
National Anti-Doping Disciplinary Panel.

Case Ref: NADDP 20201124

Anti-Doping Commission (Malta)

-vs-

**Alwyn Cassar - ID No. 457400L
(Member of the Malta Drug Free Powerlifting
Association)**

Case No.: 1TSTALWCA-19

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

Before the commencement of these proceedings, the members of the Panel declared that they are not subject to any circumstance or conflict that could negatively affect their impartiality in the case under review.

The hearing of the case was conducted through a visual telecommunication platform.

1. Preliminaries

Considered the Request by the National Anti-Doping Commission (Ref. No. 1TSTALWCA-19) of the 4th November 2019 to the Chairperson of the Panel to schedule a sitting for the hearing of a case concerning the alleged breach by Alwyn Cassar of the Anti-doping Regulations (Legal Notice 17 of of 2015, Sports Act, Chapter 455, Laws of Malta).

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

- i. A copy of the Doping Control Officer Report Form and documents relating to the participation of Alwyn Cassar dated 24/2/2019.
- ii. A copy of the Analysis Report dated 21/5/2019.
- iii. Letter of Notification by NADO to Alwyn Cassar of a possible violation of the Anti-Doping Rules dated 28/5/2019.
- iv. The letter by NADO to the National Association/Federation of the alleged breach by Alwyn Cassar dated 28/5/2019.

- v. The Request for a provisional hearing dated 30/5/2019.
- vi. The email confirming the provisional suspension by the Malta Drug Free Powerlifting Association dated 5/6/2019.
- vii. The appeal decision of NADAP lodged by Alwyn Cassar and dated 18/10/2019 on the application of Therapeutic Use Exemption following a decision of the Therapeutic Use Exemption Committee dated 17/6/2019 concluding that that the athlete's application for a Therapeutic Use Exemption was not granted.
- viii. The letter addressed to Alwyn Cassar on the conclusions of his request for a retroactive application of the Therapeutic Use Exemption dated 30/10/2019.
- ix. The request to the Panel to schedule a hearing dated 4/11/2019.
- x. Various correspondence relevant to the case submitted by both parties.

Took note of the Notice issued by the Panel to Alwyn Cassar to appear before the Panel on the 17th February 2019, 20th May 2020 and 21st October 2020 requesting the athlete to answer the accusation of the presence of a prohibited substance or its metabolites or markers (presence of Testosterone or Testosterone Prohormones, classified under S1.1.b as an anabolic agent in the 2019 WADA Prohibited List) detected in his urine sample collected on the 24th February 2019 during the Team Championships at Birgu Youth Center Complex. The said accusation brought forward was based on Article 3(2)(a) and (b) of L.N 17 of 2015 of the Laws of Malta:

" (2) The following constitute anti-doping rule violations:

- . (a) the presence of a prohibited substance or its metabolites or markers in an athlete's sample:*
- . (b) the use or attempted use by an athlete of a prohibited substance or a prohibited method:"*

Copy of the Notice of hearing was also forwarded to the Anti-Doping Commission, the Malta Drug Free Powerlifting Association and Malta Sports Council.

Took note of the submissions and evidence submitted by the athlete including his email dated 24th October 2020.

2. Merits:

2.1 When the case was called on the 3rd of November 2020 appeared the athlete Alwyn Cassar and Dr Dr. Christina Borg DeBono, Dr. Lucienne Attard and Ignatius

Zammit on behalf of the NADO. Both parties submitted their considerations on the adverse analytical finding relating to a non-specified substance.

2.2 During the hearing Alwyn Cassar declared that he is not contesting the adverse analytical finding but rebutting that all information and all evidence relating to what was found in the test was therapeutic and was prescribed by his endocrinologist Prof. Stephen Fava. He also explains that his quality of life would have been very hindered if he did not take this treatment and emphasised that the treatment did not give him any advantage whatsoever on anyone else but was needed for his wellbeing and not for any performance benefits. He also requested that his name is not to be made public since this could have repercussions on his personal life.

2.3 NADO submitted that Mr Cassar had received the provisional suspension from the Association and had requested a Provisional Hearing and the conclusion of it was that he was given the provisional suspension. During this time, the athlete was contesting that the testosterone was being used for therapeutical use and thus on the basis of Article 5(9) Mr Cassar applied for a retroactive application for a TUE but this was rejected by the Commission. Mr Cassar appealed and the NADAP confirmed the decision of the Commission. Furthermore, NADO requested the Panel to apply the parameters of the regulation and inflict a four (4) year ban since this is classified as a non-specified substance and insisted that the decisions should be made public. In respect of the application of the sanction NADO submitted that the suspension should apply retroactively to the date when the provisional suspension was confirmed.

3. Considerations:

3.1 Taking into consideration the non-contestation on part of the athlete on the adverse analytical finding, the Panel can firmly conclude that the facts of the case have been proven.

3.2 Furthermore, the Panel is of the opinion that the prescription of testosterone to the athlete was justified for the medical reasons outlined both by the athlete's physician and also by the independent medical consultant appointed by the Panel. However, it appears that the consultant who prescribed this medication to the athlete was not fully conversant with WADA regulations related to the correct process as regards TUE request for the use of this medication and the investigations required to support the use of this medication. Moreover, the Panel embraces the considerations and conclusions found in the decision of the NADAP dated 18th October 2019. Finally, the Panel outlines the words of the law whereby *"it is each athlete's personal duty to ensure that no prohibited substance enters his or her body. Athletes are responsible for any prohibited substance or its metabolites or markers found to be present in their samples."* (Article 3(2)(a)(i) and thus it is within the athlete's responsibility to ensure to abide by WADA Regulations.

3.3 Furthermore, based on the evidence and facts of the case which were not contested the Panel can conclude that the accusations have been proven and thus

Alwyn Cassar has breached the Anti-Doping Regulations, 2015 [Art. 3(2)(a)] and (Art. 2.1) as the presence of a prohibited substance or its metabolites or markers has been found in the athlete's urine sample A that had been collected from him on the 24th February 2019.

3.4 The Panel shall now examine the athlete's request not to disclose his identity and the opposition registered by NADO. Reference is being made to Article 11(26) and Article 15(6) of LN 17 of 2015 which state as follows:

Art 11(26) "A mandatory part of each sanction shall include automatic publication, as provided in regulation 15(6)."

Art 15(6) "The identity of any athlete or other person who is asserted by the ADC or a national association to have committed an anti-doping rule violation, may be publicly disclosed by the ADC or the national association only after notice has been provided to the athlete or other person in accordance with regulations 8(1)(c), (k), (n), (o), and (p), and to the applicable anti-doping organisations in accordance with regulation 15(3)."

The Panel opines that the requisite of the law is that it is mandatory that the sanction is made public and this in view of Article 11(26) but such article is to be read in conjunction with Article 15(6) whereby it stipulates that the identity of the athlete "may be publicly disclosed by the ADC....". Thus, on the basis that the disclosure of the athlete's identity does not result as a mandatory requisite but according to law it "may" be disclosed, the Panel feels that the contents of this case are of sensitive and personal nature and therefore there are justifying reasons to request that the identity of the athlete is not disclosed. This does not preclude the disclosure of the decision but in case of disclosure any reference to the name, surname and identity of the athlete are mentioned the decision shall read "the athlete".

4. Decision:

Therefore on the basis of the above considerations, the National Anti-Doping Disciplinary Panel rules that:

4.1 Alwyn Cassar has breached the Anti-Doping Regulations, 2015 [Art. 3(2)(a)] and WADA Code Art. 2.1, whereby the presence of a prohibited substance or its metabolites or markers has been found in the athlete's urine sample A collected from him on the 24th February 2019.

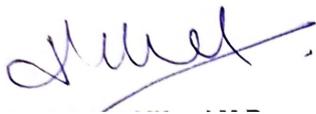
4.2 And therefore the National Anti-Doping Disciplinary Panel as provided under Art 11 (2) (a) of the Anti Doping Regulations, 2015 and Art. 10.2.1 of the WADA Code is imposing on the athlete Alwyn Cassar a suspension of ineligibility from any sports activities for a period of four (4) years commencing from the date of his provisional suspension.

4.3 As per paragraph 3.4 supra, the Panel requests that the details of the athlete are not disclosed to the public and any disclosure of the decision shall not include the name, surname and identity of the athlete.



Dr. Maria Azzopardi B.A. LL.D. LL.M (Sports Law)

Chairperson



Prof Janet Mifsud M.D.

Member



Dr. Abigail Gauci B.A. LL.D. LL.M (Int. Sports Law)

Member

This 24th day of November 2020.