

**FILE NO. 2/2014**

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

**DECISION NO. 2**

**Date: 02.06.2014**

**Chairperson:** Georgeta Mișcă

**Members:**

Carmen Trocan

Dan Oancea

Ionuț Iavor

Elena - Cristina Vișan

Marin Popescu

Daniela Mihaela Chiripuț

**Secretary:** Maria Rusu

The Appeal Commission beside the National Anti- Doping Agency (named hereinafter "the Commission") met in plenary on 02.06.2014, 16h00, at the National Anti-Doping Agency official seat in Bucharest, 37-39 Basarabia Bvd., District 2, reviewed the appeal filed by the athlete Maxim Simona Raula against the Decision no. 5/11.03.2014 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") sanctioning the Appellant with a four (4) years period of ineligibility pursuant to the provisions of Art. 49, para (1), letter c) and Art. 51, para (1) of the Law no. 227/2006 regarding prevention and fight against doping in sport, republished with subsequent amendments and additions, as well as the provisions of Art. 10.7.4 of the World Anti-Doping Code (the Code) as she was found guilty of violating the provisions of Art. 2 para.( 2) letters a) and c) of the above-mentioned law and the provisions of Art. 2.1 and 2.3 of the Code.

The athlete Maxim Simona Raula, affiliated in Steaua Army Sport Club, residing in Zalau, 18 Mihai Viteazul Bvd., Bl. A96, Sc. A, Appt. 19, Salaj County, identified with I.C. series SX no. 229319, issued by SCPEP Zalau on 05.11.2009, CNP 2850720314019 is represented by attorney Mincu Paul Alexandru, according to the power of attorney Series B 366050/15.10.2013 and the Agreement for Legal Assistance no. 6737727/29.09.2013.

The assertions and claims of the parties, the Commission's deliberations on the requests for relief made by the parties, the administration of the evidence and the debates on the appeal were documented in the minutes of the Commission meeting sessions no. 23 of 28.04.2014, no. 24 of 05.05.2014, no. 25 of 12.05.2014, no. 26 of 26.05.2014 and no. 27 of 02.06.2014.

The parties were legally convened, as reflected in the meeting sessions' minutes.

On 02.06.2014, the Commission legally convened, based on the evidence administrated in this case, the assertions 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 Maxim Simona Raula and pronounced the decision herein.

\* \* \*

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

By the appeal filed against the Decision no. 5/11.03.2014, delivered by facsimile and registered at the Commission's Secretariat under no. 8/10.04.2014 and completed with the appeal grounds submitted by facsimile and registered under no. 10/23.04.2014, the athlete Maxim Simona Raula requested the annulment of the appealed decision and, subsequently, the cancellation of the sanction of four (4) years ineligibility, which has been illegally decided.

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

1. The athlete Maxim Simona Raula didn't evade in any way the doping control.

On 30.07.2013, the athlete Maxim Simona Raula left the Snagov training camp where she was training together with other athletes. The athlete left the camp after getting the approval from her coach and after informing the Romanian Athletics Federation (FRA).

After the athlete's (departure), on 31.07.2013, 16h27, FRA submitted via facsimile to ANAD a request for doping controls for the entire pool of athletes who were training at the Snagov training camp.

On the same day, at 18h47, FRA sent a facsimile to Steaua Army Sport Club, informing them that the athlete was not at the training camp. The Club was notified that, should the athlete fail to return to the training camp, she would not join the pool heading for the World Championship in Moscow. The same facsimile, signed by the President of FRA, Mr. Sandu Ion, revealed that he had spoken on the phone with the athlete. On 01.08.2013, ANAD delegated the doping control officer (DCO), Ms. Adina Sandu to conduct the doping tests of the athletes in the Snagov training camp. The authorization issued by ANAD under no. 6761/01.08.2013 shows that the DCO Adina Sandu was to collect a number of 6, 7, 8 or 9 urine samples. The last and most prominent number is 9, but the superposition of the writings in the authorization proves that, initially, the DCO was delegated to collect a number of 6 urine

samples, i.e. for the athletes indicated in the order submitted by FRA and who were supposed to be found in the training camp, except for the athlete Maxim Simona Raula, who had left the camp. The same superposition of writings is also on the authorization issued by ANAD under no. 6762/01.08.2013, which mandated Ms. Ana Condrut as DCO for this testing mission.

The appellant considers that these documents confirm that, prior to the date established for the doping testing, FRA and ANAD had acknowledged and accepted the fact that the athlete Maxim Simona Raula was not at the venue of the doping control.

It was also shown that there was no motivation provided with regard to the athlete's absence from the doping control, meaning that there was no indication as to the conduct of the appellant which was considered by the Hearing Commission as an anti-doping rule violation. It was also stated that, had the first Hearing Commission stated in the appealed decision the reasons for sanctioning the athlete and the specific violation under article 2.3 of the Code and article 2, para. 2, letter c) of the Law 227/2006, then the appeal grounds would have been developed towards a unique direction.

As for filling in the relevant information in ADAMS, the appellant maintains that she was informed only on 05.08.2013 through the letter no. 6772/01.08.2013 and as such she was in no way able to fill in the relevant information in ADAMS until 02.08.2013, as requested by ANAD. The opinion of the athlete's representative is that the athlete was not sanctioned for failing to fill in the information in ADAMS, as such sanction should have been grounded on the provisions of article 2, para 2, letter d) of the Law 227/2006 and not the provisions of letter c) of the same article. Practically, ANAD has admitted the fact that the athlete received the letter 6772/01.08.2013 only on 05.08.2013 and she could not be sanctioned for failing to submit her whereabouts until 02.08.2013, as requested.

The appellant concluded that both on 01.08.2013 and on 03.08.2013 she was not under an obligation to be in a certain place and, therefore, she could not be sanctioned by ANAD pursuant to the provisions of article 2, para.2, letter c) of the Law 227/2006.

2. As for the analytical results of the sample with the code numbers 6044377A and 60444377B, which flagged the presence of the prohibited substance recombinant Erythropoietin, included in section S2 of the Prohibited List, the appellant, through her attorney has submitted a request to supplement the appeal grounds, transmitted by facsimile on 22.04.2014 at 22h40 and registered at ANAD under no. 454 of 23.04.2014, through which she presents a series of irregularities detected in the laboratory documentation and requests in this regard the administration of documentary evidence, respectively:

- submission on the case file of all the documents related to the samples' expedition from Romania to Switzerland through the UPS courier (in connection with item 2 above) and those related to the seal of the package in order to result the code of the applied seal;
- presentation of the original documents referred to in the request for supplementing the appeal grounds in order to check the records.

At the meeting session on 05.05.2014, the appellant, through her attorney, requested that the application for documentary evidence submission be allowed such as it was recorded in the supplement of the appeal grounds. As for the request submitted, prior to the determination on this request, the Commission decided to ask for a written point of view from the Doping Control Laboratory in Bucharest.

At the meeting session on 12.05.2014, the Commission took note of the answer issued by the Department for research and Doping Control Laboratory (DCLCD) within the Agency, registered at the DCLCD under no. 788/12.05.2014 and at the Commission's Secretariat under no. 15/12.05.2014 and decided to send it to the parties, namely the appellant Maxim Simona Raula and the Hearing Commission.

At the meeting session on 26.05.2014, the appellant, through her attorney, requested, in addition to the evidence requested in writing in the appeal grounds and in the supplement to the appeal grounds, the administration of the evidence based on the laboratory documents issued on the occasion of the athlete's testing, as well as the documents which were not included in the document package received from the Doping Control Laboratory in Lausanne. The Commission denied the appellant's request as inconclusive for the settlement of the case.

At the parties' request, the Commission set a new deadline up to 02.06.2014, to allow them to submit written conclusions.

In fact, pursuant to the Decision no. 5/11.03.2014, the hearing Commission has decided a 4-year ineligibility for the athlete Maxim Simona Raula, affiliated in Steaua Army Sport Club, pursuant to the provisions of article 49, para. (1) letter c) and article 51, para. (1) of the Law 227/2006, republished, as well as the provisions of article 10.7.4 of the Code, following the violation of article 2 para. (2) letters a) and c) of the above mentioned Law, as well as article 2.1 and 2.3 of the Code.

As grounds for this decision, the Hearing Commission held the fact that, based on the Decision no. 2/19.11.2013, the provisions of article 28, letter b) corroborated with article 16, letter d) of the Regulation for organization and functioning of the Appeal Commission, the Appeal Commission allowed the appeal filed by the athlete Maxim Simona Raula, annulled the Decision no. 12/28.08.2013 of the hearing Commission and remitted the case for deliberation and motivation, pursuant to the provisions of articles 50-51 corroborated with article 33, para. (2), letter h) of the Law 227/2006.

With the aim to fulfill the dispositions of the Decision no. 2/2013 of the Commission and to correctly and completely manage the anti-doping rule violation set forth in article 2, para. (2), letters a) and c) of the Law 227/2006, committed by the athlete Maxim Simona Raula, the Hearing Commission established the following:

As result of the FRA request, submitted through the letter no. 1899/31.07.2013 and registered at ANAD under no. 6757/01.08.2013, a team of DCOs delegated by ANAD went to Snagov Baza Noua to perform a doping control on the athlete Maxim Simona Raula. She was not found at the indicated

place, and this was documented in the supplementary report form – comments, signed by the physician Oșean Vasile, as well as in the DOCs report.

Taking into account that the President and the General Secretary of the FRA held a meeting with the athletes and their support personnel on the evening of 30.07.2013, during which both the athletes, including Maxim Simona Raula, and their support personnel were informed of an imminent doping control on the pool of athletes participating in the World Championship in Moscow, and of the fact that they were not allowed to leave the training camp, as well as the fact that the athlete wasn't found for doping control on 01.08.2013, as she had left few hours after the meeting without informing anyone and not being available on the phone, ANAD decided on 01.08.2013 to include her in the registered testing pool. In this regard, ANAD sent to FRA and Steaua Army Sport Club a letter informing them of the athlete's inclusion in the registered testing pool, and the athlete signed this letter on 05.08.2013.

On 03.08.2013, following the information received from Steaua Army Sport Club in the letter no. A4287/02.08.2013, registered at ANAD under no. 6782/02.08.2013, showing the fact that the athlete was notified to return to training camp until 03.08.2013, at 10h00, another team of DCOs went to Snagov Baza Noua in order to collect an urine sample from the athlete Maxim Simona Raula. Again, the athlete wasn't found at the indicated place, and this was documented in the supplementary report form – comments, signed by the Director of the Snagov National Sport Complex, as well as in the DCOs report.

On 05.08.2013, the athlete accompanied by the physician Oșean Vasile, reported to ANAD headquarters to submit to a doping control. The analytical result of the athlete's sample with the code number 6044377A, issued on 23.08.2013 by the Doping Control Laboratory in Lausanne and by the Doping Control Laboratory in Bucharest through the Bulletin of analysis no. 566/26.08.2013 indicated the presence of the prohibited substance recombinant Erythropoietin, included in section S2 of the Prohibited List.

In observance of the athlete's right to defense, the athlete was convened and attended the Hearing Commission meeting on 26.09.2013 when she was handed out under signature the Bulletin of analysis no. 566/26.08.2013 issued by the Doping Control Laboratory in Bucharest and the bulletin of analysis no. R 13-04497 issued by the Doping Control Laboratory in Lausanne, representing the analytical results of the sample with the code number 6044377A and indicating the presence of the prohibited substance recombinant Erythropoietin. Before the Hearing Commission, the athlete asked for the B sample analysis, also requested through the statement registered under no. 47 of 26.09.2013; subsequently, after the end of the meeting session she mentioned that she would like to waive the B sample analysis.

Taking into account that the athlete didn't submit her choice regarding one of the dates established for B sample analysis as well as the unjustified postponements which led to a delay in settling the case, ANAD decided to perform the B sample analysis, according to the applicable legal provisions and,

through the letter no. 1005/13.12.2013, authorized the Doping Control Laboratory in Lausanne to perform the B sample analysis in the period 17 to 19 December 2013. The Hearing Commission informed the athlete of this term.

The analysis of the sample with the code number 6044377B was performed on 17.12.2013, in Lausanne, in the presence of two independent witnesses who witnessed the opening of B sample and established that it was properly sealed and belonged to the athlete Maxim Simona Raula, and had the code number 6044377B; all these were documented in the report drawn up on this occasion.

The Analysis Bulletin no. R13-07238/20.12.2013 issued to this end and transmitted to ANAD on 24.12.2013 indicated the presence of recombinant Erythropoietin in the sample with the code number 6044377B, thus confirming the result of the sample with the code number 6044377A.

The Hearing Commission was convened on 09.01.2014 for the athlete's hearing and the settlement of the case, but the athlete didn't appear although she had been legally notified through the letter no. 1063/30.12.2013. The Commission took note of the request submitted by her representative on the very same day, registered under no. 15/09.01.2014, requesting several documents, which were part of the documentation package previously provided to her under signature.

As for this request and in observance of the principle of the right to defense, the Hearing Commission decided that the requested documents should be communicated once again and the settlement of the case be postponed until 23.01.2014.

At the meeting session on 23.01.2014, when the athlete was legally convened through the letter no. 49/14.01.2014, the Hearing Commission took note of the letter submitted by the athlete through her representative the attorney Mincu Paul Alexandru, registered under no. 79/23.01.2014, which was communicated on the same day as the hearing and not within the legal term set forth in article 30 of the Regulation for organization and functioning of the Hearing Commission.

The Hearing Commission legally convened the athlete Maxim Simona Raula at the meeting session on 11.03.2014, but again she failed to appear. Moreover, on 10.03.2014, the athlete through her representative submitted a letter registered under no. 272/10.03.2014, informing the Hearing Commission of the fact that she received the documentation packages but she wanted to be informed of the hearing date, although the hearing date was already known both by the athlete and her legal representative, the attorney Mincu Paul Alexandru.

For all the reasons presented above, and taking into account the provisions of article 51, para (1) of the Law 227/2006 (*"In case that following a decision taken for a first anti-doping rule violation the Agency discovers a new anti-doping rule violation committed by the athlete or other person from the athlete's support personnel occurred earlier in time, before the notification for the first anti-doping rule violation, then the Hearing Commission shall apply an additional sanction, based on the sanction that would have been applied if the two anti-doping rule violations were managed in the same time."*) the Hearing Commission reviewed the two violations committed by the athlete as result of violating the

provisions of article 2, para. (2), letters a) and c), thesis 3-evading and, by applying the provisions of article 49, para. (1), letter c), retained an aggravated circumstance and individualized the sanctioned to a 4-year period of ineligibility, respectively the most severe sanction.

Pursuant to the provisions of article 49, para. (1), letter c):” *(1) The ineligibility periods set forth in Articles 38 and 40 for the anti-doping rules violations under Article 2 paragraph (2) letters a)-f) shall be increased up to a maximum of four (4) years in case the violation is committed in one of the following situations: c) the athlete or other person is obstructing the detection or adjudication of an anti-doping rule violation*”, the Hearing Commission appreciated that the violation committed by the athlete as result of violating the anti-doping rules set forth in article 2, para. (2), letter c)-evading and sanctioned with a 4-year period of ineligibility represents the most severe violation and this is why the Hearing Commission proceeded to this individualization of the sanction.

As for the appellants’ assertions, according to which she didn’t commit the violation set forth in article 2, para. (2), letter c), thesis 3 of the Law no. 227/2006, the Hearing Commission, after reviewing the documents on the file, retained the contradictory statements of the athlete Simona Raula Maxim and her coach Barbu Augustin, the statement of the General Secretary of FRA, Catalin Ganera and the documents submitted, the statement of the physician Oșean Vasile, as well as the fact that the athlete couldn’t prove how she had left the training camp on the evening of 30.07.2013.

As for the supplement of the appeal grounds submitted by the athlete and her assertion according to which there are inconsistencies in the laboratory documentations submitted, the Hearing Commission appreciated that they were punctually settled by the Department for Research and Doping Control Laboratory in the letter no. 788/12.05.2014 submitted on the case file.

For all these reasons, the Hearing Commission requested the dismissal of the appeal filed by the athlete Maxim Simona Raula against the Decision no. 5/11.03.2014 of the Hearing Commission and the upholding of this decision as legal and grounded.

**After reviewing the appeal file, the Commission holds the following:**

The appeal filed by the athlete Maxim Simona Raula against the Decision no. 5/11.03.2014 of the Hearing Commission is ungrounded.

Pursuant to the provisions of article 2, para. (2), letter a) of the Law 227/2006, the presence of a prohibited substance or its metabolites or its markers in the athlete’s biological sample represents an anti-doping rule violation.

Pursuant to the provisions of article 48, para. (1) of the above mentioned Law, the athletes are responsible for the presence of any prohibited substance or its metabolites or its markers in the biological samples collected. It is each athlete’s duty to make sure that no prohibited substance enters his body. Therefore, there is no need to prove the athlete’s intention, fault, negligence or conscious use to establish an anti-doping rule violation according to the provisions of article 2, para. (2), letter a) of the Law, as well as article 2.1.1 of the World Anti-Doping Code.

Pursuant to the legal provisions retained by the Commission when establishing the violation and individualizing the sanction, the proof of an anti-doping rule violation is represented by one of the following situations: presence of a prohibited substance or its metabolites or its markers in the A sample of an athlete, when the athlete doesn't ask for B sample analysis and the B sample is not analyzed, or when the B sample is analyzed and the analysis confirms the presence of the prohibited substance or its metabolites or its markers in athlete's A sample. In the case of the athlete Maxim Simona Raula there isn't any indication to refute the way the prohibited substance EPO entered her body, as this is a substance which can be administered only by systemic (injectable) way.

Pursuant to the provisions of article 2, para. (2), letter c) thesis II of the Law no. 227/2006, evading in any way the sample collection represents an anti-doping rule violation. It results from this legal provision that this violation doesn't involve any biological sample collection and it is managed by the national anti-doping organization, according to article 29 of the Law no. 227/2006, republished, and art. 7.4 of the World Anti-Doping Code.

Evading in any way the sample collection implies that the athlete acts with intent – the subjective attitude manifested by the athlete who foresees the result of his/her act, pursues its occurrence, or, when occurrence is not pursued, the athlete accepts the possibility of the occurrence by committing an act.

This means that the athlete's action, by commission or by omission, of evading in any way the sample collection has to be conducted with intent, either direct or indirect intent, and not by negligence.

The positive results confirmed by the bulletins of analysis issued by the Doping Control Laboratories in Bucharest and Lausanne, for A sample respectively B sample, contribute to prove the bad faith, thus representing an action by commission and direct intent to evade the sample collection.

The Commission establishes that it results indisputably from the very statement of the athlete Maxim Simona Raula, heard on 23.09.2013, that she admitted the violation by referring to the "too severe" sanction established through the Decision no. 12/ 28.08.2013 issued by the Hearing Commission for violating the provisions of article 2, para. (2), letter c) of the Law 227/2006 and not refuting the sanction.

This argument is also supported by the contradictory statements of the athlete Maxim Simona Raula when compared to the statements made by the persons in her entourage.

At the same time, the Commission holds the athlete's statement referring to the impossibility to be reached on the phone in the village Rastoltu Desert, in opposition with the statement in which she claims she contacted the President and the General Secretary of FRA on 31.07.2013 in the morning, while she was in the same village.

On the other hand, as for the appellant's assertions included in the appeal grounds regarding the fact that the requirements for establishing an anti-doping rule violation according to article 2 para. (2) letter c) of the Law no. 227/2006 and article 2.3 of the Code are not met, due to the fact that she



couldn't evade the sample collection as long as she had not been officially notified of this doping control and the case file doesn't include any evidence to prove the existence of such official notification received by the athlete previously to the date and time of the doping control, the Commission holds that the above mentioned legal provisions also include, with regard to the thesis related to „*evading in any way the sample collection*” the hypothesis when the athlete is hiding with the aim to avoid receipt of the notification for doping control; the evidence submitted on the case file reveal that the appellant left the training camp precisely as learned of the imminence of a doping control and she was aware of the fact that she would receive the official notification, a perspective that she intended to avoid.

As for the evidence administered in the case and the meeting notes / written conclusions of the appellant and the Hearing Commission;

Taking into account the provisions of article 9 para. (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 seven (7) members out of seven (7), unanimously

#### **DECIDE:**

Pursuant to the provisions of article 28 letter b) corroborated with article 16 letter d) of the Regulation for organization and functioning of the Appeal Commission denies the appeal filed by the appellant Maxim Simona Raula, affiliated in Steaua Army Sport Club, residing in Zalau, 18 Mihai Viteazul Bvd., Bl. A96, Sc. A, Appt. 19, Salaj County, identified with I.C. series SX no. 229319, issued by SCPEP Zalau on 05.11.2009, CNP 2850720314019 as ungrounded and upholds the Decision no. 5/11.03.2014 of the Hearing Commission as legal and grounded.

The current decision may be appealed to the Court of Arbitration for Sport in Lausanne within 21 days since its notification.

**CHAIRPERSON**

**Georgeta MIȘCĂ**