

**IN THE MATTER OF DISCIPLINARY PROCEEDINGS BROUGHT BY THE INTERNATIONAL TENNIS
FEDERATION UNDER THE 2017 TENNIS ANTI-DOPING PROGRAMME AGAINST ADRIAN BARBU**

ORDER OF TERMINATION OF PROCEEDINGS

WHEREAS:

- A. The ITF commenced these proceedings on 12 October 2017, when it charged Mr Barbu with a TADP Art 2.1 anti-doping rule violation (**ADRV**), on the basis that two prohibited substances (nandrolone and methenolone, and their respective metabolites) were present in a urine sample collected from him on 16 August 2017 at the ATP Challenger Bucher Reisen Tennis Grand Prix event held in Meerbusch, Germany (the **Event**).
- B. The parties were represented in these proceedings by Lauren Pagé of Bird & Bird (for the ITF) and James Cranston of Clifford Chance (for Mr. Barbu through the Sport Resolutions pro bono service). The parties exchanged written submissions, including fact and expert evidence, as well as detailed legal arguments, which have narrowed the issues in dispute between the parties.
- C. Specifically:
 - C.1 Mr Barbu has accepted that two prohibited substances (nandrolone and methenolone, and their respective metabolites) were present in a urine sample collected from him at the Event and so has admitted the charge.
 - C.2 Mr Barbu has accepted that the results he obtained at the Event and subsequent to the Event (up to his provisional suspension on 22 October 2017) should be disqualified, in accordance with TADP Art 9.1 and 10.8, with all resulting consequences, including forfeiture of any medals, titles, ranking points and prize money.
 - C.3 Mr Barbu has explained that he used Deca Durabolin (nandrolone) and Primobolan (methenolone) between 1 September and 17 December 2016 but that he did not do so to improve his sporting performance. In 2016 he was not playing on the professional tennis circuit, he had not done since 2006 (with the exception of a single tournament in 2011), and he had no intention of returning to the circuit. In February 2017, however, he decided to start training to return to competitive tennis. He registered with the ITF in April 2017 and returned to competition in May 2017. In doing so, it did not cross his mind that the prohibited substances he had used in 2016 might still be in his system. On that basis, he has denied that he intended to cheat (as defined in TADP Art 10.2.3), so that the starting point for the period of ineligibility should be not four years but two years (under TADP Art 10.2.2). He also contended that the period of ineligibility should be reduced below two years pursuant to TADP Art 10.5.2, on the basis that he bears No Significant Fault or Negligence for his ADRV. In the event that a four year ban were imposed, he argued in the alternative that the period of ineligibility should be reduced to two years pursuant to TADP Art 10.6.3, based on his prompt admission of his ADRV.

- C.4 In response, the ITF has challenged Mr Barbu's assertion that the prohibited substances and their metabolites found in his sample came from use of the prohibited substances that ended in December 2016, but accepts that that possibility cannot be ruled out. The ITF therefore accepts that it could be found, in all the circumstances of the case, that Mr Barbu's explanation of source is more likely than not to be correct. The ITF also accepts that it could be found, on the evidence, that Mr Barbu did not intend to cheat within the meaning of TADP Art 10.2.3.
- C.5 The ITF insists that Mr Barbu is not entitled to any reduction of the period of ineligibility below two years. In particular, his prompt admission does not warrant any reduction (although it does justify back-dating of the applicable period of ineligibility to 16 August 2017 (the date of sample collection), in accordance with TADP Art 10.10.3(b)). In addition, in the ITF's submission, it was clearly significantly negligent of Mr Barbu to start training and competing on the ITF circuit without giving any thought at all to whether or not the prohibited substances he had previously been using might still be in his system. He did not conduct any research himself, he did not consult a doctor or other qualified person, and he did not ask anyone else or make any other enquiries at all. Instead he simply assumed that the prohibited substances would be out of his system completely, and therefore he would not test positive. This was a clear and significant breach of his duty to use utmost caution to ensure that he did not commit an ADRV.
- D. Appreciating the uncertainties inherent in the disciplinary process, and desiring to avoid the time and cost that would be incurred in having a contested hearing before the Tribunal in this matter (thereby conserving scarce resources that the ITF could deploy elsewhere in the fight against doping in the sport), the parties are willing to compromise their respective positions on the terms set out below.
- E. The Tribunal has not held a hearing in this matter to consider the evidence, but has reviewed the terms proposed in order to confirm that they are, on their face, consistent with the provisions of the TADP.

NOW, THEREFORE, WITH THE CONSENT OF THE PARTIES, THE CHAIRMAN OF THE INDEPENDENT TRIBUNAL ORDERS THE TERMINATION OF THESE PROCEEDINGS ON THE FOLLOWING BASIS:

1. Mr Barbu has committed the TADP Art 2.1 anti-doping rule violation with which he was charged by the ITF on 12 October 2017, i.e., the presence of two prohibited substances (nandrolone and methenolone, and their respective metabolites) in a urine sample collected from him on 16 August 2017 at the ATP Challenger Bucher Reisen Tennis Grand Prix event held in Meerbusch, Germany.
2. The results that Mr Barbu obtained at that event and subsequently shall be disqualified, in accordance with TADP Art 9.1 and 10.8, with all resulting consequences, including forfeiture of any medals, titles, ranking points and prize money. Mr Barbu is required to pay the forfeited prize money to the ITF by no later than 15 August 2019.
3. Mr Barbu's ADRV was not intentional within the meaning of TADP Art 10.2.3 and therefore Mr Barbu shall serve a period of ineligibility of two years in accordance with TADP Art 10.2.2.
4. On account of Mr Barbu's prompt admission of his ADRV (in his preliminary response to the charge on 22 October 2017), the two year period of ineligibility shall be back-dated in accordance with TADP Art 10.10.3(b), so that it is deemed to have started on 16 August 2017, and so shall end at midnight on 15 August 2019.

5. During his period of ineligibility, Mr Barbu's status shall be as set out under TADP Article 10.11, i.e., he is not entitled to play, coach or otherwise participate in any capacity in (i) any Covered Event; (ii) any other Event or Competition, or activity (other than authorised anti-doping education or rehabilitation programmes) authorised, organised or sanctioned by the ITF, the ATP, the WTA, any National Association or member of a National Association, or any Signatory, Signatory's member organisation, or club or member organisation of that Signatory's member organisation; (iii) any Event or Competition authorised or organised by any professional league or any international or national-level Event or Competition organisation; or (iv) any elite or national-level sporting activity funded by a governmental agency; nor will he be given accreditation for or otherwise granted access to any Event referred to at points (i) and (ii). In accordance with TADP Article 10.11.1(b)(ii), Mr Barbu may use the facilities of a club or other member organisation of a Signatory's member organisation in the last two months of his period of ineligibility.
6. Each party shall bear its own costs of these proceedings.
7. This Order shall be deemed to constitute the final decision of the Independent Tribunal in this matter, within the meaning of TADP Article 8.8.2, for the purposes of the appeal rights set out in TADP Article 12.2.1.
8. Each of the ITF and Mr Barbu waives its/his right to appeal against or otherwise challenge any aspect of this Order, whether pursuant to TADP Article 12.2.1 or otherwise. However, if an appeal is filed with the CAS against this Order either by WADA or the National Anti-Doping Agency of Romania, Mr Barbu will be entitled to exercise his right of cross-appeal in accordance with TADP Article 12.6.3.
9. In accordance with TADP Article 8.8.5, this Order will be publicly reported, including by being posted on the ITF's website.

London, 9 February 2018



Mr Charles Hollander QC
Chairman of the Independent Tribunal