

**THE APPEAL COMMISSION
BESIDE
THE NATIONAL ANTI-DOPING AGENCY**

DECISION NO. 1

Date: 21.01.2015

Chairperson: Carmen TROCAN

Members:

Dan Oancea

Georgeta Miscă

Daniela Mihaela Chiripuş

Diana Elena Ştefănescu

Elena - Cristina Vişan

Irina Tonca

Secretary: Maria Rusu

The Appeal Commission beside National Anti- Doping Agency (named hereinafter "the Commission") met in plenary on 21.01.2015 at 15h30, at the National Anti-Doping Agency official seat in Bucharest, 37-39 Basarabia Bvd., District 2, reviewed the appeal filed by the minor athlete Căpraru Elena Mădălina, through the legal representative Guzgă Valentina Liliana, the athlete's mother and the attorney Drăgan Nicolau Mihai, against the Decision no. 16/28.10.2014 of *the Hearing Commission for the athletes and their support personnel who violated the anti-doping rules* beside the National Anti - Doping Agency (named hereinafter "the Hearing Commission"), registered at the Appeal Commission under the number 24/24.11.2014, through which the appellant has been suspended from the sport activity for 2 years, pursuant to the provisions of article 38 of the Law no. 227/2006 regarding prevention and fight against doping in sport, republished with subsequent amendments and additions, as she violated the provisions of article 2 paragraph (2) letter a) of the above mentioned Law.

The athlete Căpraru Elena Mădălina is affiliated with Dacia Galati Sport Club at sport discipline tennis and with Lulu' Gym Galati Sport Club at sport discipline bodybuilding, residing in Galaţi, 2 Galati Boulevard, bl. A13 A, sc. 1, floor 8, appt. 23, Galaţi County, identified with IC series GL no. 831475, issued by SPCLEP Galaţi on 03.10.2012, CNP 2980807170035.

Although legally convened on 16.12.2014, the Commission postponed the meeting because of the lack of cvorum. The following meetings were conducted in compliance with the applicable rules, the Commission making the cvorum required for conducting the meetings and giving the decision.

The Commission meetings were attended, according to the empowerments submitted to the case file, by a representative of the Hearing Commission, the appellant Căpraru Elena Mădălina – minor athlete, who was accompanied during the case settlement by the legal representative Guzgă Valentina-Liliana, her mother and assisted by the attorney Drăgan Nicolau-Mihai, having the CNP 1760319170311 and the power of attorney GL/0120480 from 08.01.2015.

After reviewing the preliminary aspects, the Commission ascertains that the Appeal was filed in due time, the appeal fee was paid and the parties were legally convened.

The allegations and claims of the parties, the Commission's deliberations on the requests of relief made by the parties, the administration of the evidences and the debates on the appeal were documented

in the minutes of the Commission meeting sessions no. 32 of 08.01.2015, no. 34 of 14.01.2015 and no. 36 of 21.01.2015 and are part of the current Decision.

On 21.01.2015, the Commission legally convened, based on the evidences administrated in this case, the allegations documented in the minutes of the meeting sessions and the meeting sessions' notes, respectively the written conclusions submitted by the parties, proceeded to the deliberations on the appeal filed by the athlete Căpraru Elena Mădălina and pronounced the Decision herein.

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By deliberating on the appeal filed in due time, the Commission establishes the followings:

By the appeal filed against the Decision no. 16/28.10.2014 of the Hearing Commission, registered at the National Anti-Doping Agency under the no. 1320/24.11.2014 and at the Commission under the no. 24/24.11.2014, with subsequent completions, according to article 20 paragraph (2) and article 21 of the Regulation for the organization and functioning of the Commission and registered under the number 27/3.12.2014 and 45/08.01.2015, the athlete Căpraru Elena Mădălina, through her legal representative Guzgă Valentina-Liliana and conventional representative - attorney Drăgan Nicolau Mihai, requested the admission of the appel as it has been filed, the annulement of the Decision no. 16/28.10.2014 given by the Hearing Commission, the cancellation of the sanction applied and the remit of the case to the Hearing Commission for retrial.

The appellant, through her attorney, requested that the Decision to be given should take into account the Law provision according to which ... when the athlete establishes that he/she bears no fault in case of an anti-doping rules violations, the period of ineligibility shall be eliminated. Moreover...when a prohibited substances is identified in the athlete's sample, the athlete has to prove the way the prohibited substance entered his/her body for the santion to be eliminated.

In subsidiary, the appellant, through her attorney, requests the reduction of the sanction given that she has shown how and who administered her the prohibited substance, she helped the Commission to sanction the guilty persons, the lack of intention has already been proven, she didn't know the administered medicine contained a prohibited substance. She leaves to the Commission to decide which reason for reducing the sanction applies to this case.

In support of the appeal filed, the appellant, directly and through her attorney, shows the followings:

In fact, the athlete Căpraru Elena Mădălina competed on 28 September 2014 in a bodybuilding competition, in fitness-bikini section, when she was submitted to a doping control. Following this doping control she was found positive with 17β-HYDROXYMETHYL-17α -METHYL-18 NORANDROSTA-1,4,13-TRIEN-3ONE, which is a prohibited substance.

After receiving the notification from the National Anti-Doping Agency regarding the result of the sample and found out that a prohibited substance entered her body and, consequently she was found positive, she contacted her tennis coach as she remembered that a month ago, before a tennis competition, the coach administered her two times half of a pink pill, about which she didn't remebered at the moment of completing the doping control form.

After calling the tennis coach Basarab Laurențiu on the phone, she found out that the pill he gave her was Danabol. The athlete stated she saw the coach taking these pills and, for this reason, she trusted to take from him. When she asked him what were the pills for, the coach told her that there are for emotions relief, related to the participation in the competition next day, respectively on 30 August 2014.

The athlete also showed that she asked the coach where did he take the pills from and he told her he had the pills from Republic of Moldova, from some former mates, without mentioning the pills name or their ingredients but ensuring her that she could ask for more, when in need.

About the situation she was in, the athlete stated that she wasn't aware of the content of the pills administered by Basarab Laurentiu, she didn't take into account doping as she knew that tennis is not so much attained by this phenomenon, she knew about doping from the bodybuilding gym where she was going, initially for physical tennis training. In this regard, the athlete stated she never attended an anti-doping training and she only received vague indications from the coach Berbec Aurel from the bodybuilding sport club to visit the website of the National Anti-Doping Agency, which he admitted in front of the Commission.

After finding out the positive result of the doping control, the athlete consulted with the coach Berbec Aurel, who advised her to waive the B sample analysis as he knew the Doping Control Laboratory from Bucharest is very performant and the equipment never make mistakes.

As for the effects of the „pink pill” administration, the athlete mentioned that due to the overtraining she cracked in the very day of the competition and she didn't compete anymore. Moreover, while referring to the health issues, she declared that, after taking the pill the menstruation ceased for 2-3 months, she faced water retention, irritability, insomnia. The endocrinologist she consulted on 19 December 2014 mentioned that the symptoms may appear even after taking one single pill of Danabol (50 mg of substance).

In order to clarify the issue related to the retention period of the prohibited substance – methandienone, given the period of one month between the intake and the detection, on the athlete's conventional representative, the attorney Drăgan Nicolau-Mihai request the Commission admitted the documentary evidence which consisted in asking for the point of view of the Doping Control Laboratory of Bucharest.

From the point of view presented by the Laboratory's representatives, the Commission retained the following: *„the retention time for a prohibited substance is influenced by the athlete's individual metabolism particularities, as well as by the way of administration and dosage...and, according to the specific literature, the substance detected is a longtime excretion metabolite of methanediene and it can be detected in the urine up to 19 days after the administration of a single dose of 5 mg methanediene (the 10th part of the substance administered to the athlete)”*.

In support of the appealed Decision, the Hearing Commission, through its representatives, showed the following:

The half-life period of the detected substance wouldn't allow the detection of methanediene at the end of September, only from a single pill of Danabol. The detection of the substance in the athlete's body after a month leads to the premise that more than one pill was administered. The athlete's allegation regarding the administration of Danabol for emotions relief is not grounded, as the effect is contrary at this class of substances. The Hearing Commission considered that the lack of an official quality for the coach leads to his exclusion from the athlete's support personnel.

The Hearing Commission maintains its position towards the sanction applied, for the following reasons: the athlete is guilty for violating the anti-doping rules, article 2 paragraph (2) letter a). Through the statement given in front of the Hearing Commission she admitted that she took the substance by waiving the B sample analysis. There are no evidences that she took one-two pills, the only certitude being the detection of the substance in her urine sample, admitting that she received the pill from the coach and she was told that the pill was for increasing her performance and that she wanted to take more pills. The representative of the Hearing Commission showed that, in his opinion, the intention has been established. He also declared that: regarding the elimination of the sanction, the World Anti-Doping Code

provides, only in exceptional situations – the sabotage between athletes – when an athlete establishes that he/she made all the efforts to avoid a sabotage; the issue of sanction elimination shouldn't be taken into account; the sanction reduction is applicable when the athlete admits his/her violation before receiving the notification for doping control; the admission in front of the Hearing Commission, after receiving the notification regarding the adverse analytical finding with the substance she used and which has been detected in her sample doesn't constitute a reason for sanction reduction; the lack of significant negligence cannot be invoked as long as she acted consciously and she admitted this in her statement; the principle of athlete's strict liability shall apply with regard to what she consumed and what has been found in her sample.

After reviewing the appeal filed, the Commission holds the following:

Following the doping control conducted on 28.09.2014, during the National Bodybuilding Championships – fitness-bikini section, conducted in Cluj Napoca, the athlete Căpraru Elena Mădălina, aged 16 at that moment has been found positive, according to the analytical result of the sample with the code number 6117434A, which revealed the presence of the prohibited substance 17 β -HYDROXYMETHYL-17 α –METHYL-18 NORANDROSTA-1,4,13-TRIEN-3ONE, indicating the administration of the prohibited substance methanediene, included in section S1.1.a Exogenous Androgenic Anabolic Steroids of the 2014 Prohibited List.

After hearing the parties and the witnesses, the Commission holds the following:

The athlete Căpraru Elena Mădălina admitted that she took a „small pink pill”, half pill both on 29 and 30 August 2014, before an international tennis event, for emotions relief and, subsequently, for increasing her sport performance. Because of an arm injury as result of the overtraining, the athlete didn't compete anymore in the tennis event that generated the emotions. The pill was administered to her by the tennis coach Basarab Laurențiu, who didn't tell her what was the pill and its ingredients, but only it would relief her emotions, and he admitted this fact during the hearing. The appellant trusted very much her coach, who also took the same pill, who practices tennis from 5 years old and never heard of doping in tennis, which she thought to be a clean sport discipline. From the documents submitted to the file, it results that the coach Basarab Laurențiu has no legal relations with Dacia Galati Sport Club, where the athlete is affiliated. However, the minor athlete Căpraru Elena Mădălina was convinced that he was a coach at that sport club, her belief being grounded on the following aspects: he conducts the trainings within the club; the three coaches of the club, with Basarab Laurentiu among them, were coaching by rotation the children groups for each day; Basarab Laurentiu was also travelling outside the city with groups of children which were assigned to him; the amounts representing the fees for tennis classes were handed over by the athlete to Basarab Laurențiu or other person from the sport club. As athlete affiliated with Dacia Galati Sport Club, Căpraru Elena Mădălina didn't beneficiate of the services of any physician or dietician and she never received anti-doping training. The athlete learned about doping in sport from the bodybuilding coach Berbec Aurel, who instructed her to read the World Anti-Doping Code, to avoid doping and to take care what she consumes. The athlete stated that, at bodybuilding, where she found out that there are doping issues, she was very careful when taking a medicine, she read the prospectus before taking them.

The athlete declared and the witnesses confirmed that she called the tennis coach on the phone to ask him what pill he gave her, after finding out that the prohibited substance methanediene was detected in her sample, and only then she found out that the pill was Danabol. From the tennis coach's statement it results that he administered to the athlete Danabol from Pharmaceutical Balkan in concentration of 50mg. The athlete concluded that the prohibited substance was included in the pink pill received from the tennis coach. For this reason and taking into account that the bodybuilding coach

advised her not to ask the B sample analysis, having in mind the reputation of the laboratory that works according to the standards and doesn't mistake, the athlete waived the B sample analysis. As to the fact that the prohibited substance was detected in relation with a bodybuilding competition conducted on 28.09.2015, about a month after the administration of Danabol, the Commission finds credible that the substance contained in a pill of **50 mg** can be detected after this period of time, taking into account the Doping Control Laboratory of Bucharest opinion, according to which the retention time for a substance in a 5 mg dose is about three weeks: *„the retention time for a prohibited substance is influenced by the athlete's individual metabolization particularities, as well as by the way of administration and dosage. According to the specific literature..., the substance detected is a longtime excretion metabolite of methanediene and it can be detected in the urine up to 19 days after the administration of a single dose of 5 mg methanediene”*. The Commission also retained the bodybuilding coach's statement, according to which the main effect of the prohibited substance detected is to increase the muscles, which is downgraded in a bodybuilding fitness-bikini competition, where the athlete was competing in.

After reviewing all the aspects above, the Commission established that there are a lot of circumstances in this case that should be taken into account in view of establishing the athlete's fault: (i) the athlete's honesty and cooperation for determining the circumstances of the prohibited substance intake; (ii) indication by the athlete of the way the prohibited substance entered her body and the person who caused this; (iii) the erroneous situation the athlete was in with regard to the coach quality of the person who recommended the intake of the substance (Basarab Laurențiu), which is a pardonable error for a person of 16 years old – generated by the sport club where she was affiliated, which tolerated and facilitated, with the violation of the law, coaching activities conducted by a person who has no specific legal relations with the club; the sport club fault as for not providing anti-doping training to the athlete and medical or dietary services; (iv) the athlete brought in a doping case that could be continued, contributing through her statements and by presenting the coach as witness, who admitted his fault; (v) thus, ANAD was given a sufficient basis for a doping case against Mr. Basarab Laurențiu – considered to be the athlete's coach; (vi) taking into account that this coach was training many groups of athletes, with minors among them, who were overcome with the same emotions before a competition, the risk for these athletes to be administered with the „pink pills” or other prohibited substances was considerable diminished; (vii) it was also stopped a possible continuous traffic of prohibited substances (see the coach's statement on the fact that he bought these medicines from some former mates from Republic of Moldova, which were stored within the sport club he was working as graduate of the Physical Education and Sport Faculty, sport discipline – tennis); (viii) taking into account that, in this case, the athlete didn't have benefits, as in the bodybuilding – fitness-bikini competition she was participating, the Danabol doesn't help but, by contrary, the athlete is downgraded and she didn't compete in the tennis competition; (ix) the youth and lack of experience of the athlete are relevant factors in establishing her fault.

All these circumstances, corroborated with the athlete's honesty and the fact that it is the first anti-doping rule violation proves, in the Commission opinion, that there were causes that determined the diminution of the athlete's vigilance regarding the administration of medicines containing prohibited substances and it can be held in this case the lack of significant negligence for the athlete.

Taking into account the above mentioned circumstances and the provisions of the World Anti-Doping Code, article 10.5.2 (No significant fault or negligence), according to which *„If an Athlete or other Person establishes in an individual case that he or she bears No Significant Fault or Negligence, then the otherwise applicable period of Ineligibility may be reduced, but the reduced period of Ineligibility may not be less than one-half of the period of Ineligibility otherwise applicable[...].When a Prohibited Substance or its Markers or Metabolites is detected in an Athlete's Sample in violation of Article 2.1 (Presence of a Prohibited Substance or its Metabolites or Markers), the Athlete must also establish how the Prohibited Substance entered his or her system in order to have the period of*

Ineligibility reduced, as well as the provisions of article 48 paragraph (3) of the Law no. 227/2006 regarding prevention and fight against doping in sport, applicable at the date of the violation;

As for the evidences administered in the case and the conclusions of the appellant and the Hearing Commission;

Taking into account the provisions of article 9 paragraph (1), article 26, article 27 and article 29 of the Regulation for organization and functioning of the Appeal Commission approved by the Order no. 38/2013 issued by the Agency's President, the Commission with a quorum of five (5) members out of seven (7), unanimously

DECIDES:

Pursuant to the provisions of article 28 letter a) corroborated with article 16 letter d) of the Regulation for organization and functioning of the Appeal Commission, **admits the appeal** filed by the appellant Căpraru Elena Mădălina, affiliated with Dacia Galati Sport Club at sport discipline tennis and with Lulu' Gym Galati Sport Club at sport discipline bodybuilding, residing in Galați, 2 Galati Boulevard, bl. A13 A, sc. 1, floor 8, appt. 23, Galați County, identified with IC series GL no. 831475, issued by SPCLEP Galați on 03.10.2012, CNP 2980807170035 against the Decision no. 16/28.10.2014 of the Hearing Commission for athletes and their support personnel who violated the anti-doping rules beside National Anti-Doping Agency.

In compliance with the provisions of article 48 paragraph (3) of the Law no. 227/2006 regarding prevention and fight against doping in sport, applicable at the date of the violation, decides **the reduction of the athlete Capraru Elena Madalina's ineligibility to one (1) year.**

The ineligibility period shall begin to run from the date of the Hearing Commission Decision, the athlete being suspended from 28.10.2014 to 27.10.2015.

The current Decision may be appealed to the Court of Arbitration for Sport in Lausanne within 21 days from its communication.

CHAIRPERSON,

Carmen Trocan