

## **INTERNATIONAL RUGBY BOARD**

IN THE MATTER OF REGULATIONS RELATING TO THE GAME

AND IN THE MATTER OF AN ALLEGED DOPING OFFENCE BY **DAVIT ZHAMUTASHVILI (GEORGIA)** CONTRARY TO REGULATION 21

AND IN THE MATTER OF AN ALLEGED DOPING OFFENCE BY **DAVIT ALEXANDER TODUA (GEORGIA)** CONTRARY TO REGULATION 21

BEFORE A BOARD JUDICIAL COMMITTEE APPOINTED PURSUANT TO REGULATION 21.20 and 21.21 CONSISTING OF:

### Judicial Committee:

**Dr. Ismail Jakoet** (South Africa)

**Dr. Ichiro Kono** (Japan)

**Graeme Mew** (Canada – Chair)

### For the Board:

Susan Ahern (Counsel)

Tim Ricketts (Anti-Doping Manager)

### For Georgia Rugby Union

George Nijaradze (Vice President)

Irakli Khutsishvili (CEO)

### The Players

Davit Zhamutashvili (Player)

Alexander Todua (Player)

### In Attendance

Levan Maisashvili (Head Coach, Lelo R.C.)

Natalie Kurtanidze (Interpreter)

Heard: 22 August 2007 (by way of telephone conference)

## **DECISION OF THE JUDICIAL COMMITTEE**

1. On a number of occasions Judicial Committees of the International Rugby Board have commented that the recreational use of cannabis is not unknown in rugby circles.<sup>1</sup>

---

<sup>1</sup> See for example *IRB v Naqelevuki*, 16 March 2007 and *IRB v Garbuzov*, *IRB v Rechnev*, 28 September 2006

2. Notwithstanding this, the *Regulations Relating to the Game* and the *World Anti-Doping Code* make it clear that the use of cannabinoids by athletes is prohibited and that when the presence of cannabinoids in an athlete's bodily sample is detected as a result of doping controls, an anti-doping rule violation will result which, in turn, may lead to sanctions being imposed on the athlete.
3. The regulations relating to anti-doping form part of the rules of the Game of rugby. Similar anti-doping rules apply to all players of the Game at whatever level and wherever the Game is played.
4. While, across a broad range of sports and in different parts of the world, the approach taken to the imposition of sanctions for anti-doping rule violations which arise from recreational use of cannabinoids is not uniform, the approach consistently taken in international rugby has been that such violations are not, in the absence of truly mitigating circumstances, trivial matters deserving of no more than slaps on the wrist in the form of reprimands.
5. Accordingly, rugby players who commit anti-doping rule violations as a result of their recreational use of cannabinoids, where there is no intent to enhance sport performance, can nevertheless expect in the vast majority of cases to receive a period of suspension.

### **Background**

6. This case involves two rugby players from Georgia, Davit Zhamutashvili and Alexander Todua (hereinafter the "Players"), who were tested In Competition at the IRB Sevens World Series in Edinburgh on 3 June 2007.
7. The Players' 'A' Samples (A Sample 3000926/Zhamutashvili) (A Sample 3000937/Todua) both tested positive for Carboxy-THC (a metabolite of cannabis) at a concentration higher than the cut-off of 15ng/ml set by the World Anti-Doping Agency ("WADA"). Carboxy-THC is a Prohibited Substance listed under S8 Cannabinoids on the WADA Prohibited List 2007.
8. A preliminary review of the cases were undertaken by Dr Barry O'Driscoll on 1 July 2007 in accordance with IRB Regulation 21.20, which confirmed that there was

no apparent departure from the International Standard for Testing, there were no TUEs (Therapeutic Use Exemptions) on file for use of the substance for either Player and therefore an anti-doping rule violation by each Player may have been committed in contravention of IRB Regulation 21.2.1.

9. The Players were advised by letter dated 2 July 2007 of the results of the 'A' Sample and advised that in accordance with IRB Regulation 21.19 they were provisionally suspended. The provisional suspensions became effective on 3 July 2007.

10. No request was made by either Player to have their 'B' Samples analysed within the 21 day timeframe set out in IRB Regulation 21.20.5 and, therefore, in accordance with the Regulations both Players were deemed to have accepted their 'A' Sample results.

11. This Board Judicial Committee ("BJC") has been appointed to consider the Players' cases. The Players, through the Georgian Rugby Union (the "Union"), indicated that they wished to have a hearing before the BJC and to participate in that hearing by way of telephone conference.

12. The hearing took place by way of a telephone conference call on 22 August 2007. Written submissions were received prior to the hearing from both the IRB and the Union. At the hearing, verbal evidence was received from both of the Players and further submissions were made on behalf of the IRB and the Players.

### **Alexander Todua**

13. This Player is 19 years old. He is an amateur player and a full time university student. He has been playing rugby for 9 years and has represented Georgia since he was 17, playing in the Under 19 World Cup in South Africa in 2004, the Under 19 World Championships in 2005 and 2006 and the Under 20 European Championship tournament in 2006. He has been subject to doping control previously and has attended doping education seminars. He said that information concerning cannabinoids must have slipped his attention while undergoing anti-doping education.

## **Davit Zhamutashvili**

14. Mr. Zhamutashvili is 24. He has played rugby for 5 years and has played for the national Sevens team for three years. He has also played in the national 15-a-side team and has played rugby league. He described himself as semi-professional. He has played all of his rugby in Georgia. He has undergone doping control on two previous occasions.

## **Anti-Doping Rule Violation Established**

15. Regulation 21.2 of the Regulations Relating to the Game provides, inter alia:

The following constitute anti-doping rule violations:

21.2.1 The presence of a Prohibited Substance or its Metabolites or Markers in a Player's bodily Sample.

- (a) It is each Player's personal duty to ensure that no Prohibited Substance enters his body. Players are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their bodily Sample. Accordingly, it is not necessary that intent, fault, negligence or knowing Use on the Player's part be demonstrated in order to establish an anti-doping violation under Regulation 21.2.1.

16. Regulation 21.6 addresses the principle of personal responsibility and provides;

21.6.1 It is each Players responsibility to ensure that no Prohibited Substance is found to be present in his body and that Prohibited Methods are not used. It is also the personal responsibility of each Player to ensure that he does not commit any other anti-doping rule violation.

21.6.2 It is the sole responsibility of each Player and Person to acquaint himself with all of the provisions of these Anti-Doping Regulations including the Guidelines. It is also each Player's sole responsibility to notify Player Support Personnel, including, but not limited to, their doctors of their obligation not to use Prohibited Substances and Prohibited Methods and to ensure that any medical treatment received by them does not violate any of the provisions of these Regulations.

17. Under Regulation 21.3.1, the Board has the burden of establishing an anti-doping rule violation to the comfortable satisfaction of the BJC.

18. The Players both advised the BJC that they accepted the analytical findings of the laboratory. Accordingly, we conclude that the Board has established in respect of each of the Players an anti-doping rule violation, namely, the presence of Carboxy-

THC (a metabolite of cannabis), a Prohibited Substance, at a concentration higher than 15ng/ml<sup>2</sup>, in the Players' bodily Samples.

### **Events Leading to Anti-Doping Rule Violations**

19. On 17 May 2007, after a lengthy series of training session and on the eve of the Georgia team's departure to Poland stage of FIRA-AER European Sevens Championship, and, thereafter, three other international sevens tournaments, the Players attended a party hosted by a close friend. Both Players acknowledge that they "simply allowed ourselves to relax and even accepted an invitation to taste marijuana". Both Players claim that they had not tried marijuana before. Mr. Todua said that he would not like to repeat the experience. He was a bit drunk already and, after a number of puffs on a marijuana cigarette, he felt sick.

20. Both players admitted that their marijuana use that night arose from curiosity and a lack of self-control. Both realise that they made a serious error. Neither can reconcile their marijuana use with "playing clean", a principle which they both claim to support. They vehemently deny, however, that their use of marijuana was intended to enhance or otherwise affect their sport performance.

21. The Players understand that, as athletes performing at the international level, they serve as role models for others. They stressed the importance of rugby as one of the cleanest and most-favoured sports in Georgia and expressed regret and remorse that their conduct may have threatened the image of rugby in their country.

22. Neither Player has been involved in any previous "negative incident" in their rugby careers.

### **The Union's Position**

23. The Union's representatives said that they would increase anti-doping education and would consider imposing further sanctions on the Players in addition to those that might be imposed by the BJC.

---

<sup>2</sup> Sample A-3000926/Zhamutashvili - had a mean concentration of 31.3ng/ml. Sample A – 3000937/Todua - had a mean concentration of 91.2ng/ml

24. The Union emphasised that both of the Players are well regarded and, like the Players, emphasised the importance of the Game in Georgia as a counterweight to the influence of “the street”.

### **Sanction**

25. Sanctions are provided for in Regulation 21.22. Ordinarily the period of Ineligibility for Prohibited Substances for a first time offence is two (2) years (Regulation 21.22.1).

26. However, certain “specified substances” including Cannabinoids, fall to be considered under Regulation 21.22.2 which provides:

The Prohibited List may identify specified substances which are particularly susceptible to unintentional anti-doping rules violations because of their general availability in medicinal products or which are less likely to be successfully abused as doping agents. Where a Player can establish that the Use of such a specified substance was not intended to enhance sport performance, the period of Ineligibility found in Regulation 21.22.1 shall be replaced with the following:

First violation: At a minimum, a warning and reprimand and no period of Ineligibility from future Events, and at a maximum, one (1) year's Ineligibility.

Second violation: Two (2) years' Ineligibility.

Third violation: Lifetime Ineligibility.

However, the Player or other Person shall have the opportunity in each case, before a period of Ineligibility is imposed, to establish the basis for eliminating or reducing (in the case of a second or third violation) this sanction as provided in Regulation 21.22.4.

27. The burden is on the Players to establish to the satisfaction of the BJC, that their individual Use of Carboxy-THC (Cannabinoids) was not intended to enhance their sport performance, to avail of the reduced sanctions for a first offence in Regulation 21.22.2.

### **Discussion**

28. We are satisfied that there was no intent on the part of either Player to enhance sport performance. As a result the modified sanctions applicable to specified substances can be considered by us.

29. Each Player has failed to discharge his personal responsibility to ensure that no Prohibited Substance is present in his body. Each has let his Union down and has let down those who might see the Players as role models.

30. While the Players' previous good records serve as mitigating factors, as does their ready admission of guilt and their contrition, such factors are not sufficient to persuade us that a period of Ineligibility should not be ordered.

31. Taking into account other matters arising from out of competition recreational use of marijuana<sup>3</sup>, we have decided that the appropriate sanction is a period of Ineligibility of three months for each of the Players.

32. We note that the Players have been provisionally suspended since 3 July 2007.

33. We would discourage the imposition of any additional sanctions on the Players by the Union.

### **Decision**

34. On 3 June 2007, the Players each committed an anti-doping rule violation, namely, the presence in a bodily Sample provided by each Player of Carboxy-THC (a metabolite of cannabis) at a concentration higher than 15ng/ml. Carboxy-THC is a Prohibited Substance under both Regulation 21 and the *World Anti-Doping Code*.

35. The sanction imposed for this anti-doping rule violation is a period of Ineligibility of three months, commencing 3 July 2007 (the date upon which the Players' provisional suspensions under Regulation 21.19 commenced) and concluding (but inclusive of) 2 October 2007.

36. The Players' attention is drawn to Regulation 21.22.7, which provides:

No Player or Person who has been declared Ineligible may, during the period of Ineligibility, participate in any capacity in a Match, Series of Matches and/or Tournament (international or otherwise) or activity (other than authorised anti-doping education or rehabilitation programs) authorised or organised by the Board or any Member Union. Such participation includes but is not limited to coaching, officiating, selection, team management, administration or promotion of the Game, playing, training as part of a team or

---

<sup>3</sup> *IRB v Naqelevuki*, 16 March 2007 (3 months); *IRB v Ho*, 22 December 2004 (3 months); *IRB v Larguet*, 8 October 2004 (2 months).

squad, or involvement in the Game in any other capacity in any Union in membership of the IRB. In addition, for any anti-doping rule violation not involving specified substances described in Regulation 21.22.2, some or all sport related financial support or other sport-related benefits received by such Player or Person will be withheld by the Board and its Member Unions.

### **Costs**

37. If the Board wishes us to exercise our discretion in relation to costs pursuant to Regulation 21.21.9, written submissions should be provided to the BJC via Mr. Ricketts by 17:00 Dublin time on 4 October 2007, with any responding written submissions to be provided by no later than 17:00 Dublin time on 11 October 2007.

### **Review**

38. This decision is final, subject to referral to a Post Hearing Review Body (Regulation 21.24.1) and an appeal to the Court of Arbitration for Sport (Regulation 21.27). In this regard attention is also directed to Regulation 21.24.2 which sets out the process for referral to a Post Hearing Review Body, including the time limit within which the process must be initiated.

27 September 2007

A handwritten signature in black ink, appearing to read 'Graeme Mew' with a stylized initial 'G' and a horizontal line under the name.

Graeme Mew, Chairman