COURT OF ARBITRATION FOR SPORT (CAS)
TRIBUNAL ARBITRAL DU SPORT (TAS)

AD HOC DIVISION / CHAMBRE AD HOC

Games of the XXVI Olympiad - Atlanta 1996

Ref.: Arbitration No 003-4

FINAL AWARD

in the arbitration between

Andrei KORNEEV
and
International Olympic Committee

and in the arbitration between

Zakhar GOULIEV
and
International Olympic Committee

* * * * *

OBJECT OF THE APPLICATIONS

1. Andrei KORNEEV ("Korneev") seeks an order cancelling the disqualification imposed on him by the International Olympic Committee Executive Board ("the Executive Board") on 27 July, 1996 after winning a Bronze Medal in the 200 metres Men's Breaststroke category for use of Bromantan a substance alleged to be prohibited by the Rules of the International Olympic Committee Medical Code.

2. The determination of the Executive Board was in the following terms:

"INTERNATIONAL OLYMPIC COMMITTEE

EXECUTIVE BOARD

DECISION

(Rule 25.1.2.1 of the Olympic Charter)

In re KORNEEV Andrei, born on 19th January 1974, athlete, member of the Russian Federation team (RUS), swimming. The athlete Korneev won the bronze medal in the 200 m breaststroke category during the competition that took place on 24th July 1996.

The Executive Board took note today of the report of the President of the IOC Medical Commission, which stated the following:

"It was revealed in a doping control that the sample provided by the above athlete contained bromantan which belongs to class 1A (stimulants) of the Prohibited Classes of Substances."

"The IOC Medical Commission proposes to the IOC Executive Board the disqualification and the exclusion of the athlete together with the withdrawal of his medal and diploma."

CONSIDERING the above, pursuant to Rule 25.1.2.1 of the Olympic Charter,

THE EXECUTIVE BOARD OF THE INTERNATIONAL OLYMPIC COMMITTEE

DECIDES

1. The athlete KORNEEV, member of the Russian Federation team (RUS), is disqualified and excluded from the Games of the XXVI Olympiad with immediate effect for use of bromantan, a substance prohibited by the Rules of the IOC Medical Commission.

2. *The Russian Olympic Committee is hereby requested to withdraw and return the medal and the diploma awarded to the athlete KORNEEV for his third place in the 200m breaststroke category.*

The above-mentioned decision shall be effective immediately.

Atlanta, 28th July 1996

For the IOC Executive Board
(signed)
François CARRARD
Director General"

3. Zakhar GOULIEV ("Gouliev") seeks an order cancelling the disqualification imposed on him by the International Olympic Committee Executive Board ("the Executive Board") on 28 July, 1996 after winning a Bronze Medal in the 48 kg category of the Greco-Roman wrestling competition which took place on 21 July 1996 for use of Bromantan, a substance alleged to be prohibited by the Rules of the International Olympic Committee Medical Code.

4. The determination of the Executive Board was in the following terms:

"INTERNATIONAL OLYMPIC COMMITTEE
EXECUTIVE BOARD

DECISION
(Rule 25.1.2.1 of the Olympic Charter)

In re GOULIEV Zafar, born on 17th June 1972, athlete, member of the Russian Federation team (RUS), Greco-Roman wrestling. The athlete Gouliev won the bronze medal in the 48 kg category during the competition that took place on 21st July 1996.

The Executive Board took note today of the report of the President of the IOC Medical Commission, which stated the following:

"It was revealed in a doping control that the sample provided by the above athlete contained bromantan which belongs to class 1A (stimulants) of the Prohibited Classes of Substances."

"The IOC Medical Commission proposes to the IOC Executive Board the disqualification and the exclusion of the athlete together with the withdrawal of his medal and diploma."

CONSIDERING the above, pursuant to Rule 25.1.2.1 of the Olympic Charter,

THE EXECUTIVE BOARD OF THE
INTERNATIONAL OLYMPIC COMMITTEE

DECIDES

1. *The athlete GOULIEV, member of the Russian Federation team (RUS), is disqualified and excluded from the Games of the XXVI Olympiad with immediate effect for use of bromantan, a substance prohibited by the Rules of the IOC Medical Commission.*

2. *The Russian Olympic Committee is hereby requested to withdraw and return the medal and the diploma awarded to the athlete GOULIEV for his third place in the 48 kg category.*

The above-mentioned decision shall be effective immediately.

Atlanta, 28th July 1996

For the IOC Executive Board
(signed)
François CARRARD
Director General"

LEGAL ASPECTS

5. Procedural rules

These proceedings are governed by the Rules for the Resolution of Disputes Arising During the Olympic Games (The "ad hoc Rules") of the Court of Arbitration for Sport (CAS) enacted by the International Council of Arbitration for Sport (ICAS) on September 28, 1995. They are further governed by Chapter 12 of the Swiss Private International Law Act of December 18, 1987 ("PIL Act"). The application of the "PIL Act" applies to this arbitration because, as a result of the decision issued by the President of the ad hoc Division on July 11, 1996, the seat of the ad hoc Division and of the panels of Arbitrators of such Division is set in Lausanne, Switzerland.

6. Jurisdiction

The jurisdiction of the ad hoc Division arises out of the completion of the entry form by Korneev and Gouliev as athletes participating in the Olympic Games.

7. Law Applicable to the Merits

In accordance with Article 17 of the ad hoc Rules a panel shall decide a dispute "pursuant to the Olympic Charter, the applicable regulations, general principles of law and the rules of law, the application of which it deems appropriate".

8. Power of Review

According to Article 16 of the ad hoc Rules, the panel has "full power to review the facts on which the application is based".

PROCEDURE

9. On 29 July 1996 at 2:45pm Mr. Vitaly Smirnov, President of the Russian Olympic Committee lodged an appeal to the Court of Arbitration for Sport Ad hoc Division Atlanta on behalf of Korneev.

10. On 29 July 1996 at 2:45pm Mr. Vitaly Smirnov, President of the Russian Olympic Committee lodged an appeal to the Court of Arbitration for Sport Ad hoc Division Atlanta on behalf of Gouliev.

11. Immediately thereafter the President of the Ad hoc Division appointed this Panel to hear both proceedings and notice of a hearing to take place at 6:00 p.m. at Room 904 at the Hotel Marriott Marquis Atlanta was given to Vitaly Smirnov, the Russian Swimming Federation, the Russian Wrestling Federation and the International Olympic Committee.

12. At the hearing Korneev and Gouliev were represented by Alexander Krozlovski, Vice-President of the Russian Olympic Committee and Guennadi Alechine, President of the Russian Swimming Federation.

13. The Respondent was represented, initially by François Carrard, Director General of the IOC, and later by Howard Stupp, legal Director of the IOC, together with Prince Alexandre de Mérode, President of the IOC Medical Commission, and Professor Jordi Segura, of the Anti-Doping Sub-commission of the Medical Commission.

14. It was determined that as the two appeals raised substantially similar issues they should be heard together.

15. During the hearing the Panel heard submissions on behalf of the parties and received a number of documents from the International Olympic Committee.

16. The Representatives of the Claimants indicated that they intended to make certain documents available, some of which were in Moscow.

17. The Panel concluded that, in view of the issues which it understood were raised by the proceedings, it was appropriate that an independent expert should be appointed to report on matters relating to the appeals.

18. The further hearing of the proceedings was adjourned to a time to be fixed by the Court and to be notified to the parties.

19. At 12:36pm on 30 July 1996 the Panel informed the representatives of Korneev and Gouliev that any material which they wished to put forward should be provided by 6:00 p.m. on that day. If any material was not provided by that time, such material would only be received by

leave of the Panel upon cause being shown for the delay in its provision. In the course of the same day, the representatives of the athletes filed a document in Russian, which was translated and copied to the IOC.

20. At 1:55pm on 30 July, 1996 the Panel informed the representatives of the Applicants that a video link to Russian could be made available of the athletes who had returned to Russia without to giving evidence if they wished to give evidence.

21. On 30 July, 1996 the Panel informed the representatives of the parties that, subject to any objection, from the parties received before 6:00 p.m. on that day by the Panel intended to appoint Dr. John Holbrook as an expert to advise the Panel.

22. At 3:10pm on 30 July 1996 the Panel provided a draft of the questions it proposed should be answered by Dr. Holbrook for comment by the parties.

23. The time for delivering the award was extended to 6:00pm on 31 July, 1996.

24. No communication was received from the parties in relation to either the appointment of the expert or the questions to be asked of him.

25. On 30 July, 1996 Dr. Holbrook, Professor at Mercer University School of Pharmacy and Director of the Center for Substance Abuse, Education and Reasearch, was appointed by the Panel to answer the questions referred to above.

26. On 30 July 1996 the parties were notified that the hearing would resume at 4:00pm on 31 July 1996.

27. The report by Dr. Holbrook was received and forwarded to the parties.

28. At the hearing on 31 July 1996 the Applicants were represented by Mr. Emmet Bondurant II and Ms. Jane E. Fahey and the International Olympic Committee was represented by Mr. Howard Stupp. In addition there were a number of persons present on each side of the record.

29. The hearings proceeded until 6:50pm when they were adjourned until 10:00am on 2 August, 1996. During the period of adjournment the IOC was to make available certain documents, which it had in its possession, to representatives of the Applicants.

30. The hearing resumed at 10:00am and concluded at 5:30pm on 2 August 1996. At the commencement of the hearing not all of the documents which were to have been made available by the IOC to the representatives of the Applicants had been received by them but they were made available then. The representatives of the Applicants elected to proceed with the hearing although offered the opportunity of an adjournment in which to obtain instructions.

31. During the hearings on 31 July 1996 and 2 August 1996 evidence was given on behalf of all parties and witnesses, including Dr. Holbrook, were cross-examined.

32. The time for delivering an award was extended to 6:pm on 4 August, 1996.

33. The transcript of the proceedings runs to 337 pages.

34. At the conclusion of the hearings on 2 August 1996 the Panel reserved its decision.

THE FACTS

35. The substance Bromantan has apparently been used by Russian athletes for a considerable number of years. It appears that it was used by athletes competing in the 1988 and 1992 Olympic Games.

36 The use of Bromantan was unknown to the IOC Medical Commission ("the Commission") and its use was not detected by the testing methods then available. The Russian Olympic Committee did not inform the Commission of the existence and use of Bromantan and no athlete disclosed its use during drug testing.

37. The Commission became aware of the existence and use of Bromantan as a result of a letter dated 13 June, 1996 from the International Amateur Athletic Federation.

38. That letter was addressed to Prince Alexandre de Mérode but he was abroad and did not become aware of its contents until he arrived in Atlanta for the Olympic Games.

39. The letter was forwarded to Professor Segura and he received it upon his return from Atlanta where he had been involved in establishing the accredited testing laboratory for the Olympic Games.

40. The letter disclosed that:

40.1 testing of the athletes in 1994 and 1995 had disclosed the presence of an unidentified substance the use of which had not been disclosed by the athletes. The laboratories had been unable to identify either the substance or its properties.

40.2 At the World Figure Skating Championships held in Madrid in March, 1996 a Russian athlete had declared using a substance known as Bromantan. When tested the results showed identical results to those for the athletes referred to in paragraph 40.1.

41. On 5 June 1996, Gregory Varobiev, a Russian member of the IAAF Medical Committee, wrote to Gabriel Dolle, the IAAF Anti-Doping Control Officer, in response to a request for information relating to Bromantan in the following terms:

> "*Trying to fulfil your request concerning Bromantanum, I learned to act like an investigator, as this medicine is produced not by any Pharmacy, but unofficially. Therefore I had difficulties to get it. I am sending you one bottle with 50 tablets in it.*
>
> *Bromantanum / adamant -2 or para-brofenil amin/ relates to the Aktoprotactor with stimulant effect. This medicine stimulates lipois and activitates involvement of lipids in the energy echange.*

In the conditions of tense activity, with high temperature Bromantanum effects greatly emotional sphere and functional state of human body.

This medicine is used in order to relieve depression, to improve the operation and physical working activity.

Dosage: in order to improve working conditions to take 0.2-0.3 gramms after meals.

In Order to improve immunity to take 0.1 gramms three times a day during two-three weeks.

Not to be taken when individual and increased high sensitivity.

This is all the information that I could get."

42. After receipt of the letter, Professor Segura carried out some research of the available literature. It seems that the entirety of the literature available was Russian and was as follows:

42.1 Krapnin SV et al November 1993

"A quantitative pharma-electroencephalographic analysis of the action of bromantan."

Abstract:

The action of the new stimulant bromantan on spectra power EEG on Fourier of sensorimotor cortex, dorsal hippocamp and lateral hypothalamus of left and right hemispheres of brain of rat in free behavior was investigated.

Bromantan leads to decreases in the total and absolute powers of all frequency-decreases the relative power of theta-band and increases the relative power of beta 1, 2-activity. The basic feature of bromantan's action is a two-phase effect (its maximum occurs 2-3 and 6-7 hours after administration), which remains up to 8 h of EEG recording. These data suggest that bromantan has more marked and prolonged stimulant properties than other adamantane psychostimulants.

42.2 Sergeeva SA et al March 1995

"Correlated interconnection between pharmacoleinetic and dynamic development of the pharmacologic effects of bromantan".

No abstract was available.

42.3 Grekhova et al March 1995

"The effect of bromantan, a new immunostimulant with psychostimulating action, on release and metabolism of dopamine in the dorsal striatum of freely moving rats: a microdialysis study."

No abstract was available.

42.4 Badyshtor BA et al March/April 1995

"Study of heat-protective effects of bromantan at various levels of overheating."

Abstract

"The thermoprotective properties of bromantan were studied during overheating. Simultaneously with the known effects on heat exchange and sensitivity to high temperatures bromantan caused a decrease in ranges of heat tolerance, increased the rate of SVTK growth as well as altered protein metabolism and antioxidant protection and also affected the autonomic regulation of heat exchange which were essential in adaptation. At the same time, during ergothermal loading accompanied by any troubles in evaporation and heat exchange, marked thermoprotective efficiency of bromantan was compared for its ability to improve muscle dynamometry and hemodynamics as compared with control values."

42.5 Kudrin VS et al July/August 1996

"The effect of bromantan on the dopamine and serotoninergic systems of the rat brain."

Abstract

"The effect of acute and chronic administration (50 mg/kg, p.o.) of a new immunostimulator, bromantan exhibiting psychostimulant features on the content of NE, DA and 5-HT, and their metabolites are studied. Bromantan induced a significant increase in the 5-HT and 5-HIAA content in the frontal cortex and delayed an increase in their content in subcortical brain regions. A stable decrease in the 5-HT and 5-HIAA levels in the cerebellum is observed. The drug also affected the DAS parameters of the brain thus suggesting an important role of dopaminergic system in the mechanism of pharmacological effects of the drug."

42.6 Sedov AV et al 1995

"Experimental rationale for the use of drugs to increase the resistance of the human body to the combined action of carbon monoxide and hyperthermia."

Abstract

"A group of volunteers were exposed to coaction of carbon dioxide (concentration 300 mg/cu ..; and heating microclimate (ambient temperature +50 +/- 2 degrees C, relative humidity 20 +/- 5%), simultaneously they received one of the medicines: placebo, bemitil (0.5 g), bromantan (0.25 g) or bemitil (0.5 g) combined with bromantan (0.25 g). Bromantan (0.25 g) or bemitil (0.5 g) combined with bromantan (0.25g) were proved to be the most effective method to increase stability of the human body against co-action of carbon dioxide and heating microclimate,

42.7 Sergeyeva SA; Krasnykh LM 1995

Kinetics of distribution of bromantan into organs and tissues of the rat after a single administration."

Abstract

"Studies on the distribution of bromantan (2-(p-bromo phenyl) amino adamantine) in the organs and tissues of rats are described. Bromantan is a Russian psychotropic agent, which displays retarding effects against development of fatigue in animals after operations as well as marked adaptogenic, immunostimulant and detoxifying activities. Levels of bromantan were determined by a published GLC method in blood and tissue homogenates (brain, liver, kidney, lung, heart, skeletal muscle, testicle, fatty tissue) of rats following a p.o. 100 mg/kg dose. The distribution coefficient (Kp) was determined as the ratio of bromantan in the organ to that in blood. These measurements confirmed the intensive distribution of bromantan in organs with a relatively low concentration in blood.

43. When the Commission's Subcommission on Doping and Biochemistry of Sport met in Atlanta on 15 and 16 July 1996 it discussed the available information and proposed to regard bromantan "*as a related substance to the forbidden class I.A.*" and to inform the Commission at its next Plenary Session.

44. On 26 July 1996, members of the Commission met with representatives of the Russian Olympic Committee in relation to the Applicant Gouliev, namely Dr. Vitaly Semenov, a member of the Commission, Dr. Markov, chief of the medical department of the Russian Olympic Committee, Mr. Hisamudine, the chief wrestling coach and an interpreter. Dr. Semenov informed the representatives of the Commission that his laboratory had discovered the use of Bromantan approximately five years ago. He said it was not found in any medical literature as in the national pharmacopoeia. It was subsequently discovered that it was used for military purposes. He said he did not know the formula as its physical and chemical qualities but did know that it was needed as an immunostimulant and that it enhanced endurance.

He further said that in his view the drug should be banned for young athletes but that the Russian authorities could not do so as it was not on the list of banned substances.

45. As indicated above, the Panel retained Dr. John Holbrook, Director of the Center for Substance Abuse Education and Research and Professor in the Department of Pharmaceutical Sciences at Mercer University School of Pharmacy on 30 July 1996 to advise on questions relevant to the substance Bromantan.

46. This appointment was done after the parties were informed of the Panel's intention to do so and of the questions to be put to Dr. Holbrook. No objection was made by any party to either the appointment of Dr. Holbrook or the questions to be put to him.

47. Dr. Holbrook reported on 31 July 1996 and his report was made available to the parties.

48. Dr. Holbrook reported on the basis of the available literature and also on the basis of his own expert knowledge. He expressed the view that Bromantan is chemically related to Amantadine, an antiviral agent which is known to stimulate the release of the neurotransmitter dopamine as well as other neurotransmitters such as neuropinephine and serotonin from their neuronal storage sites. More specifically, he reported:

> *"Since bromantane is in the same chemical category as amantadine and has been reported to produce effects on neurotransmitters in the central nervous system which are similar to those reported with amantadine and, since it has been categorized in the current literature as a psychostimulant, it must be assumed that bromantane has the capacity to produce the same central nervous system stimulant effects as other drugs in the category which include an enhanced sense of well being, mood elevation, insomnia, loss of appetite and nervousness. These effects are dose dependent and variable depending on the individual."*

49. Dr. Holbrook was of the view that Bromantan is related to amphetamine-type compounds in that it has the ability to alter levels of transmitters in the central nervous system resulting in enhanced effects as dopamine, serotonin and possibility norepinephrine.

50. At the hearing, it was agreed between the parties that:

    50.1 Amantadine is not a prohibited substance within the meaning of Article I of the IOC Medical Code;

    50.2. Amantadine is not within the meaning of "a related substance" as that term appears in Article IA (Stimulants) of the IOC Medical Code;

    50.3. Amantadine increases the presence of the neurotransmitters referred to in Dr. Holbrook's report; and

    50.4. Some of the pharmacologically approved substances have stimulant properties;

51. Dr. Holbrook was cross-examined by counsel for their Applicants and gave the following evidence.

    1. That on the literature available Bromantan improved the immune system of the user.

2. On the information available it was not possible to determine whether Bromantan had significant or weak immunostimulant qualities.

3. On the informations available it was not possible to determine whether Bromantan had significant or weak psychostimulant qualities.

4. The body of literature available is not sufficient to determine the issues referred to 2 and 3 above.

5. Although Bromantan can have some of the same properties of amantadine because of their similar structures, there could be significant differences in the pharmacological properties of the substances. Notwithstanding this comparison amandatine is not a prohibited substance.

6. He was not able to express any view as to the quantitative effect of Bromantan because of the lack of data.

7. The effects of amantadine are the same as amphetamine on neurotransmitters but he was unable to express a view of the dosage required to produce a stimulant effect.

52. Dr. Semenov, the head of the antidoping center in Moscow, gave evidence on behalf of the Applicants to the following effects:

1. He carried out some testing of Bromantane in 1994. That test was a comparison of the performance of a such group of athletes who took Bromantan with another such group of athletes who have taken mesocarb, a powerful stimulant which is a banned substance.

2. From such tests, he concluded that Bromantane had no stimulant effect of compared with mesocarb.

3. On 6 April, 1996, Dr. Semenov wrote to the head of the Sports Medicine Center of the Russian Olympic Committee in the following terms:

"In response to your request dated February 26, 84 No 18/G we would like to inform you that officially Bromantan is not listed as a prohibited drug by IOC Medical Commission. As concerns its pharmacological properties, it significantly increases immunity, there is no anabolic effect, no other side effects have been found."

53. The Institute of Pharmacology of the Russian Federations, Russian Olympic Committee then produced recommendations on the use of pharmaceuticals during the pre-competitions period and competitions in preparation to the Olympic Games 1994-1996 in the following terms:

"INSTITUTE OF PHARMACOLOGY OF THE RUSSIAN FEDERATION
RUSSIAN OLYMPIC COMMITTEE
RECOMMENDATIONS

on the use of pharmaceuticals during the pre-competition period and competitions in preparation to the Olympic games in 1994-1996.

Authors:

Dr. S.A. Kryzhanovski, Doctor of Medical Sciences

Dr. A.S. Losev, Candidate of Medical Sciences

Dr. Yu. V. Bogdanov, Distinguished Physician of the Russian Federation

Actoprotectors and adoptogens

Bromantan (adamant-2-para.bromophenyl)amine belongs to the class of actoprotectors and adaptogens. In terms of its pharmacological action spectrum it shows some antiasthenic effect, increases resistance to overheating, contributes to the restoration of working capacity after physical exercise. The substance is highly lipophilic and is distributed into lipids of brain and fat tissues. It activates lipolisis and facilitates participation of lipids in energy metabolism.

Bromantan has membrane-stabilising action, antioxidant <activity> and increases immunity even after a single dose (increases the level of B-cels and circulating immune complexes in bloodstream), it is more powerful than Levamizol in terms of its effect on immunity. Bromantan stimulates synthesis of cytochromes P-450 and thus facilitates detoxifying liver function. In other words, in terms of its pharmacological effect it is a typical actoprotector. It does not have any anabolic activity.

The drug is slowly excreted from the body and is well tolerated. In practice it is often used together with nootropic preparations.

Single dose to increase physical working capacity: 0.1-0.15 grams after the meal; in order to stimulate the immunity the drug can be taken in courses at the dose of 0.1 gram t.i.d. for 2-3 weeks. Interval between courses: 2-4 weeks."

54. Dr. Semenov expressed the view that further study of Bromantan is appropriate.

55. Dr. Semenov said rather extraordinarily, that the materials supporting the studies he had referred to could not be made available to the Court as "the entire month of August everybody on vacation".

56. Dr. Semenov expressed the view that experimental studies are necessary to determine whether in fact Bromantan is a psychostimulant.

57. Professor Segura gave evidence that at a meeting held on 26 July, 1996, Dr. Semenov and Dr. Akhapkin informed Professor Segura that they had not given Bromantan to the athletes but that the substance could be bought in Moscow. The effect of this statement was reported to the Commission.

58. Professor Segura said he had contemporaneous notes of these statements but they were not called for nor were the tapes of the meetings of the Commission.. Again the statements by Professor Segura statements were not challenged.

59. Professor Segura's evidence was supported by Barry Sample, head of the IOC testing laboratory, whose evidence was not challenged.

60. Mr. Sample gave evidence that the Russian delegation denied that Bromantan had been used. This was not challenged.

The Medical Code

I. Paragraph 48, in Chapter 5 of the Olympic Charter provides as follows:

"1. The IOC adopts a Medical Code which shall, among other things, provide for prohibition of doping, determine the prohibitive classes of substances and prohibited methods, establish the list of accredited laboratories, provide for the obligation of competitors to submit themselves to medical controls and examinations and make provision for sanctions to be applied in the event of violation of such Medical Code. The Medical Code shall also include provisions relating to the medical care of athletes.

2. The President of the IOC appoints a Medical Commission, the terms of reference of which shall include the following duties:

2.1 to elaborate the IOC Medical Code and to submit it to the IOC Executive Board for approval,

2.2 to implement the IOC Medical Code in accordance with the instructions of the IOC Executive Board."

II. The IOC Medical Code provides, so far as relevant, as follows:

"2.1 ***Preamble***

International Olympic Committee Medical Code

Whereas the International Olympic Committee ("IOC") is the supreme authority of the Olympic Movement and, in particular, the Olympic Games;

Whereas *in furtherance of its Mission, the IOC, in close collaboration with the International Federations and the National Olympic Committees, dedicates its efforts to ensuring that in sports the spirit of Fair Play and violence is banned, leads the fight against doping in sport and takes measures, the goal of which is to prevent endangering the health of athletes;*

Whereas *the IOC has established rules prohibiting the use of certain substances and methods intended to enhance and/or having the effect of enhancing athletic performance, such practices being contrary to medical ethics, and which are referred to generally as "doping";*

Whereas *rule 48 of the Olympic Charter provides that the IOC shall establish an IOC Medical Code which shall provide for prohibition of doping, establish lists of prohibitive classes of substances and prohibited methods, provide for the obligation of competitors to submit themselves to medical controls and examinations and make provision for sanctions to be applied in the event of a violation of such Medical Code, which shall also include provisions relating to the medical care given to athletes;*

Whereas *the IOC wishes to codify the rules dealing with doping in the IOC Medical Code which shall apply to the Olympic Games, to all competitions to which the IOC grants any patronage or support and to all sports practiced within the context of the Olympic Movement, including during the time of preparations for competition.*

Whereas *the IOC Medical Code is essentially intended to safeguard the health of athlete, and to ensure respect for the ethical concepts implicit in Fair Play, the Olympic Spirit and medical practice;*

Whereas *in keeping with the desire of the IOC to act in the best interests of athletes and other persons concerned, the IOC Medical Code shall include provisions to enable appeals to be taken from certain decisions rendered in reliance thereon;*

Whereas *after consultation with representatives of the international sports federations, the national Olympic Committees, athletes and the medical profession;*

NOW, THEREFORE, UPON THE PROPOSAL OF THE IOC MEDICAL COMMISSION, THE IOC APPROVES THE PROVISION OF CHAPTERS I TO X BELOW WHICH, TOGETHER WITH THEIR APPENDICES, CONSTITUTE THE IOC MEDICAL CODE PROVIDED FOR UNDER RULE 48 OF THE OLYMPIC CHARTER.

2.2 Article I

Doping is prohibited

2.3 Article IV

Notwithstanding the obligations of others to comply with the provisions of the IOC Medical Code it is the personal responsibility of any competitor subject to the provisions of the IOC Medical Code to ensure that he/she does not ingest any prohibited substance or engage in any prohibited method.

2.4 Article VI

The list of prohibited classes of substances and prohibited methods contained in the IOC Medical Code may be changed from time by the IOC Executive Board on the proposal of the IOC Medical Commission. Such list shall be published and distributed to the International Federation each year not later than 1st February. This list shall

come into effect as of 1st February of such year unless agreed otherwise by the IOC Executive Board.

2.5 ***Chapter II Prohibited Classes of Substances and Prohibited Methods***

Doping contravenes the ethics of both sport and medical science. Doping consists of:

1. the administration of substances belonging to prohibited classes of pharmacological agents and / or

2. the use of various prohibited methods.

I. Prohibited Classes of Substances

A. Stimulants

Article I. PROHIBITED CLASSES OF SUBSTANCES
Prohibited substances fall into the following classes of substances:
A Stimulants
Prohibited substances in class (a) include the following examples:

amiphenazole	*amphetimines*
amineptine	*caffeine**
cocaine	*ephedrines*
fencamfamine	*mesocarb*
pentylentetrazol	*pipradol*
*salbutamol***	*terbutaline***
and related substances	

Article IV.

Except as specifically otherwise provided in the IOC Medical Code, the detected presence of any amount of substances in classes (a), (b), (d) and (e) in respect of a test conducted in connection with a competition shall constitute a definitive case of doping. The quantity of the substance detected is not material to a definitive case of doping."

Accompanying the Medical Code list not forming part of it is an "Explanatory Document" which provides, so far as is relevant as follows:

"Chapter I: *EXAMPLES AND EXPLANATIONS OF PROHIBITED CLASSES OF SUBSTANCES AND PROHIBITED METHODS*

The following list represents examples of the different prohibited classes of substances and prohibited methods to illustrate the doping definition. All substances belonging to the prohibited classes cannot be used even if they are not listed as examples. For this reason, the term "and related substances" is introduced. This term describes drugs that are related to the class by their pharmacological actionsand/or chemical structure. If substances of the prohibited classes are identified by an IOC accredited laboratory the relevant authority will act.

I. PROHIBITED CLASSES OF SUBSTANCES

A. Stimulants

Stimulants comprise various types of drugs which increase alertness, reduce fatigue and may increase competitiveness and hostility. Their use can also produce loss of judgment, which may lead to accidents to others in some sports. Amphetamine and related compounds have the most notorious reputation in producing problems in sport. Some deaths of sportsmen have resulted even when normal doses have been used under conditions of maximum physical activity. There is no medical justification for the use of amphetamines.

CHAPTER II: GUIDELINES FOR SANCTIONS AND PENALTIES"

This chapter appears at page 10 of the accompanying document and provides that the benefit of the doubt should be given to the athletes in certain limited cases.

THE ISSUES

A great many issues were raised during the hearing of the appeals before the Court but it appears to us that the first issue which should be addressed and which if determined in favour of the athletes would dispose of the appeals is whether it has been established that Bromantan is a stimulant within the meaning of the Medical Code.

BURDEN OF PROOF

Bromantan is not specifically named in the Medical Code as a prohibited substance.

Accordingly, in order to justify the disqualification of an athlete for the use of Bromantan it must be established that Bromantan is a stimulant within the meaning of the Medical Code. The burden of establishing that fact, if disputed, is on the suspending body.

STANDARD OF PROOF

An allegation of doping in sport is a serious allegation.

The standard of proof of the ingredients necessary to establish the offence of doping is greater than a mere balance of probabilities but less than a standard which may be expressed as proof beyond a reasonable doubt.

In our view an appropriate expression of the standard of proof required is that the ingredients must be established to the comfortable satisfaction of the Court having in mind the seriousness of the allegation which is made.

It follows that the more serious the allegation being considered the greater is the degree of evidence which is required to achieve the requisite degree of comfortable satisfaction necessary to establish the commission of the offence.

In addition the nature of the offence is one of strict liability if a prohibited substance is used. Accordingly, this is a further factor whether may require a higher degree of satisfaction than may otherwise be appropriate.

FINDINGS

In these cases the Commission acted with understandable speed to deal with a situation with which it was suddenly faced and which was surrounded with circumstances which naturally gave rise to considerable suspicion.

The Commission was conscientiously performing duties to protect sport from the unacceptable influence of doping in the following circumstances:

1. It was at about the beginning of the Olympic Games made aware of the covert use of an unknown substance substantially by Russian athletes over a number of years.
2. The existence of that substance only became known because of the disclosure by one Russian athlete in Canada in March 1996 of its use.
3. The substance was a product for the Russian military and was not available generally although it could apparently "be obtained in Moscow".
4. The scientific literature available relating to this substance was extremely limited and only in Russian.
5. That literature would reasonably lead a scientific reader to the conclusion that the substance possessed stimulant qualities.
6. The appellants did not declare their now undisputed use of the substance when tested for drugs although the use of vitamins was disclosed.
7. The denial of use was persisted in after testing disclosed the presence of the substance in samples which had been tested.

The circumstances set out above would quite naturally and reasonably give rise to a suspicion that the substance possessed the qualities of a stimulant.

If in fact the substance is a stimulant its use is prohibited by the Medical Code regardless of whether or not it is specifically listed as an example or not.

The ongoing fight against the use of drugs in sport would be severely hampered by there being an exclusive list of substances being the only substances whose use was prohibited. The Court wishes to emphasize the overriding importance of the fight against doping in sports. Doping both threatens the integrity of competition and puts the health of athletes at risk. Whenever there is a proof that it has occurred, it is not to be tolerated.

The intention and the effect of the Medical Code is to ban the use of stimulants. The listing of examples of stimulants is to assist those engaged in sport to be aware of the minimum

range of banned substances and to put beyond doubt whether or not certain substances are prohibited or in some cases the level of dosage which is permissible.

The Court has had the advantage of having had the assistance of Dr. Holbrook, an extremely well qualified expert in the precise area of scientific expertise necessary to understand the issues in this case and also of an elaboration of the essentially very basic testing said to have been done in Russia before the substance was placed on the list of substances approved for use by Russian athletes in their preparation for the Olympic Games.

After carefully considering the evidence of Dr. Holbrook and of Prof. Segura we are of the view that the scientific evidence before us establishes that Bromantan may well be a stimulant within the meaning of the Medical Code but that the evidence before the Court is not sufficient to establish that conclusion to the relevant and high degree of satisfaction necessary to support such a finding.

The surrounding circumstances while suspicious do not form a basis for concluding, in the light of the scientific evidence, that Bromantan is a stimulant. The surrounding circumstances, of themselves, are not evidence of the objective fact of the actual chemical composition and qualities of Bromantan. They could be evidence of the belief of those using the substance but not of the correctness of that belief.

While it may be that further study may establish that Bromantan is a prohibited substance the totality of the materiel before us does not allow us to reach that conclusion.

At the hearing counsel for the appellants on behalf of the Russian Olympic Committee offered to:

1. Cooperate fully in a study to determine whether Bromantan should be classed as a prohibited substance.

2. To make records relating to Bromantan available for that purpose.

3. To disclose to the Medical Commission all drugs which the Russian Olympic Committee recommend to Russian athletes for use on a general basis. The Russian Olympic Committee urged that consideration should be given to creating a rule that other national bodies should be required to make similar disclosures.

4. To discontinue the use of Bromantan pending further investigations.

The arbitrators strongly urge the Russian National Olympic Committee to implement its offers. In particular the arbitrators believe that, in view of the probability that Bromantan can be indeed classified as a stimulant, its use should be discontinued forthwith.

* * * * *

DECISION

On the basis of the foregoing facts and legal determinations, the ad hoc Division of the Court of Arbitration for Sport decides that the appeals of the athletes Andrei Korneev and Zakhar Gouliev against the decisions of the International Olympic Committee Executive Board disqualifying them for the Games of the XXVI Olympiad for the use of Bromantan be allowed and those decisions be set aside.

Atlanta, August 4, 1996

The ad hoc Division of the Court of Arbitration for Sport

Vince **Bruce**
President of the Panel

Barbara **Shycoff**
Arbitrator

Gérard **Rasquin**
Arbitrator