

At the Headquarters of the Malta Sports Council, Cospicua

Decision of the National Anti-Doping Disciplinary Panel

Ref: 03/2012/NADDP

Anti-Doping Commission (Malta)

Vs

[Athlete] (Waterpolo Player, with Identity Card Number [...])

The National Anti-Doping Disciplinary Panel (hereinafter the 'Panel') consisting of Dr Carmel Cascun as Chairman, and Notary Dr Sue Mercieca and Ms Joanna Vella as members,

Before the commencement of these procedures, Not Dr Sue Mercieca and Ms Joanna Vella declared to the Chairman that they are not subject to any circumstance or conflict that could negatively affect their impartiality in the case under review. The same declaration is being made by the Chairman.

Considered the Request (Ref No: [...]) made by the National Anti Doping Commission on the 25th September 2012 (Dok ADC1) to the Chairman of the 'Panel' to appoint a sitting for the hearing of a case concerning an alleged breach of the Anti-Doping Regulations, 2011 (LN 281/2011, Sports Act, Chapter 455, Laws of Malta) by Waterpolo Player Mr [...]

Took note and reviewed all the documents that were forwarded to the 'Panel' by the Chairperson, Anti-Doping Commission, including principally the following:

- Request to the 'Panel' to schedule an anti-doping disciplinary hearing dated 25th September 2012 (Dok ADC1);
- Exit/Entry Log for the waterpolo match event [...] vs [...] dated [...] 2012 (Dok ADC 35);
- Chain of Custody Form dated [...] 2012 (Dok ADC34);
- Doping Control Officer Report Form dated [...] 2012 (Dok ADC33);
- Doping Control Form dated [...] 2012 (Dok ADC36)
- Email message from Manolis Lyris PhD of Olympic Athletic Center of Athens 'Spyros Louis' dated 5th September 2012 (Dok ADC32);
- Analysis Report numbered 10469 2 issued by Olympic Athletic Center of Athens 'Spyros Louis' dated 5th September 2012 (Dok ADC31);
- Letter by the Chairperson Anti-Doping Commission dated the 5th September 2012 to the President of the National Association (i.e. ASA) following an Adverse Analytical Finding (Dok ADC24);



- Notification of Adverse Analytical Finding addressed by the Chairperson Anti-Doping Commission to [...] on the 5th September 2012 (Dok ADC28);
- Report of Adverse Analytical Finding (Ref No. [...]) (Dok ADC27);
- Receipt of Delivery of Letters signed by [...] on the 10th September 2012 (Dok ADC17);
- Initial Review by the NADO regarding Adverse Analytical Finding signed by the Chairperson Anti-Doping Commission (Ref No. [...]) (Dok ADC29);
- Email message by the National Anti-Doping Program Coordinator to Mr Joe Caruana Curran on 10th September 2012 (Dok ADC12);
- Receipt of Delivery of Letters signed by Joe Caruana Curran, President of ASA on the 10th September 2012 (Dok ADC14);
- Receipt of Delivery of Letters signed by [...] on the 11th September 2012 (Dok ADC11);
- Email message dated 11th September 2012 from the General Secretary, ASA Malta to [...] (Dok ADC4);
- Email message dated 12th September 2012 from National Anti-Doping Program Coordinator to [...] on the subject of Laboratory Documentation Package (Dok ADC8);
- Request for Provisional Hearing dated the 14th September 2012 signed by [...] (Dok ADC3);
- Email message dated the 19th September 2012 from the National Anti-Doping Program Coordinator to Dr Manolis Lyris cancelling the analysis of Sample 'B' (Dok ADC9);
- Empty/unfilled set of Doping Control Form (Urine) marked Dok ADC'Y';
- Copy of the Athlete's Consent Form marked Dok ADC'X'.

Took note of the Notice issued by the Chairman of the National Anti-Doping Disciplinary Panel to [...] on the 6th October 2012 for him to appear before the 'Panel' on the 19th October 2012 (Dok NADDP1), copy of which has also been forwarded to the Anti-Doping Commission, the Aquatic Sports Association of Malta, the Malta Sports Council and the [...].

Took note of the documents tabled by [...] whilst giving evidence, namely:

- Pink Copy 1 of Doping Control Form (Urine) dated [...] 2012 (Dok KH2);
- Yellow Copy 4 of Doping Control Form (Urine) dated [...] 2012 (Dok KH1);

Heard and took note of the evidence given under oath during the hearing of the 19th October 2012 held at the Cottonera Sports Complex, Cospicua by the following:

- Mr [...] (the athlete charged with the anti-doping breach)
- Dr [...]

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Heard and took note of the submissions and comments made during the hearing by advocate Dr Peter Fenech retained by the Anti-Doping Commission;

Heard and took note of the submissions and comments made during the hearing by Dr Stephen Tonna Lowell, the defence advocate retained by Mr [...];

during the sitting held at the Cottonera Sports Complex, Cospicua on the 19th October 2012 at 17.45 hours.

The parties agreed that the Panel's decision is to be written in English.

1. Preliminaries

1.1 In the case under review [...], who is registered as a player with [...], at about [...] hrs on the [...] 2012 was asked to provide a urine sample 'in-competition' immediately after the waterpolo match between [...] and [...] which was then played at [...] in [...].

1.2 According to the procedures the 'Doping Control Form' and the 'Chain of Custody Form' were completed (Dok ADC36 and Dok ADC34). On the [...] 2012 at about [...] hours a urine sample of 110 ml quantity was collected from [...], and when requested to list "any prescription/non-prescription medications or supplements taken over the past 7 days and any transfusions received over the last 6 months" [...] answer was N/A (not applicable). [...] urine sample was sealed in two containers marked 'A' and 'B'.

1.3 The urine samples were sent to a WADA¹ accredited laboratory at the Olympic Athletic Center of Athens 'Spyros Louis'. On the the 5th September 2012 this laboratory issued its analysis report number 10469_2 under the signature of Laboratory Director Dr Manolis Lyris PhD. In this report, *inter alia*, it was declared that:


- Event/status of Control: In Competition Testing
- Sport: Waterpolo
- Type of Sample: Urine
- Chain of Custody Status: According to WADA specifications
- Sample Code: A416630
- Sex: Male
- Substance Identified: Cocaine
- Result: Adverse Analytical Finding

1.4 According to the 2012 Prohibited List² as published by WADA "All stimulants (including both optical isomers where relevant) are prohibited, except imidazole

¹ World Anti-Doping Agency

² The World Anti-Doping Code, The 2012 Prohibited List (published on 24th August 2011 effective as from 1st January 2012).



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derivatives for topical use and those stimulants included in the 2012 Monitoring Program. Cocaine is considered as one of the 'in-competition' prohibited

Substances, and in fact cocaine is specifically mentioned under the paragraph containing the list of the (prohibited) Non-Specified Stimulants.

- 1.5 On the 5th September 2012 [...] was informed that a prohibited substance was detected in the urine sample that was collected from him on the [...] 2012 (Dok ADC28). Mr [...] was also given a Report of Adverse Analytical Finding (Dok ADC27) in which it was stated that cocaine was identified in his urine sample. It was added that cocaine metabolites were confirmed in the sample as also mentioned in the laboratory analysis report issued by Dr Manolis Lyris. Then Mr [...] was told that the presence of such substance was in violation of the WADA Code (Art 2.1) and LN 281/2011 (Art 3.3) of the Laws of Malta. Furthermore [...] was informed of the possible consequences which such a breach may attract in terms of the WADA Code (Art 10.1 and Art 10.2) and LN 281/2011 (Art 11.1 and Art 11.2).
- 1.6 Also on the 5th September 2012 the Chairperson of the Anti-Doping Commission informed the President of the Aquatic Sports Association of Malta of the Adverse Analytical Finding concerning [...] (Dok ADC24). In turn the General Secretary of the Aquatic Sports Association of Malta, on the 11th September 2012 notified Mr [...] that "the Aquatic Sports Association of Malta is provisionally suspending you with immediate effect" (Dok ADC4). At some stage before the commencement of these proceedings [...] was considering pursuing a provisional hearing but eventually this was not pursued.
- 1.7 Although [...] was given the opportunity to request the analysis of Sample 'B' by the 12th September 2012, Mr [...] did not exercise such a right, even though some extra time seems to have been given to him to decide. In any event on the 19th September 2012 the Director of the laboratory in Athens was advised by the National Anti Doping Program Coordinator that "the athlete did not request the analysis of the B-Sample" (Dok ADC9). Also during the hearing Mr [...] said that he did not request for an analysis of the B-Sample since the urine sample was from the same batch of urine collected from him.

2. The Merits and Considerations

- 2.1 At the start of the hearing defendant's advocate raised two preliminary points. The first point concerned the issue of consent, when it was stated that the athlete could withdraw his consent even after providing the sample and that in such an event the proceedings ought to be halted. The advocate appearing for the Anti Doping Commission disagreed with this and replied that even if consent by the athlete were to be withdrawn such a withdrawal would not halt disciplinary procedures. He added that withdrawal of consent would result into an ineligibility period of

the athlete for 2 years which latter comment was agreed to by the defendant's advocate.

2.2 The other point raised by the defendant's advocate concerned the issue of 'self-incrimination' when Mr [...] advocate argued that the provision of a sample by the athlete meant that it had the effect as if asking the athlete to self-incriminate himself. In reply to this the advocate assisting the ADC emphasised that the current proceedings were proceedings concerning sports rules and that normal criminal procedures are not applicable to these proceedings³.

2.3 After considering the position [...] decided to concede the preliminary points raised and hence the hearing moved on to consider the merits of the case.

2.4 Nevertheless at this stage the Panel, with respect to the issue of 'withdrawal of consent', highlights that if one were to look closer at the WADA Code Articles (2.3) and (10.3.1)⁴, these Articles only make reference to 'Refusing and Failing without compelling justification to Submit to Sample Collection'. Therefore it is the considered opinion of the Panel that since there is no specific mentioning of 'withdrawal of consent' in the WADA Code then the athlete has two options when requested to submit to a urine sample collection: either to submit a sample or to refuse to give the sample. However once it is given, it cannot be withdrawn. Also The Anti-Doping Regulations, 2011 (LN281/2011) provide that once a person as a sport participant falls within the definition of an athlete, as subject to the jurisdiction of a country which is signatory to WADA, he would automatically be required to comply with the WADA Code. Art 6(1) in LN281/2011 states that all athletes affiliated with a national association shall be subject to an in-competition testing by the athlete's national association, international federation, the ADC, national organisations and any other anti-doping organisation responsible for testing at a competition or event in which they participate⁵. Hence athletes are by law required to submit to anti-doping test and if they refuse or fail to submit to sample collection without compelling justification then this will be considered as a violation of an anti-doping rule.


2.5 During his evidence under oath, [...] recounted that when he was asked to submit to the anti-doping test on the [...] 2012 he was startled because a week before the waterpolo match he attended a bachelor's party at a club in [...], [...] where he had noticed that cannabis was being consumed. However he said that he did not consume any himself. Mr [...] also said that on Friday night before the waterpolo match (which was played on a Sunday) and after coming back from [...] he was present at a club in [...], Malta where he alleged noticing that cannabis and cocaine were being consumed. Again Mr [...] stated that he did not consume any of these substances then, although when he received the positive anti-doping result the only possible explanation he

³ Vide Part One: Doping Control - Introduction, concluding paragraph p.18 (WADA Code, 2009)

⁴ Their equivalents in The Anti Doping Regulations, 2011 LN281/2011 are Art 3(8) and Art 11(3) (a)

⁵ Under the same Article, athletes serving to a period of ineligibility or a provisional suspension shall also be subject to out-of-competition testing at any time or place.



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could think of was that when he was at the club in [...] he was given a drink that was not his, and which drink was taken away from him abruptly by an unknown third party after taking a sip. Mr [...] described this drink as not normal and that it “had an anaesthetic sensation to it”.

2.6 Mr [...] did not produce any corroborating evidence to what he recounted during his evidence under oath. Apart from this lack of corroboration which is required under Art 11(4) in LN281/2011 to justify any elimination or reduction, the Panel is apprehensive of the athlete’s ‘startled’ reaction shown by him immediately after he was asked to submit to a sample for anti-doping control. This reaction may be a signal that the athlete is not as innocent as much as he tried to demonstrate.

2.7 No request was made by [...] for a Therapeutic Exemption Use prior to the sports event of the [...] 2012.

2.8 The laboratory test finding of the prohibited substance that was identified in [...] urine sample (as also noted in the Report of Adverse Analytical Finding (Dok ADC27) was not contested by the athlete. Apart from stating the prohibited substance identified in the sample, which was ‘cocaine’, this Report and also the Athens Laboratory Report (Dok ADC31) contained the following additional note: “The presence of a. benzoylecgonine and b. ecgoninemethylester (Cocaine metabolites) were confirmed in the sample.” According to pharmacological data, cocaine is poorly absorbed from the gut and has a high first-pass metabolism thus there will be less drug which will reach the systemic circulation when taken orally. This is why the most common routes of taking cocaine are by inhalation, injection or smoking⁶⁷⁸. Therefore the Panel is of the opinion that it is highly improbable that Mr [...] had ingested the substance via an alcoholic drink (bearing also in mind that he said that he had a sip) for cocaine metabolites to have been found. Furthermore scientific literature states that when cocaine is mixed with alcohol a different metabolite from those mentioned in the Laboratory report (Dok ADC31) would result⁹.

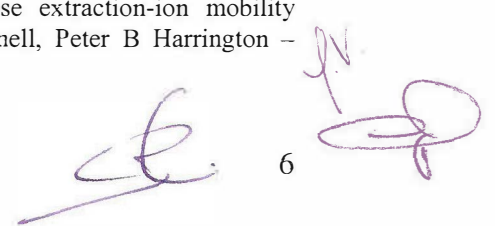
2.9 During his evidence Dr [...], [...] of [...] [...] confirmed that [...] is registered as a player with [...] [...], and that this athlete took his sport relatively seriously considering his work commitments. However of concern to the Panel is the secretary’s admittance that the [...] did not organise any information session on

⁶ Cocaine-Related Psychiatric Disorders by Christopher P Holstege MD – Medscape Drugs, Diseases & Procedures, Jun 9, 2011.

⁷ The effect of ethanol on oral cocaine pharmacokinetics reveals an unrecognized class of ethanol-mediated drug interactions by Robert Parker and S Casey Laizure - Drug Metabolism and Disposition Vol 38 (2010) 317-322.

⁸ Routes of drug administration by P Verma, A.S. Thakur, K Deshmukh, Dr AK Jha and S.Verma - International Journal of Pharmaceutical Studies and Research Vol 1(1) (2010) 54-59.

⁹ Detection of cocaine and its metabolites in urine using solid phase extraction-ion mobility spectrometry with alternating least square by Yao Lu, Ryan M O'Donnell, Peter B Harrington – Forensic Science International Vol 189 (2009) 54-59.



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anti-doping legislation for their athletes. As this Panel had said on other occasions the Sports Organisations have a duty to educate their athletes about anti-doping regulations for them to avoid anti-doping breaches. Dr [...] declared that he became aware of this case after [...] was tested for anti-doping.

3. The Decision

On the basis of the foregoing, the National Anti-Doping Disciplinary Panel decides this anti-doping case brought by the National Anti-Doping Commission against the athlete Mr [...] by finding :

- That Mr [...] has breached the Anti-Doping Regulations, 2011 Art 3(3) and the WADA Code Art 2.1 as the prohibited substance 'cocaine' has been found in [...] urine sample that had been collected from him 'in-competition' on the [...] 2012 immediately after the waterpolo match between [...] and [...].
- And therefore the National Anti-Doping Disciplinary Panel as provided by the Anti-Doping Regulations, 2011 Art 11(2) and the WADA Code Art 10.2 is imposing on the athlete [...] a suspension of ineligibility from any sports activities for a period of two (2) years commencing from the date of his provisional suspension on the 11th September 2012.

Dr Carmel Cascun

Dr Sue Mercieca

Ms Joanna Vella

This

29th

day of November 2012

At Cospicua, Malta