

Decision of the National Anti-Doping Disciplinary Panel. (Malta)

Case Ref: NADDP 01/2018

Anti-Doping Commission (Malta)

-vs-

Keith Galea (ID No. 370987M)

The National Anti-Doping Disciplinary Panel (hereinafter referred to as the 'Panel') consisting of lawyer Dr. Maria Azzopardi (lawyer) as Chairperson, Dr. Abigail Gauci (lawyer) and Dr Janet Mifsud Profs in Clinical Pharmacology and Therapeutics as members.

Before the commencement of this proceeding, the members declared to the Chairperson that they are not subject to any circumstance or conflict that could negatively affect their impartiality in the case under review. The same declaration was made by the Chairperson to the Panel.

The athlete was assisted by Dr. Arthur Azzopardi whilst the Anti-Doping Commission (ADC) was represented by Dr. Lucienne Attard and legally assisted by Dr. Christina Borg Debono.

1. Preliminaries

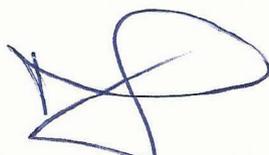
Considered the Request by the National Anti-Doping Commission (Ref No: 2TSTKEIGAL-17 /12) of the 22nd September 2017 to the Chairperson of the Panel to schedule a sitting for the hearing of a case alleging an adverse analytical finding during a test carried out on the 25th May 2017, whereby Keith Galea allegedly tested positive for Stanozolol, a prohibited substance classed as Anabolic Androgenic Steroid – Exogenous (i.e. not ordinarily produced by the body naturally) - under S1 Anabolic Agents in the 2017 WADA Prohibited List and claiming that the concentration of intact hCG (human chorionic gonadotropin) in Mr Galea's sample was found to be 13.2 IU/L which is greater than the decision limit of 5.0 IU/L.

Dr. Arthur Azzopardi on behalf of the athlete declared that he is not contesting the urine sample testing taken on the 25th of May 2017 or its result of positivity nor is he contesting the substance traced in his urine sample or any procedure or any other requirement envisaged under Regulation 5. The defence counsel declared that the athlete is basing his defence on Regulation 11 (4) (C)(ii) proviso namely:

“(c) an athlete or other person may not plead no fault or negligence under sub-regulation (4) (a) in the following circumstance:

(ii) the administration of a prohibited substance by the athlete's personal physician or trainer without disclosure to the athlete; and

Provided that, depending on the unique facts of a particular case, any of the circumstances mentioned in this sub-regulation could result in a reduced sanction under sub-regulation (4)(b);”



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The Panel took note and reviewed the following documents that were forwarded to the Panel and to the athlete at the initial stage by the Coordinator of the Anti-Doping Programme, namely a copy of the:

- (i) Authorisation Letter by NADO to DCO to carry out Doping Tests
- (ii) Schedule of the competition;
- (iii) Doping Control Form dated 25th May 2017;
- (iv) Chain of Custody Form dated 25th May 2017;
- (v) Laboratory test and delivery notice;
- (vi) Laboratory Report - Sample A;
- (vii) Laboratory Report - ADAMS;
- (viii) Waybill/Tracking notification by UPS;
- (ix) Whereabouts details reports;
- (x) Laboratory HCG Analysis;
- (xi) Request by the athlete for B Sample;
- (xii) Letter of Notification by NADO to Keith Galea dated 12th July 2017 of a possible violation of the Anti-Doping Rules;
- (xiii) Request by NADO to the National Association/Federation dated the 13th July 2017 of the alleged breach by Keith Galea;
- (xiv) Notification of the Provisional Suspension by the Malta Triathlon Association to Keith Galea dated 14th July 2017.
- (xv) Request to the NADP from the NADC dated 14th July 2017 to schedule a hearing;

Took note of the Notice issued by the Panel to Keith Galea to appear before the Panel to answer to the accusation based on Article 3 (2)(a) u (b) of L.N 17 of 2015 of the Laws of Malta. Copy of the Notice of hearing was also forwarded to the Anti-Doping Commission, the Malta Triathlon Federation and SportMalta. Took note of the evidence and documents brought before the Panel in the various sittings as well as the oral submissions of the Parties and the Note of case-law produced by the parties.

List of documents presented by the defence counsel:

Dok KG - legal letter dated 13th July 2016 from Keith Galea to Graham Borg (a competitor) to caution him;
Dok KG1 - a police report dated 11th September 2016 referring to threats he had received from family members of competitors
Dok KG2 - Laboratory Analysis dated 29th May 2017
Dok KG 3, KG4, KG 5 - WhatsApp conversations
Dok KG 6 - Messages and call logs
Dok KG 7 - Index of Physical Performance
Dok KG 8 - Electronic Messages
Dok DG1 - Exchange of emails

2. **Factual Background:**

2.1. Heard and took note of the evidence produced during the sittings, the Panel refers to the salient parts of case and the more relevant parts of the evidence of the witnesses:

a. The athlete has been involved in sports for the past 20 years and is part of the Flexi-Training scheme whereby part of his hours of works are subsidised by the government so that he can train. Keith Galea is a full time teacher. He has done over 25 doping tests in his career and is part of ADAMS.

b. During his career as a triathlon, Keith Galea was on top of the table and has one several competitions and in 2017 he was still doing well in his performances though as he has explained during his testimony his was not at his best performance. Keith Galea also explained that he has found many obstacles during his last year before the last doping test whereby he was being

threatened by his competitors and had personal problems with his wife due to his stress related to his athletic career. He explained to the Panel that triathlon is his life and is fully dedicated to his career in triathlon. Keith Galea's rigid and disciplined attitude towards his sporting career was confirmed by his brother who followed him, at some period as a coach as well and by Psychiatrist Mark Xuereb who followed him after a breakdown Galea had some time after the doping test de quo. During the deposition of Keith Galea and his brother, it transpired that Keith Galea was passing through a stressful period before the doping test primarily because he was very focused to improve his performances and to repeat and improve his success during the last year.

b. On the 25th of May 2017, the NADO carried out a doping test, which then resulted in a positive result for Stanazolol, a prohibited substance classed as Anabolic Androgenic Steroid – Exogenous which are classified as Anabolic Agents.

c. Keith Galea at the initial stages of these proceedings clarified that he is not contesting the result and any of the procedures for the doping test but according to his testimony he explained that at first he was training with Ivan Rozhnov but was not satisfied with the training so much so that he had engaged Filippo Ballatore to follow him as a coach as well. Galea explained that he was feeling weak and could not perform like he used to and when he referred this matter to Rozhnov, the solution which was being suggested by Roshnov did not bring about any improvement in his performance and thus he was questioning the training and advice given by Roshnov and in fact Galea explains that he went to medical doctor and did some tests but did not get any positive outcome.

d. Galea explains that at some point in time he met Filippo Ballatore, who was a well-known person in cycling and agreed with him so that Ballatore could coach him as well for the cycling part but from Galea's testimony it transpires that he relied on him about all aspects of training, eating and other matters that could affect his performance. When Galea referred to Ballatore, Galea explained that he was feeling weak and could not perform and therefore he confided in Ballatore that he could reinstate him to his top form and on Ballatore's advice he had done some tests in Italy. During that period Galea was all focused on his athletic performance and nothing else mattered. Galea explains that when Ballatore told him to take the syringes and the tablets, he did ask if such were permitted in sports and Ballatore confirmed that there was nothing to worry but in the end Galea did not enquire anything that was being told by Ballatore. Galea explained that whatever Ballatore said was correct and he had 100% faith in him and in fact he explained that he was feeling better.

e. From the print out of WhatsApp chat exhibited by Galea it transpires that there was a constant communication between Keith Galea and Ballatore until the results of the doping test came out. After the doping test Keith Galea tried to communicate with Ballatore but the latter at first replies that there is nothing to worry about and later he interrupted all communication with Galea. At this point even Galea's wife tried to communicate with Ballatore but his reaction was a threatening one and thus all communication was interrupted.

f. After the doping test resulted in a positive test, Galea had a bad crisis and he had to seek professional help in order to control his emotions and reactions. This is confirmed by Dr. Mark Xuereb, a psychiatrist and specifically qualified in sports psychiatry. Dr Xuereb could recall that Galea was in a state of agitation and from what he had been told from Galea it transpires that he is completely dedicated to his sports and follows rigidly any instructions given by the coach and does what is needed in order to perform at his best. Dr Xuereb states that ***“Keith Galea in his mind never wanted to break the rules. Remember that Keith breaths sport. It is his life. It is a legacy in his family. Basically he was always on top. So his question is why would I want to abuse on something when I have done better. Keith never wanted in his mind to take PEDs. At that moment in time Keith was faced with this situation He went to the people who he thought he could trust. His coach. He was asking, from pillar to post because he was noticing that his hearth beat was going higher. He didn't and could not understand what was going on. This man was pretty much left to his own devices in a state of perpetual crisis with a culmination which was this positive test. He was being given totally incorrect*”**



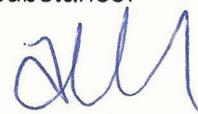
unscientific and dangerous advice. I'm going to mention people and I will say this with a lot of responsibility. His so called coach, who you may know better than me that your coach is your mentor or god. This coach was telling him to train when you have fever. Its all in your head. Do your routines. This man had physiological parameters with psychological over training syndrome. Number two, decompensation. Three, adjustment disorder. These are sport/ psychological what we call in sports medicine crossing the Rubicon from the physiological to the psychological."

g. From the evidence given by Keith Galea and his brother Dermot Galea it transpires that the substances which Galea was taking had labels on them and there was something written but Galea did not take any precaution to check what was written on the labels and when Dermot Galea was asked if he had the photos sent by Keith Galea's wife of the labels and containers of the substances, he claimed that he deleted such photos. Keith Galea also explained that he threw away the substances and their containers and thus he had no evidence of the substances but mentioned that from what he recalls there was written "ST", "TS", "KENO" and "GO".

h. During the production of evidence it transpires that on Doping Control Form, Galea did not indicate Ballatore as his coach but only Roshnov and when being asked why he claimed that he did not want that Roshnov be irritated with the fact that he had another coach. However, in the Doping Control Form Keith Galea fails to mention the substances he was taken. In fact he also omitted to mention the multi-vitamin which were indicated by Roshnov and during his cross-examination he explained that he wasn't asked to write them done and thus he did not.

3. Considerations:

- 3.1. Taking into consideration the evidence including the documents and testimony brought before the Panel, the focal point is whether from such evidence and testimony the athlete managed to prove that the athlete was not aware and could not have been aware as a reasonable man that his coach was making him take substances which are prohibited under the WADA Code. Therefore, the defence counsel is pleading no significant fault or negligence on part of the athlete on the basis that the athlete during that period was in a state of agitation, confusion and mental weakness that made him vulnerable to be monopolised by his coach in such a way that he could not question or suspect of any of the substances that he was being given by his coach. The defence counsel had to prove this claim on a balance of probability.
- 3.2. From the evidence brought before the Panel believes that the athlete was in a state of crisis in the sense that he was determined to succeed and to keep up the good performances and this has lead him to follow any instructions given to him by his coach Ballatore. However, the Panel also heard that Galea had known Ballatore for just 5 months, that when faced with a situation whereby he was not satisfied with the advice given by his coach Roshnov he did question his methods and in fact he went to medical professionals to seek answers to his physical condition and he was also being followed by a psychotherapist Rueben Vella. Galea also resorted to a second coach being Ballatore because he was not fully satisfied with his first coach. It transpires that Galea was very attentive, rigid and disciplined to follow a correct diet, to train regularly and to make sure to be professional in his work-outs and lifestyle. The Panel is convinced that Galea had the necessary mental faculty to question the possibility that the substances being given to him by Ballatore were questionable and thus he had a duty to check and verify what he was taking on advice of his coach. The Panel finds it very strange that Galea did not take any notice and did not verify the substances which had been given to him by Ballatore to the point that he did not even verify the names and details found on the labelling. Moreover, if Galea just ignored the possibility that such substances posed a threat, then the athlete has to bear the responsibility that he did not exercise the necessary duty of care required by an athlete.
- 3.3. It has been well established that the athlete has not met his burden of establishing that he acted with No Fault or Negligence in making use of the illicit substance.



- 3.4. An athlete who was aware that another individual given to him a substance which was new to him, and who voluntarily chose to take that substance must bear the consequences arising from his failure to exercise the required duty of care. The fact that Galea was passing through a very difficult time, cannot be the basis for finding that the athlete did not act with significant fault or negligence since the Panel believes that the state of crisis the athlete was passing through was not sufficient to render him incapable of questioning and checking such substances. The fact to be an elite athlete competing in national competitions and to be fully aware of his anti-doping responsibilities are relevant in this respect as well as the fact that the athlete did not disclose such information immediately and destroyed any evidence showing the specific containers or substances.
- 3.5. Fault or Negligence will only apply in exceptional circumstances and after showing that the athlete has taken all due care. Athletes are responsible for their choice of the personnel or other persons within the circle of associates who are entrusted by them and therefore it is within their responsibility to take all necessary precautionary and diligent actions to ensure that whatever they are being given is not classed under the Prohibited List. With reference to this case, the Panel believes that Galea did not exercise the necessary due care that is being required from an athlete especially when Galea was an experienced athlete.
- 3.6. The Panel does believe that Galea was passing through a difficult period but is not convinced that such circumstances were grave enough to impede him to be aware of the possible threats that the substances he was ingesting were possibly prohibited. In this respect, Galea did not take any basic precautions, by consulting a doctor or simply by searching the names and details found on the labels of the substances and thus he has departed from his duty of care. It has been well-established that a sanction may be reduced for no significant fault or negligence, but only when the circumstances are "truly exceptional and not in the vast majority of cases" and when taking into consideration all the facts of the case the Panel believes that the athlete has departed from the duty of care required from athletes and there is no sufficient justification to justify his negligence.

4. Decision

Therefore, on the basis of the above considerations, the athlete failed to establish that he bore No Significant Fault or Negligence and thus the National Anti-Doping Disciplinary Panel rules that it is finding Keith Galea in breach of Anti-Doping Regulations, 2015 [3 (2) (a) u (b)] and WADA Code (Art. 2.3) on the 25th May 2017.

Consequently, Panel concludes that a four-year period of ineligibility applies and such shall commence from the date of the provisional suspension being the 14th of July, 2017.

A copy of this decision is to be forwarded to the Malta Triathlon Federation.



Dr. Maria Azzopardi
Chairperson



Prof. Janet Mifsud
Panel Member



Dr. Abigail Gauci
Panel Member

This 7th day of March, 2018.