

INTERNATIONAL RUGBY BOARD

IN THE MATTER of the Regulations
Relating to the Game

AND

IN THE MATTER of an alleged anti doping rule
violation by **LADIKO**
CHOCHISHVILI contrary to IRB
Regulation 21

**BEFORE A BOARD JUDICIAL COMMITTEE APPOINTED PURSUANT TO
REGULATION 21.20 AND 21.21 CONSISTING OF:**

Judicial Committee

Tim Gresson (New Zealand, Chairman)
Dr Ismail Jakoet (South Africa)
Dr Barry O'Driscoll (Ireland)

Appearances and Attendances

For the Board

Susan Ahern (Counsel for the International Rugby Board)
Tim Ricketts (Anti-Doping Manager)
Natalie Kurtanidze (Translator – Georgia Rugby Union)

For the Georgia Rugby Union

Levan Maisashvili (Coach of Georgia Under 20 Team)
Irakli Chikava (Head of the Disciplinary Committee, Georgia Rugby Union)

The Player

Ladiko Chochishvili

Hearing

Thursday 26 June 2008 by way of telephone conference

DECISION OF THE BOARD JUDICIAL COMMITTEE

1. Prior to the IRB Junior World Trophy Tournament played in Chile, on the 13th April 2008, Ladiko Chochishvili ("the player") provided a urine sample which subsequently returned an adverse analytical finding for the substance 19-norandrosterone at a concentration of 32.3ng/ml which is greater than the permitted threshold level of 2ng/ml.

2. 19-norandrosterone is a prohibited substance listed under S1 Anabolic Androgenic Steroids on the WADA Prohibited List 2008 ("the WADA list") which is incorporated in IRB Regulation 21 as Schedule 2.
3. Following receipt of the analysis of the A sample and after a preliminary review (which confirmed that an anti-doping rule violation may have been committed) conducted in accordance with IRB Regulation 21.20.1, on the 25th April 2008 at a meeting attended by representatives of the Georgia Union, the Tournament Director and the IRB Anti-Doping Commissioner, the player was provisionally suspended as at that date.
4. At the meeting the player confirmed that he did not require the B sample to be analysed, following which a Board Judicial Committee ("BJC") was appointed to hear the case.
5. The player attended the hearing on the 26th June 2008 and gave evidence. The team coach also gave evidence. Mr Irakli Chikava assisted the BJC by providing general information in relation to the steps that have been taken by the union to eliminate doping by rugby players from Georgia. The comments of the Georgians were translated into English by Natalie Kurtinidze.

Factual Background

6. Prior to the tournament, the player made no declaration on either his Doping Control Form or to the IRB (pursuant to Regulation 21.5) by way of a request for a therapeutic use exemption in relation to the prescribed substance which is the subject of the certificate submitted on the 23rd April 2008.
7. During the tournament the player signed the Player Consent and Agreement Form thereby agreeing to comply with the IRB's Anti-Doping Regulations.
8. During the meeting on the 25th May 2008, Mr Nikoloz Shatirishvili, the team physiotherapist, was recorded as stating:
"...that the player lives in a remote village in the mountains and that a doctor injected this product to the player to cure a sickness without knowing the consequences. He also claimed that he was aware of the injection before the meeting ..."

9. Further:

"The player told us only when we were in camp in France, 20 days ago about the fact that he received this injection. He was really sick and the doctor of his village cured with this substance".

10. During the hearing on the 26th June 2008 the player stated that at the time of the tournament he had been playing rugby for two years. This was the first tournament he had attended. He confirmed that prior to and during the tournament he received education on the IRB's anti-doping programme. He was generally aware of his responsibilities in relation to prohibited substances in sport such as anabolic steroids but did not become aware of the specific list of prohibited substances until he arrived in Chile. He stated he was unaware of the Zhamutashvili and Todua decisions¹ (involving players from Georgia) in which they were suspended for three months for anti-doping cannabis violations.

11. Following written advice from the IRB of the adverse analytical finding in the urine sample, in a letter dated 29th May 2008 the player stated:

"Unfortunately, the only thing I can say in connection with my case is to admit presence of anabolic agent in my blood and add that I realise the gravity of my misconduct. Considering this, I would not like to take part in the hearing, if you do not mind. On the other hand, I remain at your disposal for any additional information you might require in connection with my case."

12. Also during the hearing the player elaborated on the circumstances during which his village (situated in the north highland region of Georgia) his doctor, without the player's knowledge, injected him with the banned substance. He described how he had consulted the doctor because he was "very weak ... suffering from food poisoning." He received "several injections" and "different kinds of pills". The food poisoning symptoms initially occurred around the New Year but had completely disappeared by the end of January after he had received the injections and taken the pills. With the exception of antibiotics, he was uncertain as to the kind of pills he was prescribed.

13. Although the player was aware of his obligations not to take prohibited substances, he attributed the violation to his doctor having no knowledge of

¹ IRB v Zhamutashvili and Todua, 27 September 2007

sports medicine. He acknowledged his doctor was aware he was representing a national team and they did not have a discussion that it was illegal to take banned substances in sport. In his view the doctor should have been aware of this.

14. The player stated that prior to the tournament when he told the physiotherapist that he had received treatment, the latter unsuccessfully attempted to contact the doctor to obtain more information. The player also confirmed that the vitamins listed on his Doping Control Form had been given to him by the team's doctor during the pre-tournament training camp.
15. Mr Maisashvili confirmed that following the two 2007 decisions, during the team's training camp held in mid-January, he emphasised the need for players to comply with the IRB's Anti-Doping Regulations. He expressed the opinion that if the player had been aware of the regulations earlier, then he would not have allowed the doctor to inject him with the illegal substance.
16. Mr Chikava acknowledged that clearly there had been an anti-doping violation. He considered the player should have informed the team manager that "*as he was under treatment something could been done about it*".

Anti-Doping Rule Violation

17. The IRB alleges that the player committed an anti-doping rule violation contrary to Regulation 21.2.1 which provides that the presence of a prohibited substance or its metabolites or markers in a player's bodily sample, constitutes an anti-doping rule violation. Pursuant to Regulation 21.3.1 the Board has the burden of establishing an anti-doping rule violation to the comfortable satisfaction of the BJC.
18. The player accepts and does not in any way challenge the analytical findings of the laboratory. Accordingly, the BJC finds that the Board has established to the required standard the anti-doping rule violation; that is the presence of the prohibited substance (19-norandrosterone) in the player's bodily sample.

Sanction

19. In relation to sanction, essentially strong pleas for leniency were made on the basis that in the circumstances the player was not responsible for the presence of the banned substance and he was not aware of the list of banned substances. Further the BJC was requested to adopt a merciful approach and not impose the mandatory sanction for the player's Anti-Doping Rule violation. The player stated he deeply regretted allowing the prohibited substance to enter his body and would not knowingly have ingested it when potentially it could have damaged his career in rugby, which had provided him with serious opportunities in life.
20. These claims overlooked the IRB's regulatory framework that in imposing the appropriate sanction, the BJC is required to apply the appropriate provisions of Regulation 21 (which are based on the World Anti Doping Code). In this regard the twin principles of personal responsibility and strict liability are at the heart of the Regulations.
21. Regulation 21.6 which addresses the principle of personal responsibility provides:
- 21.6.1 It is each Player's responsibility to ensure that no Prohibited Substance is found to be present in his body and that Prohibited Methods are not used. It is also the personal responsibility of each Player to ensure that he does not commit any other anti-doping rule violation.*
- 21.6.2 It is the sole responsibility of each Player and Person to acquaint himself with all of the provisions of these Anti-Doping Regulations including the Guidelines. It is also each Player's sole responsibility to notify Player Support Personnel, including, but not limited to, their doctors of their obligations not to use Prohibited Substances and Prohibited Methods and to ensure that any medical treatment received by them does not violate any of the provisions of these Regulations."*
22. In relation to the principle of strict liability, the sanction for the presence of a prohibited substance including, 19-norandrosterone, is a mandatory sanction of two years for a first offence (Regulation 21.22.1). However, the mandatory sanction is subject to the player establishing on a balance of probabilities (refer

Regulation 21.3.1), the basis for eliminating or reducing the period of ineligibility based on exceptional circumstances as set out in Regulation 21.22.4 which provides:

“(a) If the Player establishes in an individual case involving an anti-doping rule violation under Regulation 21.2.1 (presence of Prohibited Substance or its Metabolites or Markers) or Use of a Prohibited Substance or Prohibited Method under Regulation 21.2.2 that he bears No Fault or Negligence for the violation, the otherwise applicable period of ineligibility shall be eliminated. When a Prohibited Substance or its Markers or Metabolites is detected in a Player’s specimen in violation of Regulation 21.2.1 (presence of a Prohibited Substance), the Player must also establish how the Prohibited Substance entered his system in order to have the period of ineligibility eliminated. In the event this Regulation 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 Regulation 21.22.1, 21.22.2 and 21.22.5.

(b) This Regulation 21.22.4 applies only to anti-doping rule violations involving Use of a Prohibited Substance or Prohibited Method under Regulation 21.2.2, failing to submit to Sample collection under Regulation 21.2.3, or administration of a Prohibited Substance or Prohibited Method under Regulation 21.2.8. If a Player or Person establishes in an individual case involving such violations 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 minimum 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 a Player’s Specimen in violation of Regulation 21.2.1 (presence of Prohibited Substance), the Player must also establish how the Prohibited substance entered his or her system in order to have the period of ineligibility reduced.

23. Thus, under paragraph (a), if a player can establish he “bears no fault or negligence for the violation” and can establish how the prohibited substance

entered his system, the period of ineligibility can be eliminated. Under paragraph (b) where there is no significant fault or negligence on the part of the player then the period of ineligibility may be reduced to a period of not less than one half of the minimum period of ineligibility.

24. Both these provisions require the player to establish how the prohibited substance entered his system.

25. During the hearing the IRB was provided with the opportunity of responding to the additional matters that had been raised by the player and Messrs Maisashvili and Chikava in relation to the elimination or reduction of the mandatory sanction. Essentially, Mrs Ahern submitted that the player had failed to reach the threshold test by proving on a balance of probabilities that there was any basis for eliminating or reducing the mandatory sanction in that exceptional circumstances had not been demonstrated and there was a "question mark" as to how the prohibited substance was ingested.

26. Putting aside the question as to how the prohibited substance entered the player's system, the BJC upholds the IRB submission that the player had failed to prove exceptional circumstances warranting either elimination or reduction of the mandatory sanction. For several reasons it has serious reservations as to the veracity of the player's account. They include:

- The positive therapeutic effects of Nandrolone include muscle growth, appetite stimulation, increased blood cell production and bone intensity. Clinical studies have also shown it to be effective in treating anaemia, osteoporosis, some forms of neoplasia including breast cancer and also acts as a progestin-based contraceptive. None of these are consistent with the player's condition for which he stated he needed medical treatment.
- There was no corroborative or other evidence supporting the player's account. In particular, bearing in mind that the player has the burden of establishing the basis for the elimination or reduction of the sanction, the BJC notes there was no supporting evidence from the doctor such as a medical certificate/report or a copy of the prescription confirming the matters previously referred to.

- There was no evidence from the team physiotherapist confirming that he unsuccessfully attempted to contact the doctor when advised of the player's treatment.
- It is questionable whether one injection of the anabolic steroid (nandrolone) administered between the beginning and mid January 2008, as at 13 April 2008 would still be in the player's system at a concentration level of 32.3 ng/ml.
- The inherent implausibility of the player's account in that although the doctor administered the injection and prescribed, with one exception, unknown pills for the food poisoning, the player was able to specifically state that on one occasion he was injected with the banned substance nandrolone.
- The inherent unlikelihood of a duly qualified medical practitioner having, as the player suggested, no knowledge of prohibited substances in sport. Further, given, according to the player, that the doctor was aware the player had been selected for the Georgia National Under 20 team, the inherent unlikelihood he would be so foolish or reckless to administer the banned substance to cure the player's food poisoning.

27. In summary, the BJC finds the player's account whereby he has attempted to blame an unnamed village doctor to be totally implausible and is a further example of a player attempting to establish exceptional circumstances in an unconvincing fashion (for a similar recent case, refer Iraj²).

28. It follows for the reasons outlined, the sanction imposed for this Anti-Doping Rule violation is a period of ineligibility for two years commencing from the 25th April 2008 (the date upon which the player's provisional suspension commenced) and concluding (but inclusive of) the 25th April 2010.

Costs

29. The BJC provisionally considers that there should be no orders for costs but if either of the parties wishes us to exercise our discretion in relation to costs pursuant to Regulation 21.21.9, written submissions should be provided to the BJC via Mr Ricketts by 17.00 Dublin time on the 18th July 2008, with any


² *IRB v Iraj*, 13 March 2008

responding written submissions to be provided by no later than 17.00 Dublin time on the 1st August 2008.

Review

30. This decision is final, subject to referral to a Post Hearing Review Body (Regulation 21.24.1) and an appeal to the Court of Arbitration for Sport (Regulation 21.27). In this regard attention is also directed to Regulation 21.24.2 which sets out the process for referral to a Post Hearing Review Body, including the time limit within which the process must be initiated.

4 July 2008



Tim Gresson (for and on behalf of the Board Judicial Committee)
Dr Ismail Jakoet
Dr Barry O'Driscoll