

APPEAL COMMISSION
beside
NATIONAL ANTI-DOPING AGENCY
Bucharest
File no.25/2010

DECISION No. 2/19.05.2011

Date: 19.05.2011

Chairperson: Carmen TROCAN

Members:

Florin Alin CÂRSTOIU

Ionela TUDOR

Elena Magdalena COSTACHE

Dan OANCEA

Niculae TEODORESCU

Georgeta MIȘCĂ

Secretary: Gabriela Bicheru

The Appeal Commission, summoned on 9.05.2011, 17.30 H, at the official seat of the National Anti-Doping Agency, 37 – 39 Basarabia Bvd., District 2, Bucharest reviewed the appeal submitted by the World Anti-Doping Agency (WADA), with the Headquarters in Canada, Stock Exchange Tower 800 Victoria Square, Suite 1700, PO Box 120, Montreal, Quebec, 4421B7, represented by dr. François Kaiser, Place Saint- François, PO Box 7191, 1002, Lausanne, Switzerland against Decision no 1/11.01.2011 of the *Hearing Commission for athletes and athletes support personnel who violated the anti-doping rules* beside ANAD (referred herein as *the Hearing Commission*) sanctioning the athlete Sobota Kamil Mihail, registered to National College “Aurel Vlaicu” and Dinamo Bucharest Sport Club with one year of ineligibility, pursuant to the provisions of art. 36 of Law no. 227/2006 regarding prevention and fight against doping in sport republished by applying the provisions of article 46 (3) of the same law.

The following persons were present and heard to the meeting of the Appeal Commission on 09.05.2011: the athlete Sobota Kamil Mihail, identified with Identity Card series KX no. 750461, issued by SPCELP Cluj -Napoca on 07.07.2010, CNP 1920331125821, Mrs. Gabriela Andreiașu, the representative of the Hearing Commission pursuant to Empowerment Letter no. 118/05.05.2011, and Mrs. Ileana Vajjală, director of Doping Control Laboratory.

The Appellant was not present and asked for the case to be judged in its absence.

As no other requests were received, the Appeal Commission established to have a decision made on 19.05.2011.

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By reviewing the appeal submitted against the Decision no. 1/11.01.2011 of the Hearing Commission, the Appeal Commission takes note of the followings:

The requirements regarding the right to appeal of the Appellant are met. The appeal was submitted in due time.

De facto, on February the 16th, 2011, the Appellant appealed against Decision no. 1/11.01.2011 of the Hearing Commission with regard to the athlete Sobota Kamil Mihail. The Appellant shows that Sobota Kamil Mihail is a rugby player, member of Dinamo Bucharest Sport Club, but does not take into account that the athlete is registered to two different clubs and he is also member of National College "Aurel Vlaicu" Bucharest; both clubs are members of Romanian Rugby Federation.

In its appeal, the Appellant highlights that the substance "stanozolol" detected in athlete's biological sample is not a specified substance. The Appellant also underlines that the athlete had not been granted a Therapeutic Use Exemption (TUE), therefore he was guilty of having violated art. 2.2(a) of Law no. 227/2006 (the presence of a prohibited substance or its metabolites or markers in athlete's sample). By reviewing the evidences in the file and how the Decision of the Hearing Commission was reasoned, the Appellant does not note in athlete's favor the fact that the presence of a prohibited substance in athlete's body was due to a medical prescription and considers very difficult to prove, in this case, athlete's no fault or negligence or athlete's no significant fault or negligence towards how the prohibited substance got into his body.

The Appellant considers as applicable the provisions of Law no. 227/2006, republished and requests to have the athlete sanctioned with an ineligibility period between 18 months and two years. When reasoning the request, the Appellant specifies that the requirements concerning reduction of sanction in art. 46 (2) of Law no. 227/2006, republished are not met and invokes

CAS cases law and art. 10 of the World Anti-Doping Code, which reads “sanction cannot be completely eliminated on the basis of No Fault or Negligence when the administration of a prohibited substance had been (done) by the athlete’s personal physician or trainer without disclosure to the Athlete, while the athletes are responsible for the choice of medical personnel and for advising medical personnel that they cannot be given any prohibited substance.”

The Appellant also underlines the athlete had at hand the chance to use Internet to obtain information concerning the administered medicine. In Appellant’s opinion, the athlete did nothing to make sure the prescribed medication did not contain any compound in the 2010 Prohibited List and requests: to have the appeal admitted as formulated, to have the Decision no. 1/11.01.2011 of the Hearing Commission set aside and to have the athlete sanctioned with a period of ineligibility to be set between 18 months and two years.

Based on the reasons invoked by the Appellant and the evidences administrated in the case, the Appeal Commission takes note of the followings:

On the 10th of November, 2010, the athlete Sobota Kamil Mihail, registered both to National College “Aurel Vlaicu” and Dinamo Bucharest Sport Club, sport discipline rugby, underwent an out of competition doping testing ordered by the relevant federation (Romanian Rugby Federation).

Following this doping control, the athlete’s sample with the code no. 1953068A was found positive for 3’-hydroxistanozolol and 4 β -hydroxistanozolol, metabolites of stanozolol, substances in the 2010 Prohibited List.

The statements given by the coaches and the athlete show the athlete was educated with regard to his obligations related to doping issues.

According to the statements of the Hearing Commission representative and the director of Doping Control Laboratory, the ingested medicine did not influence sport performance and once ingested, it could stay in the system for two - three months.

By reviewing the athlete’s attitude during the doping control process and establishing the athlete’s degree of fault, the Appeal Commission took note of the athlete’s good faith, who admitted he used WINSTROL product from the moment he signed the *Notification for doping testing*. By reviewing the evidences in the file, it has been established that the above-mentioned medicinet had been prescribed to the athlete by a medical doctor to treat the “relapsed right tibial-tarsian sprain”. The athlete’s statement that he declined his status of being athlete in front

of the doctor, corroborated with the fact that, according to the patients' register, it was a common practice for the employees of the hospital where the athlete was treated not to fill in the box "profession" of the register, led the Appeal Commission to the conclusion that the use of the prohibited substance was not based on the athlete's intention to dope.

The athlete's availability for a new doping control during the Appeal Commission's hearing has also led to the conclusion regarding the athlete's no significant fault.

The Appeal Commission also took note that during 24 April – 23 October 2010, the athlete was suspended for disciplinary reasons by the International Federation of Rugby Amateur – European Rugby Association. This circumstance, corroborated with the fact that, according to the statement of the Doping Control Laboratory's Director, the Winstrol product did not improve the sport performances and it only increased the effort resistance led to the conclusion that, during the period when the athlete took the medicine, the athlete was not in a regular contact with the medical doctors of the clubs where the athlete was registered, which meant that the idea regarding the use of doping substances seemed not to be reasoned clearly.

Based on the provided evidences in the file, the Appeal Commission appreciates that the athlete has no significant fault or negligence in relation to the administration of the Winstrol product, taking into account that, at the moment of ingestion, he was serving a disciplinary ineligibility period and this product was not intended, due to its effects, to influence the sport performance.

On the other hand, the Appeal Commission should consider the strict liability principle, which also applies to this case. Despite the fact that the effect of this medication can persist in the body for many months, as it is kept in the adipose tissue and released more at certain times, the athlete should have manifested an increased vigilance to the effects of the products prescribed to him as well as to their persistence in time. For this reason, the Appeal Commission took note of the athlete's negligence and establishes a sanction of 14 months ineligibility period for the athlete.

Pursuant to the provisions of art. 28 of the Regulation that sets the organization and functioning of the Appeal Commission, no. 69/2011, with further changes and based on the above-mentioned, the Appeal Commission, with unanimity of votes

DECIDES

1. Admits partially the appeal submitted by the World Anti-Doping Agency (WADA), with the Headquarters in Canada, Stock Exchange Tower 800 Victoria Square, Suite 1700, PO Box 120, Montreal, Quebec, 4421B7.
2. Sets aside the Decision no. 1/11.01.2011 of the *Hearing Commission for athletes and their support personnel who violated the anti-doping rules* beside A.N.A.D.
3. Sanctions the athlete Sobota Kamil-Mihai, identified with IC KX 750 461, issued by SPCELP Cluj-Napoca, on 07.07.2010, CNP 1920331125821 registered to Aurel Vlaicu National College and Dinamo Bucharest Sport Club with ineligibility from any sport activity for 14 (fourteen) months. The sanction begins to run from the date of the current decision. Any suspension period applied to the athlete before the coming into force of the present decision will be credited against the total suspension period.
4. All the results obtained by the athlete Sobota Kamil Mihail in competitions, starting with November the 10th, 2010 up to the beginning of the applicable ineligibility period will be disqualified, with all the consequences resulting, including withdrawal of medals, points and prizes.

The decision may be appealed to the Court of Arbitration in Sport in Lausanne, in 21 days since the communication.

Mandatory.

CHAIRPERSON,
Carmen TROCAN