was an “intervention”. He says it would be strange if the testing were contrary to French law in view of Mr Harris’s evidence. He further points out that there is no evidence that the Tokyo test was unlawful according to the law of Japan. Moreover the player waived any objection in both cases by declining to note it on the doping control form.
56. We accept the ITF’s submissions on this aspect. We see no evidence that the Tokyo test was unlawful. Nor do we accept that the urine test carried out at Roland-Garros was an “intervention” if, which is not clear, the 1997 Convention is part of French law. If parental consent is needed, it was bestowed by Mr Karatantchev first by signing the “Anti-Doping Consent” and the “Minor Medical Release” on the player’s Mandatory Player Form, in November 2004, and subsequently by permitting his daughter to take part in the

two tests; even if, which we have not accepted, he asked to attend and was refused. Moreover we accept that the player waived any objection she might have had, and we do not accept that she was incapable of doing so as a minor, as we do not accept that the presence of an adult was compulsory under the International Standard for Testing.

57. Next, the player submits that the Tribunal lacks jurisdiction to impose any sanction on the player because there was a departure from the International Standard for Testing in that in both Paris and Tokyo the player's father was refused admission to the testing station. We have already rejected the factual basis for this submission. We would add that it is in addition not a jurisdictional bar at all. The effect of a departure from the International Standard for Testing is to place an onus on the ITF under Article K.4.2 of the Programme to prove that "such departures did not cause the Adverse Analytical Finding or the factual basis for the Doping Offence".

58. Here, Dr Honour accepted under cross-examination from Mr Taylor (transcript page 54, second day) that if Mr Karatantchev was prevented against his will from attending the two tests, he could not see how that could affect the reliability of the laboratory results.

[REDACTED]

59. That leaves the player's substantive defence to the charge: the contention that the positive test results were caused by nandrolone endogenously produced by the player [REDACTED]. Appendix Two, paragraph S1.1.b to the Programme includes the following provision:

"Where a Prohibited Substance ... is capable of being produced by the body naturally, a Sample will be deemed to contain such Prohibited Substance where the concentration of the Prohibited Substance or its metabolites or markers and/or any other relevant ratio(s) in the Athlete's

Sample so deviates from the range of values normally found in humans that it is unlikely to be consistent with normal endogenous production. A Sample shall not be deemed to contain a Prohibited Substance in any such case where the Athlete proves by evidence that the concentration of the Prohibited Substance or its metabolites or markers and/or the relevant ratio(s) in the Athlete's Sample is attributable to a physiological or pathological condition.”

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

68. We have considered carefully the evidence of both experts, written and oral. We have concluded that the player comes nowhere near satisfying us on the balance of probabilities that endogenous production of nandrolone [REDACTED] [REDACTED] was the cause of the positive test results. We agree with Professor Makin that the data on which Dr Honour relies do not support that conclusion. We consider that Dr Honour's conclusion is too speculative to satisfy the onus on the player to prove on the balance of probabilities that his thesis is correct.
69. Dr Honour was instructed on the basis of the player's denial of having knowingly administered a prohibited substance exogenously. Whether or not that denial is true, the player took supplements regularly, including during the period between the two tests. The quantity and frequency and exact brand identities of those supplements are not known, but the evidence before us is that the player and her advisers did not check carefully the origin and ingredients of those supplements, still less have them tested to ensure that they were not contaminated with a precursor of 19-norandrosterone. We conclude that the supplements are more likely [REDACTED] to be the cause of the positive test results.
70. It follows that the ITF has established the commission of the two doping offences, which – it is common ground – must be treated as a single first offence for the purpose of imposing a period of ineligibility under Article M.2 of the Programme. The player sought to argue faintly at the oral hearing that she has a defence under Article M.5 of No Fault or Negligence, or No Significant Fault or Negligence. But that defence was not pleaded in the player's written brief and could not possibly succeed in the absence of proof of

how the prohibited substance, if exogenously administered, entered the player's system.

71. The Tribunal is therefore obliged to deal with this case in accordance with the provisions of the Programme which apply to a first doping offence of this kind. First, we are obliged by Article L.1 of the Programme to disqualify the player's results obtained at the Roland-Garros tournament, including forfeiture of the 294 WTA computer ranking points and prize money of 110,370 euros (which we presume corresponds to the sum of US \$ 126,744 set out in the schedule). Those points and that prize money must be forfeited.
72. Secondly, we are obliged by Article M.7, unless we consider that fairness requires otherwise, to disqualify the player's results, ranking points and prize money in respect of competitions in which the player competed subsequent to the French Open. Here, there were two doping offences and no unusual delays in notifying the player of the positive test results. She voluntarily continued competing after being so notified. She was entitled to do so, but had she abstained from competition the period of her abstention would have been credited against any period of ineligibility.
73. The player made no positive case that fairness required us to depart from the norm set out in Article M.7. We decline to do so. Accordingly the player's results must be disqualified, and her ranking points and prize money must be forfeited, in respect of all competitions subsequent to the French Open in which she took part.
74. Thirdly, we are required by Article M.2 of the Programme to impose a mandatory period of ineligibility of two years. We have a discretion under Article M.8.3(b) of the Programme - for example in cases of delay in the hearing process - to start the period of ineligibility on a date earlier than the date of this decision. In that regard, we bear in mind that the hearing took place

just before the start of the Christmas and New Year holiday period, with the consequence that we were unable to issue our decision as early as we would have liked to have done, and were unable to do so within a period of two weeks after the end of the hearing, which would be reasonable outside the holiday period.

75. Accordingly we consider that the period of ineligibility should start as at the date when we would, but for the holiday period, have issued our decision. We decide pursuant to Article M.8.3(b) that the period of ineligibility shall start on 1 January 2006. The two year period is therefore the calendar years 2006 and 2007. The ban will expire at midnight on 31 December 2007.
76. We conclude by noting that the player is, fortunately for her, very young and talented. She is easily young enough and talented enough to recover from the blow to her career occasioned by this case. We would hope and expect that she will keep her skills honed during her period of ineligibility and will learn from this experience the lessons necessary to ensure that she does not in future fail to comply with the anti-doping rules applicable in her sport. In particular we hope that both she and her advisers will do their utmost to ensure that she takes every precaution to avoid ingesting, inadvertently or otherwise, not just prohibited substances as such, but also dietary supplements that could be contaminated with a prohibited substance.

The Tribunal's Ruling

77. Accordingly, for the reasons given above, the Tribunal:
- (1) finds that the doping offence specified in the notice of charge set out in the ITF's letter to the player dated 27 September 2005 has been committed by the player: namely that a prohibited substance, 19-norandrosterone, in a concentration above the reporting threshold of 2

ng/ml, has been found to be present in the urine sample that the player provided at the French Open on 31 May 2005;

- (2) finds that the doping offence specified in the notice of charge set out in the ITF's letter to the player dated 25 October 2005 has been committed by the player: namely that a prohibited substance, 19-norandrosterone, in a concentration above the reporting threshold of 2 ng/ml, has been found to be present in the urine sample that the player provided out of competition in Tokyo on 5 July 2005;
- (3) in the case of both doping offences, rejects the player's defences founded on alleged absence of a valid contract, alleged lack of jurisdiction and/or lack of consent, and rejects the defence that the positive test results are on the balance of probabilities the result of endogenous production of nandrolone by the player [REDACTED];
- (4) declares, however, that by reason of Article M.6.1 of the Programme the two offences are to be treated as one single first offence for the purpose of the imposition of a period of ineligibility under Article M.2 of the Programme;
- (5) orders that the player's individual result must be disqualified in respect of the French Open held at Roland-Garros, France, and in consequence rules that the ranking points and prize money obtained by the player through her participation in that event, must be forfeited;
- (6) orders, further, that the player's individual results in all competitions subsequent to the French Open shall be disqualified and all prize money and ranking points in respect of those competitions forfeited;

- (7) declares that the player shall be ineligible for a period of two years commencing on 1 January 2006 from participating in any capacity in any event or activity (other than authorised anti-doping education or rehabilitation programmes) authorised by the ITF or any national or regional entity which is a member of or is recognised by the ITF as the entity governing the sport of tennis in that nation or region.

Tim Kerr QC, Chairman

Dr Anik Sax

Professor Vivian James

11 January 2006