

**DECISION**  
**No. 6/8.12.2008**

The Appeal Commission assembled on 8.12.2008, 11h25 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 Olympic Sport Club situated in Craiova, 9 Stirbei Voda Bvd., Dolj County and the athlete Dumbravean Corina residing in Craiova, 34 C (ex 22) Stirbei Voda Bvd. against the Sanction Committee's Decision no. 22/ 10.09.2008, which establishes that the athlete **DUMBRAVEAN Corina** 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 Dumbravean Corina and Olympic Sport Club, based on the power of attorney no. 134536/ 11.11.2008 within the file.
- The athlete Dumbravean Corina, identified with IC series DX, no. 572667, CNP 2840415060048
- 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 Dumbravean Corina and Olympic Sport Club against the decision no. 22/10.09.2008 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**, through the Decision no. 5/19.02.2008, the **Hearing Commission** decided that despite the fact that the presence of the prohibited

substance **NESP (Novel Erythropoiesis Stimulating Protein)** in DUMBRAVEAN CORINA's sample is actually an anti-doping rule violation pursuant to art. 2, paragraph 2, letter a) of the Law no. 227/2006 regarding the prevention and fight against doping in sport with further changes and art. 2.2 of the World Anti-Doping Code, the athlete *established her lack of fault or significant negligence by the documents submitted to her file, as she proved that she did not know and she could not have known or even suspected, even by paying the most careful attention that she had been administrated prohibited substances.*

Based on the above-mentioned decision, the **Sanction Committee**, made the decision no. 5/ 19.02.2009, deciding not to apply the ineligibility sanction against the athlete **DUMBRAVEAN Corina, registered to Olimpic Craiova Sport Club**, pursuant to art. 39, paragraph (2) corroborated with art. 39, paragraph (4) of the Law no. 227/2006 regarding prevention and fight against doping in sport, as she proved the lack of fault or significant negligence.

In 13.03.2008, the Romanian Athletics Federation appealed against the decision no. 5/19.02.2008 of the **Sanctions Committee**, on IAAF's request, invoking the fact that IAAF anti-doping rules 38.16 – 38.20 regarding the exceptional circumstances in case of an international level athlete had been disregarded.

The Appeal Commission approved the Romanian Athletics Federation's appeal by the Decision no. 2/ 23.05.2008 as being grounded and repealed the Decision no. 5/ 19.02.2008 of the Sanctions Commission and decided that the case was going to be solved in compliance with the legal provisions in force for the international level athletes.

The athlete's file was submitted to the IAAF Doping Review Board, in order to establish whether there were exceptional circumstances in the athlete's case.

The IAAF Doping Review Board, when reviewed the file, established that the medical documents within the file submitted by the athlete Dumbravean Corina together with the information and data registered by IAAF are not sufficient for the athlete to benefit from exceptional circumstances and the reduction or elimination of the suspension period of time, because:

- the athlete did not mention her recent hospitalization to the IAAF Doping Control Officers at the time of the doping control on 16.11.2007, neither orally, nor in the Doping Control Form.

- The athlete did not mention her hospitalization in her first (spontaneous) statements on 19.12.2007, once she was notified about the NESP being found in her sample.
- Her first statement, which is confuse, stated only that she went to an hospital to have some blood collected, among other statements and commentaries. As she did not mention any hospitalization for a medical emergency **just four days before the doping control** was even more surprising than the fact that she mentioned that she being a blood donor got her to be hospitalized in Craiova County Hospital.
- The experts went unanimously to the conclusion that a medicine such as NESP, which is administrated everywhere in the world **for chronic renal dysfunctions** is not used in the emergency units to treat serious medical problems such the one diagnosed in Mrs. Dumbravean Corina's case.
- The file submitted by the athlete consisted only in hand written reports, photocopies of the certificates and statements, with no original documents. The file did not comprised any printed documents from computers or other devices used in Craiova Hospital, which could have confirmed the authenticity of the documents shown.

At this point, the Hearing Commission requested the athlete, by the National Anti-Doping Agency's request no. 1006/ 29.08.2008 to show other medical evidences which could support her lack of guilt so that she could beneficiate from exceptional circumstances for the reduction or elimination of her sanction.

The athlete did not submit any other documents to the file and she did not attended any meeting personally or by a representative, despite the fact she had been notified by a written notification about the hearing date of 04.09.2008, confirmed as being received in 01.09.2008, according to the documents within the file.

The athlete and her club appealed against the Sanctions Committee's decision on 04.09.2008.

Regarding the first ground in the appeal of both appellants – respectively the fact that the parties were not notified about the fact that an appeal had been filed against the decision no. 5/ 19.02.2008 – the Appeal Commission takes into account that as the statements given before the Appeal Commission by the representative of the Romanian Athletics

Federation, Mr. Sorin Matei proves, both the club and the athlete were aware of the above-mentioned fact.

Despite the statement, any other justifying documents were not submitted to the file to support Mr. Sorin Matei's statement up to the moment of the present decision.

The file comprises the document no. 1006, dated 29.08.2008 received as the athlete's confirmation shows in 01.09.2008 acknowledging her that the **IAAF Doping Review Board established that there were no exceptional circumstances** for the reduction or elimination of her sanction and that she was invited to NADA's official seat on 04.09.2008 for the subsequent hearing. Even more, the relevant notification requested the athlete to file, as soon as possible; other proves of her lack of fault, before the meeting of the Hearing Commission.

Regarding this aspect, the Appeal Commission establishes that despite some deficiencies in the correspondence between NADA and the athlete Dumbravean Corina, the athlete was provided with a fair and impartial hearing, according to the provisions of art. 28 of the Law no. 227/2006 regarding the fight against doping in sport.

More than that, the procedural aspects invoked by the appellants did not influence the grounds of the case.

As for the second reason invoked in the Olimpic Sport club's appeal referring to the exception of the power of the fact already judged for the Decision no. 5/ 19.02.2008 of the Sanctions Committee besides NADA, the Appeal Commission considers that the exception is not supported, because the athlete is an international level athlete, therefore, IAAF Anti-Doping Rules are primordial and the provisions says that the exceptional circumstances (in cases such the one judged here) are established by the IAAF Doping Review Board (IAAF Rule 38.13).

Towards the facts presented above, the Appeal Commission appreciates that there is no case of the exception of the power of the fact already judged, as the Decision no. 5/ 19.02.2008 was repealed by the Decision no. 2/ 23.05.2008 of the Appeal Commission besides NADA, which approved the appeal of the Romanian Athletics Federation and repealed the Decision no. 5/ 19.02.2008 of the Sanctions Committee besides NADA.

As a result, the Decision no. 5/ 19.02.2008 was cancelled and stopped being in force. By canceling the decision, the file was submitted to the IAAF Doping Review Board, the only authority able to establish exceptional circumstances for international level athletes.

The decision of the IAAF Doping Review Board is mandatory for the relevant body of each Member which will impose the application of the sanctions 40.1 of the IAAF Rules, and for this reason the athlete was invited to the meeting of the Hearing Commission besides NADA on 04.09.2008, according to the documents within the file (receiving confirmation dated 01.09.2008) while the Sanctions Committee established on 10.09.2008 the Decision no. 22, suspending the athlete for two years, according to the provisions of the art. 31 of the Law no. 227/2006 regarding the prevention and fight against doping in sport with further changes, as she was found guilty of violating the art. 2, paragraph 2, letter a) of the mentioned law.

As for the third reason of the Olimpic Sport club's appeal, we make the appreciation that in compliance with the World Anti-Doping Code and the International Standards, in case of international level athletes, the international regulations are the one ruling the case before the domestic ones. These reasons were taken into account when the NADA submitted the file to the IAAF Doping Review Board, **the only authority able to establish exceptional circumstances for international level athletes.**

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 appeals of the athlete Dumbravean Corina and Olimpic Sport club against the Decision no. 22/ 10.09.2008 of the Sanctions Committee – NADA.

Maintains as legal and grounded the Decision no. 22/ 10.09.2008 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