

Appeal Commission
Beside
National Anti-Doping Agency
Bucharest

Decision
No. 8/18.11.2010

Appeal Commission summoned on 30.09.2010, 17.00H; 07.10.2010, 17.00H; 21.10.2010, 17.00H; 22.10.2010, 15.00H; 18.11.2010, 1.00pm at the official seat of National Anti-Doping Agency in Bucharest, 37 - 39 Basarabia Bvd., Sector 2 to solve the appeal submitted by Mr. Eleodor Rosca, residing in Craiova, 17 Morii Street, Craiova County against Decision no. 30/24.08.2010 of the Hearing Commission for the athletes and their support personnel who violated the anti-doping rules beside ANAD, deciding the ineligibility of Mr. Eleodor Rosca for a period of four (4) years since the date of the decision, pursuant to art. 36 of Law 227/2006 regarding prevention and fight against doping in sport republished as he was found guilty of violating article 2, paragraph (2), letter h) of the mentioned law, article 2.8 of the World Anti-Doping Code and Rule 32.2 letter h) of IAAF's Anti-Doping Rules.

The hearing of Mr. Eleodor Rosca in his position as athlete's support personnel took place on September the 30th, 2010, 17.00H at the official seat of National Anti-Doping Agency and day of appearance were appointed pursuant to article 16, letter c of Order no. 47/2009 of ANAD's President regarding Regulation of set up and functions of Appeal Commission, with further changes and completions.

Thus, members of the Appeal Commission established to hear the two doping control officers on 07.10.2010 in order to solve the case justly and to perform the following demarches: to request Romanian Athletics Federation and Bucharest Municipal Sport Club – institutions with responsibilities in the field – to submit to the file the information requested by the Official Letter no. 9389 of 04.10.2010, respectively no. 4519 of 22.10.2010 and the documents supporting the information.

At the same time, new days of appearance were appointed in order to provide the appellant Eleodor Rosca with the opportunity to submit to the file documents supporting the reasons of the appeal; the documents were submitted in due time, until 21.10.2010.

On 22.10.2010, respectively 18.11.2010, members of the Appeal Commission beside National Anti-Doping Agency summoned in order to render a decision in this case.

The session of the Appeal Commission on September the 30th, 2010, 17.00H was attended by:

- Mr. Eleodor Rosca, identified with IC series DX, no. 292906, CNP 1690315163200, residing in Craiova, 17 Morii Street, Craiova County, assisted by lawyer Popescu Alina-Camelia, with delegation no. 11/2010, submitted to the file.

The members of the Appeal Commission:

- Mrs. Floarea CHIVU– member
- Mrs. Carmen TROCAN – member
- Mrs. Elena Magdalena COSTACHE – member
- Mr. Alin Florin CÂRSTOIU – member
- Mr. Dragoş CONDREA, Chairman of the Appeal Commission.

In the absence of the Chairman of the Appeal Commission, the hearing session was chaired by the eldest member of the present members, respectively by Mrs. Chivu Floarea, pursuant to art. 11 of Order no. 47/2009.

At the date when the decision was rendered, the following members were present:

- Mr. Dragoş CONDREA – member
- Mrs. Floarea CHIVU– member
- Mrs. Carmen TROCAN – member
- Mrs. Elena Magdalena COSTACHE – member
- Mr. Alin Florin CÂRSTOIU – member

Taking into account that on the date when the decision was rendered in this case, the mandate of the Appeal Commission's Chairman expired, the session was chaired by the eldest member of the present members, respectively by Mrs. Chivu Floarea, pursuant to art. 11 of Order no. 47/2009 with further changes and completions.

The Appeal Commission beside ANAD, by reviewing the appeal submitted by Eleodor Rosca against Decision no. 30/24.08.2010 of the Hearing Commission for the Athletes and their support personnel who violated the anti-doping rules establishing his ineligibility for four (4) years starting with the date when the decision was rendered, pursuant to article 36 of Law no. 227/2006 regarding prevention and fight against doping in sport republished, as he was found guilty of violating article 2, paragraph (2),

letter h) of the above-mentioned law, article 2.8 of the World Anti-Doping Code and Rule 32.2 letter h) of IAAF's Anti-Doping Rules,

Taking into account the provisions of Law no. 227/2006 republished, Order no. 47/2009 with further changes and completions, Appeal Commission beside National Anti-Doping Agency of Bucharest takes note of the followings:

De facto, on 18.05.2010 ANAD initiated an out of competition doping control on sport discipline athletics based on whereabouts information form in ADAMS at the training place of the athletes who were going to be tested – respectively Barbulescu (Popescu) Liliana and Dumbravean Corina Mihaela – in Brasov, Poiana Brasov, Olympic Villa. According to the statements of the two DCOs, the two athletes were not found immediately on the location given by the athletes. Mr. Eleodor Rosca showed up and informed the DCOs that the athletes were going to be there and suggested them to set up the doping control station in Olympic Villa, Fantanita Street. Finally, the athlete Barbulescu (Popescu) Liliana was tested, while the athlete Dumbravean Corina Mihaela could not be tested – as shown in the testimonies of the two DCOs documented in the minute of the session on 07.10.2010, which is part of the current decision – because the athlete attempted to temper the sample and following this incident she refused to submit to doping testing and left doping control station.

As a result, the athlete Dumbravean Corina Mihaela was sanctioned by Decision no. 18/08.07.2010 of the Hearing Commission for the Athletes and their support personnel who violated the anti-doping rules establishing her lifetime ineligibility.

Following the incident, Mr. Eleodor Rosca was given a sanction, too, by Decision no. 30/24.08.2010 of the Hearing Commission for the Athletes and their support personnel who violated the anti-doping rules establishing four (4) years of ineligibility starting with the date when the decision was rendered as he was found guilty of violating article 2, paragraph (2), letter h) of Law no. 227/2006 regarding prevention and fight against doping in sport republished, article 2.8 of the World Anti-Doping Code and Rule 32.2 letter h) of IAAF's Anti-Doping Rules, namely assisting, instigating or showing any other form of complicity regarding the above-mentioned anti-doping rules violations.

Eleodor Rosca appealed against the above-mentioned decision within the time limit, his appeal being registered by ANAD under no. 4429/22.09.2010.

Eleodor Rosca reasoned his appeal on the exception in delaying the hearing procedure by the Hearing Commission for the Athletes and their support personnel who violated the anti-doping rules; exception in lack of passive quality of “athlete’s support personnel” of Corina Mihaela Dumbravean; and legality of taking out a summons procedure and regarding the grounds of the case he requested for the appealed decision to be annulled as the Hearing Commission for the Athletes and their support personnel who violated the anti-doping rules established wrongly the facts and applied the law erroneously.

By reviewing the appeal letter submitted by the appellant, regarding the requests invoked by him, the Appeal Commission reasons:

As for the first reason of the appeal, namely the appellant invoking **the exception in delaying the hearing procedure**, this reason is dismissed by the Appeal Commission because article 33, paragraph (3) of Law 227/2006 regarding prevention and fight against doping in sport republished was applied.

Pursuant to article 33, paragraph (3) of Law 227/2006 regarding prevention and fight against doping in sport republished, “the hearing procedure will be applied with celerity, always within three months since the completion of the result management process set forth in Chapter VI, except for the cases where the provisions of art. 46 apply”. Thus, the three months period of time will be calculated starting with 18.05.2010, the date when the appellant committed the anti-doping rules violation he got sanctioned for, while he was notified by the Hearing Commission for the Athletes and their support personnel who violated the anti-doping rules on 21.07.2010 with regard to the hearing appointed on 12.08.2010, therefore the three months limit stated by law was complied with by the Hearing Commission.

As for **vitiating of taking out a summons procedure** invoked by Eleodor Rosca in the session of 30.09.2010 of the Appeal Commission, the members of the Commission establish that the taking out a summons procedure was carried out in compliance with the legal provisions. Namely, the notification of the appellant was sent to the registered office of Olimpic Sport Craiova Sport Club, taking into account his position of General Director, respectively coach of the above-mentioned sport club. According to Decision no. 30/24.08.2010, Eleodor Rosca was suspended for a period of four years having in mind his position, namely director of the club and therefore the taking out of summons procedure was carried out at the

registered office of the club and not at his home residence, as he states wrongly that it should have been carried out.

As for **exception in lack of passive quality of the appellant**, namely his quality of “athlete’s support personnel” of Corina Mihaela Dumbravean, the commission dismisses this exception because the Hearing Commission for the Athletes and their support personnel who violated the anti-doping rules took note of his quality at the date when the anti-doping rules violation occurred, namely on 18.05.2010.

Thus, pursuant to article 3, paragraph 3 of Law no. 227/2006 regarding prevention and fight against doping in sport republished, athlete’s support personnel means “any coach, trainer, manager, agent, team manager, official, medical or paramedical personnel, parent or any other Person working with, treating or assisting an Athlete participating in or preparing for sports Competitions”. The definition of “athlete’s support personnel” shows it refers to a larger area and it is not limited to the quality of athlete’s coach, but also to the manager or any other person who works with or assists the athletes who compete or who are training in order to compete in sport competitions. Besides, Mr. Eleodor Rosca admitted to the Hearing Commission’s members that he was advising the athlete Dumbravean Corina Mihaela “I only give her advices”; and even more, his testimony showed he knew very well her training program because he told the two DCOs that the athlete should go to the stadium for training; this was exactly what the athlete declared in the whereabouts information form in ADAMS, therefore he was familiar with the athlete’s training program. Furthermore, both when the two DCOs showed up for testing on 18.05.2010 – as their testimonies show – and at the date of the hearing of Mr. Eleodor Rosca in ANAD official seat by the Appeal Commission’s members, he got the Identity Card of Dumbravean Corina Mihaela with him.

Furthermore, pursuant to provisions of article 16, letter c of Order no. 47/2009 of ANAD’s President regarding Regulation of set up and functions of Appeal Commission, with further changes and completions, the members of the Appeal Commission requested Romanian Athletics Federation to specify what is the connection of the General Director, Mr. Eleodor Rosca with the two athletes who were supposed to be tested on 18.05.2010. Thus, by the official document no. 1125/18.10.2010, Romanian Athletics Federation submitted to the Appeal Commission the solicitation of the athlete Dumbravean Corina Mihaela dated 02.11.2009 requesting the Federation to approve her double-registration. Athlete’s double-registration is valid for three years, namely 01.11.2009 – 01.11.2012 and the Federation

also submitted the protocol signed in this regard; the solicitation for double-registration has the signature of the same person in the box president/director of Olympic Sport Craiova Sport Club and the box professor/coach. Thus, contrary to the testimonies of Mr. Eleodor Rosca given to the members of the Appeal Commission on 30.09.2010 when he stated that in his quality of director “I don’t have anything, any connection with coaching. The contract’s object is administration of sport facilities in Craiova and Brasov”, “I mention that I assure training conditions, insurances for coaches and groups”, while the documents submitted by Romanian Athletics Federation show that he also acted as coach of the athletes, such as the Protocol signed on 09.12.2009 between Bucharest Municipal Sport Club and Olympic Sport Craiova Sport Club with regard to the athlete Liliana Barbulescu. Referring to the obligations of Olympic Sport Craiova Sport Club, this Protocol reads at point 1.1: “to assure training conditions as well as specific sport training by Professor Rosca Eleodor” and it is valid for three years. Moreover, the athlete Barbulescu Liliana wrote in the registration form for “International Championships” that her coach was Rosca Eleodor. The above-mentioned show that beside Mr. Eleodor Rosca’s quality of Director of Olympic Sport Craiova Sport Club, he also acts as athletes’ coach/ professor.

As for the grounds of the cause, members of the Appeal Commission took note that Eleodor Rosca was sanctioned by Decision no.30/24.08.2010 of the Hearing Commission for the Athletes and their support personnel who violated the anti-doping rules beside ANAD for a period of four (4) years since the date of the decision, pursuant to art. 36 of Law 227/2006 regarding prevention and fight against doping in sport republished as he was found guilty of violating article 2, paragraph (2), letter h) of the mentioned law, article 2.8 of the World Anti-Doping Code and Rule 32.2 letter h) of IAAF’s Anti-Doping Rules “assisting, instigating or any other type of complicity involving any above-mentioned anti-doping rules violation”.

Article 2, paragraph (2), letter h) of the above-mentioned law reads: “Administration or Attempted administration to any athlete of any prohibited method or prohibited substance or the use of a prohibited method on any athlete or **assisting, instigating or any other type of complicity involving any anti-doping rule violation set forth on paragraphs a) – g)**”. Thus, pursuant to the same law, article 2, paragraph (2): “(2) The following actions constitute anti-doping rule violations:

- (a) The presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's sample;
- (b) Use or Attempted Use by an athlete of a Prohibited Substance or a Prohibited Method;
- (c) Refusing or failing without compelling justification, to submit to Sample collection after notification as authorized in applicable anti-doping rules or otherwise evading Sample collection;
- (d) three times violation in a period of eighteen months of applicable requirements regarding athlete's availability for out of competition testing, including failure to file required whereabouts information and missed tests declared based on the International Standard for Testing of the World Anti-Doping Agency, including any combination of three such violations of anti-doping rules;
- (e) Tampering or Attempting to tamper, with any part of Doping Control;
- (f) Possession of Prohibited Substances and/ or Prohibited Methods;
- (g) Trafficking in or attempting to traffic any Prohibited Substance and/ or Prohibited Method".

The review of the quoted law texts shows that the appealed decision does not refer to one of the facts stipulated in paragraphs a-g, where the appellant should have had the quality of "Assistant, instigator or accomplice" and does not stipulate precisely either the fact that was the base of the athlete Dumbravean Mihaela Corina's sanction or the sanction established for her, while the appellant was found guilty of the three types of participation to the anti-doping rules violated committed by the athlete, while the Hearing Commission took into account Eleodor Rosca's assistance, instigation and complicity.

Article 27, letter c) of Order no. 73/2010 for the approval of the Regulation of set up and sanctions of the Hearing Commission for the athletes and their support personnel who violated the anti-doping rules reads – the Hearing Commission's decision shall include, under the sanction of nullity the fact that constitutes the anti-doping rule violation", or the review of the appealed decision shows that the fact that was the base of Rosca Eleodor's sanction is not stipulated explicitly and there is no reference with regard to which was the anti-doping rules violations stipulated by article 2, paragraph (2) of Law no. 227/2006 he assisted, instigated or was accomplice to.

At the same time, according to Explanatory Dictionary of Romanian Language (DEX), "to assist" means "to take part, to be present, to participate; to stay beside someone in order to help him/ her; to submit together with a person to a legal body in order to protect his/her interests",

“to instigate” – to provoke a state of agitation *intentionally*, abetting to hostile actions; to instigate, to incite, to provoke, to start”, while the Criminal Law reads “instigator is a person who intentionally gets another person to commit a fact stipulated by the Criminal Law”, while the accomplice “is the person who intentionally eases or helps in any way the commission of a fact stipulated by the Criminal Law”.

The review of the administrated proofs in this case, based on which the members of the Appeal Commission should render a decision does not reveal: that Eleodor Rosca was not present in the doping control station when the athlete was tested; that he acted by advising the athlete not to give the sample; and he did not help her to violate the anti-doping rules violations, while his intention was not proved. The statements of the two DCOs show he collaborated with them in order to have the samples of the two athletes collected. Thus, Mrs. Ilica Ecaterina, DCO, in her testimony given to the Appeal Commission states that “he did not refuse to talk to us...I will inform them by phone and they will come...in about 10 minutes the athlete Dumbravean said she needed to go to the toilet, Mr. Rosca left...something was wrong and he was very interested to have a new sample collected from the athlete...even when we were in the car Mr. Rosca insisted to submit her to doping control”, while Mr.Radulescu, the other DCO, in his testimony given to the Appeal Commission states that when the athlete Dumbravean refused to submit to doping control “Mr. Rosca was not there” and “Mr. Rosca got there in ten (10) minutes”, “Mr. Rosca said to wait for the athlete to give the sample”.

Thus, the testimonies of the two (2) DCOs do not show his bad faith, but the fact that he tried to support the set up of doping control station, insisting for the two DCOs to remain there and collect the sample of the athlete Dumbravean Mihaela Corina. The phrase used in the appealed decision saying that the mentioned athlete would be completely dependent on Mr. Rosca is ungrounded and it is not supported by proofs.

Based on the above-mentioned, by reviewing the documents in the file and the testimonies of the two DCOs heard by the Appeal Commission as witnesses,

Taking into account the provisions of article 30, letter a) of Order no. 47/2009 of ANAD’s President regarding Regulation of set up and functions of Appeal Commission, with further changes and completions, the Appeal Commission with majority of votes, respectively four against one separated opinion,

DECIDES:

Dismisses the exception in delaying the hearing procedure by the Hearing Commission for the athletes and their support personnel who violated the anti-doping rules beside ANAD as ungrounded.

Dismisses the request regarding the legality of taking out a summons procedure of the appellant Eleodor Rosca as ungrounded.

Dismisses the exception in lack of passive quality of the appellant, respectively the quality of athlete Dumbravean Mihaela Corina's support personnel as ungrounded.

Admits the appeal formulated by Rosca Eleodor against Decision no. 30/24.08.2010 of the Hearing Commission for the athletes and their support personnel who violated the anti-doping rules beside ANAD and annuls the appealed decision.

The decision of the Appeal Commission may be appealed to the Court of Arbitration for Sport.

The current decision is mandatory.

Appeal Commission

President,

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