

At the Headquarters of the Malta Sports Council, Cospicua

Decision of the National Anti-Doping Disciplinary Panel

Ref: 01/2015/ NADDP

Anti-Doping Commission (Malta)

vs

Eman Xuereb (Malta Basketball Association – Holder of Identity Card No. 183883M)

This is the decision of the National Anti-Doping Disciplinary Panel (hereinafter referred to as the "Panel"), in the case brought against Mr Eman Xuereb.

The Panel, is composed of Dr. Maria Azzopardi as Chairman, and Dr. Sue Mercieca and Dr. Aaron Formosa as members.

Dr. Sue Mercieca and Dr. Aaron Formosa declared, before the Chairman, that they were not subject to any circumstance or conflict that can have a negative impact on their impartiality in this case. The Chairman of the Panel made the same declaration.

Considered the Request (Ref No: 1TSTEMAXUE-14/13) made by the National Anti Doping Commission on the 5th December 2014 (Dok17b) to the Chairman of the 'Panel' to appoint a sitting for the hearing of a case concerning an alleged breach of the Anti-Doping Regulations, 2011 (LN 281/2011, Sports Act, Chapter 455, Laws of Malta) by basketball player Eman Xuereb.

Took note and reviewed all the documents that were forwarded to the 'Panel' by the Chairperson, Anti-Doping Commission, including principally the following:

Request to the 'Panel' to schedule an anti-doping disciplinary hearing dated 5th December 2014 (Dok 17b);

Chain of Custody Form dated 2nd November, 2014 (Dok 13b and 23a);

Doping Control Officer Report Form dated 2nd November, 2014 (Dok 12);

Email message from Manolis Lyris PhD of Olympic Athletic Center of Athens 'Spyros Louis' dated 8th January 2014 (Dok 23c);

Lab Document Package Report numbered LAB Code A54027 re Sample A469915/B469915 issued by Doping Control Laboratory of Athens dated 19th December 2014 (Dok 21, 77pages);

Email From NADO to Control laboratory of Athens to cancel B sample opening dated 5th December 2014 (Doc 16a)

Letter by the Chairperson Anti-Doping Commission dated the 2nd December 2014 to the President of the National Basketball Association (i.e. MBA) following an Adverse Analytical Finding (DokADC1);

Notification of Adverse Analytical Finding addressed by the Chairperson Anti-Doping Commission to Eman Xuereb on the 2nd December 2014 (Dok ADC2);

Report of Adverse Analytical Finding (Ref No. 1TSTEMAXUE-14/13) (Dok ADC3);

Receipt of Provisional Suspension signed by Eman Xuereb with no date but received before 10th December 2014 accepting the Suspension (Dok ADC4);

Email dated 9th December, 2014 by athlete Eman Xuereb requesting Laboratory Package and receipt of payment (Dok 18a);

Email message dated the 5th December 2014 from the National Anti-Doping Program Coordinator to Dr Manolis Lyris cancelling the analysis of Sample 'B' (Dok ADC9);

Email message dated 6th April, 2015 from Profs. Janet Mifsud to NADO explaining the LAB Report in English and to non scientist for better understanding (Dok 31a and 31b)

Took note of the Notice issued by the Chairman of the National Anti-Doping Disciplinary Panel to Eman Xuereb, for him to appear before the 'Panel' on the 9th April 2014 (Dok NADDP1) – after a postponement, copy of which had also been forwarded to the Anti-Doping Commission, the Malta Basketball Association of Malta, the Malta Sports Council and the Remax Basketball club.

The notification also served to inform the athlete of his rights, as stipulated by Article 9 of the Anti-Doping Regulations of 2011 (Legal Notice no. 281/2011), and more specifically: -

His right to assistance or legal representation by a lawyer;

His right to answer regarding the alleged breaching of Anti-Doping Regulations;

His right to present evidence, including the right to summon witnesses and examine said witnesses;

A copy of this notification was also sent to the following entities:

The Anti-Doping Commission, Malta

The Malta Basketball Association

The Kunsill Malti għall-iSport (Malta Sports Council)

Preliminaries

In the case under review Eman Xuereb who is registered as a player with the Malta Basketball Association on the 2nd November 2014 was asked to provide a urine sample 'in-competition' immediately after the basketball match.

According to the procedures the 'Doping Control Form' and the 'Chain of Custody Form' were completed. On the 2th November 2014 the two urine samples was sealed in two containers marked 'A' and 'B'.

The urine samples were sent to a WADA accredited laboratory at the Olympic Athletic Center of Athens 'Spyros Louis'. On the 7th December 2013 this laboratory issued its analysis report number 11630_2 under the signature of Laboratory Director Dr Manolis Lyris PhD. In this report, *inter alia*, it was declared that:

Event/status of Control: In Competition Testing

Sport: Basketball

Type of Sample: Urine

Chain of Custody Status: According to WADA specifications

Sample Code: A469915

Sex: Male

Substance Identified: Cocaine

Result: Adverse Analytical Finding

According to the 2013 Prohibited List as published by WADA "All stimulants (including both optical isomers where relevant) are prohibited, except imidazole derivatives use and those stimulants included in the 2013 Monitoring program. Cocaine is considered as one of the 'in-competition' prohibited substances, and in fact cocaine specifically

mentioned under the paragraph containing the list of the (prohibited) Non-Specified Stimulants.

On the 2nd December 2014 Eman Xuereb was informed that a prohibited substance was detected in the urine sample that was collected from him on the 2nd November 2014, Mr Xuereb was also given a Report of Adverse Analytical Finding in which it was stated that benzoylecgonine (cocaine metabolite) was identified in his urine sample. It was added that cocaine metabolite were confirmed in the sample as also mentioned in the laboratory analysis report issued by Dr Manolis Lyris. Then Mr Xuereb was told that the presence of such substance was in violation of the WADA Code (Article 2.1) and LN 281/2011 (Art 3.3) of the Laws of Malta. Furthermore Eman Xuereb was informed of the possible consequences which such a breach may attract in terms of the WADA Code (Art 10.1 and Art 10.2) and LN 281/2011 (Art 11.1 and Art 11.2).

Also on the 2nd December 2014 the Chairperson of the Anti-Doping Commission informed the President of Malta Basketball Association of the Adverse Analytical Finding concerning Eman Xuereb. In turn the General Secretary of the Malta Basketball Association on the 2nd December 2014 notified Mr Eman Xuereb of a choice either to accept a provisional suspension or request a provisional hearing.

Eman Xuereb was given the opportunity to request the analysis of Sample 'B' but did not exercise such a right. On the 5th December 2014 the Director of the laboratory in Athens was advised by the National Anti-Doping Program Coordinator that "the athlete did request the analysis of the B-Sample." The athlete informed the Anti Doping Commission that he was neither attending the opening and analysis of B Sample.

Merits

An oral hearing in respect of the charge took place in Tal-Qroqq on 9th April 2015. The athlete was represented by Dr Roberto Montalto. The Anti Doping Commission was represented by Dr Clint Tabone.

During his submissions Dr Roberto Montalto for the athlete admitted that the athlete was not contesting the result of the tests conducted on the athlete but wanted to explain on his client's behalf how the substance got into the athlete's system. Dr Montalto explained that the athlete had consumed along with a group of friends a cigarette made of cannabis resin – but Dr Montalto pointed out that his client did not know that the said cigarette had cocaine mixed in it. Dr Montalto explained that his client had taken the cigarette as recreation and not as performance enhancement. Dr Montalto reiterated that even such behaviour did not justify the athlete's actions but he underlined that perhaps such might partially excuse or mitigate such behaviour. Thus Dr Montalto was making a plea to the board that this was a first offence for the athlete and also to take into consideration that said athlete was already suspended since December 2014 – whilst making reference to article 8 (ii).

On behalf of the NADO Dr Clint Tabone argued that since the result of Sample A was accepted without asking for the Sample B to be examined then he underlined that the athlete had in fact accepted the results. Dr Tabone also remarked that even cannabis was a prohibited substance whilst cocaine was considered as a stimulant for the performance of the athlete. He thus said that since there was admission, the maximum penalty had to be applied.

In answer to this Dr Montalto argued that the intention of the athlete was to consume cannabis and not cocaine and then referred again to Article 8 – meaning that the athlete did not take the said substance to enhance his performance.

The athlete was asked by the board the length of time between the smoking of the cannabis cigarette and the doping test – to which the athlete replied 36 hours. The Athlete also confirmed that he knows about doping tests and that he had been an athlete for at least 20 years.

Evidence of both parties was closed at this stage.

Considerations

The Panel is grateful to the representatives of both parties for their oral and written presentations.

Under the Program, cocaine is a prohibited substance in competition. This includes any metabolite of cocaine. The presence of a cocaine metabolite in a player's body in competition is a doping offence. The Anti Doping Organisation (NADO) bears the burden of proving that a doping offence has been committed. It must prove the offence to the comfortable satisfaction of the Panel, bearing in mind the seriousness of the allegation that is made.

The Anti Doping Commission relies on the laboratory's finding that a cocaine metabolite, was present in the sample numbered A469915. The NADO submits that the sample bearing that number is that of the athlete Eman Xuereb. This was not contested by the athlete who admitted to the charge.

In evaluating the defense counsel submissions the Panel cannot entertain any reduction of penalty due to this being the first time that the said athlete committed an ADRV. Neither can the Panel take into consideration his early admittance in the proceedings in order to reduce any penalty because only an admittance before the anti-doping test is taken can be taken into account.

The Panel also rejects the defense counsel's submission that the athlete was unaware of cocaine in the cannabis cigarette because the Athlete confirmed that he knows about anti-doping and thus he is responsible for any substance that enters his body.

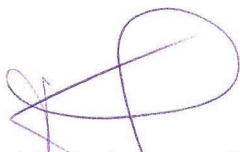
The athlete does not possess a therapeutic use exemption (TUE) in respect of cocaine.

The Decision

On the basis of the foregoing, the National Anti-Doping Disciplinary Panel decides this anti-doping case brought by the National Anti-Doping Commission against the athlete Mr Eman Xuereb by finding:

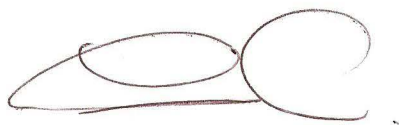
That Eman Xuereb has breached the Anti-Doping Regulations, 2011 Art 3(3) and the WADA Code Art 2.1 as the prohibited substance 'cocaine' or its metabolites had been found in Eman Xuereb's urine sample A that had been collected from him on the 2nd November 2014.

And therefore the National Anti-Doping Disciplinary Panel as provided by the Anti-Doping Regulations, 2011 Art 11(2) and the WADA Code Art 10.2 is imposing on the athlete Eman Xuereb a suspension of ineligibility from any sports activities for a period of two (2) years commencing from the date of his provisional suspension on the 2nd December, 2014.



Dr Maria Azzopardi

Chairman



Dr Sue Mercieca

Member



Dr Aaron Formosa

Member

This 29th day of April 2015

At Cospicua, Malta