



Arbitration CAS 2014/A/3786 World Anti-Doping Agency (WADA) v. Confederação Brasileira de Canoagem (CBC) & Denise Consuelo Oliveira, award of 4 May 2015

Panel: Mr Juan Pablo Arriagada Aljaro (Chile), Sole Arbitrator

Canoe

Doping (19-norandrosterone)

CAS jurisdiction

Standard sanction

Reduction of the sanction

1. **WADA has the right to appeal a final decision that has not been appealed by the athlete directly to CAS, which has jurisdiction to hear the case.**
2. ***19-norandrosterone*, classified under Section “S1” of the 2013 WADA Prohibited List as an Anabolic Agent, is indeed a Prohibited Substance but cannot be considered as a Specified Substance for the purpose of determining the sanction to the athlete. Consequently, pursuant to the applicable anti-doping regulations, the standard sanction for a first violation is a two-year period of ineligibility unless conditions for reduction or elimination are present.**
3. **The specific circumstance that an athlete claims not to have used a prohibited substance to enhance his/her sporting performance has nothing to do with the exceptional circumstances established by articles 10.5.1 and 10.5.2 of the applicable anti-doping regulations and thus cannot be used to reduce the standard sanction.**

I. PARTIES

1. The World Anti-Doping Agency (“WADA” or the “Appellant”) is a Swiss private law foundation with its seat in Lausanne, Switzerland, and its headquarters in Montréal, Canada. WADA is an international independent organization created in 1999 to promote, coordinate and monitor the fight against doping in all its forms.
2. Confederação Brasileira de Canoagem (“CBC” or the “First Respondent”) is the governing body of canoeing in Brazil. The CBC is a member of the International Canoe Federation (“ICF”), the international sports federation governing the sport of canoe worldwide.
3. Ms. Denise Consuelo Oliveira (“Athlete” or the “Second Respondent”) is a Brazilian canoer affiliated to the CBC.

II. FACTUAL BACKGROUND

A. Background Facts

4. Below is a summary of the relevant facts and allegations based on the parties' written submissions, pleadings and evidence adduced. Additional facts and allegations found in the parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, he refers in his Award only to the submissions and evidence he considers necessary to explain his reasoning.
5. On 15 December 2013, on the occasion of the Brazilian Championship of Canoe, the Athlete underwent an in-competition doping control.
6. On 19 December 2013, the Athlete's urine sample was received by the WADA-accredited laboratory located in Quebec (INRS-Institut Armand-Frappier).
7. On 22 January 2014, the WADA accredited laboratory reported that the Athlete's A sample (Sample Code 2862790 and Laboratory Code 13-21733A) produced an atypical analytical finding for the substance *19-norandrosterone*, initially estimated at 1.5 ng/mL.
8. The result of the analysis of the Athlete's B Sample (Sample Code 2862791 and Laboratory Code 13-27134A), also reported on 22 January 2014, confirmed an adverse analytical finding for the substance *19-norandrosterone*. In addition, in the Certificate of analysis granted by the WADA-accredited laboratory, the laboratory confirmed that the IRMS results were consistent with an exogenous origin of the substance (measured at 4.7 ± 0.3 ng/ml (k - 2). DL: 2.5 ng/ml). The analytic value of this finding exceeded the threshold level (i.e. 2.5 ng/mL) that for that substance it is established in the WADA Technical Document - TD2013DL -.
9. *19-norandrosterone* (hereinafter also referred to as the "Prohibited Substance") is a prohibited substance included in section "S1" (Anabolic Agents) of the 2013 WADA Prohibited List published by WADA.

B. Proceedings before the Brazilian *Superior Tribunal de Justiça Desportiva Da Canoagem* ("STJD")

10. At the request of the President of the CBC, the STJD brought disciplinary proceedings against the Athlete because of the adverse analytical finding resulting from the anti-doping test.
11. In the disciplinary proceedings carried out before the STJD, the Athlete filed the following statement of defence:
 - *"No final de março de 2013, quando treinava em sua academia de musculação uma amiga da Atleta lhe deu 1ml de Decanoato de Nandrolona o qual foi indicado para "secar" a gordura e definir a musculatura.*

- *A atleta por mera vaidade fez uso da substância para fins exclusivamente estéticos.*
- *Na oportunidade, a atleta não estava em competição, tampouco tinha qualquer objetivo esportivo próximo que pudesse justificar o uso para ganho de performance.*
- *Por este motivo, Denise repetiu se erro e fez uso de um segundo frasco de 1 ml porém não se sentiu bem e foi consultar por efeitos colaterais na internet. Neste momento descobriu que a substância era proibida no desporto de rendimento e nunca mais fez uso da substância novamente.*
- *Como relatado acima, o uso da substancia encontrada na urina da atleta decorreu de intenção estética e não teve qualquer intenção de ganho de performance.*
- *No Campeonato Brasileiro em que a atleta foi testada, só competiram a Denise e mais uma atleta que havia começado a treinar em novembro 2013, portanto com raríssimas chances de ter desempenho melhor que ó de Denise”.*

which can be freely translated into English as follows:

- *“In late March 2013 while training at her bodybuilding gymnasium, a friend of the Athlete’s gave her 1ml of Nandrolone Decanoate, which was said to “dry-up” fat and define muscles.*
- *The athlete, merely for vanity, made use of the substance solely for aesthetic purposes.*
- *At the time, the athlete neither was in competition nor had any upcoming sporting objective that could justify such usage to enhance performance.*
- *For this reason, Denise repeated her mistake and made use of a second 1 ml dose but she did not feel well and consulted the internet for side-effects. It was at this point that she discovered that the substance was banned in performance sport and she never made use of it again.*
- *As noted above, the use of the substance found in the urine of the athlete was for aesthetic reasons and there was no intention of any performance enhancement.*
- *In the Brazilian Championship where the athlete was tested, only Denise and another athlete, who had started training in November 2013, competed, and therefore it was unlikely that the performance of such athlete would have been better than Denise’s one”.*

12. On 3 April 2014, the STJD passed the following decision (hereinafter the “Appealed Decision”):

“ACORDAM, por unanimidade, os Auditores da Seção Especializada no Controle de Dopagem e os Auditores Convocados do Superior Tribunal de Justiça Desportiva da Confederação Brasileira de Canoagem, pela procedência da denúncia (1) ano de suspensão e inegibilidade da atleta Denise Consuelo Oliveira partir da data de coleta da amostra da atleta, qual seja 15 de dezembro de 2013, porém, mantendo a atleta nos registros da Confederação Brasileira de Canoagem, assim como seus prêmios, conquistas e classificações conquistadas”

which can be freely translated into English (as provided by the Appellant with its Appeal Brief) as follows:

“The Auditors of the Specialised Anti-Doping Section and the Invited Auditors from the Superior Court of Sports Justice of the Brazilian Canoe Confederation (CBCa), unanimously AGREED based on the provenance of the complaint, to 1 (one) year’s suspension and ineligibility of athlete Denise Oliveira Consuelo from the date the sample was collected from the athlete, which was 15 December 2013, but with the athlete retaining her Brazilian Canoe Confederation records, as well as the awards, achievements and classifications attained by her”.

13. On 1 October 2014, the *Autoridade Brasileira de Controle de Dopagem* (ABCD) notified WADA of the complete file relating to the decision of the STJD.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

14. On 22 October 2014, WADA filed its Statement of Appeal against the Appealed Decision with the Court of Arbitration for Sport (the “CAS”). Furthermore, the Appellant requested that the present appeal be submitted to a Sole Arbitrator.
15. On 24 October 2014, the CAS Court Office sent a letter to the parties acknowledging receipt of the Appellant’s Statement of Appeal and inviting the Appellant to file her Appeal Brief with the CAS within 10 days following the expiry of the time limit for the appeal. In this same letter, the CAS sent a copy of the Statement of Appeal to the Respondents, and invited them to inform the CAS Court Office within five days of receipt of that letter whether they agreed to the appointment of a Sole Arbitrator.
16. On 3 November 2014, WADA timely filed its Appeal Brief.
17. On 5 November 2014, the CAS Court Office invited the Respondents to file their Answer to the Appeal Brief within 20 days of receipt of that letter, informing them that *“If the Respondents fail to submit its answer by the given time limit, the Panel may nevertheless proceed with the arbitration and deliver an award”*.
18. On 13 November 2014, the CAS Court Office informed the parties that its letter from the 24 October 2014 had not been delivered to the Athlete and that, for this reason, the deadlines applicable to her were temporarily suspended. At the same time, the CAS Court Office requested the Appellant to provide the CAS with new contact details for the Athlete.
19. On 20 November 2014, the Appellant provided the CAS with the new contact details for the Athlete.
20. On 17 December 2014, the CAS Court Office informed the parties that the Athlete had received all the correspondence related to the present appeal, and that consequently the suspension of her deadlines had been lifted. In this same letter the CAS Court Office gave a deadline of 5 days to the Athlete to state whether she agreed to submit the resolution of the dispute to a Sole Arbitrator, as requested by the Appellant, as well as if she had any objection to English as the language of the proceedings. Separately, the CAS Court Office gave the

Athlete 20 days from the receipt of this letter to file the Answer to the Appeal, in accordance with Article R55 of the Code of Sports-related Arbitration.

21. On 12 January 2015, the CAS Court Office, on behalf of the President of the CAS Appeals Arbitration Division, informed the parties that Mr. Juan Pablo Arriagada Aljaro had been appointed as Sole Arbitrator in this case.
22. On 15 January 2015, the CAS Court Office invited the parties to inform the CAS whether they preferred a hearing to be held in this arbitration procedure or for the Sole Arbitrator to issue an award based solely on the parties' written submissions.
23. On 21 January 2015, WADA informed the CAS that it preferred the Sole Arbitrator issues an award based solely on the parties' written submissions.
24. On 26 January 2015, the CAS Court Office notified the parties that the Sole Arbitrator had decided to render a decision on this appeal based upon the written submissions and without a hearing, pursuant to Article R57 of the Code.
25. On 4 February 2015, the CAS Court Office sent the Order of Procedure to the parties, which was signed by the Appellant only. The other parties did not return a signed Order of Procedure or otherwise object to its contents.
26. The Respondents neither submitted an Answer to the Appeal Brief, nor otherwise participated in the present proceedings. The Sole Arbitrator is satisfied that the Respondents were duly summoned to join in this procedure but have wilfully declined to participate.

IV. SUBMISSIONS OF THE PARTIES

IV.1. The Appellant

27. In the Appeal Brief, the Appellant requested an award be rendered in the following terms:

“WADA hereby respectfully requests CAS to rule:

1. *The Appeal of WADA is admissible.*
2. *The decision rendered by the Superior Tribunal de Justiça Desportiva de Canoagem on 3 April 2014, in the matter of Ms. Denise Consuelo Oliveira, is set aside.*
3. *Ms. Denise Consuelo Oliveira is sanctioned with a two-year period of ineligibility starting on the date on which the CAS award enters into force. Any period of ineligibility, whether imposed on, or voluntarily accepted by, Ms. Denise Consuelo Oliveira before the entry into force of the CAS award, shall be credited against the total period of ineligibility to be served.*

4. *All competitive results obtained by Ms. Denise Consuelo Oliveira from 15 December 2013 through the commencement of the applicable period of ineligibility shall be disqualified with all of the resulting consequences including forfeiture of any medals, points and prizes.*
5. *WADA is granted an award for costs”.*

28. The Appellant’s submissions, in essence, may be summarized as follows:

- The Anti-Doping rule violation:
 - *19-norandrosterone* is an anabolic androgenic steroid that appears on the WADA 2013 Prohibited List under class S1.1 which is prohibited in and out-of competition, and which, contrary to the findings of the Appealed Decision, is not a specified substance.
 - An endogenous origin of the Prohibited Substance was clearly excluded by the WADA-accredited laboratory further to an IRMS analysis.
 - The presence of *19-norandrosterone* was detected in the bodily sample provided by the Athlete in excess of the applicable decision limit of 2.5 ng/mL. This is actually not challenged by the Athlete.
 - Therefore, the violation of article 2.1 of the Anti-Doping Rules adopted by the ICF (“ICF ADR”) - i.e. the presence of a prohibited substance or its metabolites or markers in an athlete’s bodily specimen - is established.
- Determining the sanction:
 - According to article 10.2 ICF ADR, the Athlete shall incur a two-year period of ineligibility for her doping offence, unless the conditions for eliminating or reducing the period of ineligibility (art. 10.5 ICF ADR) are met.
 - In particular, an athlete can establish that, in view of the exceptional circumstances of his or her individual case, the otherwise applicable period of ineligibility shall be eliminated (in case of no fault or negligence as per article 10.5.1 ICF ADR) or reduced (in case of no significant fault or negligence as per art. 10.5.2 ICF ADR).
 - In addition to the above, a prerequisite in establishing an absence of fault or no significant fault is proof provided by the Athlete on how the prohibited substance entered his or her system. In any case, the Athlete is required to prove his or her allegations on the “balance of probabilities”, convincing the Sole Arbitrator that the occurrence of the circumstances on which the Athlete relies is more probable than their non-occurrence or more probable than other possible explanations for the positive testing.
 - With regard to the origin of the prohibited substance, the Athlete has explained that she tested positive to *19-norandrosterone* further to the administration of the

product “*Nandrolone Decanoate*”, which she took for aesthetic purposes following the advice from a friend. In this regard, WADA has no reason to believe that these explanations are inaccurate.

- With regard to the Athlete’s fault, WADA submits that the ordinary two-year ban applicable for a first anti-doping rule violation cannot be reduced since the Athlete clearly bears significant fault. It is each athlete’s personal duty to ensure that no Prohibited Substance enters his or her body. According to CAS case law, if an athlete uses a product and fails to inquire or ascertain whether the product contains a prohibited substance, the athlete’s conduct constitutes a significant fault or negligence, which excludes any reduction of the applicable period of ineligibility.
- In the case at hand, the Athlete’s fault is particularly significant because:
 - i. the name of the product itself corresponds to the name of a steroid,
 - ii. before using the product she did not obtain any assurance from a specialist that the product did not contain any prohibited substance,
 - iii. she did not contact the supplier about the product or its ingredients before taking it,
 - iv. the Athlete claims that she did conduct internet research before she took the product for a second time as she wanted to check the side-effects, and she then realized that this product was prohibited. Notwithstanding this, she still took the risk of participating in a competition after the ingestion of a banned steroid, which clearly constitutes a significant departure of her duty of care;
 - v. she seems to have ingested the steroid by injection, what should have raised alarm signals with the Athlete and should have given raise to thorough checks from the outset. In addition, it is difficult to imagine that the Athlete would have auto-injected the product (i.e. without the assistance of a third party).
- In addition, the anti-doping rules do not distinguish between amateur or professional athletes.
- In conclusion, the Athlete cannot validly invoke any mitigating factors which would justify a reduction of the period of ineligibility.

IV.2. The First Respondent

29. The Sole Arbitrator is satisfied to confirm that all communications and submissions were sent to the CBC’s address and according to the DHL track reports those were indeed delivered to it.

30. However, the CBC did not submit any Answer to the Appeal and has not expressed any position in the present proceedings.

IV.3. The Second Respondent

31. The Sole Arbitrator is satisfied to confirm that all communications and submissions were sent to the Athlete's address and according to the DHL track reports those were indeed delivered to her.
32. However, the Athlete did not submit any Answer to the Appeal and has not expressed any position in the present proceedings.

V. ADMISSIBILITY

33. Article R49 of the Code provides as follows:

"In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document. When a procedure is initiated, a party may request the Division President or the President of the Panel, if a Panel has been already constituted, to terminate it if the statement of appeal is late. The Division President or the President of the Panel renders his decision after considering any submission made by the other parties".

34. Pursuant to this provision of the Code, it is necessary determine if there is any specific time limit established in the ICF regulations that provides as much. In this regard, article 13.6 of the ICF ADR envisages that:

"[...] The above notwithstanding, the filing deadline for an appeal or intervention filed by WADA shall be the later of:

- (a) Twenty-one (21) days after the last day on which any other party in the case could have appealed or,*
- (b) Twenty-one (21) days after WADA's receipt of the complete file relating to the decision".*

35. Taking into account that the complete file relating to the Appealed Decision was sent to WADA on 1 October 2014, and that WADA filed its Statement of Appeal on the 22nd October 2014, the Sole Arbitrator considers that the Appellant has complied with the applicable time limit under Article R49 of the Code and Article 13.6 of the ICF ADR. Consequently, the Appeal is deemed admissible.

VI. JURISDICTION

36. Article R47 of the Code provides as follows:

“An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of that body.

An appeal may be filed with CAS against an award rendered by CAS acting as a first instance tribunal if such appeal has been expressly provided by the rules of the federation or sports-body concerned”.

37. The Appealed Decision was rendered by the STJD, which is the highest sports court in Brazilian sport. However, in this particular case the STJD acted as a mere first instance national body and, as previously established by the CAS jurisprudence (CAS 2007/A/1370 & 1376) it can be considered as an integral part of the organisational structure of the relevant sport federation (in this particular case, the CBC) as it is one of the sports justice bodies established by the CBC Statutes, which entrusted the CBC’s vested disciplinary power to such body.
38. The Sole Arbitrator notes that under Article 13.2 of the ICF ADR, WADA has the right to appeal to CAS against decisions regarding Anti-Doping Rule Violations, both with regard to International-Level Athletes (Article 13.2.1 ICF ADR) and to National-Level Athletes (Article 13.2.2 ICF ADR). Besides this, pursuant to article 13.1.1 of the ICF ADR, *“Where WADA has a right to appeal under Article 13 and no other party has appealed a final decision within the ICF or its National Federation’s process, WADA may appeal such decision directly to CAS without having to exhaust other remedies in the ICF or its National Federation’s process”.*
39. Therefore, since the Appealed Decision is a final decision that has not been appealed by the Athlete, WADA has the right to appeal such decision directly to CAS, which in turn has jurisdiction to hear the present case.

VII. APPLICABLE LAW

40. Article R58 of the Code provides as follows:

“The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.

41. Pursuant to Article R58 of the Code and taking into account the facts described above, the Sole Arbitrator concludes that the present appeal shall be decided on the basis of the ICF ADR, which provides a full regulation on the matter and, if necessary, the World Anti-Doping Code (the “WADC”).

VIII. MERITS OF THE APPEAL

VIII.1 The Anti-Doping Rule Violation

42. Pursuant to article 2.1.1 of the ICF ADR *“It is each Athlete’s personal duty to ensure that no Prohibited Substance enters his or her body. Athletes are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples. Accordingly, it is not necessary that intent, fault, negligence or knowing Use on the Athlete’s part be demonstrated in order to establish an anti-doping violation under Article 2.1”*.
43. Furthermore, as per Article 2.1.2 of the ICF ADR, *“Sufficient proof of an anti-doping rule violation under Article 2.1 is established by either of the following: [...] where the Athlete’s B Sample is analysed and the analysis of the Athlete’s B Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the Athlete’s Sample”*. In addition, pursuant to Article 2.1.3 ICF ADR, *“Excepting those substances for which a quantitative threshold is specifically identified in the Prohibited List, the presence of any quantity of a Prohibited Substance or its Metabolites or Markers in an Athlete’s Sample shall constitute an anti-doping rule violation”*.
44. *19-norandrosterone* is a Prohibited Substance which is classified under Section “S1” of the 2013 WADA Prohibited List, being an Anabolic Androgenic Steroid (AAS) which is also listed in the WADA Technical Document on the Decision Limits for the Confirmatory Quantification of Threshold Substances (hereinafter the “WADA TD2013DL”). Pursuant to the WADA TD2013DL, the Decision Limit (DL) established for the substance *19-norandrosterone* is 2.5 ng/mLb.
45. In line with the foregoing the Sole Arbitrator notes that, in accordance with the applicable regulations, the presence of the substance *19-norandrosterone* in an Athlete’s bodily sample in a quantity above the referred DL of 2.5 ng/mLb, constitutes an anti-doping rule violation.
46. In the present case, it is undisputed that the analysis of the Athlete’s A Sample (Sample Code 2862790) produced an atypical analytical finding for the substance *19-norandrosterone*, initially estimated at 1.5 ng/mL. Furthermore, it is also undisputed that the result of the analysis of the Athlete’s B Sample (Sample Code 2862791) confirmed an adverse analytical finding for the substance *19-norandrosterone*.
47. Particularly, it shall be stressed that the WADA-accredited laboratory confirmed that the IRMS results were consistent with an exogenous origin of the substance (measured at 4.7 ± 0.3 ng/ml (k - 2). DL: 2.5 ng/ml) and that the analytic value of such finding exceeded the threshold level (i.e. 2.5 ng/mL) that for that substance establishes the WADA Technical Document - TD2013DL -.
48. In addition, the Sole Arbitrator notes that the Athlete did not challenge the scientific conclusion as to the identification of the Prohibited Substance in her urine sample, nor its analytic value in excess of the threshold level (i.e. 2.5 ng/mL) established by WADA. In this regard, the Sole Arbitrator has also taken into account that the Athlete did not contest before the STJD the scientific accuracy of the analysis carried out by the WADA-accredited

laboratory in Quebec (INRS-Institut Armand-Frappier). On the contrary, the Athlete recognized that she consumed the prohibited substance, although allegedly for “aesthetic purposes” (*“para fins exclusivamente estéticos”*).

49. Therefore, the Sole Arbitrator notes that the analysis of the Athlete’s urine samples collected on 15 December 2013, on the occasion of the Brazilian Championship of Canoe, showed evidence of an adverse analytical finding of a Prohibited Substance in a value above the DL established by WADA (i.e. 2.5 ng/mL). Consequently, the Sole Arbitrator agrees with what was declared by the Appealed Decision and thus finds that the presence of *19-norandrosterone* in the Athlete’s urine is proven and constitutes an anti-doping rule violation under Article 2 of the ICF ADR.

VIII.2 The Sanction

A. *The nature of 19-norandrosterone and the provisions to be applied*

50. The Sole Arbitrator has noted that the Appealed Decision applied in the present case the specific regime (art. 10.4 ICF ADR) envisaged for sanctions in connection with the use of “Specified Substances”.

51. Article 10.4 ICF ADR envisages the following sanction for the use of a Specified Substance:

“Where an Athlete or other Person can establish how a Specified Substance entered his or her body or came into his or her possession and that such Specified Substance was not intended to enhance the Athlete’s sport performance or mask the use of a performance-enhancing substance, the period of Ineligibility found in Article 10.2 shall be replaced with the following:

First violation: At minimum, a reprimand and no period of Ineligibility from future Events, and at a maximum, two (2) years of Ineligibility”.

52. However, the Sole Arbitrator has noted that, in accordance with the ICF ADR, the Prohibited Substance detected in the Athlete’s body cannot be considered as a Specified Substance, because pursuant to Article 4.2.2 ICF ADR (emphasis added), *“For purposes of the application of Article 10 (Sanctions on individuals), all Prohibited Substances shall be “Specified Substances” except (a) substances in classes of anabolic agents and hormones; and (b) those stimulants and hormone antagonists and modulators so identified on the Prohibited List. Prohibited Methods shall not be Specified Substances”.*
53. Therefore, taking into account the applicable regulations, the Sole Arbitrator shall conclude that *19-norandrosterone*, classified under Section “S1” of the 2013 WADA Prohibited List as an Anabolic Agent, is indeed a Prohibited Substance but cannot be considered as a Specified Substance for the purpose of determining the sanction to the Athlete in the case at stake, as it falls under the exception established by Art. 4.2.2 (*“substances in classes of anabolic agents and hormones”*).
54. Consequently, the provisions to be taken into account to impose the sanction are those foreseen in Article 10.2 ICF ADR for Prohibited Substances.

B. *The Applicable Standard Sanction*

55. Pursuant to Article 10.2 of the ICF ADR, the standard sanction for a first violation of article 2.1 of said rules (Presence of Prohibited Substance or its Metabolites or Markers) is a two-year period of ineligibility, “*unless the conditions for eliminating or reducing the period of Ineligibility, as provided in Articles 10.4 and 10.5, or the conditions for increasing the period of Ineligibility, as provided in Article 10.6, are met*”.
56. Therefore, unless the conditions for eliminating or reducing (no party has requested to increase such standard sanction) the period of Ineligibility envisaged in the ICF ADR are met, the sanction to be imposed to the Athlete is a two-year period of ineligibility.
57. In this regard, the Sole Arbitrator notes that under the ICF ADR the conditions for eliminating or reducing the period of ineligibility are those provided under art. 10.5.1 and 10.5.2 ICF ADR (which are exactly the same than the ones established by Articles 10.51 and 10.5.2 of the WADC), that read as follows:

“10.5.1 No Fault or Negligence

If an Athlete establishes in an individual case that he or she bears No fault or Negligence, the otherwise applicable period of Ineligibility shall be eliminated. When a Prohibited Substance or its Markers or Metabolites is detected in an Athlete’s Sample in violation of Article 2.1 (presence of Prohibited Substance), the Athlete must also establish how the Prohibited Substance entered his or her system in order to have the period of Ineligibility eliminated. In the event this Article is applied and the period of Ineligibility otherwise applicable is eliminated, the anti-doping rule violation shall not be considered a violation for the limited purpose of determining the period of Ineligibility for multiple violations under Article 10.7.

10.5.2 No Significant Fault or Negligence

If an Athlete or other Person establishes in an individual case that he or she bears No Significant Fault or Negligence, then the 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. If the otherwise applicable period of Ineligibility is a lifetime, the reduced period under this section may be no less than 8 years. When a Prohibited Substance or its Markers or Metabolites is detected in an Athlete’s Sample in violation of Article 2.1 (Presence of 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”.

58. The Sole Arbitrator shall also stress that, in accordance with the definitions given by the same ICF ADR in its Appendix 1, one can conclude that an Athlete bears no fault or negligence when he is able to establish that he did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he or she had used or been administered the Prohibited Substance or Prohibited Method. In line with this, it can be concluded that an Athlete bears No Significant Fault or Negligence when he or she is able to establish that her fault or negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence, was not significant in relationship to the anti-doping rule violation.

59. In this context, the Sole Arbitrator concludes that the specific circumstance that the Appealed Decision took into account to mitigate the sanction (i.e. that the Athlete claimed not to have used the Prohibited Substance to enhance her sporting performance) is irrelevant for the present case, and has nothing to do with the exceptional circumstances established by articles 10.5.1 and 10.5.2 ICF ADR and thus cannot be used to reduce the standard sanction.
60. Furthermore, in the Sole Arbitrator's view, none of the further arguments put forward by the Athlete can lead to establish that her fault or negligence, when viewed in the totality of the circumstances of the present case, and taking into account the criteria for determining "No Fault or Negligence", was not significant in relationship to the anti-doping rule violation. In this regard, before the STJD the Athlete intended to excuse her behaviour on the basis that (i) she recognized having taken the Prohibited Substance by means of a product that a friend gave to her in the gym for aesthetic purposes ("*Decanoato de Nandrolona*") and that (ii) the second time she took the substance she did not feel well and thus investigated the substance on the Internet, when she realized it was a Prohibited Substance and decided not to take it again.
61. On the contrary, the Sole Arbitrator is of the opinion that the grounds argued by the Athlete even aggravate her Fault or Negligence, because:
- The same name of the product "*Decanoato de Nandrolona*" refers to the name of a well-known steroid (i.e. Nandrolone) which should be known as a Prohibited Substance for an athlete.
 - The fact that the dosing for this kind of substance is usually an injection should have alerted the Athlete about the possibility of being before a Prohibited Substance. However, even in these circumstances the Athlete did not carry out any research (even in the Internet) or consulted a specialist.
 - In the information leaflet of the product "*Decanoato de Nandrolona*" (produced by the Appellant) it is clearly stated that it is a doping substance.
 - After the Athlete acknowledged that she had taken a Prohibited Substance, she decided anyway to participate in the Brazilian Championship of Canoe. In addition, when she fulfilled the Doping Control Form she concealed that she had taken this product and thus did not disclose any information in this regard.
62. For all these reasons, the Sole Arbitrator considers that the Athlete was reckless and did not fulfil with her personal duty to ensure that no Prohibited Substance entered her body (Article 2.1.1 ICF ADR).
63. Therefore, the Sole Arbitrator finds that the Athlete's degree of fault or negligence, viewed in the totality of the circumstances, is clearly significant in relation of the anti-doping rule violation, and thus the sanction cannot be eliminated or reduced under article 10.5 of the ICF ADR. In consequence, the sanction to be imposed to the Athlete in this case shall be fixed in a two-year period of ineligibility starting on the date of notification of the present award.

64. In this regard, the Sole Arbitrator wants to clarify that any period of ineligibility already imposed or voluntarily accepted by the Athlete before such date shall be credited against the two-year suspension.
65. In addition, pursuant to articles 9 and 10.8 of the ICF ADR, the Athlete is also disqualified from all the results obtained during the Brazilian Championship of Canoe and from the date on which the positive sample was collected (i.e. 15 December 2013) through the 1 year period of ineligibility already fulfilled by the Athlete (i.e. from the 15 December 2013 to the 15 December 2014), with all resulting consequences, including forfeiture of any medals, points and prizes. For the sake of clarity, all other competitive results (as well as its resulting consequences such as medals, points and prizes) that the Athlete may have obtained between 16 December 2014 until the date of notification of the present award will be valid and will not be affected in anyway by the present award.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by WADA against the Decision rendered by the Superior Tribunal de Justiça Desportiva de Canoagem on 3 April 2014 with regard to the athlete Ms. Denise Consuelo Oliveira is upheld.
2. The referred Decision of the Superior Tribunal de Justiça Desportiva de Canoagem dated 3 April 2014 is set aside.
3. Ms. Denise Consuelo Oliveira is sanctioned with a two-year period of ineligibility, starting on the date on which this award is communicated to the athlete. Any period of suspension (whether imposed to or voluntarily accepted by the Athlete) shall be credited against the total period of ineligibility imposed.
4. Ms. Denise Consuelo Oliveira is disqualified of the results obtained during the Brazilian Championship of Canoe and of all the results obtained from the date on which the positive sample was collected (i.e. 15 December 2013) through the one year period of ineligibility already fulfilled by the Athlete (i.e. from the 15 December 2013 to the 15 December 2014), with all resulting consequences, including forfeiture of any medals, points and prizes. For the sake of clarity, all other competitive results (as well as its resulting consequences such as medals, points and prizes) that the Athlete may have obtained between 16 December 2014 until the date of notification of the present award will be valid and will not be affected in anyway by the present award.

5. (...).
6. (...).
7. Any other prayers for relief are rejected.