

FÉDÉRATION INTERNATIONALE DE GYMNASTIQUE



FONDÉE EN 1881

Decision by the FIG Presidential Commission

Mr. CHIU Shih-Hui (TPE), antidoping test dated November 3, 2008, Nr. 2251920 A

Facts :

Mr. CHIU Shih-Hui, born on 26.08.1991 and competing for the National Federation (« **NF** ») of Chinese Tapei (« **TPE** »), participated on 4-5 November 2008 in the « Test Event World Games Kaoshiung 2009 » (« **Test Event** »), and ranked 3rd at the final of mixed couples (see p.4 of the file).

On November 3, 2008, Mr. CHIU Shih-Hui underwent an antidoping test. The urine sample Nr. 2251920 A, which was analysed by the WADA authorized Mitsubishi Chemical Medience Corporation Laboratory in Tokyo, showed a positive result to hydrochlorothiazide (see page 9). Hydrochlorothiazide is a diuretic included in the list of prohibited substances and methods established by the World Anti-Doping Agency (« **WADA** »).

No therapeutic use exemption (« **TUE** ») was granted by the Fédération Internationale de Gymnastique (« **FIG** ») nor requested by the gymnast.

No apparent departure from the International Standards for Testing or for Laboratories resulted in the adverse analytical finding.

In its letter dated November 28, 2008 sent by registered mail, e-mail and fax (pages 13 to 26), the FIG informed the Chinese Taipei Gymnastic Association (« **TPE-NF** ») of the positive result of the test, of the opening of proceedings and of the gymnast's rights. A B Sample Analysis Request form and a Hearing Request form were attached to the letter. As per the DHL shipping report, the notification of delivery of e-mail and the fax report, all the 8 pages of the document, including the annexes, have successfully been received (pages 22, 23, 25 and 26).

The FIG having not received any answer within the set deadlines, a reminder was sent by registered mail, e-mail and fax on January 23, 2009 to TPE-NF (pages 28-29) offering a new deadline for the gymnast to submit a written explanation to the FIG. Both the e-mail and the fax successfully arrived at destination on the same day (pages 30, 32 and 33).

On February 2, 2009 the FIG called the TPE-NF to get confirmation that the gymnast had received the notification. This is confirmed by a fax (pages 40-41) sent by the FIG to the TPE-NF on the same day after an attempt to send an e-mail to the address given by the TPE-NF to the FIG by phone.

On February 9, 2009, Mr. CHIU Shih-Hui sent an e-mail to the FIG in which he confirmed having received the notification « some days ago »; he also explained that he had understood that the deadline to answer was set out to be February 9. He said he was not sure to understand which confirmation and explanations were to be submitted and he asked the FIG to contact him by e-mail (page 42).

On February 18, 2009, FIG sent an e-mail to the gymnast informing him on the situation and setting a final deadline to February 25, 2009 to submit an explanation and to request a hearing (page 43).

On February 22, 2009, the gymnast's translator Mrs. Kristy explained that she had had a discussion with the gymnast and his coach and that, according to what Mr. Chui had written on the Doping Control Form, he had taken a medication meant to heal a cold. Besides, Mr. Chui assured that he had taken no prohibited substance (page 44).

On February 23, 2009, the FIG once again contacted the gymnast through his translator and asked for additional information, in particular the list of medicines he had taken, a copy of the instructions accompanying the medicine, a written and signed explanation by the doctor and another one by the coach. Moreover, the gymnast was asked whether he wanted a hearing to be held (page 45). On March 12, 2009, since no answer had been received, a reminder was sent to the same people (pages 46 - 47).

On March 18, 2009 the FIG submitted the file to the Disciplinary Commission and informed the gymnast and the TPE-NF (page 48).

On March 21, 2009, Mr. Chui's translator explained to the FIG that the doctor could not deliver the requested prescription due to legal provisions and that he has offered to send a sample for the FIG to test it. This request was submitted to the Disciplinary Commission which was then in charge of the file.

On April 9, 2009, the FIG informed the gymnast by e-mail, by fax and through his federation that he had the opportunity to appear in a hearing set out to take place on April 25, 2009 at the FIG headquarters in Lausanne. The gymnast was given a deadline to April 14, 2009 to give his answer.

On April 13, 2009 the gymnast's English teacher, Mrs. Risa Lee, contacted the FIG and apologized for her student's late answer allegedly due to a language problem. She explained that due to financial reasons he could not take part in the hearing of April 25, 2009 but that he nevertheless was willing to answer via a video conference and prove his innocence by testing another new sample. She however explained that the only medication the gymnast had allegedly taken during the two months prior to the Test Event was phytotherapy medicines given by a Chinese therapist in order to heal a wound on Mr. Chui's foot which caused swelling and blood circulation problems.

On May 15, 2009 the Disciplinary Commission acting through the FIG awarded the gymnast a last opportunity to answer to some questions, which he did on May 19, 2009. It was then established that he had not informed his federation of his wound, that he had taken directly contact with a doctor, that the explanation on the cold problem was probably due to a translation mistake by a school friend and that he was taking 5 pills per day. The gymnast also explained that he knew it was forbidden to take prohibited substances but that he was not aware of the list of prohibited substances and that he had no idea of the composition of his medication and of the fact that it could contain a prohibited substance. He also mentioned that he did not know what a diuretic was.

On May 26, 2009, the Disciplinary Commission acting through the FIG asked the TPE-NF how they provided information to the athletes regarding their rights and obligations in case of health problems. The Federation did not answer. The gymnast also informed the FIG that nobody had explained or informed him on the necessity to submit a TUE although this had been his first participation in a national team.

The Presidential Commission, considering :

- That the result of analysis of sample 2251920A shows hydrochlorothiazide;
- That the gymnast had not asked for a TUE ;
- That there is no apparent departure from the International Standards for Testing or the International Standard for Laboratories ;
- That the gymnast did not require the analysis of the B sample;
- That the gymnast did not require a hearing before the Disciplinary Commission ;
- That the notification of the case sent on November 28, 2008 to the gymnast and to his federation contained all the explanations on the proceedings and the evidence of reception (pages 13-20, 22-26, 28-30) ;
- That under the principle of *lex mitior*, the new rules assumed to be less severe should apply to the gymnast's benefit even when the event in question occurred before they came into force (article 18.9.1 FIG Anti-Doping Rules ; article 25 WADA Code and CAS *Advisory Opinion 94/128 (UCI and CONI)*, CAS *Digest I*, p.509) ;
- That the FIG Anti-Doping Rule (« **FIG ADR** ») and the WADA Code are both effective since January 1, 2009 ;
- That according to the WADA « List of Prohibited Substances 2009 », which forms an integral part of the FIG ADR and of the WADA Code, hydrochlorothiazide is a diuretic to be considered as a specified substance under 4.2.2. of the FIG ADR and article 4.2.2 of the WADA Code;
- That according to article 10.4 FIG ADR and article 10.4 WADA Code, the suspension period provided for under article 10.2 FIG ADR and 10.2 WADA Code may be reduced provided that the gymnast may establish how a specified substance entered his body and that such specified substance was not intended to enhance the athlete's sport performance or mask the use of a performance-enhancing substance;
- The additional opportunities and deadlines granted by the FIG to the gymnast in order to clarify his situation ;
- The gymnast's explanations and the fact that he gave late explanations on the Chinese indications on the form « Doping Control Form »;
- That the gymnast gave no evidence of absence of fault or negligence ;
- That the explanations given by the gymnast on the reason why he allegedly went to a doctor were contradictory (cold and wound on the foot);
- That the gymnast could not give valid explanations as how the substance entered his body;
- That an athlete is responsible for what he ingests, for his choice of medical personnel and for advising medical personnel that they cannot be given any prohibited substance;
- Therefore, since the conditions required to reduce the period of suspension are not fulfilled, article 10.2 FIG ADR and article 10.2 WADA Code apply ;
- The proposal of the Disciplinary Commission to the Presidential Commission on July 3, 2009 ;

For these reasons, and based on article 2 FIG ADR, article 2.1.1 WADA Code (Athlete's Responsibility) and articles 10.2 FIG ADR and WADA Code (Period of Ineligibility), the FIG Presidential Commission confirms the proposals made by the Disciplinary Commission and

decides:

- **To suspend Mr. CHIU Shih-Hui for a 24 month period starting from the date of the doping test, i.e. November 3, 2008 to November 2, 2010;**
- **To disqualify Mr. CHIU Shih-Hui and to cancel any and all results he might have achieved since November 3, 2008 with all the resulting consequences including forfeiture of all medals, points and prizes;**

Costs of Proceedings:

The costs of the 1st instance disciplinary proceedings (Disciplinary Commission and Presidential Commission) are in principle paid by the FIG. However, in view of the severe infringement by the TPE-NF, the Presidential Commission hereby decides that the costs of proceedings shall be borne by the TPE-NF. Each Party shall bear its own fees and expenses.

Remedy

The appeal duly signed by the Appellant and with rationale, shall be sent in writing, to the address of the FIG headquarters to the attention of the FIG Appeal Tribunal within 21 days from the notification of the decision. The Appellant shall indicate if his appeal is intended to be dealt with within the framework of a hearing or review of the case, without appearance of the parties.

Should the Appellant wish to call witnesses or experts, a hearing shall be held.

The appeal shall either be directly delivered to the FIG headquarters or to a Swiss post office at the latest by midnight of the last day of the time limit for the appeal. The Appellant is responsible for showing proof, within a time limit to be determined by the President of the Appeal Tribunal, that his appeal has been lodged in due time, otherwise, the appeal shall be considered inadmissible.

The Appellant shall pay in advance the expenses of CHF 5,000.- to the FIG account at the same time as he shall lodge his appeal and at the latest by the end of the time limit for the appeal. While this amount shall be reimbursed to the appellant in the event that his appeal is allowed, this amount shall be kept by the FIG in the event that his appeal is considered inadmissible or is fully or partly rejected. The FIG is exempt from the obligation to pay the expenses in advance for its appeal.

Should the Appellant omit to pay in advance the expenses of CHF 5'000.- within the time limit, his appeal shall be considered inadmissible.

The appeal statement shall contain an account of the facts, the reasons for the appeal, the presentation of all evidence relied on by the appellant or an offer to present all the evidence (such as, the request for the hearing of witnesses or the request for an expert) and the arguments of the Appellant, failing which it shall be considered inadmissible.

The Appellant shall not be authorized to produce new elements of proof once his appeal is submitted, unless he justifies that he has not been able to do so for reasons beyond his control or his behest. The Appeal Tribunal may automatically conduct the investigations they may deem necessary.

Lausanne, 13th July 2009

Fédération Internationale de Gymnastique
On behalf of the Presidential Commission



Prof. Bruno Grandi
President



André F. Gueisbuhler
Secretary General