



Arbitration CAS 2006/A/1183 Karol Beck v. International Tennis Federation (ITF), award of 8 March 2007

Panel: Mr Jacques Baumgartner (Switzerland), President; Mr Gerhardt Bubnik (Czech Republic); Mr Peter Leaver QC (United Kingdom)

Tennis

Doping (clenbuterol)

Admissibility of the appeal to CAS

CAS jurisdiction in absence of objection to the late filing of an appeal

- 1. Pursuant to Art. R32 para. 2 of the CAS Code, “upon application on justified grounds [the President of the Panel] may extend the time limit provided in [the CAS] procedural rules, with the exception of the time limit for the filing of the statement of appeal, if the circumstances so warrant”. As a consequence, an appeal filed more than eight months after the stipulated deadline must be declared inadmissible.**
- 2. Although the time limit for an appeal cannot be “extended” *stricto sensu*, it must be emphasized that, in accordance with Art. R49 of the CAS Code and with the regular CAS practice, should a respondent decide voluntarily not to raise any objection to the late filing of an appeal and to consent to CAS jurisdiction in order that the dispute be resolved in the form of a final and binding award, the CAS would be entitled to proceed notwithstanding the late filing of the appeal.**

Karol Beck (the Appellant or Mr Beck) is a professional tennis player. He has competed in various ATP Tournaments and has represented Slovakia in the Davis Cup Competition.

On 24 September 2005, after a match in the Davis Cup Semi-Final in Bratislava, Mr Beck underwent a doping-control which subsequently revealed the presence of Clenbuterol, a prohibited substance.

The analysis of the B-sample confirmed the presence of Clenbuterol in the sample given by Mr Beck. As a consequence, the International Tennis Federation (ITF) commenced an internal procedure, and an Anti-Doping Tribunal was appointed to hear the case against Mr Beck.

At the hearing before the ITF Anti-Doping Tribunal on 17 January 2006, Mr Beck applied for a postponement of the hearing on the basis that the public prosecutor in Bratislava had opened a criminal investigation regarding this case and that relevant evidence could be revealed in that investigation which would assist his case. The ITF Anti-Doping Tribunal refused to postpone the hearing.

The ITF Anti-Doping Tribunal issued a ruling containing the following decisions:

- (i) *A doping offence contrary to Article C.1 has been established;*
- (ii) *Under Article L.1 the player is automatically disqualified in respect of the Davis Cup semi-final held at Bratislava, and forfeits any medals, titles, computer ranking points and prize money (without deduction for tax) obtained in that competition;*
- (iii) *Under Article M.7 the player shall be disqualified from any events subsequent to 24 September 2005, including forfeiture of any medals, titles, computer ranking points and prize money (without deduction for tax);*
- (iv) *Under Article M.2 the period of ineligibility to be imposed is 2 years;*
- (v) *Under Article M.8.3 the period of ineligibility shall commence on 1 November 2005.*

At paragraph 4 of its Decision, the ITF Anti-Doping Tribunal justified the refusal to postpone the hearing and gave the following reasons for the refusal :

“We also considered that if further material new evidence emerged after the decision the player would be able to rely upon such new evidence in any appeal to the Court of Arbitration for Sport (“CAS”) which has full jurisdiction on the fact and the law under Rule O.5.1 [of the ITF Anti-doping Program]. The ITF indicated that it would not oppose the adducing of further evidence on the appeal and would not unreasonably refuse to agree the extending of time for the filing of an appeal if material new evidence emerged after the time for an appeal had lapsed. In case this point becomes material and contentious at a later stage this decision, (...), allows the player to apply to the chairman for an extension of the time to appeal under Rule O.4”.

On 1 December 2006, Mr Beck filed a statement of appeal requesting the CAS to treat his doping offence as an offence “*without serious fault or negligence*” and to reduce the suspension imposed on him.

In his statement of appeal, Mr Beck submitted that, further to the investigation made by the Bratislava Police, new evidence has been made available concerning his case which would justify the extension of the time limit for appeal to the CAS. The new evidence to which Mr Beck referred was an Expert Report of Dr Jozef Blahovec and the testimony of Dr Roman Fano.

The ITF was invited by the CAS Court Office to file any written comments with respect to the timeliness of the appeal filed by the Appellant. In its observations, the ITF noted that Mr Beck neither sought the agreement of the ITF to the filing of the appeal more than nine months after the appeal deadline has passed, nor an extension of the time to appeal from the Chairman of the ITF Anti-Doping Tribunal. The ITF also contended that the CAS does not have jurisdiction to extend the time limit for appeal in accordance with Art. R32 of the Code of Sports-related Arbitration (Code). Furthermore, in view of the material submitted by Mr Beck, the ITF submitted that the he was not able to provide any new evidence as to how the Clenbuterol got into his system. In conclusion, the ITF requested the CAS to dismiss the appeal.

The parties exchanged further written submissions concerning the admissibility of the appeal on 21 December 2006 and on 3 January 2007.

By letter of 15 December 2006 and of 23 February 2007, the parties were informed that the Panel would rule on the admissibility of the appeal in a preliminary decision.

LAW

Jurisdiction

1. In accordance with Rule O.2 of the ITF Anti-Doping Program, the decisions of Anti-Doping Tribunals of the ITF can be appealed to the Court of Arbitration for Sport.
2. In the present case, the CAS jurisdiction in this matter has not been challenged by the parties and must be acknowledged.

Admissibility

3. In accordance with Art. R49 of the Code and with Rule O.4 of the ITF Anti-Doping Program, the deadline for filing an appeal to CAS is twenty-one days from the date of receipt of the decision by the appealing party. The ITF decision which is dated 10 February 2006, was signed by the Chairman of the Tribunal on 14 February 2006.
4. In its submissions, the ITF indicates that the decision of the ITF Anti-Doping Tribunal was issued and transmitted to the parties on 13 February 2006. The Panel does not know whether the ITF decision was notified to Mr Beck on 13 February 2006 without the signature of the Chairman of the Tribunal and then later again, with the signature of the Chairman.
5. Although it is regrettable that no evidence in the file enables the Panel to determine precisely the date when Mr Beck received a copy of the decision issued by the ITF Anti-Doping Tribunal, it seems very likely that such decision was received by him between 13 and 15 February 2006. Furthermore, the precise date upon which the decision was received is not in dispute between the parties, nor, as will be seen, is it of any relevance in this appeal. There is no suggestion in Mr Beck's submissions that he did not receive a copy of the decision within a few days of 13 February 2006.
6. If it were to be assumed that the ITF decision was received by the Appellant on 15 February 2006, the deadline for the filing of a statement of appeal with the CAS would have been 8 March 2006. However, Mr Beck filed his statement of appeal on 4 December 2006 with receipt by the CAS Court Office on 5 December 2006.

7. Pursuant to Art. R32 para. 2 of the Code, *“upon application on justified grounds [the President of the Panel], may extend the time limit provided in [the CAS] procedural rules, with the exception of the time limit for the filing of the statement of appeal, if the circumstances so warrant”*.
8. In the light of this provision, the Panel is of the view that an extension of time for the filing of the statement of appeal cannot be granted to Mr Beck. As a consequence, it appears that the appeal filed by Mr Beck, more than eight months after the stipulated deadline, must be declared inadmissible.
9. Although the time limit for appeal cannot be “extended” *stricto sensu*, it must be emphasized that, in accordance with Art. R49 of the Code and with the regular CAS practice, should a Respondent decide voluntarily not to raise any objection to the late filing of an appeal and to consent to CAS jurisdiction in order that the dispute be resolved in the form of a final and binding award, the CAS would be entitled to proceed notwithstanding the late filing of the appeal. This is, however, not the case in the present appeal.
10. Despite the fact that the appeal is not admissible, the Panel is troubled by the fact that the ITF Anti-Doping Tribunal, in its decision of 10 February 2006, was apparently prepared to give Mr Beck an opportunity to produce new evidence in support of a possible appeal directly to CAS. In reliance upon the indication from the ITF Anti-Doping Tribunal, Mr Beck tried in good faith to obtain such evidence and to submit it to the CAS.
11. The ITF contends in its submissions of 13 December 2006 that Mr Beck should have requested permission to extend the time-limit for appeal from the Chairman of the ITF Anti-Doping Tribunal. The Panel is of the view that the “procedure” envisaged by the ITF Anti-Doping tribunal in this matter is confusing: assuming that Mr Beck would have had new evidence to submit, such evidence should have been first submitted to the Chairman of the ITF Anti-Doping Tribunal in the framework of a review process. Then, on the basis of such new evidence, the ITF Anti-Doping Tribunal should have issued a new decision which in turn could have been the object of an appeal before the CAS. The hybrid solution provided by the decision challenged is not permissible or satisfactory in the sense that a full review process seems to have been offered to Mr Beck without any guarantee, however, that any new evidence could be considered at all in the end by any tribunal.
12. The Panel is of the opinion that, should Mr Beck decide to submit his new evidence to the Chairman of the ITF Anti-Doping Tribunal in the future, the Chairman should agree to review such materials and make a decision not as to whether the time-limit for appeal to CAS can be extended, because such time limit cannot be extended by definition, but as to whether the new evidence is relevant enough to justify a review of the initial decision. However, in view of the outcome of this arbitration procedure, the Panel cannot make any order to that effect but will leave the parties consider their respective positions in the light of the opinion expressed above.

The Court of Arbitration for Sport:

1. Dismisses the appeal filed by Karol Beck dated 1 December 2006.

(...).