



**Tribunal Arbitral du Sport
Court of Arbitration for Sport**

CAS 2011/A/2523 WADA v. Federación Colombiana de Patinaje & Yenny Paola Serrano Burgos

AWARD

delivered by

THE COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Mr. Conny Jörneklint, Chief Judge in Kalmar, Sweden

Arbitrators: Mr. Lars Hilliger, Attorney-at-law in Copenhagen, Denmark

Dr. Miguel Angel Fernández-Ballesteros, Professor in Madrid, Spain

in the arbitration between

WORLD ANTI-DOPING AGENCY, Montreal, Canada

Represented by Mr. Me François Kaiser, Mr. Olivier Niggli and Mr Ross Wenzel, attorneys-at-law, Lausanne, Switzerland

- Appellant -

and

FEDERACIÓN COLOMBIANA DE PATINAJE, Bogotá, Colombia

- First Respondent -

and

YENNY PAOLA SERRANO BURGOS, Bogotá, Colombia

- Second Respondent -

1. THE PARTIES

- 1.1 The World Anti-Doping Agency ("the Appellant" or "WADA") is a Swiss private law Foundation. Its seat is in Lausanne Switzerland, and its headquarters is in Montreal, Canada. WADA is an international independent organization created in 1999 to promote, coordinate, and monitor the fight against doping in sport in all its forms.
- 1.2 The Federación Colombiana de Patinaje ("the FCP" or "the First Respondent"), is the governing body for rollersports in Colombia and is a member federation of the Fédération Internationale de Rollersports ("FIRS"). The head office of FIRS shall, according to its Statutes, be in the country where the President resides or any other place proposed by him and approved by the Federation.
- 1.3 Mrs. Yenny Paola Serrano Burgos ("the Second Respondent" or "the Athlete") is a Colombian international-level roller sports athlete, affiliated with the FCP, and was born on 5 March 1993.

2. FACTUAL BACKGROUND

- 2.1 On 22, 27 and 29 October, 2010, the Athlete provided urine samples during in-competition tests during the World Speed Rollersport Championships ("the Competition") held in Guarne, Colombia, between 22 and 30 October 2010. The Athlete tested positive for methylhexanamine.
- 2.2 Methylhexanamine is a prohibited substance under the 2010 WADA Prohibited List, classified under S6 STIMULANTS (a) Non-Specified Stimulants but it was reclassified under S6 (b), Specified Stimulants on the 2011 WADA Prohibited List.
- 2.3 On 11 April 2011, the FCP Disciplinary Commission, following an oral hearing, imposed a 3 months ineligibility sanction on the Athlete and disqualified the results of the Athlete at the Competition ("the Appealed Decision" or the "FCP Decision"). It is the FCP Decision which is the subject of the present appeals proceedings.
- 2.4 It is this decision that is the subject of this appeal.

3. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

- 3.1 On 9 August 2011, WADA filed its Statement of Appeal with the Court of Arbitration for Sport ("CAS") requesting it to rule:

1. *The Appeal is admissible.*
2. *The decision by the FCP is set aside*

3. *The Athlete is sanctioned with a two-year period of ineligibility starting from the date on which the CAS award enters into force and that any ineligibility period shall be credited against the total period of ineligibility to be served*
4. *All competitive results obtained by the Athlete from 22 October 2010 through the commencement of the applicable period of ineligibility shall be annulled*
5. *WADA is granted an award for costs.*

- 3.2 On 12 October 2011, WADA filed its Appeal Brief and Exhibits with the CAS.
- 3.3 On 9 November 2011, the Athlete submitted its Answer Brief. The Athlete requested the CAS either to set aside completely the FCP Decision or, alternatively, to confirm it by imposing only the three-month suspension. But by no means the Athlete found reasonable that WADA's request be admitted.
- 3.4 By letter dated 15 December 2011, the CAS informed the parties that the Panel to hear the appeal had been constituted as follows: President: Mr. Conny Jörneklint, Chief Judge in Kalmar, Sweden; Mr. Lars Hilliger, Copenhagen, Denmark as Arbitrator appointed by the Appellant; and Dr. Miguel Ángel Fernández-Ballesteros, Madrid, Spain, Arbitrator appointed by the Athlete and the Respondent. The parties did not raise any objection as to the constitution and composition of the Panel.
- 3.5 Since none of the parties had requested the holding of a hearing the CAS Panel decided in accordance with Article R57 of the Code of Sports-related Arbitration ("the Code"), to issue an award on the basis on the parties written submissions and to replace the holding of a hearing by final observations. Consequently, the Appellant and the Respondents were given the opportunity to file their final observations, respectively on 7 and 16 February.
- 3.6 On 9 February 2012 WADA confirmed that it did not intend to file any final written submissions and that it confirmed all the arguments, evidence and requests made in the Statement of Appeal and Appeal Brief.
- 3.7 On 1 March 2012 and in view of the Respondents' silence, the CAS Court Office informed the Parties that exchange of written submissions had been closed.

4. THE PARTIES' SUBMISSIONS

A. APPELLANT'S SUBMISSIONS

- 4.1 In summary, the Appellant submits the following in support of its appeal.

(i) Admissibility of the Appeal

a. *Applicable rules*

- 4.2 FIRS is the world governing body for rollersports. FIRS is a signatory of the World Anti-doping Code ("WADC"). The Anti-Doping Policy of the FIRS ("FIRS ADP") was approved by WADA on 18 November 2008. The in-competition tests giving rise to the Appealed Decision took place at the Competition, an International event for the purpose of the FIRS ADP. Furthermore, the Athlete is an International-level athlete. Therefore, the FIRS ADP (December 2009 Edition) is applicable to this dispute.

b. *WADA's Right of Appeal*

- 4.3 According to Art. 13.2.1 of the FIRS ADP: "*In cases arising from participation in an International Event or in cases involving International-Level Athletes, the decision may be appealed exclusively to CAS in accordance with the provisions applicable before such court.*"
- 4.4 In Art. 13.2.3 (f) of the FIRS ADP, WADA is explicitly listed as one of the persons with a right of appeal under Art. 13.2.1.
- 4.5 WADA therefore has a right of appeal to CAS under 13.2.1 of the FIRS ADP.

c. *Compliance with the deadline to appeal*

- 4.6 Art. 13.6 FIRS ADP states inter alia that "*the filing deadline for an appeal or intervention filed by WADA shall be the later of:*
- (a) *Twenty-one (21) days after the last day on which any other party in the case could have appealed, or*
- (b) *Twenty-one (21) days after WADA's receipt of the complete file relating to the decision.*"
- 4.7 WADA received the Appealed Decision on 19 July 2011. The Statement of Appeal dated 9 August 2011 was therefore filed within the deadline prescribed by the FIRS ADP. The Appeal Brief was sent on 12 October 2011 and is filed within the time limit fixed by CAS in its letter dated 30 September 2011.

(ii) Anti-Doping Violation

- 4.8 Art. 4.1 of the FIRS ADP states that "*these Anti-Doping Rules incorporate the Prohibited List.*"
- 4.9 Methylhexanamine (dimethylpentylamine) is a prohibited substance, which was classified under "S6 (a)" (*Non-specified Stimulants*) of the 2010 WADA Prohibited List but

has been re-classified under "S6 (b)" (*Specified Stimulants*) on the 2011 WADA Prohibited List. It is prohibited only in-competition.

- 4.10 Notwithstanding the occurrence of the anti-doping violation in 2010, methylhexaneamine (dimethylpentylamine) shall, in accordance with the doctrine of *lex mitior*, be treated as a Specified Substance for the purposes of these appeal proceedings.
- 4.11 The Athlete did not seek to challenge the presence of the prohibited substance in her bodily samples within the context of the first instance proceedings.
- 4.12 The presence of a prohibited substance in the bodily sample of the Athlete is therefore established.
- 4.13 Consequently, the violation by the Athlete of Art. 2.1 of the FIRS ADP (presence of a prohibited substance or its metabolites or markers in an athlete's sample) is established.

(iii) Determining the Sanction

a. *General*

- 4.14 Pursuant to article 10.5 of FIRS ADP, an athlete can establish that, in view of the exceptional circumstances of his individual case, the otherwise applicable period of ineligibility shall be eliminated (in case of no fault or negligence as per article 10.5.1) or reduced (in case of no significant fault or negligence as per article 10.5.2).
- 4.15 With respect to Specified Substances, Article 10.4 of the FIRS ADP further states:
*"Where an Athlete or other Person can establish how a Specified Substance entered his or her body or came into his or her Possession and that such Specified Substance was not intended to enhance the Athlete's sport performance or mask the Use of a performance-enhancing substance, the period of Ineligibility found in Article 10.2 shall be replaced with the following:
First violation: At a minimum, a reprimand and no period of Ineligibility from future Events, and at a maximum, two (2) years of Ineligibility. [...]"*
- 4.16 As a preliminary matter, it is worth recalling that Art. 10.5.1 (no fault) is not relevant to these proceedings. The Athlete has not appealed against the Appealed Decision, which imposed a period of ineligibility of three months. In any event it will be demonstrated below that the Athlete clearly bears fault.

b. *Origin of the prohibited substance in the athlete's bodily specimen*

- 4.17 In order to have the period of ineligibility eliminated or reduced under Art. 10.4 or reduced under Art. 10.5.2 of the FIRS ADP, the Athlete must first establish how the prohibited substance entered her system.

- 4.18 In that respect, the standard of proof imposed upon the athlete pursuant to art. 3.1 of the FIRS ADP is the balance of probability.
- 4.19 Pursuant to CAS precedents (CAS 2008/A/1515) "*the balance of probability standard entails that the athlete has the burden of persuading the Panel that the occurrence of circumstances on which the athlete relies is more probable than their non-occurrence or more probable than other possible explanations of the positive test*".
- 4.20 The Athlete has sought to explain the presence of methylhexanamine (dimethylpentylamine) in her bodily sample by the fact that she was taking at the relevant time a supplement known as "Lipo 6 Black", both for weight loss and to aid her digestion.
- 4.21 On the basis of the documentation provided, WADA is not satisfied that the Athlete has established on the balance of probabilities that she consumed Lipo 6 Black and that this supplement was therefore the source of the prohibited substance in her system.
- 4.22 Firstly, the Athlete failed to declare the use of Lipo 6 Black on any of the doping control forms at the Competition. Secondly, the Athlete did not mention her consumption of this supplement at the outset of the disciplinary procedure or even during the preliminary hearing. The FCP DC notes in the Appealed Decision that the Athlete "*has given different explanations in the course of the investigation*".
- 4.23 When asked why she did not mention the supplement on the doping control forms, the answers of the athlete during the first instance proceedings appear confused and contradictory: on the one hand, the Athlete claims to have forgotten her use of this substance and, on the other, she claims to have formed the view that it was not a medicinal product and therefore unnecessary to declare. Clearly, these differing explanations are mutually exclusive and therefore inconsistent.
- 4.24 Finally, there is an apparent inconsistency in the evidence provided within the context of the first instance proceedings as to the period during which the Athlete supposed to have consumed Lipo 6 Black. On the one hand, Dr. Juan Carlos Quiceno Noguera recalled that the Athlete informed him that she had taken Lipo 6 Black "*while at the concentration, but only until the commencement of the competitions*" (i.e. not during the Competition); on the other hand, the Athlete recalls in her own statement that she continued to use this supplement throughout the Competition. The Scientific Report produced by the athlete before the FCP DC also seems to assume – presumably on the basis of the information given by the Athlete – that the consumption of Lipo 6 Black ceased prior to the competition.
- 4.25 Assuming that the Athlete did not consume the substance during the Competition (as the weight of the evidence would suggest), it would appear difficult (if not to say impossible) to explain the presence of the prohibited substance in the Athlete's sample dated 29 October 2010 (7 days after the start of the competition). The report provided

by the Athlete on the excretion of methylhexaneamine shows that the substance is excreted rapidly after 22 hours and is almost entirely excreted after 27 hours.

- 4.26 The various inconsistencies above and the fact that the Athlete first mentioned her use of Lipo 6 Black well after the commencement of the disciplinary proceedings must at least raise a suspicion that the Athlete has fabricated a story based on the consumption of Lipo 6 Black in order to elude or mitigate the consequences of an anti-doping violation.
- 4.27 Against this background, WADA submits that the Athlete must provide compelling evidence in addition to her word to demonstrate that (i) she did consume such supplement and (ii) that such consumption occurred at times which are consistent with the presence of methylhexaneamine (dimethylpentylamine) in the three relevant samples. In the absence of such evidence, the Athlete will have failed to establish the origin of the prohibited substance and must be sanctioned with a period of ineligibility of two years.

c. Art. 10.4 FIRS ADP – Applicability

- 4.28 As art. 10.5.2 (no significant fault or negligence) does not apply in cases involving art. 10.4 FIRS ADP (see art. 10.5.5 FIRS ADP including the comment thereto), it is necessary to consider art. 10.4 before art. 10.5.2.
- 4.29 Even if the Athlete is able to establish that the Lipo 6 Black is the source of the prohibited substance, she must still satisfy one additional pre-condition for art. 10.4 to apply; namely that she did not take the supplement for the purpose of enhancing sport performance.
- 4.30 The Athlete has conceded that she took the supplement for the purposes of weight loss. Indeed, the product describes itself as a “Fat Burner”.
- 4.31 Mr. Elias Del Valle Pérez, a coach of the Athlete, made a statement within the context of the investigation of the FCP DC in which he noted that the Athlete (amongst other athletes) had been gaining weight during the pre-Competition training camp. Mr. Pérez clearly implies that the weight issue was affecting the athletes’ “mobility on the track”. Indeed, he recalls that scales were provided to the athletes to monitor their weight.
- 4.32 There can be little doubt that Lipo 6 Black is a powerful substance. The manufacturer describes the substance on its website as being of “*extreme potency*” and states that it is “*absolutely not for use by persons under the age of 21*”.
- 4.33 If an athlete takes a substance to lose weight in order to improve sport performance, the art. 10.4 pre-condition will not be satisfied. In the case of *RFU v. Stewart*, decision of the Rugby Football Union Anti-Doping Tribunal dated 1 November 2006, an ath-

lete tested positive because he had used a "fat-burner" supplement. He claimed that he had put on weight during the close season and was worried that the extra weight could jeopardize his position in his team at the beginning of the season. He argued that his intention was to lose weight and not to enhance his performance. The tribunal rejected his contention on the following grounds:

"The intention may well have been to lose weight but the only sensible interpretation of the evidence was that he wanted to lose weight to enhance his sport performance. To summarize further his evidence, if he lost those extra pounds he believed he would be lighter on his feet, and his reaction times and stamina would (he believed) improve."

- 4.34 In view of the statements of Mr. Pérez, it cannot seriously be contended that the consumption of a "fat burner" product in the run-up to the Competition was not to improve sport performance.
- 4.35 As the sport-performance pre-condition of art. 10.4 FIRS ADP is not satisfied, art. 10.4 FIRS ADP does not apply.

*d. Art. 10.5.2 FIRS ADP – No significant fault or negligence
The fault of the Athlete*

- 4.36 If an athlete establishes that he bears no significant fault or negligence (as defined in the WADC and FIRS ADP), then the period of ineligibility may be reduced, but the reduced period of ineligibility may not be less than one half of the minimum period of ineligibility otherwise applicable, in this case a one-year minimum period of ineligibility (art. 10.5.2 FIRS ADP).
- 4.37 In order to benefit from a reduction of the sanction for no significant fault or negligence, the athlete must establish that his fault or negligence, when viewed in the totality of the circumstances and taking into account the criteria for "no fault or negligence", was not significant in relation to the anti-doping rules violation (See Definition of "No Significant Fault or Negligence").
- 4.38 A reduction of the otherwise applicable period of ineligibility is meant to occur in cases where the circumstances are truly exceptional, i.e. when an athlete can show that the degree of fault or negligence in the totality of the circumstances was such that it was not significant in relation to the doping offence (comment to art. 10.5.2 FIRS ADP).
- 4.39 According to art. 2.2.1 FIRS ADP, it is each athlete's personal duty to ensure that QO prohibited substance enters his or her body. The fundamental duty of care is to check the composition of any product they ingest (or have it checked, but in any event remaining personally responsible).

- 4.40 The prohibited substance (i.e. methylhexaneamine/ dimethylpentylamine) is one of the ingredients of Lipo 6 Black. The list of ingredients of the Lipo 6 Black often refers to an alternative name for methylhexaneamine/ dimethylpentylamine, namely: 1, 3-dimethylamylamine. This alternative name does not feature on the 2010 or 2011 Prohibited List but is very similar to dimethylpentylamine, which does so feature.
- 4.41 A basic internet search would have revealed that the Lipo 6 Black possibly contained substances banned by sports organizations. The website of the manufacturer (Nutrex) contains the following warning on the webpage detailing Lipo 6 Black: *"This product contains ingredients that may be banned by some sports organizations"*.
- 4.42 Exhibit 12, which is the first "hit" when "Lipo 6 Black banned" is entered into Google, states that: *"The ingredients in Lipo-6 Black may cause a positive test for substances that are banned by some sporting or government associations. Do not use this product if you are subject to testing for banned and/or performing enhancing substances. The user assumes all risks, liabilities and consequences relating to testing."*
- 4.43 If the athlete had entered the listed ingredient of the Lipo 6 Black (1, 3-dimethylamylamine) into Google, the first "hit" would have been the Wikipedia page for methylhexaneamine (one of the names featuring on the Prohibited List).
- 4.44 Despite having regular access to medical advice through the doctors of the District Institution of Sport and Leisure known as the "I.D.R.D." and despite the presence of a team physician at the training camp and subsequent Competition in Guarne - namely Dr. Juan Gregorio Mojica Cerquera – the Athlete did not disclose her consumption of Lipo 6 Black to any medically qualified person.
- 4.45 The Athlete took Lipo 6 on her mother's advice and manifestly made little or no effort to check the ingredients, even through a simple internet search. This omission becomes all the more serious when one considers the evidence of the team physician, Dr. Cerquera, who stated that all *"athletes were advised to use products acquired by the Federation, under my prescription but in the case of [...] and Paola, they preferred to continue using the products that had previously been prescribed"*.
- 4.46 The website of the manufacturer of the supplement makes clear that it is a potent substance and one which may be banned by sports organizations. Even ignoring the health risks of consuming a substance aimed at adults over the age of 21, the Athlete should have been all the more diligent in her verification of Lipo 6 Black bearing in mind the nature of the substance.
- 4.47 Based on the information available, the Athlete fell well short of the required standard of behavior. It is submitted that the Athlete could and should have taken further measures to satisfy herself that the Lipo 6 Black did not contain any prohibited substances. Such measures should have included a basic internet search with respect to the ingre-

dients and a thorough checking of the label and packaging of the Lipo 6 Black. The Athlete should have had recourse to medical advice, which was readily available to her.

e. Alleged Mitigating Elements- The Age/Experience of the Athlete

4.48 CAS Panels have been very reluctant to apply Art. 10.5.2 on the basis of the alleged youth and/or inexperience of athletes.

4.49 In the case CAS 2006/A/1032, par. 137 to 145), the Panel stated in particular that:
"[...] in order to achieve the goals of equality, fairness and promotion of health the anti-doping rules are pursuing, the anti-doping rules must apply in equal fashion to all participants in competitions they govern, irrespective of the participant's age.

[...] The reason for ignoring the age of the athlete is that either an athlete is capable of properly understanding and managing her/his anti-doping responsibilities, whatever her/his age, in which case she/he must be deemed fully responsible for her/his acts as a competitor, or the athlete is not mature enough and must either not participate in competitions or have her/his antidoping responsibilities exercised by a person – coach, parent, guardian, etc. – who is capable of such understanding and management.

[...] For the above reasons, the Panel finds that in this case the player's responsibility under articles 5.1 and 5.2 of the TADP must be assessed according to the same criteria as for an adult even if she was only 15-years old when the doping offences occurred, and that to the extent she was represented by her father in exercising her anti-doping duties his degree on diligence must count as hers in determining the degree of fault."

4.50 In another CAS award, the Panel *"has determined that age does not fall within the category of "Exceptional Circumstances" which warrant consideration in reducing the term of ineligibility. At the age of 16 years, the Appellant was able to discern what constitutes negligent conduct, especially when the applicable standard of caution evidenced in the numerous warnings and instructions regarding vitamins and food supplements of unidentified origin was clearly communicated to athletes by their respective sport federations."* (CAS 2003/A/447, par. 10.8).

4.51 The Athlete was nearly 18 years old at the time of at the anti-doping violation and had significant experience at domestic and International level competitions. With respect to her experience in anti-doping matters, the Athlete's assertion to have received little or no training runs counter to the following statement made by Mr. Pedro Nel Giraldo Zuluaga, a delegate of the Colombian national team at the Competition:

"Yes, every Monday we met with the group and informed them that they could not and should not have any WADA prohibited substance, since, as they all knew, they are substances that at any moment could yield a positive sample [...]."

- 4.52 Furthermore, the President of the FCP, Mr. Alberto Herrera Ayala, also stated that: *"In all national events and through the Medical Commission the Federation keeps the athletes and delegates informed about the need to avoid using prohibited substances, warning them about those new products that keep appearing from time to time in the WADA list"*.
- 4.53 Finally, the Athlete certainly had some experience with anti-doping controls, having been subjected to six different tests between February and the start of the pre-Competition training camp alone.

f. Conclusion on fault

- 4.54 Based on the evidence and submissions made within the context of the Appealed Decision, the Appellant submits that it is difficult to accept that the Athlete – even if she can establish that she consumed Lipo 6 Black at the relevant times – made even the slightest effort to verify the conformity of such supplement with the 2010 Prohibited List.
- 4.55 Indeed, the Appealed Decision states that *"she did not assume the minimal precautions that an athlete for her level should have taken before having consumed a product – whichever it may have been – without having at least medicated a prior consultation with a specialist in the subject, as would have been the sports physicians assigned to her sporting activities, to whom she has a permanent, direct, gratuitous and easy access on her capacity as high-performance athlete."* WADA concurs with this analysis but differs in the consequences which must be drawn.
- 4.56 Even if the Panel, despite WADA's submissions, finds that the Athlete has established the origin of the prohibited substance, WADA maintains that the Athlete is at significant fault and finds no exceptional circumstances which would justify a reduction of the period of ineligibility below two years.

(iv) Appellant's Conclusion

- 4.57 On the basis of (i) the inconsistent submissions of the Athlete concerning her consumption of Lipo 6 Black (ii) the fact that such consumption was raised only at a late stage in the first instance disciplinary proceedings and (iii) the lack of any other compelling evidence to demonstrate that such consumption occurred at the relevant times and was the origin of the prohibited substance in the positive samples, WADA's primary submission is that the Athlete has failed to establish the origin of the substance in her system. A two year period of ineligibility is therefore applicable.

- 4.58 In the event that the Panel, notwithstanding WADA's submissions, holds that the origin is sufficiently established (i.e. by the consumption of Lipo 6 Black), WADA submits that such consumption was clearly made in an effort to enhance sport performance, Art. 10.4 FIRS ADP is therefore not applicable.
- 4.59 Under art. 10.5.2, a period of ineligibility cannot be reduced below 12 months. Indeed, the period can be reduced at all only on the basis of exceptional circumstances and taking into account the athlete's ultimate responsibility to control the substances he/she ingests. In this instance, the Athlete consumed a potent "fat-burning" substance; various websites, including that of the manufacturer warn that the product contains ingredients which may be prohibited by sports organizations.
- 4.60 The Athlete should have consulted the doctors to whom she had access and conducted internet searches. Either of these approaches would have put beyond any doubt the prohibited nature of the substance. Even if one accepts the explanations of the Athlete, she did not conduct even the most basic checks prior to ingestion and relied on the uninformed advice of her mother. For this, she is at significant fault regardless of her age, and should be sanctioned with a two-year period of ineligibility in any event.

B. THE FIRST RESPONDENT'S SUBMISSIONS

- 4.61 The First Respondent remained silent during the present proceedings and, consequently, did not file an answer as requested by the CAS Court Office on 17 October 2011, notification which was correctly delivered by courier.

C. THE SECOND RESPONDENT'S SUBMISSIONS

- 4.62 The Athlete did not have a lawyer representing her in the CAS proceedings but formulated her own defense. She argues that for economic reasons, because her father is unemployed since 2 years and she lacks financial resources, she was not able to get a lawyer for her defense.
- 4.63 In summary, the Athlete submits the following:
- (i) Facts
- 4.64 As one can understand her submissions she accepts all facts presented by WADA according to the organization of the sport of rollersport, the Competition, the testing, the analysis of the samples and the classification of the prohibited substances.

(ii) Presence of the prohibited substances in the samples

- 4.65 The presence of methylhexaneamine in the Athletes samples was due to the ingestion of a medical product called Lipo 6 Black. This product contains methylhexaneamine but it was impossible for the Athlete to know of its presence. The methylhexaneamine does not appear on the label in the part that lists the components of the product. As the Athlete lacks the technical chemical expertise she could not know that the methylhexaneamine is synonymous to the compound 1, 3-dimethylamylamine. This fact made it very difficult for the Athlete to take any precautionary measures to avoid the presence of this substance in the body of the Athlete.
- 4.66 She never ingested the Lipo 6 Black with the aim to increase her sports performance, because as it appears on the product label, the supplement is indicated as a fat burner and that was what she wanted when she ingested it. At the beginning of the process of the FCP DC she did not mention that she had taken the product but she did not hide this fact with a wrong intention, nor in the spirit of lying. She did not even tell the FCP DC that she had ingested it. It was first when she was interviewed by Dr. Juan Carlos Quiceno, that she understood that Lipo 6 Black was the source of the Adverse Finding. For her this product was just ingested to lose weight and to solve her problem with constipation. As a young girl of 17 she did not realize that Lipo 6 Black was the source of the Adverse Finding as there were no connection between her sport and her intake of this product. Since several other girls (not just of skating) were using it with great effect in reducing weight she did not suspect this medical preparation to be harmful. The Athlete further states *"Does not all teenage girls of 17, regardless of whether she is an athlete or not, want to look thin and cute to please the opposite sex?"*. According to her, the reason why she did not tell the FCP DC that she took this product was because it was not simple for her to accept that she had a physical defect of overweight and constipation, specially for a famous teenager belonging to the national skating team. It appears that she wanted to be perfect and did not want to admit her physical defects and only after the bitter experience that meant and still means a disciplinary process against her, she started to accept herself as she is. She further asked the CAS Panel to bear in mind that speaking before a judge is not easy and it is even harder for an inexperienced teenage girl, specially because it is very intimidating to be in front of people who are judging you.
- 4.67 The Athlete further states that when rating the behavior of the Athlete it must be considered that on the label of Lipo 6 Black, in the part that lists the chemical components of the product, methylhexaneamine is not listed. Therefore it was impossible for the Athlete to know that the product had the prohibited substance within its components; this can be corroborated by analyzing the statement that was once rendered to the FCP DC by Dr. Juan Carlos Quiceno, Coordinator of Medicine of the District Institute of Recreation and Sport, as well as the tests that were submitted by the Director of the Institute. According to these tests, the methylhexaneamine does not appear listed as product component. But the related product, synonymous of methylhexaneamine,

which is the 1, 3-dimethylamylamine HCL, known as Geranium Surge, is listed. This is also attested by the report of the laboratory analysis produced in relation to the product by the Doping Control Laboratory of Coldeportes. From these facts, one can conclude that for anyone lacking technical chemical expertise it is impossible to know that by ingesting 1,3-dimethylamylamine HCL, you are actually ingesting the banned substance methylhexaneamine.

a. Has the Athlete established how the prohibited substance entered her body?

- 4.68 It has been established in an irrefutable manner, that the methylhexaneamine was present in the supplement Lipo 6 Black and there was no indication in the label about the presence of methylhexaneamine. This product, as it was indicated during the first instance proceedings, does not indicate that methylhexaneamine is among its components. Therefore the Athlete ingested Lipo 6 Black and this is how methylhexaneamine entered in her system.

b. Was the substance intended to enhance the Athlete's sport performance?

- 4.69 Lack of intention by the Athlete to improve her performance follows logically from the abovementioned; she never intended to improve her performance with methylhexaneamine because she never even suspected that the ingested products contained methylhexaneamine. Thus it can be said that the two necessary conditions for a sanction reduction are met.

c. Further mitigating elements

- 4.70 The Athlete sustains that she has never received any type of brochure or information on prohibited substances either from any trainer, coach, doctor, World Championship Organizer, The Colombian Federation for Skating, the IDRD or any medical committee. .
- 4.71 The Athlete further requests the Panel to take into consideration that she took part in the latest World Championships in Korea after having served the sanction period imposed to her by the FCP DC, even without knowing that the decision of FCP DC had been appealed. Therefore, she wishes that her results in this championship be annulled.
- 4.72 Finally, the Athlete highlighted that she is a child of God, holy and totally dedicated to Jesus Christ. Everything she does is for the glory and honor of God. And she can say with a clean conscience that she has not lied. She further requested the Panel to consider that all the issues related to the doping offence is harming a lifetime of sacrifices that she has made, frustrating to all of her dreams. Today she realizes she made a huge mistake; consequently, she requested the CAS a second chance, deciding at least to confirm the first sanction imposed on her.

5. LEGAL ANALYSIS

I. JURISDICTION OF THE CAS

5.1 Article R47 of the CAS Code provides as follows:

An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body.

5.2 Article 13.1 of the Anti-Doping Policy of FIRS ("FIRS ADP") states as follows:

13.1 Decisions Subject to Appeal

Decisions made under these Anti-Doping Rules may be appealed as set forth below in Article 13.2 through 13.4 or as otherwise provided in these Anti-Doping Rules.

5.3 Article 13.2.1 of the FIRS ADP says:

13.2.1 Appeals Involving International-Level Athletes

In cases arising from participation in an International Event or in cases involving International-Level Athletes, the decision may be appealed exclusively to CAS in accordance with the provisions applicable before such court.

5.4 In article 13.2.3 it is said that WADA is one of the persons which are entitled to appeal in cases under Article 13.2.1.

5.5 It is not contested that the CAS has jurisdiction in this dispute.

5.6 According to Article R57 of the CAS Code, the Panel has full power to review the facts and the law of the case. Furthermore, the Panel may issue a new decision which replaces the decision challenged, or may annul the decision and refer the case back to the previous instance.

II. ADMISSIBILITY

5.7 With reference to para. 6.3 above article 13.2.1 of the FIRS ADP states that in cases arising from competition in an International Event or in cases involving International-Level Athletes, the decision may be appealed exclusively to the CAS in accordance with the provisions applicable before such court.

5.8 Article 13.6 of the FIRS ADP provides that "*The time to file an appeal to CAS shall be twenty-one (21) days from the date of receipt of the decision by the appealing party.*"

It is further said in the same article:

The above notwithstanding, the filing deadline for an appeal or intervention filed by WADA shall be the later of:

(a) Twenty-one (21) days after the last day on which any other party in the case could have appealed, or

(b) Twenty-one (21) days after WADA's receipt of the complete file relating to the decision.

5.9 WADA has stated that it received the appealed decision on 19 July 2011, which has not been contradicted by the Respondents. WADA filed the Statement of Appeal on 9 August 2011.

5.10 In light of the above, the Panel finds the Appeal admissible.

III. APPLICABLE LAW

5.11 Article R58 of the CAS Code provides as follows:

The Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.

5.12 It is common ground between the parties that the applicable regulations of this case are the FIRS ADP which applies to all members and participants in the activities of the FIRS or of its member federations. Therefore, the FIRS ADP shall apply.

IV. THE PANEL'S FINDINGS ON THE MERITS

(i) Anti-Doping Violation:

5.13 The Athlete has accepted the results of the A Sample analysis and has waived analysis of the B Sample. According to Article 2.1.2 FIRS ADP sufficient proof of an anti-doping rule violation under Article 2.1 is established by 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 analyzed.

5.14 In Article 4.1 of the FIRS ADP it is stated that "*These Anti-Doping Rules incorporate the Prohibited List which is published and revised by WADA as described in Article 4.1 of the Code.*"

5.15 The presence of the prohibited substance methylhexanamine in the Athlete's bodily samples is therefore established thus an anti-doping rule violation has also been established.

(ii) Determining the sanction

5.16 According to Art. 10 of the FIRS ADP the following sanctions are applicable.

10.1 Disqualification of Results in Event during which an Anti-Doping Rule Violation Occurs

An Anti-Doping Rule violation occurring during or in connection with an Event may lead to Disqualification of all of the Athlete's individual results obtained in that Event with all consequences, including forfeiture of all medals, points and prizes, except as provided in Article 10.1.1.

10.1.1 If the Athlete establishes that he or she bears No Fault or Negligence for the violation, the Athlete's individual results in the other Competition shall not be Disqualified unless the Athlete's results in Competition other than the Competition in which the anti-doping rule violation occurred were likely to have been affected by the Athlete's anti-doping rule violation.

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

First violation: *Two (2) years' Ineligibility.*

5.17 As a result, the Panel now has to put under scrutiny whether Art. 10.4 or 10.5 of the FIRS ADP may apply to the present case.

10.4 Elimination or Reduction of the Period of Ineligibility for Specified Substances under Specific Circumstances

Where an Athlete or other Person can establish how a Specified Substance entered his or her body or came into his or her Possession and that such Specified Substance was not intended to enhance the Athlete's sport performance or mask the Use of a performance-enhancing substance, the period of Ineligibility found in Article 10.2 shall be replaced with the following:

First violation: *At a minimum, a reprimand and no period of Ineligibility from future Events, and at a maximum, two (2) years of Ineligibility.*

To justify any elimination or reduction, the Athlete or other Person must produce corroborating evidence in addition to his or her word which establishes to the comfortable satisfaction of the hearing panel the absence of an intent to enhance sport performance or mask the Use of a performance enhancing substance. The Athlete's or other Person's degree of fault shall be the criterion considered in assessing any reduction of the period of Ineligibility.

Comment to Article 10.4: Specified Substances as now defined in Article 4.2.2 are not necessarily less serious agents for purposes of sports doping than other Prohibited Substances (for example, a stimulant that is listed as a Specified Substance could be very effective to an Athlete in competition); for that reason, an Athlete who does not meet the criteria under this Article would receive a two-year period of Ineligibility and could receive up to a four-year period of Ineligibility under Article 10.6. However, there is a greater likelihood that Specified Substances, as opposed to other Prohibited Substances, could be susceptible to a credible, non-doping explanation.

This Article applies only in those cases where the hearing panel is comfortably satisfied by the objective circumstances of the case that the Athlete in taking or Possessing a Prohibited Substance did not intend to enhance his or her sport performance. Examples of the type of objective circumstances which in combination might lead a hearing panel to be comfortably satisfied of no performance-enhancing intent would include: the fact that the nature of the Specified Substance or the timing of its ingestion would not have been beneficial to the Athlete; the Athlete's open Use or disclosure of his or her Use of the Specified Substance; and a contemporaneous medical records file substantiating the non-sport-related prescription for the Specified Substance. Generally, the greater the potential performance-enhancing benefit, the higher the burden on the Athlete to prove lack of an intent to enhance sport performance.

While the absence of intent to enhance sport performance must be established to the comfortable satisfaction of the hearing panel, the Athlete may establish how the Specified Substance entered the body by a balance of probability.

In assessing the Athlete's or other Person's degree of fault, the circumstances considered must be specific and relevant to explain the Athlete's or other Person's departure from the expected standard of behavior. Thus, for example, the fact that an Athlete would lose the opportunity to earn large sums of money during a period of Ineligibility or the fact that the Athlete only has a short time left in his or her career or the timing of the sporting calendar would not be relevant factors to be considered in reducing the period of Ineligibility under this Article. It is anticipated that the period of Ineligibility will be eliminated entirely in only the most exceptional cases.

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 Article 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 Article 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 Article 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 eight (8) years. When a Prohibited Substance or its Markers or Metabolites is detected in an Athlete's Sample in violation of Article 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.

Comment to Articles 10.5.1 and 10.5.2: FIRS' Anti-Doping Rules provide for the possible reduction or elimination of the period of Ineligibility in the unique circumstance where the Athlete can establish that he or she had No Fault or Negligence, or No Significant Fault or Negligence, in connection with the violation. This approach is consistent with basic principles of human rights and provides a balance between those Anti-Doping Organizations that argue for a much narrower exception, or none at all, and those that would reduce a two year suspension based on a range of other factors even when the Athlete was admittedly at fault. These Articles apply only to the imposition of sanctions; they are not applicable to the determination of whether an anti-doping rule violation has occurred. Article 10.5.2 may be applied to any anti-doping rule violation even though it will be especially difficult to meet the criteria for a reduction for those anti-doping rule violations where knowledge is an element of the violation.

Articles 10.5.1 and 10.5.2 are meant to have an impact only in cases where the circumstances are truly exceptional and not in the vast majority of cases.

To illustrate the operation of Article 10.5.1, an example where No Fault or Negligence would result in the total elimination of a sanction is where an Athlete could prove that, despite all due care, he or she was sabotaged by a competitor. Conversely, a sanction could not be completely eliminated on the basis of No Fault or Negligence in the following circumstances: (a) a positive test resulting from a mislabeled or contaminated vitamin or nutritional supplement (Athletes are responsible for what they ingest (Article 2.1.1) and have been warned against the possibility of supplement contamination); (b) the administration of a Prohibited Substance by the Athlete's personal physician or trainer without disclosure to the Athlete (Athletes are responsible for their choice of medical per-

sonnel and for advising medical personnel that they cannot be given any Prohibited Substance); and (c) sabotage of the Athlete's food or drink by a spouse, coach or other Person within the Athlete's circle of associates (Athletes are responsible for what they ingest and for the conduct of those Persons to whom they entrust access to their food and drink). However, depending on the unique facts of a particular case, any of the referenced illustrations could result in a reduced sanction based on No Significant Fault or Negligence. (For example, reduction may well be appropriate in illustration (a) if the Athlete clearly establishes that the cause of the positive test was contamination in a common multiple vitamin purchased from a source with no connection to Prohibited Substances and the Athlete exercised care in not taking other nutritional supplements.)

For purposes of assessing the Athlete's or other Person's fault under Articles 10.5.1 and 10.5.2, the evidence considered must be specific and relevant to explain the Athlete's or other Person's departure from the expected standard of behavior. Thus, for example the fact that an Athlete would lose the opportunity to earn large sums of money during a period of Ineligibility or the fact that the Athlete only has a short time left in his or her career or the timing of the sporting calendar would not be relevant factors to be considered in reducing the period of Ineligibility under this Article.

While Minors are not given special treatment per se in determining the applicable sanction, certainly youth and lack of experience are relevant factors to be assessed in determining the Athlete's or other Person's fault under Article 10.5.2, as well as Articles 10.3.3, 10.4 and 10.5.1.

Article 10.5.2 should not be applied in cases where Articles 10.3.3 or 10.4 apply, as those Articles already take into consideration the Athlete or other Person's degree of fault for purposes of establishing the applicable period of Ineligibility.

10.5.5 Where an Athlete or Other Person Establishes Entitlement to Reduction in Sanction under More than One Provision of this Article

Before applying any reduction or suspension under Articles 10.5.2, 10.5.3 or 10.5.4, the otherwise applicable period of Ineligibility shall be determined in accordance with Articles 10.2, 10.3, 10.4 and 10.6. If the Athlete or other Person establishes entitlement to a reduction or suspension of the period of Ineligibility under two or more of Articles 10.5.2, 10.5.3 or 10.5.4, then the period of Ineligibility may be reduced or suspended, but not below one-fourth of the otherwise applicable period of Ineligibility.

Comment to Article 10.5.5: The appropriate sanction is determined in a sequence of four steps. First, the hearing panel determines which of the basic sanctions (Article 10.2, Article 10.3, Article 10.4 or Article 10.6) applies to the particular anti-doping rule violation. In a second step, the hearing panel establishes whether there is a basis for suspension, elimination or reduction of the sanction (Articles 10.5.1 through 10.5.4). Note, however, not all grounds for suspension, elimination or reduction may be combined with the provisions on basic sanctions. For example, Article 10.5.2 does not apply in cases involving Articles 10.3.3 or 10.4, since the hearing panel, under Articles 10.3.3 and 10.4, will already have determined the period of Ineligibility based on the Athlete's or

other Person's degree of fault. In a third step, the hearing panel determines under Article 10.5.5 whether the Athlete or other Person is entitled to elimination, reduction or suspension under more than one provision of Article 10.5. Finally, the hearing panel decides on the commencement of the period of Ineligibility under Article 10.9.

- 5.18 To prevail under Art. 10.4 of the FIRS ADP, the Athlete must first (i) establish how the Specified Substance entered his or her body and then (ii) that such Specified Substance was not intended to enhance the Athlete's sport performance. The Panel shall put both these requirements under scrutiny.
- 5.19 Prior to this analysis, the Panel considers it worth pointing out that it is to be kept in mind that the Anti-Doping Rules adopts the rule of strict liability. From the strict liability principle follows that, once WADA has established that an anti-doping rule violation has occurred, as in the present case, it is up to the Athlete to demonstrate that the requirements foreseen under Art. 10.4 of the FIRS ADP are met. Such a burden of proof is expressly stated under Art. 3.1 second phrase of the FIRS ADP, which provides that: "*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 Articles 10.4 and 10.6, where the Athlete must satisfy a higher burden of proof. [...]*".
- 5.20 As to the first requirement, i.e. the ingestion of the Prohibited Substance, The Athlete argues that such ingestion must have occurred when she was taking a supplement called Lipo 6 Black, which she took primarily to lose weight. One of the ingredients of Lipo 6 Black is methylhexaneamine/ dimethylpentylamine, which is the prohibited substance in this case.
- 5.21 Concerning Art. 10.4 the Athlete must satisfy a higher burden of proof than the balance of probability. To justify any elimination or reduction, the Athlete must produce corroborating evidence in addition to his or her word which establishes to the comfortable satisfaction of the hearing panel the absence of an intent to enhance sport performance.
- 5.22 As WADA has pointed out the Athlete did not declare the use of Lipo 6 Black on any of the doping control forms at the Competition and she did not mention her consumption of such supplement at the outset of the disciplinary procedure or even during the preliminary hearing. The FCP DC notes in the Appealed Decision that the Athlete has given different explanations in the course of the investigation.
- 5.23 The Athlete has given various explanations to why she did not mention the supplement in the doping control forms. One is that she forgot that she took this supplement and another is that she did not think of the supplement as a medication of any kind.

- 5.24 The Athlete has also given various explanations on when she used the supplement. On one hand she has said to a doctor that she used the supplement only until the start of the Competition but on the other hand she has said in her own statement that she used the supplement during the whole Competition, an explanation which is more consistent to the time of the excretion of methylhexaneamine in the human body.
- 5.25 The Athlete mentioned the ingestion of Lipo 6 Black after the commencement of the disciplinary proceeding in the FCP DC. All elements in the explanations of the Athlete raise doubts about her credibility. The Panel finds that her explanation how the prohibited substance entered her body is not supported by any evidence. Consequently it cannot be accepted by the Panel. This means that Art 10.4 can not be applied in this case.
- 5.26 The conclusion under para. 9.2.10 means that the Panel has to go on to analyze whether Art. 10.5.1 or 10.5.2 can be applied.
- 5.27 Art. 10.5.1 and 10.5.2 are meant to have an impact only in cases where the circumstances are truly exceptional and not in the vast majority of cases. For purposes of assessing the Athlete's or other Person's fault or negligence under either of these articles, the evidence considered must be specific and relevant to explain the Athlete's or other Person's departure from the expected standard of behavior. While Minors are not given special treatment per se in determining the applicable sanction, certainly youth and lack of experience are relevant factors to be assessed in determining the Athlete's or other Person's fault or negligence under Article 10.5.2.
- 5.28 The Comment of Art. 10.5.1 and Art.10.5.2 mentions that a sanction could not be completely eliminated on the basis of No Fault or Negligence in the circumstances when a positive test resulting from a mislabeled or contaminated vitamin or nutritional supplement (Athletes are responsible for what they ingest (Article 2.1.1) and have been warned against the possibility of supplement contamination). But the Comment adds that depending on the unique facts of a particular case, the referenced illustration could result in a reduced sanction based on No Significant Fault or Negligence. For example, reduction may well be appropriate if the Athlete clearly establishes that the cause of the positive test was contamination in a common multiple vitamin purchased from a source with no connection to Prohibited Substances and the Athlete exercised care in not taking other nutritional supplements. The Panel finds that this means that the FCP DC was right when it found that the situation is not such that the Athlete has established that she bears No Fault or Negligence. This means also that Art 10.5.1 FIRS ADP should not be applied in this case.
- 5.29 Even if you accept the Athletes' explanation on how she got the prohibited substance in her body through a nutritional supplement there are many obstacles for the Athlete before you can apply Art. 10.5.2.

- 5.30 There is a rich CAS case law concerning the standard of behavior required of the Athlete concerning nutritional supplements. There are examples when a CAS Panel has used Art. 10.5.2 to reduce the sanction when the source of the Adverse Finding has been supplements. In this case we don't even know if the source of the Adverse Finding is the supplement that the Athlete said that she used during the Competition. The Athlete has ignored the advice from her team doctor not to use other supplements than those acquired by the Federation and under the doctor's prescription.
- 5.31 As already mentioned above the Comment to Art. 10.5.2 clarifies that Minors are not given special treatment per se in determining the applicable sanction, but youth and lack of experience are relevant factors to be assessed in determining the Athlete's fault under Art. 10.5.2.
- 5.32 The Athlete in this case is an International-Level athlete and she competed in the World Speed Rollersport Championships. From the decision of the FCP DC it appears that the athletes of the Colombian team to the Championships had received due information about doping and the risks to intake prohibited substances.
- 5.33 According to CAS case law there are several cases concerning young athletes. It is worth citing the award in CAS 2003/A/447 where the Panel found that *"At the age of 16 years, the Appellant was able to discern what constitutes negligent conduct, especially when the applicable standard of caution evidenced in the numerous warnings and instructions regarding vitamins and food supplements of unidentified origin was clearly communicated to athletes by their respective sport federations."*
- 5.34 It is the Panel's view that an athlete, in order to fulfill his or her duty according to Art. 2.1 FIRS ADP, has to be active to ensure that a medication or a supplement that he or she uses does not contain any compound that is on the Prohibited List. In the present case, the Athlete has not done anything to ensure this, even if you consider her youth. The Panel is of the view that the Athlete has not established that she bears No Significant Fault or Negligence. Therefore the Panel finds no ground to reduce the sanction according to Art. 10.5.2 FIRS ADP.

(iii) What is the starting point of Ineligibility?

- 5.35 Pursuant to Art. 10.9 FIRS ADP *"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. Any period of Provisional Suspension (whether imposed or voluntarily accepted) shall be credited against the total period of Ineligibility imposed"*.
- 5.36 According to Art. 10.9.1 *"the FIRS or Anti-Doping Organization imposing the sanction may start the period of Ineligibility at an earlier date where there have been substantial delays in the hearing process or other aspects of Doping Control not attribut-*

able to the Athlete or other Person, commencing as early as the date of Sample collection or the date on which another anti-doping rule violation last occurred”.

5.37 According to the Appealed Decision of the FCP DC the start date of the ineligibility period was on 11 April 2011 with a deduction of the 30-day period of provisional suspension.

5.38 The panel finds that the period of Ineligibility shall start on 11 April 2011 with deduction of the provisional period served by the Athlete.

(iv) Disqualification of Results

5.39 Art. 9 of FIRS ADP provides that *“An anti-doping rule violation in Individual Sports in connection with an In-Competition test automatically leads to Disqualification of the result obtained in that Competition with all resulting Consequences, including forfeiture of any medals, points and prizes”*. Art. 10.8 states *“In addition to the automatic Disqualification of the results in the Competition which produced the positive Sample under Article 9 (Automatic Disqualification of Individual Results), all other competitive results obtained from the date a positive Sample was collected (whether In-Competition or Out-of-Competition), or other anti-doping rule violation occurred, through the commencement of any Provisional Suspension or Ineligibility period, shall, unless fairness requires otherwise, be Disqualified with all of the resulting Consequences including forfeiture of any medals, points and prizes”*.

5.40 Based on Art 9 FIRS ADP the Panel hereby confirms the Appealed Decision of the FCP DC with respect to the disqualification of the result of the Athlete obtained in the Competition. FCP DC has not ruled that further results be disqualified. WADA has requested that further results be disqualified. According to Art. 10.8, the Panel finds that all competitive results obtained by the Athlete from 28 October 2010 until the date of this award shall be disqualified with all the resulting consequences including forfeiture of any medals, points and/or prizes.

6. COSTS

6.1 The Panel notes that the present case is of disciplinary nature and that the appeal has been filed against a decision rendered by a national federation acting by delegation of powers of an international federation (FIRS). Article R65.1 CAS Code provides that:

“[t]he present Article R65 is applicable to appeals against decisions which are exclusively of a disciplinary nature and which are rendered by [...] a national sports-body acting by delegation of powers of an international federation or sports-body.”

6.2 Article R65.2 CAS Code stipulates:

"[...] the proceedings shall be free. The fees and costs of the arbitrators, calculated in accordance with the CAS fee scale, together with the costs of the CAS are borne by the CAS."

6.3 Article R65.3 CAS Code stipulates:

"The costs of the parties, witnesses, experts and interpreters shall be advanced by the parties. In the award, the Panel shall decide which party shall bear them or in what proportion that parties shall share them, taking into account the outcome of the proceedings, as well as the conduct and financial resources of the parties."

6.4 Since this matter can be assimilated to a disciplinary case of an international nature ruled in appeal, no costs are payable to the CAS beyond the Court Office fee of CHF 1'000 paid by the Appellant prior to its Statement of Appeal, which in any event is kept by the CAS.

6.5 In the case at hand, the appeal filed by WADA is upheld. As a general rule, the CAS grants the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings. The CAS may however depart from that principle under certain circumstances, in particular when such a burden put on the losing party would put its financial situation at stake. Such appears to be the case here. As a consequence, the Panel takes the view that it is reasonable in the present case to order that each party shall bear its own costs.

* * * * *

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal of WADA is admissible.
2. The decision rendered by the Disciplinary Commission of the FCP on 11 April 2011 2011 against Yenny Paola Serrano Burgos is set aside.
3. Yenny Paola Serrano Burgos is sanctioned with a two-year period of ineligibility, which started on 11 April 2011. The period of provisional suspension of 30 (thirty) days and any other ineligibility period shall be credited against the total period of ineligibility to be served.
4. All competitive results obtained by Yenny Paola Serrano Burgos from 22 October 2010 shall be disqualified with all the resulting consequences including forfeiture of any medals, points and/or prizes.
5. This award is pronounced without costs, except for the Court Office fee of CHF 1'000 (one thousand Swiss Francs) already paid by WADA which is retained by the CAS.
6. Each party shall bear its own costs.
7. All other prayers for relief are dismissed.

Lausanne, 23 August 2012

THE COURT OF ARBITRATION FOR SPORT


Conny Jönréklint
President