

DECISION  
№ 4  
Sofia, 21.10.2013

The Bulgarian Sport Arbitration with the Bulgarian Olympic Committee, at an open meeting on 16.10.2013 in the following panel of arbitrators:

CHAIRPERSON: Margarita ZLATAREVA  
MEMBERS: Tsvetan ATANASOV  
Mariana YAKIMOVA

and secretary Kamelia Ignatova, having examined the report of reporter Tsvetan Atanasov on arbitration case №2 in the BSA registry for 2013 has taken into consideration the following in order to pronounce:

The proceedings are pursuant to Article 7, paragraph 1, point 3 of the BSA Rules for resolution of arguments (RRA).

The proceedings were launched in response to the appeal of decision № 04/31/2013 from 11.03.2013 by the World Anti-Doping Agency /WADA/ on disciplinary exchange of letters № 04/31/2013 of the Disciplinary Commission of the Bulgarian Olympic Committee, imposing the penalty "one year" period of ineligibility" on ADEM SUNAY RAMIS, athlete in wrestling from LEVSKI Sports Club starting on 27.01.2013 due to doping violations disclosed with a test on 27.01.2013.

At the time of the test the applicable normative act was the active Regulations on Doping Control in Training and Competition Activities from 2011 (promulgated SG 35/03.05.2011), referred to as RDCTCA, and a criterion for the consequences of the prohibited substance *FUROSEMIDE* discovered in the urine test of the athlete is the List of Prohibited Substances of the World Anti-Doping Agency (WADA) for 2013.

**I. On the competence of the Bulgarian Sport Arbitration**

According to Article 60, paragraph 5 of RDCTCA the Bulgarian Sport Arbitration with BOC is competent to hear appeals as an appellative instance against decisions of the Disciplinary Commission of BOC. This competence is pursuant from by-law issued by the Council of Ministers on the basis of Article 45, paragraph 3 of the Law on physical education and sport (LPES). The RDCTCA is mandatory for the licensed sport organizations and their members, as well as for athletes who have gained their competitor rights through the respective sport organization.

The Bulgarian Wrestling Federation whose member was charged with a doping violation has adopted in its Statute the jurisdiction of BSA for doping control. Its athletes are subject to the administrative power of the Anti-Doping Center at the Minister of physical education and sport who is the national authority performing doping control in sport, as well as of the procedure for disclosing violations, determination of sanctions and appeals on the grounds of RDCTCA.

In view of the above there are grounds for arbitration under Article 10, point 5 of the BSA Rules for resolution of arguments.

Appealing before BSA and the inclusion of the defendant in the arbitration proceedings means acceptance of the regulations of these rules. Therefore the ruling arbitration panel was elected in accordance with the rules of Article 22, paragraphs 1 and 2 of the BSA RRA (see order from 16.09.2013 of the BSA chairperson) and each of the three arbitrators has signed an impartiality and independence declaration.

## II. On the subject of disagreement

1. With decision № 04/31/2013 from 11.03.2013 on disciplinary exchange of letters № 04/31/2013 the Disciplinary Commission of the BOC imposed on ADEM SUNAY RAMIS, athlete in wrestling from LEVSKI Sports Club the penalty "one year' period of ineligibility" starting on 27.01.2013 *for disclosed presence of a prohibited substance "furosemide" (a prohibited substance classified under "S5 diuretics and other masking substances" on the World Anti-Doping Agency 2013 Prohibited Substances and Methods List) and for use of a prohibited substance.*

The decision was appealed by the World Anti-Doping Agency /WADA/ in its part referring to the gravity of the imposed penalty with e request to modify and replace it with the penalty specified in Article 64, paragraph 1 of RDCTCA, two years period of ineligibility. The appeal formulates a justification of the groundlessness of the decision and the reduced penalty in particular, and a lack of grounds for the imposition of other, less severe texts on the athlete, and incorrect implementation of the sanctions envisaged in RDCTCA in this particular case.

The defendant in the proceedings Adem RAMIS has not challenged the order and manner of the test, its analysis or the result. He did not use his right of control analysis of sample "B". Before this panel in the open session on 16.10.2013 the athlete explained that he got the prohibited substance from an acquaintance "at the fitness" in the form of tablets, not packaged. He took it with the intention to lose weight in view of the forthcoming competition in the following days. He requested from the arbitration court to be allowed to compete again.

The Bulgarian Wrestling Federation abstained from an opinion on the argument.

The hearing arbitration panel, having in mind the complaints about the data in the disciplinary exchange of letters, assumed the following as established:

2. The appeal was made by a legitimate person against an appealable act and therefore should be considered admissible.

The appeal is justified in essence.



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*for the authenticity of the translation!* Paul



The RDCTCA and its Article 64, paragraph 1 envisages a period of two years ineligibility for the established violations of the anti-doping rules in the meaning of Article 6, paragraph 1, point 1 and 2 of envisages – presence and usage of a prohibited substance in the sample of an athlete based on performed doping control test by the Anti-Doping Center. This is the main provision that should apply in the process of confirmation of the disclosed violations, unless the penalizing authority establishes indisputably the presence of facts, corresponding to any of the provisions envisaging mitigation of the sanction.

The appealed decision does not explicitly state which texts of RDCTCA the Disciplinary Commission has referred to in order to decide on a penalty that is lesser than the prescribed one. This arbitration panel believes it appropriate to explore whether facts are present of any of the provisions reducing or excluding the responsibility of the athlete in the interest of a comprehensive study.

The penalty set out in Article **64, paragraph 1 of RDCTCA** could be reduced in the presence of the conditions referred to in **Article 66** thereof. In order to apply those provisions however, the following prerequisites must exist: the discovered substance should be *specific*; the athlete should prove in an irrefutable way that it entered his/her system by chance and was in no way intended to boost his sport achievements or to conceal another prohibited substance. It is clear that the taken substance *furosemide* is a prohibited substance according to the List of Prohibited Substances and Methods of the World Anti-Doping Agency (WADA) for 2013 i.e. theoretically possible that the athlete took it without the direct intention to boost his results or conceal other prohibited substances. However, the other component of the factual background referred to in Article 66 – namely convincing evidence that the substance entered the competitor's system by chance – is absent. It should be pointed out that the burden of proof as regards any intention to boost the sports results or conceal another substance using the discovered one rests with the athlete. No such evidence has been provided in the proceedings. What is more, the testimony of the athlete, including before this panel of the court clarifies that he had taken the prohibited substance precisely for the purpose of reducing his weight. In other words there is a deliberate use of the *furosemide* for its quality of a diuretic that could help the athlete stay in the desired category. It is a known fact that in wrestling the competitors are distributed into categories and an athlete's weight is an important factor of consideration for a competition's arrangements. Having taken the prohibited substance, the athlete has ensured himself the impermissible advantage to lose weight with the help of medication instead of the conventional way. On these grounds the arbitration court assumes that Article 66 of RDCTCA is **not applicable** to this particular case.

The court also thinks that the other privileged provision of RDCTCA, giving the opportunity to drop off the responsibility or reduce the penalty by half, namely Article 67 of RDCTCA, is equally inapplicable. In order to apply it, the athlete should either prove not guilty, so that he is not sanctioned at all or negligible fault, so that his penalty is reduced by half. As clarified earlier, in this particular case the deliberate actions of the athlete to use the prohibited substance in order



to lose weight, i.e. to create a competitive advantage are indisputable and therefore no justification exists to apply the provisions of Article 67 of RDCTCA.

It should be emphasized that **Article 6, paragraph 1, (a) and paragraph 2, (a)** impose on every competitor the burden of due care with regard to the intake of medication of any description. Therefore when a penalty is imposed in the order of this ordinance the penalizing authority should keep in mind the presumption of athlete's guilt, originating in these provisions and when imposing penalties lesser than the set ones should have collected convincing evidence of the guilt in terms of the athlete's attitude to his own actions.

In view of the above this arbitration panel assumes that the appealed decision of the Disciplinary Commission should be modified. The period of ineligibility of athlete ADEM RAMIS should be extended from one to two years.

The Bulgarian Wrestling Federation, implementing the BSA decisions, should be notified of the extended ineligibility period of the penalty imposed on RAMIS.

On the basis of the above grounds, this arbitration panel

**DECIDED:**

**MODIFIES** decision № 04/31/2013 from 11.03.2013 on disciplinary exchange of letters № 04/31/2013 of the BOC Disciplinary Commission, which imposes on ADEM SUNAY RAMIS with address 47 "Todorini Kukli" Street, Sofia, athlete in wrestling from LEVSKI Sports Club, Sofia the penalty "ineligibility period of one /1/ year" on the grounds of discovered "furosemide" /a prohibited substance classified under "S5" Diuretics and other masking substances/ and its use – doping violations under Article 6, paragraph 1, points 1 and 2 of the RDCTCA starting on 27.01.2013 **by INCREASING the period of ineligibility to TWO years.**

This decision can be appealed within 21 calendar days from its receiving before the Court of Arbitration for Sport in Lausanne, Switzerland.

Copies of this decision should be sent to the World Anti-Doping Agency (WADA) as an appellant, the Anti-Doping Center, Sofia, to Adem RAMIS with address 47 "Todorini Kukli" Street, Sofia and to the Bulgarian Wrestling Federation.

A written notice of this decision should be sent to the World Anti-Doping Agency and International Wrestling Federation (FILA).

CHAIRPERSON: *Signature illegible*

MEMBERS: *Signatures illegible*



*For the authenticity of the translation!*  
*Kaul*