

Translation from Romanian:

APPEAL COMMISSION
attached to
NATIONAL ANTI-DOPING AGENCY
Bucharest

DECISION
No. 2/8.01.2010

The Appeal Commission convened on 8.01.2010, 12:00 hours, at the headquarters of the National Anti-Doping Agency in Bucharest, Blvd. Basarabia, No. 37-39, Sector 2, for the settlement of the appeal filed by the World Anti-Doping Agency (WADA), Stock Exchange Tower, 800 Victoria Square, Suite 1700, P.O. Box 120, Montreal, Quebec, Canada, represented by dr. Francois Kaiser, 1, Place Saint-Francois, P.O. Box 7191, 1002 Lausanne, Switzerland, against Decision No. 9/04.08.2009 of the Hearing Commission of Athletes and Athlete Support Personnel who infringed the anti-doping regulations, which decided the sanctioning with a "reprimand" of athlete Carmen Cristina Toma, a member of Club Sportiv Farul Constanta and Club Sportiv Dinamo Bucharest, without the application of the sanction of suspension from the sport activity, according to the provisions of art. 37 of Law No. 227/2006 regarding the prevention and fight against doping in sport, republished, because she was guilty of the breach of the provisions of art. 2 para. (2) letter a) of the said law.

The debates took place on 10 December 2009 at the headquarters of National Anti-Doping Agency.

The following persons participated in the meeting of the Appeal Commission of 10.12.2009:

- Athlete Carmen Cristina Toma, a member of Club Sportiv Farul Constanța and Club Sportiv Dinamo Bucharest, identified by Identity Card series KT, No. 337309, with her domicile in Constanța, str. I. C. Brătianu, No. 84, bl. SR9B, entrance A, apt. 3, Constanța county;
- Her coach, Dragomir Steluța, identified by Identity Card series KT, No. 274462
- The physician of the national athletics pool, Limona Adriana Camelia, identified by Identity Card series DP, No. 043797;

The Appeal Commission:

- Mr. Dragoș CONDREA – President
- Ms. Floarea CHIVU - member
- Ms. Carmen TROCAN - member
- Mr. Alin Florin CĂRSTOIU - member

Ministerul Justiției
Traducător Autorizat - Franceză-Engleză
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Ms. Elena - Magdalena COSTACHE, as member of the Appeal Commission, was absent.

Analyzing the appeal filed by the WORLD ANTI-DOPING AGENCY against Decision No. 9/04.08.2009 of the Hearing Commission of Athletes and Athlete Support Personnel who infringed the anti-doping regulations, which decided the sanctioning with a "reprimand" of athlete Carmen Cristina Toma, a member of Club Sportiv Farul Constanta and Club Sportiv Dinamo Bucharest, without the application of the sanction of suspension from the sport activity, according to the provisions of art. 37 of Law No. 227/2006 regarding the prevention and fight against doping in sport, republished, because she was guilty of the breach of the provisions of art. 2 para. (2) letter a) of the said law, the Appeal Commission establishes as follows:

In fact, by Decision No. 9/04.08.2009, the Hearing Commission of Athletes and Athlete Support Personnel who infringed the anti-doping regulations, analyzing File No. 10/2009 regarding athlete Carmen Cristina Toma, a member of Club Sportiv Farul Constanta and Club Sportiv Dinamo Bucharest, established that, as a result of the doping control conducted on 12.06.2009, for the Athletics sport discipline, on the occasion of the International Championship of Athletics of Romania, which took place in Bucharest, the analytic result of the sample of athlete Carmen Cristina Toma, holding code 2435900A, indicated the presence of the substance heptaminol, the result being confirmed by the Doping Control Laboratory in Koln, Germany.

The substance identified in the athlete's sample is included in Class S6.b. of the Prohibited List, being a specific substance.

Further to the debates, the Hearing Commission of Athletes and Athlete Support Personnel who infringed the anti-doping regulations established the fact that the athlete used, without intention, a food supplement containing also the substance heptaminol, and that from the evidence produced, it results that the athlete did not use the substance to enhance her performance in the sport she practices. Also, the Hearing Commission of Athletes and Athlete Support Personnel who infringed the anti-doping regulations establishes that this is the first violation of the anti-doping regulations by the athlete.

In consideration of the above, the Hearing Commission of Athletes and Athlete Support Personnel who infringed the anti-doping regulations decided to apply a reprimand to athlete Carmen Cristina Toma, a member of Club Sportiv Farul Constanta and Club Sportiv Dinamo Bucharest, without the application of the sanction of suspension from the sports activity, according to the provisions of art. 37 of Law No. 227/2006 regarding the prevention and fight against doping in sport, republished, because she was guilty of the breach of the provisions of art. 2 para. (2) letter a) of the said law, and the athlete was warned to use in the future only medicines prescribed by the sports physician



Against the decision of the Hearing Commission of Athletes and Athlete Support Personnel who infringed the anti-doping regulations, on 13.11.2009, the World Anti-Doping Agency filed and submitted an appeal, requesting the admission of the appeal, the cancellation of the challenged decision and, consequently, the suspension of athlete Carmen Cristina Toma for a period between one year and two years starting from the date on which the decision of the Appeal Commission enters into force, the disqualification of all results obtained in competitions starting from 12 June 2009 and until the commencement of the applicable period of ineligibility, also requesting an award for costs.

The appellant criticizes the decision issued because of the fact that the athlete did not prove how the prohibited substance entered her body, such alleging that she ingested a natural product called "Ginkofort" to relief the pain due to her premenstrual syndrome two days before the anti-doping test. Moreover, the athlete purchased the product at chemistry pursuant to the chemist advice, without informing him that she was a national-level athlete, and without reading the leaflet before ingesting the product. The prospectus of "Ginkofort" expressly mentions that the pills contain heptaminol.

In consideration of the aspects invoked, the Appeal Commission establishes that, from the produced evidence, it results that the athlete did not use the substance to enhance the sport performance in her discipline, that the nature of the specific substance and the time of ingestion were not beneficial to the athlete and did not lead to enhancing her performance – heptaminol being a cardiovascular stimulant, and the requirements of the triple vault discipline focus on the neuromuscular system, being an anaerobe effort. The duration of performance of a triple vault is of 5-6 seconds and it requires explosion, force, speed, and not resistance (which involves the cardio-vascular system – aerobe effort).

Also, the Appeal Commission assesses that athlete Carmen Cristina Toma could have taken more caution measures before consuming these pills, at least by reading the prospectus of the product. Moreover, according to the provisions of art. 21 of Law No. 227/2006 regarding the prevention and fight against doping in sport, republished, she should have specified her capacity as athlete upon purchasing the respective product.

The Appeal Commission also establishes that this is the first violation of the anti-doping regulations by the athlete and that, as a result of the positive result of the control of 12.06.2009, the athlete withdrew one (1) day before from the under 23 European Championships where she ranked 2nd as European performance, returning to the country when the organization announced that this substance was found in her sample. Then, she also withdrew from the Senior World Championships, Senior National Championships, Francophone Games, until the settlement of the case.

In consideration of the above, the Appeal Commission admits in part the appeal filed by WADA and modifies Decision No. 9/04.08.2009 of the Hearing Commission of

Athletes and Athlete Support Personnel who infringed the anti-doping regulations, replacing the measure of reprimand applied to athlete Carmen Cristina Toma, a member of Club Sportiv Farul Constanta and Club Sportiv Dinamo Bucharest, with the application of the sanction of suspension of the athlete from the sport activity for a period of 1 (one) year from the date of taking her biological samples.

In respect of the request for disqualification of the results obtained by the athlete starting from 12.06.2009 and until the commencement of the suspension period, the Appeal Commission shall order the disqualification of the results obtained starting from 12.06.2009 and until the date of issuance of this decision, taking into account that the athlete's suspension shall be ordered starting from the date of taking her biological sample.

In respect of the request to compel the respondent to bear the costs incurred by WADA for the submission of the appeal, the Appeal Commission shall reject this request, because the appellant did not prove any costs related to the submission of the appeal and did not submit in the file of the case any document in this respect and did not specify the amount of the costs.

In consideration of the provisions of art. 37, art. 42 para. 3 of Law No. 227/2006 regarding the prevention and fight against doping in sport, republished, based on art. 30 letter a) of Order No. 47/2009, as subsequently amended, for the approval of the Regulation for organization and operation of the Appeal Commission, the Appeal Commission

DECIDES:

To admit in part the appeal filed by the World Anti-Doping Agency (WADA) on 13.11.2009 against Decision No. 9/04.08.2009 of the Hearing Commission of Athletes and Athlete Support Personnel who infringed the anti-doping regulations.

To modify Decision No. 9/04.08.2009 of the Hearing Commission of Athletes and Athlete Support Personnel who infringed the anti-doping regulations, replacing the sanction of "reprimand" applied to athlete Carmen Cristina Toma, a member of Club Sportiv Farul Constanta and Club Sportiv Dinamo Bucharest, with her domicile in Constanța, str. I. C. Brătianu, No. 84, bl. SR9B, entrance A, apt. 3, Constanța county, with the application of the sanction of suspension of the athlete from the sport activity for a period of 1 (one) year from the date of taking her biological sample.

The competitive results obtained by athlete Carmen Cristina Toma starting from 12.06.2009 and until the date of issuance of this decision shall be disqualified, with all the consequences resulting from this fact, including forfeiture of any medals, points and prizes.

To reject WADA's request to compel respondent Carmen Cristina Toma to pay the costs incurred by WADA for the submission of the appeal.

The decision of the Appeal Commission may be challenged with the Court of Arbitration for Sport in Lausanne within 21 days from notification.

This decision is binding.

APPEAL COMMISSION
Dragoș Condrea – president

Illegible signature
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I, the undersigned SUR MINODORA-VASILICA, a certified translator with authorization no. 5260 issued by the Ministry of Justice, certify the exactness of the translation of the Romanian document,
Translator,

