

DECISION
No. 7/8.12.2008

The Appeal Commission assembled on 8.12.2008, 13h30 a.m., at National Anti-Doping Agency's official seat in Bucharest, 37-39 Basarabia Blvd, District 2, in order to solve the appeal formulated by the Olimpic Sport Club situated in Craiova, 9 Stirbei Voda Bvd., Dolj County and the athlete Popescu Liliana residing in Craiova, 89 Dacia Bvd., bl. U5, sc. 1, appt. 5, Dolj County against the Sanction Committee's Decision no. 23/ 03.10.2008, which establishes that the athlete **Popescu Liliana** is sanctioned with two years ineligibility, pursuant to art. 31 of the Law no. 227/2006 regarding prevention and fight against doping in sport with further changes, the athlete being guilty of violating the provisions of art. 2, paragraph 2, letter a) of the mentioned law.

The following persons attended the Appeal Commission's meeting:

- Mr. Dan IDITA, lawyer, the representative of the athlete Popescu Liliana and Olimpic Sport Club, based on the power of attorney no. 134535/ 11.11.2008 within the file.
- The athlete Popescu Liliana, identified with IC series DX, no. 568 293, CNP 2820205160027
- Mrs. Graziela Elena Vajjala – the representative of Sanctions Committee.

The Appeal Commission:

- mrs. Elena Magdalena Costache – Chair
- mrs. Daniela TEIANU – member
- mrs. Dana CHIRIPUS – member
- mrs. Carmen TROCAN – member
- absent – mrs. Veronica Tifin, member

Analyzing the appeal statement formulated by the Appellants Popescu Liliana and Olimpic Sport Club against the decision no. 23/03.10.2008 suspending the athlete for two years, pursuant to art. 31 of the law no. 227/2006 regarding the prevention and fight against doping in sport, with further changes and, the athlete being guilty of violating the provisions of the art. 2, paragraph 2, letter a) of the mentioned law, establishes the followings:

De facto, following the doping control conducted on 29.05.2008 on the *International Meeting of Alger* at IAAF request, the analytical result of

the sample no. **2261896 A/B** of the above-mentioned athlete, received from the Doping Control Laboratory of Paris, indicated the presence of **the prohibited substance NESP (Novel Erythropoiesis Stimulating Protein)**. The Hearing Commission heard the athlete on 08.07.2008, respectively on 05.08.2008, at the National Anti-Doping Agency's official seat. The athlete claimed she was innocent, stating that in 27.05.2008, while in the locality of Bacau, she suffered a scooter accident "falling down violently with the back (the lumbar area) against the kerb stone of a pavement", and being transported by a taxi to the Emergency Hospital of Bacau County, where she was treated for "a risk of renal blocking".

The athlete submitted to the Commission some documents issued by the Hospital, claiming that while in hospital, she was administrated many medicines, among which **Aranesp**.

At the same time, during the Hearing Commission meeting in 05.08.2008, the athlete claimed she suffered from a chronic anemia since 2000, submitting to the file two Medical Analyses Reports issued in October 2005, respectively April 2006 by a private laboratory of Craiova County. She also submitted a Medical Analyses Bulletin issued by the Radiology Department of the Emergency Hospital of Bacau County, dated 27.05.2008. On the same occasion, the athlete stated that while being hospitalized in the Emergency Hospital of Bacau County, she never said anything about her being an athlete.

To sustain what the athlete presented, she also submitted two statements (dated 18.07.2008 and 30.07.2008) of the medical doctor Todosi Gheorghe, who treated her on 27.05.2008.

As a result of what the athlete stated for this case and the provisions of the art. 39, paragraph 2 of the Law no. 227/2006, the National Anti-Doping

Agency submitted the athlete Popescu Liliana's file to the IAAF Doping Review Board to be reviewed and to establish whether there or there weren't exceptional circumstances stipulated in IAAF Rule 38.13.

The Doping Review Board's representative notified the NADA on 30.09.2008 that in the current cases there were no exceptional circumstances stipulated by the IAAF Rules, therefore the file was going to be managed by NADA pursuant to the Romanian legislation in force.

As a result, on 30.09.2008, the Hearing Commission reached the Decision no. 23/ 30.09.2008 establishing that the athlete Popescu Liliana violated the provisions of the art. 2, paragraph 2 of the Law no. 227/2006 and submitted the file to the Sanction Committee in order to have the sanction applied pursuant to the legal provision in force and the documents within the file.

On 03.10.2008, the Sanctions Committee besides NADA reached the Decision no. 23/03.10.2008 establishing the ineligibility of the athlete Popescu Liliana for two years pursuant to the art. 31 of the Law no. 227/2006, as she was guilty of violating the art. 2, paragraph 2, letter a) of the above-mentioned law, the ineligibility period starting with the date of sample collection.

Both the sport club Olimpic Sport and the athlete appealed against the above-mentioned decision (namely, the Decision no. 23/ 03.10.2008).

As for the appeal filed by the sport club: despite the fact that the Decision no. 23/03.10.2008 of the Sanctions Committee besides NADA was notified to the club on 13.10.2008 (according to the receiving confirmation existent within the file), the appeal was filed on 27.10.2008 (the date of the mail) and registered to NADA under the no. 1137/29.10.2008.

Taking into account these facts and pursuant to the art. 27 paragraph 1 of the Order no. 60/2007 for the approval of the Appeal Commission Regulation, the Chair of the Appeal Commission discussed about the appeal being filed too late by the sport club. The sport club representative said he let the Commission decide in this regard.

The Appeal Commission established that the appeal was filled too late, over the legal term of ten days.

As for the appeal filed by the athlete Liliana Popescu, the decision against which the appeal was filled was notified to the athlete on 18.10.2008 (receiving confirmation) while the appeal was filed on 27.10.2008 (the date of the mail) and registered to NADA under the no. 1138/ 29.10.2008. Therefore, the athlete requested in the appeal for the Decision no. 23/03.10.2008 to be repealed, reasoning that the substance found in her system was administrated to her while she was in the hospital, in a state of unconsciousness and in subsidiary asking for the appeal to be admitted and the art. 39, paragraph 3 of the Law no. 227/2006 to be applied and the sanction to be reduced to the half.

In order to solve the case, the Hearing Commission, by the aid of the National Anti-Doping Agency investigated the circumstances related to the diagnosis established and the treatment administrated to the athlete during the hospitalization, requesting to the Emergency Hospital of Bacau County on 11.07.2008 the medical documents of the patient Liliana Popescu.

Following the request, the Emergency Hospital of Bacau County transmitted to the Commission, on 24.07.2008 – 30.07.2008, copies of the medical documents related to the case, the official statement of the hospital and a new statement of the Dr. Todosi Gheorghe (dated 30.07.2008).

At the same time, in 29.07.2008, the Commission requested to the National Institute of Sport Medicine copies of the medical investigations' results of the athlete Liliana Popescu, performed on the occasion of the periodical medical examinations. In 30.07.2008, the Institute submitted to the Commission the Medical Analysis Bulletin from 1998 – 2008 as well as the Medical-Sportive Note issued on March – July 2008 on the athlete's name.

Consequently, the National Institute of Sport Medicine submitted to the Hearing Commission also the registrations related to the diagnoses of the athlete in the last eight years.

After reviewing the documents from the file case, the following irregularities have been noticed:

- in the statement sent to IAAF on 03.07.2008, the athlete has declared that she was unconscious while she was transported to the hospital, but this has been denied by the Emergency Hospital of Bacau County, through the note no. 10565 from 30.07.2008; at the same time, the athlete's statement according to which she was transported to the hospital with a taxi undermines the seriousness of the accident, taking into account that it hasn't been called the ambulance;
- on 05.08.2008, the athlete has stated that she suffers from chronic anemia even since 2000, but this has been invalidated by the medical documentation provided by the National Institute of Sport Medicine; thus, the athlete's bulletins of analyses issued between 1998 – 2008 have revealed that the values of the hemoglobin level were normal and, moreover, the athlete wasn't registered as suffering of anemia; at

the last medical control, it has been issued a sport medical note, valid from March to July 2008, according to which the athlete was “healthy from clinical point of view”; even Dr. Cone, who is the physician of the athlete’s pool didn’t know about any disease of the athlete (respectively anemia);

- at the same time, in the statement given on 18.07.2008, the medical doctor Todosi Gheorghe has declared that the patient Liliana Popescu was brought unconscious to the Emergency Unit of the Hospital and, among other medicines, it has been also administered **Aranesp**; subsequently, following the official investigations of the Commission, the same medical doctor stated in front of the notary Isache Stefan on 30.07.2008, certified under the no. 1604/ 30.07.2008 that the patient was administrated some anti-spastics and painkillers and only at the moment of getting out of the hospital it has been prescribed to her some medicaments among which **Aranesp** and patient was advised to address to the Students’ Polyclinic. The doctor’s statements from 30.07.2008 are confirmed also by the official point of view of the Emergency Hospital of Bacau County, which has been sent to the Hearing Commission, and according to which the patient was conscious during the investigations and the **Aranesp** medicine was prescribed to her only when she left the hospital.

Regarding the two statements of the same doctor, respectively the one from 18.07.2008 and the one submitted to the file on 12.11.2008, the Commission establishes that they can not be taken into consideration as only photocopies of these statements were submitted to the file, despite

the fact that on 12.11.2008 meeting, the representative was advised to submit to the file the original statements but this never happened.

The Appeal Commission also considers that the athlete's behavior was inadequate both during the hospitalization, as she didn't say anything about her status of athlete but the one of student and after leaving the hospital, as she should comply with the doctor's recommendations and to inform her physician and coach about the accident and the treatment administered and prescribed in the Emergency Hospital of Bacau County, the fact being admitted by the athlete during the meeting of the Appeal Commission. Also, during the Appeal Commission meeting the athlete stated that when she filled in the doping control form during the doping control conducted during the *International Meeting of Algeria* , on 29.05.2008, the athlete did not inform the doping control officer about the incident on 27.05.2008 or about her being administered medicine following the incident and she did not mention these aspects in the doping control form either. More than that, she did not notify her coach or the pool's medical doctor regarding the incident and the medicine administered to her, although she had the obligation to do it.

More than that, according to the law, the athlete had the obligation to inform about her status of athlete (*Art. 19 of the 227/2006 Law – The national or international level athlete has the obligation to mention his or her status of athlete during any medical exam, of any kind*”).

With the review of the above-mentioned facts, the Appeal Commission establishes that the athlete is guilty of violating the art. 2, paragraph 2, letter a) of the Law no. 227/2006, the athlete being responsible for the presence of any prohibited substances or its metabolites or markers in her body, while it

is not necessary to establish the intention or the fault to demonstrate an anti-doping rule violation (art. 39, paragraph 1 of the Law 227/2006).

The minute of the Appeal Commission meeting, signed today, 08.12.2008 is a part of the current decision.

Based on the above-mentioned reasons, pursuant to art. 30, letter a) from the Order no. 60/2007 for the approval of the Appeal Commission Regulation, the Appeal Commission

DECIDES:

NOT to admit the late appeal of the Olimpic Sport club against the Decision no. 23/03.10.2008 of the Sanctions Committee – NADA.

NOT to admit (as it is not reasoned) the appeal of the athlete Popescu Liliana against the Decision no. 23/03.10.2008 of the Sanctions Committee – NADA.

Maintains as legal and grounded the Decision no. 23/03.10.2008 of the Sanctions Committee – the National Anti-Doping Agency.

The decision may be appealed directly to the Court of Arbitration for Sports, in Lausanne, in up to 21 days since the notification.

The current decision is mandatory.

THE CHAIR OF THE APPEAL COMMISSION,

Elena Magdalena COSTACHE