

**DECISION OF THE FIS DOPING PANEL
IN THE MATTER OF THE CASE OF ANDRUS VEERPALU (EST)**
of 21 August 2011

Panel Members Patrick Smith, Chairman
 Sverre Seeberg
 Roman Kumpost

FACTS

1. On 29 January 2011, Mr Andrus Veerpalu (the "Athlete") was subject to an out-of-competition doping control in Otepää (EST) performed under the authority of WADA.
2. The samples were analysed by the WADA-accredited laboratory at the "Deutsche Sporthochschule Köln" in Germany (the "Laboratory"). The samples were received on 31 January 2011. The screening procedure took place on 4 February 2011 and the confirmation procedure on 8 February 2011 (kit 2) and 11 February 2011 (kit 1).
3. The analysis indicated an adverse analytical finding of recombinant ("exogenous") human growth hormone (recGH).
4. By letter of 15 February 2011, the International Ski Federation (the "FIS") informed the Estonian Ski Association (the "NSA EST") of the presence of recGH in the sample of the Athlete. The NSA EST was informed that the Athlete had the right to promptly request the analysis of the B-Sample and to attend the B-Sample opening and analysis. If the B-Sample analysis was requested, such analysis would take place on/or before 24 February 2011.
5. Upon receipt of the letter of 15 February 2011, the President of the NSA EST contacted the Secretary General of the FIS to explore the possibility to avoid any form of public disclosure, e.g. by a statement of the Athlete that he wanted to terminate his sporting career because of health reasons. On the other hand, the FIS agreed to contact the Laboratory to check whether the B-Sample analysis could take place at a later date, i.e. after the upcoming FIS Nordic World Ski Championships in Oslo (7 March 2011).

6. On 23 February 2011 (i.e. on the opening day of the FIS Nordic World Ski Championships), the Athlete and the NSA EST issued a public statement according to which the Athlete would retire from sports.
7. By letter dated 8 March 2011, the FIS informed the NSA EST that since the Athlete had admitted the use of the prohibited substance verbally and through his withdrawal from the FIS Nordic World Ski Championships in Oslo 2011 and his immediate retirement from sports, the case would now be dealt with by the FIS Doping Panel. In the event that the FIS Doping Panel determined that a violation of the FIS Anti-Doping Rules had taken place, it would apply a sanction which might include disqualifications and a period of ineligibility. The Athlete was invited to either submit a written explanation or to attend the hearing in person.
8. By letter dated 12 March 2011, the NSA EST replied that it did not agree with the assumption of FIS that the Athlete had accepted the positive finding of recGH in the A-Sample. The Athlete rather requested the opening of the B-Sample.
9. By letter of 21 March 2011, Mr Ajvar Pilv introduced himself as the legal representative of the Athlete and repeated the request for the opening of the B-Sample.
10. By letter dated 24 March 2011, the FIS maintained its position that the Athlete had not requested the analysis of the B-Sample within the set deadline. However, considering the achievements of the Athlete as a former champion, the FIS still accepted the Athlete's request and made the necessary arrangements for the opening and the analysis of the B-Sample on 31 March 2011 at the Laboratory.
11. Upon the Athlete's representative's request for a postponement of the date of the opening and analysis of the B-Sample, the FIS and the Laboratory agreed to a new date for the opening and the analysis of the B-Sample which eventually took place on 6 April 2011. The Athlete was accompanied by Dr. Jüri Laasik, a biotechnology expert, who confirmed that he had not witnessed any irregularities in the process of the opening and analysis at the B-Sample.
12. On 7 April 2011, the FIS received the full report from the Laboratory of an adverse analytical finding of recGH also in the Athlete's B-Sample (the "Laboratory Documentation Package"). The FIS announced that the FIS Doping Panel would now hold a hearing and invited the Athlete and/or his representative to attend.

13. By letter of 14 April 2011, the FIS informed the Athlete that the hearing of the FIS Doping Panel would take place on Sunday 5 June 2011 in Ljubljana. In addition, the Athlete was invited to submit any written observations on or before 10 May 2011.
14. On 15 April 2011, the Laboratory Documentation Package for the Sample A/B 431893 concerning the Athlete's samples was sent to the FIS and forwarded to the Athlete's representative and to the NSA EST.
15. By letter of 19 April 2011, the Athlete's representative asked FIS to forward seven prior decisions of the FIS Doping Panel as indicated on the FIS internet homepage. These decisions were forwarded to the Athlete's representative on the same day.
16. By letter of 3 May 2011, the Athlete's representative asked for a postponement of the time limit for the Athlete's written submissions until 20 May 2011 which was granted.
17. By separate letter of 3 May 2011, the Athlete's representative submitted certain questions regarding the Laboratory Documentation Package and the Laboratory's quality standards to the Laboratory. These questions were forwarded to the Laboratory and answered by letter of 19 May 2011.
18. By letter of 13 May 2011, the FIS informed the Athlete's representative again that the hearing would take place on Sunday, 5 June 2011, 4 p.m., in Ljubljana, Slovenia.
19. On 20 May 2011, the Athlete's representative submitted the Athlete's written submissions together with 11 appendices.
20. On 21 May 2011, the answers of the Laboratory to the Athlete's question of 3 May 2011 were forwarded to the Athlete's representative.
21. On 27 May 2011, the Athlete's representative informed the FIS Doping Panel that the Athlete, the witnesses called by him and the Athlete's representative would not travel to Ljubljana but attend the hearing by way of a telephone conference.
22. By email of 3 June 2011, the Athlete's Representative submitted another document by Dr. de Boer in response to the answers to the Laboratory.
23. The hearing before the FIS Doping Panel took place on Sunday, 5 June 2011, 4 p.m., at the Grand Hotel Union in Ljubljana. The chairman of the FIS Doping Panel Patrick

Smith and the members Sverre Seeberg and Roman Kumpost were present as well as Ms Sarah Fussek (FIS) and Dr. Stephan Netzle (legal counsel of the FIS). The Athlete, his representatives and the witnesses attended the hearing by way of telephone conference.

24. After the hearing of 5 June 2011, the Athlete's Representative submitted a written "Summary of Explanations" to the FIS Doping Panel.
25. On 27 June 2011, the FIS Doping Panel forwarded a Statement of Dr Osquel Barroso, Senior Manager Science, WADA, to the Athlete's Representative for final comments to be made on or before 7 July 2011. A request of the Athlete's representative for extension of this time limit by four weeks was rejected by the FIS Doping Panel.
26. On 7 July 2011, the Athlete's representative submitted the "Comments to the statement by WADA in the matter of Andrus Veerpalu" together with 5 attachments to the FIS Doping Panel.

STATEMENT OF GENERAL PRINCIPLES

27. The following provisions of the FIS Anti-Doping Rules (the "FIS ADR") are pertinent for this case:

2.1 The presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample

2.1.1 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 Art. 2.1.

2.1.2 Sufficient proof of an anti-doping rule violation under Art. 2.1 is established by either of the following: presence of a Prohibited Substance or its Metabolites or Markers in the Athlete's A Sample where the Athlete waives analysis of the B Sample and the B Sample is not analysed; or, 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 A Sample.

2.1.3 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.

3.1 Burdens and standards of proof

FIS and its National Ski Associations shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether FIS or its National Ski Association has established an anti-doping rule violation to the comfortable satisfaction of the hearing panel bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt. Where these Rules place the burden of proof upon the athlete or other person alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability, except as provided in Arts. 10.4 and 10.6, where the athlete must satisfy a higher burden of proof."

10.2 Ineligibility for Presence, Use or Attempted Use, or Possession of Prohibited Substances and Prohibited Methods

The period of Ineligibility imposed for a violation of Art 2.1 (Presence of Prohibited Substance or its Metabolites or Markers), Art 2.2 (Use or Attempted Use of Prohibited Substance or Prohibited Method) or Art. 2.6 (Possession of Prohibited Substances and Methods) shall be as follows, unless the conditions for eliminating or reducing the period of Ineligibility, as provided in Arts. 10.4 and 10.5, or the conditions for increasing the period of Ineligibility, as provided in Art. 10.6, are met:

First violation: Two (2) years' Ineligibility.

10.5 Elimination or reduction of period of ineligibility based on exceptional circumstances

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 Art. 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 Art 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 Art. 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 or its markers or metabolites is detected in an athlete's sample in violation of Art. 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."

10.6 Aggravating Circumstances Which May Increase the Period of Ineligibility

If FIS establishes in an individual case involving an anti-doping rule violation other than violations under Arts. 2.7 (Trafficking) and 2.8 (Administration) that aggravating circumstances are present which justify the imposition of a period of Ineligibility greater than the standard sanction, then the period of Ineligibility otherwise applicable shall be increased up to a maximum of four years unless the Athlete or other Person can prove to the comfortable satisfaction of the hearing panel that he did not knowingly violate the anti-doping rule. An Athlete or other Person can avoid the application of this article by admitting the anti-doping rule violation as asserted promptly after being confronted with the anti-doping rule violation by FIS.

10.9 Commencement of Ineligibility Period

Except as provided below, the period of Ineligibility shall start on the date of the hearing decision providing for Ineligibility or, if the hearing is waived, on the date Ineligibility is accepted or otherwise imposed.

10.9.3 *If a Provisional Suspension is imposed and respected by the Athlete, then the Athlete shall receive a credit for such period of Provisional Suspension against any period of Ineligibility which may ultimately be imposed.*

THE HEARING AND THE EVIDENTIARY PROCEEDING

28. At the hearing, which was held on 5 June 2011 in Ljubljana, the Athlete and the Athlete's Representative and his scientific experts were present by way of telephone conference.
29. The FIS Doping Panel deliberated and took all written submissions of the Athlete's representative and the evidence provided by his experts into due consideration. The Panel also received from WADA further information on hGH and the method of analysis used to demonstrate the presence of hGH as a result of doping. All information was submitted to the Athlete's representative after the hearing for comments. The Athlete's representative submitted his comments to the FIS Doping Panel on 7 July 2010.

30. The FIS Doping Panel decided to grant the athlete an exception and to admit the documents into evidence notwithstanding the fact that they were submitted after the time limit set for the filing of written submissions. At the hearing, the Athlete and his representative confirmed that the process adopted was fair.
31. The Athlete challenges the admissibility of the statement of Dr Osquel Barroso from WADA and that it is an independent expert report. The Panel is aware of the role which WADA plays in the development and application of various testing methods and the role of Dr Barroso in the development of the recGH testing method applied in the present case. The FIS Doping Panel concludes that all of the evidence presented by the Athlete and WADA may be taken into account in assessing whether an anti-doping rule violation has been proven to its comfortable satisfaction bearing in mind the seriousness of the allegation which is made (see also Art. 3.1 of the FIS Anti-Doping Rules).

DISCUSSION

1. *Preliminary remarks*

32. The Athlete presents a great number of arguments why the results of the analysis of his samples cannot be relied upon by this panel. The arguments can be arranged in two groups:
 - a. The circumstances of collecting and handling of the samples;
 - b. The reliability and suitability of the method used to verify the existence of recGH.
33. As a preliminary remark, the FIS Doping Panel points out that its task is to apply the rules and regulations and to review whether the applicable rules and regulations have been followed by the Doping Control Officer (DCO), the persons entrusted with the transportation of the samples and the Laboratory which performed the analysis. The FIS Doping Panel is however, not in a position to review a method of analysis that has been introduced by WADA and the accredited laboratories by a scientific process.
34. On the other hand, the FIS Doping Panel is not limited to take only those points into consideration which have been raised by the Athlete but also other circumstances and evidence which of it has been made aware by other FIS bodies and institutions, by the WADA and/or by the Laboratory.

2. Jurisdiction of the FIS Doping Panel

35. The Athlete declared his retirement after he learned of the positive result of the analysis of the A-Sample. He has not competed since then. This may trigger the question whether the FIS Doping Panel has the competence to manage the result of the analysis.
36. The Athlete has not challenged the jurisdiction of the FIS Doping Panel. To the contrary, by requesting the FIS to order the opening and analysis of the B-sample, the Athlete has accepted the jurisdiction of the FIS and the responsible body for the management of analysis results, i.e. the FIS Doping Panel.
37. In addition, Art. 7.8 of the FIS ADR says:

If an Athlete or other Person retires while a results management process is underway, FIS retains jurisdiction to complete its results management process. If an Athlete or other Person retires before any results management process has begun and FIS would have had results management jurisdiction over the Athlete or other Person at the time the Athlete or other Person committed an anti-doping rule violation, FIS has jurisdiction to conduct results management.

38. The FIS Doping Panel has therefore jurisdiction to adjudicate the adverse analytical finding.

3. Did the Athlete waive his right to have the B-Sample analysed?

39. When the NSA EST was informed about the presence of recGH in the A-Sample of the Athlete, it was their main concern that such information was not revealed to the public. Neither the NSA EST nor the Athlete asked for the opening of the B-Sample within the deadline set by the FIS in its letter dated 15 February 2011. The NSA EST and the Athlete preferred to declare in a public statement issued at the opening day of the FIS Nordic World Ski Championships that the Athlete had decided to withdraw from competition sport because of health reasons.
40. Only when the FIS informed the NSA EST that, notwithstanding the retirement of the Athlete, there would still be a procedure before the FIS Doping Panel with the possibility of a sanction, the Athlete insisted on the analysis of the B-Sample although his request was clearly out-of-time.
41. The FIS Doping Panel notes that the FIS nevertheless agreed to proceed with the opening and the analysis of the B-Sample, which eventually confirmed the positive

result of the analysis of the A-Sample. The FIS Doping Panel is therefore satisfied that the FIS has not done anything which could be interpreted as disregard of the Athlete's rights, and there is no need to further investigate whether the request of the Athlete was late.

4. Did the delay between the A- and B-analysis affect the accuracy of the analysis result?

42. The Laboratory's confirmation procedure on the A-Sample was carried out on 8 February 2011 (kit 2) and on 11 February 2010 (kit 1). The confirmation procedure on the B-sample took place on 5 April 2010 (kit 1) and 6 April (kit 2). There was a time period of 53 days (kit 1) and 57 days (kit 2) between the analyses of the A- and the B-Sample. Has this delay distorted the analysis results?

43. WADA made the following statement concerning the delay between the A- and the B-Sample and its influence on the analysis results:

"Test validation and laboratory proficiency testing studies have shown that the ratios of recGH/pitGH as determined by the assays may decrease with long times of sample storage at -20°C, or if the samples are stored under non-optimal temperature conditions (e.g. at room temperature or at 4°C for more than 96h). In this regard, however, the kit "1" and kit "2" do not behave in exactly the same way, and this is associated with the fine specificity of the capture antibodies (the ones that bind the hGH present in the sample) present in these kits. Thus, results for kit "1" are quite stable under defined conditions of sample collection, transportation, storage and analysis (as established in the WADA Guidelines for application of the hGH isoform differential immunoassays, v1.0 June 2010). In contrast, the values of pitGH measured with kit "2" tend to increase over time (thus resulting in a decreased rec2/pit2 ratio). This situation is not optimal as it may potentially lead to false negative confirmatory results with kit "2" if the time period between the "A" and "B" sample confirmations is too long or if the samples are not properly stored. But, in any case, this does not cause a false positive finding (but rather it may result in a false negative finding), nor does it invalidate the initial kit "2" test results. In the case at hand, the "B" sample confirmation took place 2 months after the "A" sample positive finding, and this delay is likely to explain the observed decrease on the ratio for the kit "2".

44. The FIS Doping Panel therefore finds that the delay between the A- and B-analysis did not affect the accuracy of the result of the analysis to the disadvantage of the Athlete. Irrespective of the result of the analysis the FIS Doping Panel also notes that the reason for the remarkably long period between the analysis of the A- and the B-sample is attributable mainly to the Athlete and the NSA EST: No request for the opening and analysis of the B-sample was made on or before the deadline of 24

February 2011. When the FIS accepted the delayed request, it was the Athlete and his representative who requested another postponement of the date of the opening and analysis of the B-sample. The Panel concludes that the Athlete has waived his argument that the extension of the time period had a detrimental impact on the accuracy of the analysis results.

5. *Were the samples properly collected and handled?*

45. The Athlete submits that the samples were not correctly collected since there is no evidence that they were stored in compliance with the WADA Guidelines for Blood Sample Collection and the International Standards for Laboratories (ISL). In particular, the Athlete alleges that there was no documentation regarding the conditions under which the samples were stored for the first 5 hours after the collection until the handover to the courier or evidence that they were handled according to the WADA Guidelines for Blood Sample Collection from the moment of handover to the courier until their arrival at the Laboratory. The Athlete also submits that the transport of the samples took extremely long time and the centrifuging of the samples took place only “after an unacceptable delay” of 65 hours and 20 minutes after collection.
46. According to Art. 5.2.1 of the ISL, the samples must be inspected upon arrival at the laboratory and any irregularities shall be recorded. The Laboratory Documentation Package does not contain any indication that any irregularities were observed. There is no requirement that the fitness of the samples for analysis must be explicitly confirmed in the Laboratory Documentation Package. The burden is therefore upon the Athlete to demonstrate that the samples were not collected and transported in compliance with the WADA Guidelines for Blood Sample Collection and that this non-compliance affected the analysis procedure in a material way. There is no onus or burden of proof upon the Anti-Doping Organisation (ADO) to demonstrate the compliance of the sample collection with the applicable regulations and guidelines. The crucial fact is whether or not the laboratory found any irregularities which prevented it from carry on the analysis process. Neither the laboratory nor the ADO are required to submit any further documents than the Laboratory Documentation Package. There is no requirement for the ADO to submit “exhaustive” documents to prove the fitness of the samples for testing. It is not sufficient for the Athlete to simply ask for additional information and to draw adverse conclusions relating to the validity of the analysis if the requested information is not provided.

47. There is no evidence contained in the Laboratory Documentation Package that raises doubts that the samples arrived in proper condition. The delivery note No. 286970 which is contained in the Laboratory Documentation Package demonstrates that the samples were transported in a refrigerated state. According to the Laboratory, the samples were delivered under cooled conditions by the courier and there were no signs of haemolysis or clotting and clear sera were obtained after centrifugation.
48. The opening and analysis of the B-Sample was also witnessed by the Athlete and his expert representative. Neither mentioned any irregularities in their written confirmation of the correctness of the opening and analysis procedure.
49. The Athlete also submits that the time between collection and centrifugation and the time between arrival of the samples at the Laboratory and centrifugation was longer than 36 hours as recommended by the WADA Guidelines for Blood Sample Collection. It is the evidence of Dr Barroso that, while it is true that such a delay may have affected the results of the analyses, such affectation would lead to an underestimation of assay results, rather than causing a false positive finding. In other words, if samples had been delivered and centrifuged within 24-36 hours of sample collection, the resulting rec/pit ratios would most probably be even higher than what's been reported.
50. Considering the evidence that the Laboratory received the samples in a condition which was well acceptable for the analysis and that there is no indication that the period of time between the arrival of the samples at the laboratory and the centrifugation affected the samples in a way that may have disturbed the analysis process, the FIS Doping Panel finds the arguments of the Athlete considering the proper collection and handling of the samples by the DCO and/or the laboratory to be unfounded.

6. *Did the long and hard training before the blood sample collection affect the blood composition?*

51. The Athlete submits that, prior to the sample collection, he had completed a long, hard and intensive training session of 3,5 hours which must have affected the blood composition and therefore the results of the analysis.
52. The Doping Control Form (DCF) indicates that the training ended at 13:30. The blood samples were taken at 15:40, i.e. 2 hours and 10 minutes later. According to Dr Barroso who relied on a number of scientific publications, the time between training

and sample collection was long enough for any elevated levels of endogenous hGH production to decrease back to normal (the half-life of 22-kDa hGH in circulation is approximately 15 min).

53. The FIS Doping Panel has carefully considered the criticism expressed by the Athlete's scientific experts in their comments dated 7 July 2011. The FIS Doping Panel notes that the Athlete's experts do not challenge the statement that the effect of hard exercise on the 22kDa/pitGH ratio would return to normal within 2 hours upon termination of such exercise. The FIS Doping Panel therefore concludes that the physical exercise of the Athlete until about two hours before the collection of the sample did not affect the finding to the disadvantage of the Athlete.

7. Did the fact that the sample was taken in the "high altitude house" affect the analysis?

54. The Athlete submits that the samples were taken during his stay in a "high altitude house." The respective room was prepared for simulating a height of 4,000 to 4,500 meters. According to the Athlete's scientific experts, these specific conditions substantially increased the level of GH. They concluded that *"the taking of blood samples from the Athlete after intensive training in the high altitude house directly affected the ratio of the 20/20kDa isoforms to the prejudice of the athlete and caused the adverse analytical finding."* This possibility was not taken into account by the Laboratory when the analysis result was interpreted.

55. The fact that the samples were taken under high altitude conditions was not mentioned in the DCF, the Mission Summary of the DCO or in the DCO's additional remarks. According to the Mission Summary, the DCO met the Athlete at the entrance of the Tehvandi Center and then went to a hotel room for the collection of the sample. There was no mention at any time that this was a hotel room under hypobaric conditions.

56. The FIS Doping Panel can leave the issue open whether the sample was indeed taken in a "high altitude room" under hypobaric conditions because it is not convinced that such hypobaric conditions would have had a decisive impact on the analysis result.

57. Dr Barroso has dealt with the (only) scientific publication on which the Athlete's experts relied their conclusion. He concluded that this study reported that in fact, there were no significant differences between sea level basal hGH values and those

obtained after acclimatization at 3600 m and that the assertion that hypoxic conditions *per se* influenced the hGH secretion was not correct. The FIS Doping Panel therefore does not accept the allegation that the (disputed) fact that the sample collection took place under hypobaric conditions was responsible for the positive finding of recGH.

8. *The GH testing method requested by WADA is not reliable*

58. The Athlete claims that the testing method to identify recHG is not reliable since (a) the stability of the ratio of GH isoforms was not proven, (b) the method was not sufficiently validated (especially since the validation did allegedly not involve elite athletes in different conditions and since the validation was based on a too small population), and (c) the genetic background of the athlete could have affected the test results.
59. As stated above, it is the task of the FIS Doping Panel to apply the FIS ADR and the related documents issued by the WADA and to review whether the laboratory applied the analysis method prescribed by WADA and whether the adverse analytical finding has been sufficiently documented by the Laboratory Documentation Package. It is however not the responsibility of the FIS Doping Panel to question the applied testing method as long as a method which is validated and admitted by the WADA and documented by the respective technical document has been used. In the present case, the FIS Doping Panel is satisfied that:
- a. The Laboratory in question is accredited by WADA for the application of the method for detection of doping with hGH (the hGH isoform differential immunoassays) which has been used since 2008 on approximately 3400 analyses performed with “kit 1” and 1050 analyses with “kit 2” on athletes from different sports and under different conditions.
 - b. The Laboratory Documentation Report of the Laboratory contains all data which are required by WADA as sufficient evidence of an adverse analytical finding. This has been confirmed by WADA.
 - c. The FIS Doping Panel is not prepared to initiate investigations about the testing method based on general criticism and hypotheses submitted by the Athlete’s experts or because of the allegation that the documents available do not contain all data desired by the Athlete’s expert. The FIS Doping Panel therefore declines to review the factors which could, in the eyes of the Athlete’s experts, affect the reliability of the hGH test such as the “stability of the ratio of GH isoforms”, “the

validation of the GH testing method” and the “statistical validation of the WADA GH test”.

60. In this context, the Athlete also claims that his genetic background could have affected the test results. In particular, “5 polymorphic DNA positions in the promotor area of the GH1 gene and one variable nucleotide in the gene” of the Athlete had been detected. Although the influence of this polymorphism on the 22kDA/20 kDA GH ratio is still under scientific use, the Athlete submits that this doubt was not taken into consideration and an impact on the analysis result could not be ruled out. This theory has been repeated in the Report of the scientific experts of 7 July 2011.
61. The theoretic possibility that a genetic particularity could have affected the analysis of the Athlete’s sample is not sufficient for the FIS Doping Panel to disregard the testing method or the analysis result. The Athlete has not provided any evidence which would (a) indicate the existence of that genetic particularity and (b) the impact of his genetic particularity on the adverse analytical finding as set out in the Laboratory Documentation Package. The FIS Doping Panel finds the respective submission of the Athlete both unsubstantiated and not supported by specific evidence.
62. On 7 July 2011 and together with the Athlete’s comments on Dr Barroso’s statement, a witness statement by Dr Jüri Laasik was submitted stating that the WADA hGH differential immunoassay kit used by the Laboratory was labelled “Only for scientific use” or “For scientific use only.” According to the Report of the scientific experts of the same date, this was another example for poor validation. “This means that the test is not suitable for laboratory testing.”
63. The FIS Doping Panel notes that this observation was not made when Dr Jüri Laasik was present at the Laboratory on 5 and 6 June 2011. In fact, Dr Laasik signed the witness protocol without any reservation. Furthermore, neither Dr Laasik nor the Athlete’s scientific experts explain how the fact that the kit was labelled “for scientific use only” affected the analysis result. The FIS Doping Panel therefore considers this observation as irrelevant.

9. Does the result of the analysis constitute a violation of the FIS ADR?

64. The documentation package of the sample A/B 431893 of the Athlete which was produced by the Laboratory indicates the following:

"The analysis of the sample 431893 identified above by using the CMZ hGH differential immunoassays has produced the following analytical values of assay ratios:

2,62 for kit "1" and

3,07 for kit "2"

which are greater than the corresponding DL of 1,81 and 1,68 respectively. The combined standard uncertainty (uc) estimated by the laboratory at the DL is 0,24 for kit "1" and 0,22 for kit "2". This constitutes an Adverse Analytical Finding for hGH."

65. Likewise, the B-Analysis Report says:

"The analysis of the sample B 431893 identified above by using the CMZ hGH differential immunoassays has produced the following analytical values of assay ratios:

2,73 for kit "1" and

2,00 for kit "2"

which are greater than the corresponding DL of 1,81 and 1,68 respectively. The combined standard uncertainty (uc) estimated by the laboratory at the DL is 0,24 for kit "1" and 0,22 for kit "2". This constitutes an Adverse Analytical Finding for hGH."

66. The typographic error on page 30 of the Documentation Package concerned the ExKon neg of Kit 2 and was corrected by letter of 19 May 2011. There is no evidence provided by the Athlete that this typo had a decisive impact on the analysis result.

67. The analysis of the A- and B-Sample of the Athlete therefore indicates the presence of recGH which is a prohibited substance.

10. Conclusion

68. The adverse analytical finding of recGH constitutes a violation of Art. 2.1 of the FIS ADR (presence of a prohibited substance or its metabolized or markers in an athlete's sample) and shall be subject to the sanction as set out below.

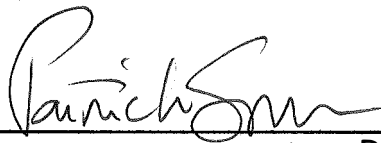
SANCTION

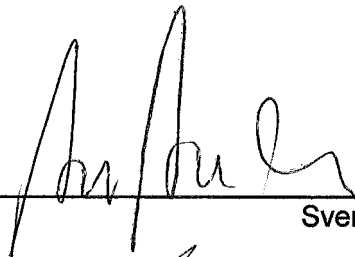
69. According to Art. 10.2 of the FIS ADR, the period of ineligibility imposed for a violation of Art. 2.6 of the FIS ADR shall be 2 years. The sanction may be eliminated, reduced or aggravated according to Arts. 10.5 and 10.6 of the FIS ADR if the specific circumstances so require.
70. The Athlete has not made any submissions with respect to the sanction and, in particular, not requested the elimination or reduction of the otherwise applicable sanction.
71. There are no conditions or circumstances which would require the FIS Doping Panel to eliminate or reduce the otherwise applicable sanction. However, the FIS Doping Panel finds it rather disturbing that when the Athlete learned of the positive result of the A sample analysis, he and the NSA EST did not ask for the opening and analysis of the B sample but decided to publicly announce the Athlete's retirement from competition sport. The opening and analysis of the B sample was only requested when the NSA EST was told that the retirement would not save the athlete from a procedure with the FIS Doping Panel and led to a substantial delay in the analysis procedure with the risk of rendering the sample unusable. Such behaviour constituted a deceptive or obstructing conduct of the Athlete to avoid the adjudication of an anti-doping rule violation which must be regarded as an aggravating circumstance according to Art. 10.8 of the FIS ADR.
72. The FIS Doping Panel is also disturbed by the fact that recGH cannot have been applied incidentally like, e.g. a substance contained in a medication negligently prescribed or administered by a doctor but required a high degree of expertise and a methodical approach with the help of medical personnel. The FIS Doping Panel therefore finds it appropriate to increase the otherwise applicable sanction by one year leading to a total period of ineligibility of 3 years.
73. According to Art. 10.9 of the FIS ADR, the period of ineligibility shall start on the date of the hearing decision, providing for ineligibility or, if the hearing is waived, on the date ineligibility is accepted or otherwise imposed.
74. Art. 10.9.3 of the FIS ADR states that if a provisional suspension is imposed and respected by the Athlete, then the Athlete shall receive a credit for such period of provisional suspension against any period of ineligibility which may ultimately be imposed.


75. The Athlete withdrew from competition sports on 23 February 2011 and did not compete since. The FIS Doping Panel finds therefore that a period of ineligibility of 3 years shall apply on the Athlete which commences on the date of the announcement of the Athlete to withdraw from competition sports, i.e. on 23 February 2011.

DECISION

76. The FIS Doping Panel finds that the Athlete Andrus Veerpalu has committed an anti-doping violation contrary to Article 2.1 of the FIS ADR. He is declared ineligible from participating from any FIS sanctioned event for a period of three (3) years, beginning on 23 February 2011.
77. The Panel has determined that no costs are to be awarded in these circumstances.
78. This Decision may be appealed exclusively to the Court of Arbitration for Sports in Lausanne (CAS) in accordance with the provisions applicable before such court. The time to file an appeal to CAS shall be twenty-one days from the date of receipt of this decision by the appealing party.


Patrick Smith


Sverre Seeberg


Roman Kumpost