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CERTIFIED TRANSLATION FROM THE POLISH LANGUAGE

File Reference Number: 1/S/2012

**ARBITRAL AWARD
of the Arbitration Tribunal for Sport
at the Polish Olympic Committee
given on January 21, 2013.**

Adjudication Panel:

Chairperson - Maria Zuchowicz
Arbitrator - Piotr Sendeki
Arbitrator - Paweł Granecki

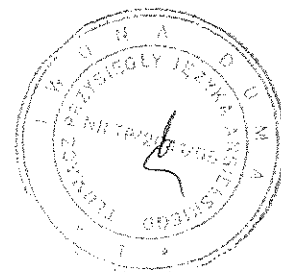
Recording clerk - Agata Kruszewska

Following the examination on January 21, 2013 of an appeal lodged by the World Anti-Doping Agency (WADA) versus the Polish Swimming Federation and Mirela Olczak against the decision given on March 27, 2012 by the PSF Board in the matter of Mirela Olczak

rules as follows:

- 1) To partially change the decision of the Polish Swimming Federation of March 27, 2012 in that the athlete Mirela Olczak is sanctioned with a one-year period of ineligibility.
- 2) To include the period of ineligibility until the date of giving this arbitral award in the total period of ineligibility of the athlete Mirela Olczak.

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- 3) To disqualify all competitive results obtained by the athlete Mirela Olczak during the competitions from November 12, 2011 through the commencement of the applicable period of ineligibility, including to forfeit any medals, points and prizes received for such competitions.
- 4) To dismiss the appeal with respect to the other points.
- 5) Pursuant to section 92 item 4 of the Rules of the Arbitration Tribunal for Sport at the Polish Olympic Committee, it determines the final court fee as PLN 4,000 /four thousand/, which is due to be paid in full to the Arbitration Tribunal for Sport at the Polish Olympic Committee.
- 6) To award in favor of the World Anti-Doping Agency (WADA) the amount of PLN 1,000 /one thousand/ from the athlete Mirela Olczak and the amount of PLN 1,000 /one thousand/ from the Polish Swimming Federation toward partial reimbursement of the proceeding costs.

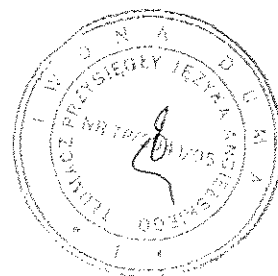
I. The facts

1. Mirela Olczak, a swimmer competing during the Grand Prix – Polish Cup was subjected on November 12, 2011 to an anti-doping test. The test performed on a bodily sample provided by the athlete revealed the presence of a prohibited substance known as “methyhexanamine” (methyhexaneamine), which is classified under “S6 (b) (Specified Stimulants).
2. The athlete did not request the analysis of the B-sample and explained that she took a dietary supplement known as “Thermal Pro” as she wanted to lose some weight in a short time. She declared that she had found out about the supplement from her colleagues – competitors, who reassured her that the supplement was safe and that they had used it before and the result

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of anti-doping tests was negative. The athlete took the substance without informing her coach or the sports doctor.

3. On January 24, 2012, having examined the athlete and her coach Jacek Nowak, the Disciplinary Commission of the Polish Swimming Federation sanctioned Mirela Olczak with a four-month period of ineligibility starting from December 7, 2011. Following an intervention on the part of the International Swimming Federation (“FINA”), the PSF Board increased the athlete’s sanction to six months.



II. Jurisdiction of the Tribunal for Sport at the Polish Olympic Committee – admissibility of the appeal.

As all sports federations, the Polish Swimming Federation is required to abide by the anti-doping regulations adopted by the Commission against Doping in Sport (CDS), which is an independent anti-doping organization for the Republic of Poland. On April 8, 2004, the Commission adopted the World Anti-Doping Code ("the Code") and operates based on the Act on Sports of June 25, 2010 (Journal of Laws No. 127, item 857), while applying anti-doping regulations in any anti-doping tests. The athletes, auxiliary staff (coaches, instructors, doctors, etc.) and any other persons who have accepted the anti-doping regulations as a condition for participation in sports competitions are bound by them. Based on the Model Anti-Doping Rules, the Polish Sports Federations adopt anti-doping regulations, incorporating them into their by-laws and disciplinary procedures and are required to abide by them. Since Mirela Olczak is a member of the PSF, she is required to abide by the anti-doping regulations.

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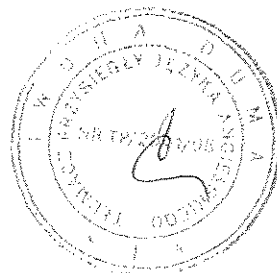
Under Article 13.2.2. of the Model Anti-Doping Rules "In cases involving national-level athletes subordinate to the Commission against Doping in Sport that do not have the right to appeal under Article 13.2.1 (it refers to international-level athletes), the decision may be appealed against to an independent and impartial national appeal body, i.e. the Arbitration Tribunal for Sport at the Polish Olympic Committee."

Under Article 13.2.3., one of the parties entitled to lodge an appeal to the Tribunal is WADA. (f)

It should be pointed out that the Polish Sports Federations undertake, based on the Model Anti-Doping Rules, to abide by the anti-doping regulations and to impose individual sanctions. Moreover, they recognize the rights of and undertake to cooperate with the Commission against Doping in Sport and disciplinary bodies.

The adoption and implementation of an anti-doping policy is a condition for obtaining financial and/or any other support from the Government of the Republic of Poland.

Therefore, it is clear from the regulations mentioned above that the authority competent to examine the appeal against the decision of the Federation's disciplinary body is the Tribunal and that WADA may lodge an appeal to the Tribunal for Sport at the Polish Olympic Committee.



III. Time limit to lodge an appeal.

WADA lodged the appeal within the 21-day period prescribed in Article 13.5. WADA received the case file by fax on April 3, 2012 and the grounds for the appeal were filed on April 24, 2012.

IV. Violation of anti-doping regulations.

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Methylhexaneamine found in the athlete's body is a prohibited substance, which is classified under "S6 (b)" – specified stimulants on the 2011 WADA Prohibited List.

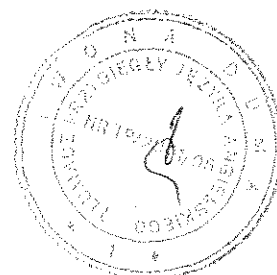
The athlete did not challenge the presence of the prohibited substance in her bodily sample and stated in her clarifying letter submitted on December 22, 2011 that the substance could be one of the components of the supplement known as Thermal Pro, which she had taken "to lose some weight in a quick and easy way".

It is therefore established that the athlete violated Article 2.1 of the Anti-Doping Regulations.

V. Determining the sanction.

1. The appeal against the decision of the Board of the Polish Swimming Federation of March 27, 2012 was lodged by WADA against the Polish Swimming Federation and the athlete Mirela Olczak. WADA challenged the decision of the PSF with respect to the sanction since, in its opinion, the athlete should be sanctioned under Article 10.2 of the Anti-Doping Regulations with ineligibility for the period of two years.
2. WADA justifies the sanction of two years with the provisions of Article 10.2, under which in the event of the first violation of the anti-doping regulations a period of ineligibility of two years shall be imposed. Further, WADA argues that there are no grounds to eliminate or reduce the period of ineligibility given that Article 10.5 provides for an elimination of the period of ineligibility (no fault or negligence – 10.5.1) or reduction of the period of ineligibility (no significant fault or significant negligence – Article 10.5.2) only where the athlete can establish that there occurred

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exceptional circumstances, which in the opinion of WADA is not the case here.

3. In her "Clarifying Letter" addressed to the President of the PSF, the athlete stated that she wanted to lose some weight in a quick and easy way – thanks to supplements. Afterwards the athlete stated as follows "I was aware that my fellow athletes had knowledge in this particular field of interest... After time I received pills I was reassured by my colleagues that I can safely use the specific, because they have been using it before and their dope tests results ... were negative. I neither had the knowledge nor the awareness about the fact that this supplement is classified as doping I am aware that my actions were completely irresponsible and imprudent, because I have been taking a substance without informing my coach and the sports doctor".

The athlete claims that the presence of the substance referred to above did not in any way affect her results.

Such claim can hardly be accepted given that the athlete had taken the prohibited substance in order to lose weight and thus improve her results.

4. Swimming is a discipline where the physical condition of the athlete is of paramount importance. Apart from its slimming properties, Thermal Pro also boosts energy, increases strength and has a stimulating effect.
5. Having analyzed the facts of the case, the Adjudication Panel found that there are no grounds to eliminate the sanction of ineligibility altogether since the criterion of "no fault or negligence" is not met here in full.

However, it should be analyzed whether, in the case concerned, the athlete deserves a reduction in the period of ineligibility imposed on her due to

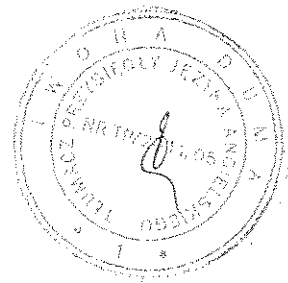
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no significant (material) fault or significant (material) negligence.

It is obvious that Article 10.5.2. only applies where the circumstances are truly exceptional, but needs to be considered when assessing the degree of the athlete's fault.

In imposing a sanction in the case concerned, the following issues should be taken into account:

- The athlete is very young and lacks experience.
- After the prohibited substance was found in her body, the athlete immediately revealed how the substance could enter her body, which is a prerequisite for the application of Article 10.5.2.



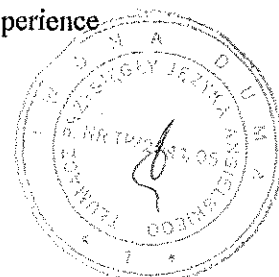
- The athlete immediately provided the name of the dietary supplement.
- As follows from her clarifying letter of December 22, 2011, the athlete understood her mistake, stating that her "actions were completely irresponsible and impudent" and that she "let down many people with [her] carelessness".
- The athlete sent to the Arbitration Tribunal a letter of November 19, 2012 entitled "Stanowisko zawodniczek wobec apelacji WADA" [The athlete's position with respect to the appeal lodged by WADA], in which she confirmed the facts contained in her declaration, said she was sorry and requests that she be punished under Article 10.5.2. of the anti-doping regulations by reducing the sanction by half and imposing a one-year period of ineligibility, with forfeiture of any prizes received from the time of violation of the anti-doping regulations.
- The athlete drew the right conclusions from the situation which arose, stating that "using any additional supplements should be discussed with coaches and doctors, rather than with [her] peers and colleagues".

The judicial decisions concerning anti-doping cases, which are invoked in the WADA's appeal brief, imply strict obligations

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on the part of an athlete with regard to the use of dietary supplements. The Adjudication Panel substantially agrees with the opinions expressed in particular by the Court of Arbitration for Sport in Lausanne (CAS), except that the decisions quoted in the WADA's appeal brief in the case concerned were made under certain factual circumstances, whereas the general conclusions drawn on the basis thereof may not be automatically applied to each case involving the violation of the anti-doping rules. Therefore, even though the Adjudication Panel fully approves the achievements of CAS and the bodies deciding anti-doping cases, it should not be disregarded that the case of the athlete Mirela Olczak deserves to be analyzed first on the basis of evidence and anti-doping regulations which apply in the case concerned, and the opinions expressed in other similar cases should only play an auxiliary role.

The Adjudication Panel believes that these proceedings are aimed to impose a sanction, which, while being a significant punishment for the athlete, will play an educational role rather than cause the longest possible break in or end the athlete's sport career. The analysis of the conduct of the athlete Mirela Olczak following the finding of methylhexanamine in her body as well as the fact that *tempore criminis* she was so young and inexperienced that the determination of her fault may not be the same as in the case of athletes with more experience



in sport, makes the degree of her fault open to debate. Without doubt, the Adjudication Panel deemed the athlete's actions careless and typical for young and inexperienced individuals. However, the athlete did not violate the anti-doping rules knowingly; the degree of the unintentional guilt is in the opinion

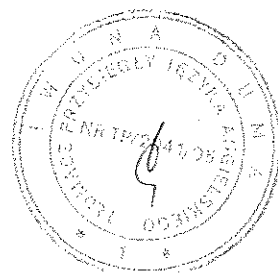
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of the Adjudication Panel not significant enough to – other than stated in the appeal lodged by WADA – justify the non-application of Article 10.5.2. The Adjudication Panel points out to the fact that a two-year ineligibility sanction, according to the systemic interpretation of Article 10.5.2, should be imposed if there is significant fault or significant negligence on the part of the athlete. In the case concerned the athlete Mirela Olczak demonstrated -- according to the facts established beyond doubt between WADA and the athlete, that in her case the intentional guilt or negligence is not significant enough to impose a two-year ineligibility sanction. The Adjudication Panel is of the opinion that this sanction should be imposed where *there is intentional guilt or serious negligence, which is not the case here.*

In light of the aforesaid, given that the athlete Mirela Olczak violated the anti-doping rules, she might be deemed to have acted carelessly, with carelessness being one of the forms of unintentional guilt. Therefore, the imposition of the ineligibility sanction is justified here. However, the Adjudication Panel believes that the period of ineligibility should be reduced to one year under Article 10.5.2 since no significant fault or negligence have been established on the part of the athlete. When judging the athlete's actions, her young age and lack of experience should be taken into account, which led the athlete to falsely judge the behavior consisting in taking the supplement containing the prohibited substance. Judging objectively, even though the athlete should be aware of the fact that she, as a professional athlete, should exercise the utmost care when taking any preparations she is unsure about, her case may not be considered as the one involving any intent in taking the prohibited substance. In light of the aforesaid, the Adjudication Panel

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believes that the one-year ineligibility sanction will both play an educational role and be a proper repression for the athlete who violated the anti-doping regulations.



6. Moreover, what deserves attention and full approval is "conclusion to the board of the Polish Swimming Federation" included in the Minutes of the meeting of the Disciplinary Board of the Polish Swimming Federation, which was held on January 24, 2012, which reads as follows: "Oblige coaches and managers of the teams to bring up to date athlete's knowledge regarding prohibited substances and their possible presence in dietary supplements".

This kind of recommendation implies the need for the provision of information concerning anti-doping regulations and prohibited substances, in particular to young athletes.

7. Given the above, the Tribunal has found that the appeal lodged by WADA should partially be allowed and decided to change the decision of the Polish Swimming Federation concerning Mirela Olczak, to sanction the athlete Mirela Olczak with a one-year period of ineligibility, starting from the coming into force of the ruling of the Arbitration Tribunal for Sport at the Polish Olympic Committee in the case concerned and to credit the period of ineligibility until the date of giving this ruling against the total period of ineligibility. Simultaneously, Mirela Olczak shall be punished in that all her competitive results obtained during competitions from November 12, 2011 through the commencement of the period of ineligibility be disqualified and any medals, points and prizes forfeited.

The Tribunal has ruled to award in favor of WADA the amount of PLN 1,000 /one thousand/ from the athlete Mirela Olczak and the amount of PLN 1,000 /one thousand/ from the Polish Swimming Federation toward reimbursement of the proceeding costs, deeming it appropriate for such costs to be relatively separated.

Following the settlement of the translation costs, the remaining amount

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shall be reimbursed to WADA as specified in the Cost Rules of the Arbitration Tribunal for Sport.

Repertory No.: 139/01/2013

*I, the undersigned, Iwona Duma, sworn translator of the English language registered on the list of sworn translators of the Ministry of Justice under number TP/2041/05, hereby certify that the above text is a true and complete translation of the unsigned Polish document presented to me.
Number of strokes and pages (1125 strokes per page): 16551 strokes (15 pages of translation)*

Warsaw, January 31, 2013.

