



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

By fax

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Lausanne, 8 February 2006/AZ/kr

Re : CAS 2005/A/834 Dubin, Österreichischer Behindertensportverband & Austrian Paralympic Committee v/IPC

Dear Sir, dear Madam,

Please find attached a copy of the award rendered by the Court of Arbitration for Sport in the above-referenced matter.

You will receive an original copy of the award, signed by all members of the Panel, in due course.

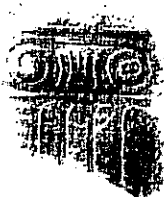
I remain at your disposal for any further information.

Yours sincerely,

A handwritten signature in black ink, consisting of a stylized 'A' and 'Z' followed by a long horizontal line extending to the right.

**Andrea ZIMMERMANN
Counsel to the CAS**

Enc.



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

CAS 2005/A/834 Dubin, Österreichischer Behindertensportverband & Austrian Paralympic Committee v/IPC

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Mr Bernhard Welten, Attorney-at-Law, Bern, Switzerland

**Arbitrators: Mr Karl-Heinz Klee, Attorney-at-Law, Innsbruck, Austria
Mr Ian Blackshaw, L.L.M., Solicitor, Weybridge, England**

between

Mr Wolfgang Dubin, Vienna, Austria,

Österreichischer Behindertensportverband, Vienna, Austria,

Austrian Anti-Doping Committee, Vienna, Austria

Represented by Dr. Karlheinz Demel, General Legal Advisor, Vienna, Austria

Appellants

and

International Paralympic Committee, Bonn, Germany

Represented by Ms Sarah Herbert, Solicitor, London, England

Respondent

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I. THE PARTIES

1. Mr Wolfgang Dubin is a disabled athlete who was a member of the Austrian Paralympic Team which participated in the Athens 2004 Paralympic Games.
2. The Austrian Paralympic Committee ("APC"), with its seat in Vienna, is the governing body for disabled sport in Austria. It is a member of the International Paralympic Committee.
3. The Austrian Anti-Doping Committee ("AADC"), with its seat in Vienna, is the governing body for doping in sport in Austria, created by the Austrian Republic, the "Bundesländer" and the Austrian Federal Sports Organisation. It aims to reduce and eliminate the problem of doping within sport in Austria. According to the rules set-out by the Austrian sports bodies, it is responsible for conducting all doping controls. Additionally, it has been appointed to hear any appeals filed against decisions issued by the Austrian sports bodies.
4. The International Paralympic Committee ("IPC") (the "Respondent") is a non-governmental international organisation made up of different sports bodies for disabled athletes. In particular, it organises the summer and winter Paralympic Games. It also administers and enforces the IPC Anti-Doping Code (the "IPC Code").

II. THE FACTUAL BACKGROUND

1. On 27 September 2004 Mr Dubin participated in the Shot Put F36 Men's event at the Athens 2004 Paralympic Games. He won a silver medal. The same day he underwent a in-competition doping control according to the IPC Code.
2. On 15 October 2004 the IPC informed the Secretary General of the APC of the existence of a possible anti-doping rule violation by Mr Dubin. The WADA-accredited anti-doping laboratory in Greece had detected the presence of Propylhexedrine in the athlete's urine.
3. On 26 October 2004 the IPC Anti-Doping Subcommittee conducted an expedited hearing by telephone in accordance with article 9.7 of the IPC Code. Mr Dubin explained that he had been prescribed the medicine Maliasin for many years, as a treatment for epilepsy. He was not aware that it contained the prohibited substance Propylhexedrine.
4. During the course of this hearing, the IPC Anti-Doping Subcommittee established that no Therapeutic Use Exemption (TUE) had been requested by or granted to Mr Dubin to justify the existence of the prohibited substance in his urine. Therefore it considered that the athlete had committed an anti-doping rule violation under article 3.1 of the IPC Code, which could result in an automatic disqualification pursuant to article 11 of the IPC Code. However, the IPC Anti-Doping Subcommittee recommended that the minimum sanction be imposed, consisting of a warning and reprimand, with no period of ineligibility since, in its view, Mr Dubin had taken the prohibited substance unwittingly, without deliberately intending to enhance his performance as an athlete, as he had taken it solely to control his epilepsy.
5. By letter of 8 November 2004 the IPC Management Committee informed the athlete that it followed the recommendation of the IPC Anti-Doping Subcommittee. According to article 9.9

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of the IPC Code, Mr Dubin had the right to appeal this decision within 7 days and to request the analysis of the B sample.

6. By letter of 15 November 2004 Mr Dubin appealed the IPC Anti-Doping Subcommittee's decision and requested the analysis of the B sample. On the same day, the IPC published a press release announcing that Mr Dubin violated an anti-doping rule in accordance with the IPC Code and was thus retrospectively disqualified from the men's shot put event at the Athens 2004 Paralympic Games.
7. On 22 November 2004 the IPC informed the General Secretary of the APC that the B sample analysis confirmed the result of the A sample; both samples contained the prohibited substance Propylhexedrine.
8. On 26 January 2005 the IPC Legal Committee conducted an internal appeal hearing in presence of the athlete. It issued the following decision:
9. **"Comment**
In 2003 Propylhexedrine was expressly mentioned in the S1 list of substances. In 2004 it was not.

Following the results of the Athlete's test, the Athens Laboratory (Costas Georgakopoulos) wrote to the WADA's Director of Sciences, Oliver Rabin, to ask whether Propylhexedrine was caught by the last sentence of S1 of the WADC Prohibited List as a substance 'with similar chemical structure and similar pharmacological effect(s)'.

On 1 October 2004 Mr Rabin replied to confirm that Propylhexedrine 'is a stimulant considered to be a prohibited substance on the 2004 List of Prohibited Substances (under the wording of substances with similar chemical structure or similar pharmacological effect)'. He went on to say '[t]he substance is clearly indicated as prohibited substance by several anti-doping agencies and international federations'.

Recommendation

After listening to representations made by the Athlete, the NPC's Legal Advisor and the NPC Medical Officer, the IPC Legal Committee unanimously is of the view that the sanction imposed on 8 November 2004 was correct and recommends that the Appeal be dismissed."

10. By letter of 2 February 2005 the IPC Management Committee informed the General Secretary of the APC that it upheld the disqualification imposed on Mr Dubin on 8 November 2004.

III. PROCEDURE BEFORE THE CAS

1. On 21 February 2005 Mr Dubin, the Austrian Paralympic Committee and the Austrian Anti-Doping Committee (the "Appellants") filed an appeal with the Court of Arbitration for Sport ("CAS") in which they requested the CAS to:

"1) [Allow] the statement of appeal and [cancel] the appealed decisions.

2) [Declare] that there is no doping offence committed by the Appellant as opposed the appealed decision.

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3) *[Declare] the Athletes rights as a member of the APC and the rights to participate in further sports competitions of any kind are restored to the Appellant.*

4) *[Declare], that the Respondent shall indemnify and hold harmless the Appellants for all costs and fees out or in connection with the appealed decisions."*

2. On 17 March 2005 the CAS Court Office confirmed that the procedure would be conducted in English and not in German as requested by the Appellants.
3. On 23 March 2005 the Appellants' filed their Appeal brief with CAS.
4. By letter dated 12 April 2005 the CAS Court Office informed the parties of the composition of the Panel.
5. On 29 April 2005 the IPC filed its answer in accordance with Article R55 of the Code of Sports-related Arbitration (the "CAS Code").
6. Both parties signed the Order of Procedure.
7. A hearing was held in Lausanne on 9 December 2005 (the "CAS Hearing"). The Appellants were represented by Dr Demel. The Respondent was represented by Ms Sarah Herbert.
8. During the CAS Hearing the following witnesses were heard: Dr Rainer Popovic for the Appellants, Mr Andy Parkinson and Dr Olivier Rabin for the Respondent.
9. At the conclusion of the hearing, the parties, after making submissions in support of their respective requests for relief, confirmed that they had no objections regarding their right to be heard and to be treated equally in the arbitration proceedings.

IV THE PARTIES' ARGUMENTS

The Appellants

1. The Appellants asserted that the IPC did not respect article 7.2 of the World Anti-Doping Agency Code (the "WADA Code") by denying the athlete's right to promptly request the analysis of the B sample.
2. Furthermore, the Appellant's stated that the IPC did not respect its own anti-doping code by being late in notifying the decision of the IPC Anti-doping Subcommittee to the athlete and by publishing a press release containing details of Mr Dubin's situation before the B sample had been analysed.
3. Finally the Appellants declared that their arguments had not been taken into consideration by the IPC. The arguments submitted by the Appellants can be summarised as follows:
4. Propylhexedrine was explicitly mentioned on the 2003 IOC Prohibited List of Substances and Methods Prohibited ("IOC Prohibited List").
5. Propylhexedrine did not appear on the 2004 WADA Prohibited List (the "Prohibited List"), and as no reasons had been given by WADA as to why this substance was no longer listed, the

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Appellants presumed *“that the validity of the “forbidden substance” is not in force any more”*.

6. Mr Dubin admitted that he took the drug Maliasin twice a day for a couple of years as an anti-epileptic medicine. Moreover he stated that since 2003 he has kept medical evidence regarding his diseases with him at all times.
7. In 2004 Mr Dubin informed the APC that he still needed to use this drug but he did not apply for a TUE, as the 2004 Prohibited List did not list Maliasin as a prohibited substance, and also because his medical doctor, Dr Rainer Popovic, had declared that Maliasin contained only the substance Barbexaclone, an artificial molecule, which was not mentioned on the List either and which was *“far away to be considered having something similar with Propylhexedrine”*.
8. The Appellants questioned why the laboratory in Athens had analysed Mr Dubin’s sample for the presence of Propylhexedrine since Dr Costas Georgakopoulos seemed to be unsure about the status of this substance, and had to request the opinion of Dr Olivier Rabin of WADA in order to be sure that it was a prohibited substance.
9. Finally, the Appellants argued that Propylhexedrine is not listed in the Austrian Code of prohibited substances under the substances related to Ephedrine, which could be pharmacologically-speaking similar to Barbexaclone and to its metabolites.
10. The Appellants concluded with the general principle of law *“ultra posse nemo tenetur”* to declare that no anti-doping rule violation had been committed by Mr Dubin.

The Respondent

11. The Respondent requests the Panel to uphold its decision that Mr Dubin committed an anti-doping rule violation and to declare that the *“correct procedure was followed and the decision made is justifiable”*.

In support of its position, the Respondent argues – *inter alia* – that:

- a) The IPC asserted that the substance, Propylhexedrine, found in Mr Dubin’s urine is a prohibited substance, which was expressly mentioned in the 2003 Prohibited List and will be listed again as a stimulant in the next version of the list to be published in 2006. Nevertheless, in the Respondent’s view, Propylhexedrine remained a prohibited stimulant under the section 1 of the 2004 Prohibited List, not under the examples of stimulants but at the end of the stimulants’ paragraph under the wording *“other substances with similar chemical structure or similar pharmacological effect(s)”*. According to the statement of the Respondent’s witness, Dr Rabin, the chemical structure of Propylhexedrine is related to ephedrine and amphetamine, two substances listed as examples of prohibited stimulants in the Prohibited List.
- b) Furthermore, the IPC stated that the accredited laboratories are not limited to testing only for stimulants that are expressly named on the list, but that they can test much more widely than the list of examples. This means that generally there are two categories of substances in the WADA Prohibited List; on one hand the expressly and completely listed substances, which are defined by “closed lists” and all the others, which represent the “open lists”. In the case of the latter, the list of examples is not exhaustive meaning that any substance, which is similar in its chemical structure and pharmacological effects, is also prohibited. In the IPC’s view,

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Propylhexedrine is included in the "similar substances". The IPC declared that Mr Dubin's urine sample was analysed by the accredited laboratory in Athens in the same way as all other samples collected during the Athens 2004 Olympic and Paralympic Games were analysed.

- c) The IPC explained in its submissions the relationship between the WADA Monitoring Program (the "Monitoring Program") and the Prohibited List. According to Dr Rabin, WADA Science Director, the Monitoring Program has been created to allow WADA to monitor the potential use or abuse as a doping agent of some substances. When WADA transfers a substance to the Monitoring Program it means that the substance is no longer prohibited, as there has been a change in status. This is clearly explained in the WADA Code and in the explanatory note which accompanies every release of a new list. The fact that Propylhexedrine had never been moved on to the Monitoring Program means that the status of this substance has never changed, even in 2004, when it was no longer specified on the Prohibited List. The IPC also added that there is no obligation in its rules to indicate to the athletes or national paralympic committees the changes or variations made to the Prohibited List.
- d) Furthermore, regarding Mr Dubin's failure to apply for a TUE for his medicine, Maliasin, the Respondent did not support the Appellants' argument that it was not on the Austrian Reference List. The fact that Mr Dubin's doctor, Mr Popovic apparently told him that Maliasin did not contain the prohibited substance Propylhexedrine but only Barbexalone, was not accepted by the Respondent as a defence to an anti-doping rule violation. In the Respondent's view Mr Dubin cannot rely on the Austrian Reference List, because it is not relevant to this case. Paralympic athletes competing at the Paralympic Games must adhere to the WADA Prohibited List in accordance with the IPC Code. The IPC also stated that a TUE could not be granted retrospectively in this case, as it is *"the responsibility of the Athlete to ensure that any TUE has been applied for and granted before the substance is used"*.
- e) According to the IPC, as the strict liability rule applies in doping cases, it is Mr Dubin's responsibility to ensure that no prohibited substance enters his body. This means that if the athlete had any doubts, he should have made appropriate enquiries before taking the substance. Even if the IPC accepted that the substance was neither taken in order to enhance performance, nor intentionally, these arguments *"were irrelevant when considering the question of whether an anti-doping rule violation has occurred"*. The Respondent added that all the athletes that participated in the Athens 2004 Paralympic Games had to sign an eligibility form, in which it was stated that the Athletes were aware of the *"non taking any substance or using processes forbidden by the IPC Anti-Doping Code"*. The Respondent's witness, Mr Andrew Parkinson, IPC Scientific and Medical Director, confirmed during the Hearing that this eligibility form refers implicitly to the WADA Code through the application of article 5.1 of the IPC Code.
- f) Finally the IPC asserted that Mr Dubin's case was handled in accordance with the IPC Code. It therefore denied that *"there were any procedural or substantive irregularities invalidating its findings that Mr Dubin committed an anti-doping rule violation. The correct procedure was followed and the decision made is justifiable"*.

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V IN LAW

Jurisdiction

1. According to article R27 of the CAS Code, the Code applies whenever the parties have agreed to refer a sports-related dispute to the CAS. Such disputes can arise from the statutes or regulations of a federation containing an arbitration clause, a contract containing an arbitration clause, or be the subject of a later arbitration agreement. In the present case, the jurisdiction of the CAS is based on article 14.2 of the IPC Code and 13.2.1 of the WADA Code. Moreover the parties have signed the order of procedure sent to them by the CAS Court Office.

Scope of Panel's review

2. Article 57 of the Code provides that the Panel shall have full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance.

Admissibility

3. The Appellants' statement of appeal was filed within the deadline set down in article 14.4 of the IPC Code and in article R49 of the Code. Further the requested Court Office fee of CHF 500.-- was paid in accordance to article R65.2 of the Code within the set deadline. Therefore the appellants complied with the requirements of article R48 of the Code.

Applicable Law

4. Pursuant to article R58 of the Code, the Panel is required to 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”.

The Panel notes that in this case the IPC rules to be applied are based on the WADA Code.

5. The main IPC rules to be taken into consideration in this arbitration are the following:

“6.1.5 An application for a TUE will not be considered for retroactive approval except in cases where :
6.1.5.1 Emergency treatment of an acute medical condition was necessary.
6.1.5.2 There was insufficient time for an applicant to submit, or a TUEC to consider, an application prior to Doping Control.

9.5 Consequences of an A Sample Result

The A Sample Result is regarded as definitive and the B Sample analysis shall only be undertaken at the request of the Athlete as part of an Internal Appeal.

9.9 Internal Appeal

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The decision taken as a result of the Expedited Hearing (Article 9.8), including any provisional suspension, may be appealed by the Athlete following the process of Internal Appeal. The Athlete has the right to request the analysis of the B Sample as part of such Internal Appeal, or failing such request, the B Sample analysis will be deemed waived. Waiving the B Sample analysis should in no way be interpreted as an acceptance of any anti-doping rule violation but the fact that the B Sample analysis will confirm those Results obtained from the A Sample. [...]

11 Automatic Disqualification of Individual Results

A violation of these Anti-Doping Rules in connection with an In-Competition test automatically leads to Disqualification of the individual results obtained in that Event with all resulting Consequences, including forfeit of any medals, points and prizes.

12.3 Imposition of ineligibility for Specified Substances

The Prohibited List may identify specified substances which are particularly susceptible to unintentional anti-doping rule violations because their general availability in medicinal products or which are less likely to be successfully abused as doping agents. Where an athlete can establish that the Use of such a specified substance was not intended to enhance sport performance, the period of Ineligibility found in Article 12.2 shall be replaced with the following :

<u>First violation:</u>	<i>At a minimum: a warning and reprimand and no period of Ineligibility from future Competitions</i>
	<i>At a maximum: one (1) year Ineligibility</i>
<u>Second violation:</u>	<i>Two (2) years Ineligibility</i>
<u>Third violation:</u>	<i>Lifetime Ineligibility</i>

However, the Athlete or other Person shall have the opportunity in each case, before a period of Ineligibility is imposed, to establish the basis for eliminating or reducing (in the case of a second or third violation) this sanction as provided in Article 12.5.

12.5.1 No Fault or Negligence.

If the Athlete establishes in an individual case involving an anti-doping rule violation under Article 3.1 (presence of Prohibited Substance or its Metabolites or Markers) or under Article 3.2 (Use of a Prohibited Substance or Prohibited Method) that he or she bears No Fault or Negligence for the violation, the otherwise applicable period of Ineligibility shall be eliminated. When a Prohibited Substance or its Markers or Metabolites is detected in an Athlete's Specimen in violation of Article 3.1 (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 Articles 12.2, 12.3 and 12.6.

Therapeutic Use Exemption (TUE): *An exemption to Use, for therapeutic purposes, substances on the WADC Prohibited List.*

No Fault or Negligence: *The Athlete's establishing that he or she did not know or suspect, and could not reasonably have known or suspected even with the exercise of the utmost caution, that he or she had used or been administered the Prohibited Substance or prohibited Method.*

6. According to article 5 of the IPC Code, the IPC adopted the Prohibited List, which is published in the WADA Code.

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7. In the present case the decision taken by the Respondent on 2 February 2005 forms the very subject of the matter in dispute. It is based on the application of the rules and regulations of the Respondent, specifically, the IPC Code, which, in turn, is based on the WADA Code. Subsidiarily, the Panel will refer to German law, as the IPC is domiciled in Germany, or take into account the general principles of law to settle the matter in dispute in accordance with article R58 of the Code.

VI THE MERITS ON THE DISPUTE

The procedural issue

1. According to the above-mentioned facts, it appears to the Panel that the IPC followed its procedural rules in order to issue the challenged decision. Nevertheless, the Panel notes that these rules are not in conformity with the WADA Code, in particular regarding articles 7.2 of the WADA Code. Pursuant to this article, the Athlete has the right to promptly request the analysis of the B-sample after notification of the initial review by the international federation. Under the IPC Rules, the A-sample result is definitive and "*the B-sample analysis shall only be undertaken at the request of the Athlete as part of the Internal Appeal*" (art. 9.5 IPC Code). Furthermore, the IPC first issues a decision during the Expedited Hearing and before the eventual request for the analysis of the B-sample. *In casu*, further to the Expedited Hearing, the IPC made a press release stating that Mr Dubin committed an anti-doping rule violation. At that time, the B-sample had not been analysed.
2. The Panel is of the view that such proceedings, as mentioned in the IPC Code, endanger the reputation and name of the Athletes, because the latter have a fundamental right to ensure their defence on full results. This right is clearly restricted under the IPC Rules. However as the B sample was analysed after a first decision and it confirmed the A sample's adverse analytical finding regarding Propylhexedrine this procedural mistake is in the case at stake "healed".

The Therapeutic Use Exemption (TUE)

3. For many years, Mr Dubin has needed to take an anti-epileptic drug named Maliasin. According to his physician, Dr Popovic, Mr Dubin would suffer serious health issues if he was unable to take this medicine.
4. It appears from the facts of this matter that Mr Dubin did not know that he had to apply for a TUE in order to take the drug Maliasin to participate at the Athens 2004 Paralympic Games. Mr Dubin had asked his doctor, Dr Popovic, whether he needed such a TUE for these Games or not, as he used to take his medical prescriptions with him in the former years (IOC rules); he further was granted a TUE starting from 1 January 2005. It appears in the Appellants' submissions and it has been confirmed by Dr Popovic at the hearing, that his own doctor did not know that Propylhexedrine was still a prohibited substance. He thought that the fact that it was not on the 2004 WADA Prohibited List, as it had expressly been on the 2003 IOC List, meant that the athlete did not need a TUE for this substance. Moreover, Dr Popovic told Mr Dubin that the medicine, Maliasin, contained only Barbexalone, which was not a prohibited substance, and not Propylhexedrine.
5. The Panel notes that article 6.1.5 of the IPC Code provides the possibility for an International Federation to grant a TUE retroactively. According to Mr Parkinson, this concerns only very

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acute cases, when it is really question of an emergency. To his knowledge, the IPC has never granted a retroactive TUE.

6. The Panel notes that the conditions set-out in this article 6.1.5 IPC Code are unfortunately not fulfilled in the case on hand.

The prohibited substance: Propylhexedrine

7. According to Dr Rabin's statement, and in contrast to Dr Popovic's view, the drug Maliasin contains Barbexaclone, which is a mixture of two substances: Phenylbarbexaclone and Propylhexedrine. Given the explanations of Dr Rabin, the Panel notes that Propylhexedrine is chemically and pharmacologically related to examples of substances listed under the stimulants in the 2004 Prohibited List. In Dr Rabin's view, the substance is very similar to the amphetamine examples. Furthermore, this drug is capable of enhancing performance in athletes, as it has, like many other stimulants, two levels of action regarding the pharmacological effects, one being an effect of euphoria at the level of the central nervous system and another being effects on the cardiovascular system including hypertension and a direct effect on the heart rate. Therefore, it can present health-risks to athletes who take it, as it interferes with the cardiovascular system.
8. The substance Propylhexedrine was expressly mentioned on the 2003 IOC Prohibited List. In 2004, WADA published its first Prohibited List, without listing Propylhexedrine as a specified substance. During the hearing, Dr Rabin explained that this substance has always been considered as prohibited, even if it had been removed as a named example from the Prohibited List. WADA had no intention of changing the status of the drug, had it wished to do so, it would have moved the drug to the Monitoring Program. On the 2006 Prohibited List Propylhexedrine is listed again as an example of a stimulant (see section S6) which is mainly due to the present case.

No Fault or Negligence

9. Article 12.5.1 of the IPC Code provides that the athlete must establish that he did not ingest the prohibited substance, neither intentionally nor with any negligence from his part. As stated above, the Panel understands why Mr Dubin did not apply for a TUE, since his medical doctor had advised him that the prescribed Maliasin did not contain any substance being on the Prohibited List, and therefore a TUE was not necessary. The Panel's view is that the athlete should not be expected to research the issue further than this as a medical doctor should be able to accurately understand and interpret the Prohibited List.
10. For the Panel it is clear that analysed Propylhexedrine was present in Mr. Dubin's urine sample from the medicament Maliasin and he therefore did not take such substance for performance enhancing. The Panel therefore relieves Mr. Dubin from every suspect of fault or negligence. Supposed that Dr. Popovic would have given the right information that Propylhexedrine is present in the medicament Maliasin and such substance was on the Prohibited List 2004 Mr. Dubin would have requested and received a TUE for the year 2004 as he received it for the year 2005, without any exemption.

The Panel's conclusions

11. In view of the above, it is proven to the Panel that the status of Propylhexedrine had never changed, which means that it was a prohibited substance in 2004 despite WADA's missing

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information regarding the changes in the examples listed as stimulants. However, the Panel wishes to make clear that it is convinced that Mr Dubin did not take the prohibited substance in order to enhance his performance, but only as a treatment necessary to control his epilepsy and he would have got without any problems a TUE for 2004.

12. Furthermore, the Panel notes that unclear anti-doping rules can lead to dramatic consequences for athletes. As the medical and chemical terminology within the Prohibited List is often very complicated, even for scientists, it would be helpful, in particular for the Athletes who are the main parties concerned by the Prohibited Lists, to clarify the proceedings. In the present matter, the substance Propylhexedrine was listed on the 2003 IOC Prohibited List, but was then removed in 2004 without any explanation by WADA. To the Panel it is obvious that such changes in the Prohibited List without explanations are sending the wrong signals out to the athlete. As not even medical doctors or the WADA accredited laboratory in Athens were able to decide by themselves if Propylhexedrine was still a prohibited substance, this deduction is certainly not able for an athlete in the present case that a substance is no longer named on the Prohibited List and has not been moved to the Monitoring Program.
13. In light of the above, it appears that Mr Dubin was a victim of the missing communication within the Anti-doping system and that he unfortunately must assume the consequences of a positive test result. It appears that neither Mr Dubin nor his doctor were fully aware of the situation, due to the ambiguous listing/de-listing of substances on the 2003 and 2004 Prohibited Lists.
14. Therefore, the Panel concludes that whilst there was no fault or negligence on the part of Mr Dubin, the fact that a prohibited substance was found in his urine sample means that he has committed a doping violation and in accordance to art. 11 IPC Code Mr. Dubin is disqualified for the Shot Put F36 Men's event at the Athens 2004 Paralympic Games and he has to return his silver medal to IPC. As, however, Mr Dubin has committed no fault or negligence and, as a consequence thereof, no period of ineligibility has been imposed upon him, the warning and the reprimand that he has received are not justified in these particular circumstances; therefore, the warning and the reprimand are cancelled and no such sanctions will be listed in Mr Dubin's file.

VII COSTS

1. Pursuant to article R65.1 of the Code, disciplinary matters of an international nature shall be free, except for the Court Office fee to be paid by the Appellant and retained by the CAS.
2. Article 65.3 of the Code provides that the Panel shall decide which party shall bear the costs of the parties, witnesses, experts and interpreters, taking into account the outcome of the proceedings, as well the conduct and financial resources of the parties.
3. Having taken into account the nature of the matter, the conduct of the parties and their financial resources, the Panel is of the view that it is reasonable for each party to bear their own costs and expenses incurred in connection with this appeal arbitration procedure.
4. However, in the light of the particular circumstances of the present case, namely the invidious and unfortunate situation in which Mr Dubin finds himself as described above, with which the

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Panel sympathises, the Panel orders the IPC to refund the CAS Court Office fee of CHF 500 to the Appellants.

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ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The Appeal filed on 21 February 2005 by Mr Dubin, the Austrian Paralympic Committee and the Austrian Anti-Doping Committee against the decision issued on 2 February 2005 by which the appeal against the Decision of 8 November 2004 was dismissed is partially admitted.
2. The Decision of the IPC Management Committee of 2 February 2005 is corrected in the sense that the warning and the reprimand imposed on the appellant Wolfgang Dubin are fully cancelled.
3. The present arbitration procedure is rendered without costs, except for the CAS Court Office fee of CHF 500 (five hundred Swiss Francs) already paid by the Appellants which is retained by the CAS.
4. The Respondent shall refund the CAS Court Office fee of CHF 500 (five hundred Swiss Francs) to the Appellants.
5. Each party shall bear its own costs.

Done in Lausanne, 8 February 2006

THE COURT OF ARBITRATION FOR SPORT

President of the Panel



Bernhard Welten