

English translation: disciplinary council judgement David Kopp case

DISCIPLINARY COUNCIL

Medically Justified Sports Practice

Roll number: 2008 - 113

Concerning: KOPP David, born in Bonn (Germany) on 5 January 1979,
residing at D - 51063 Köln (Germany), Deutz-Mülheimerstrasse 262A,

Accused of: A violation of Article 24 of the 13 July 2007 Flemish Parliament Act on medically and ethically justified sports practice, in Izegem on 11 September 2008, whereby the athlete has not refrained at all times from doping practices as referred to in Article 3 of the aforementioned Flemish Parliament Act since at a cycling competition, in which he participated as an athlete, the presence was established of a prohibited substance or its metabolite or marker in the athlete's sample (Article 3, 1° of the aforementioned Flemish Parliament Act), in particular benzoylecgonine, which is a metabolite of cocaine.

Having regard to the 13 July 2007 Flemish Parliament Act on medically and ethically justified sports practice, amended by the 21 November 2008 Flemish Parliament Act amending the 13 July 2007 Flemish Parliament Act on medically justified sports practice and the 24 July 1996 Flemish Parliament Act establishing the legal position of non-professional athletes;

Having regard to the 20 June 2008 Flemish Government Decree implementing the 13 July 2007 Flemish Parliament Act on medically and ethically justified sports practice, as amended by the 19 December 2008 Flemish Government Decree amending the 31 May 2002 Flemish Government Decree establishing the accreditation and subsidisation criteria applicable to Flemish sports federations, the umbrella organisation and recreational sports organisations and the 20 June 2008 Flemish Government Decree implementing the 13 July 2007 Flemish Parliament Act on medically justified sports practice;

Having regard to the dossier that was compiled by the administration of the Flemish ministry responsible for medically justified sports practice;

Having regard to the contested decision of 24 November 2009 of the Disciplinary Committee, whereby:

- the athlete was declared ineligible for a one-year period, which implies that he is denied participation in any competition as an athlete or in any other capacity,
- it was ruled that the period of ineligibility starts on 1 January 2009 and ends on 31 December 2009,
- an administrative fine of 500 EUR was imposed on the athlete,
- the athlete was sentenced to a fine of 370 EUR, corresponding to a part of the procedural costs;

Having regard to the higher appeal, lodged in writing on 10 December 2009 by the World Anti-Doping Agency (WADA);

The World Anti-Doping Agency (WADA), having been duly summoned, did not appear at the session of 26 January 2010, as a result of which the case was handled in absentia.

Having regard to the oral explanation of the case by the chairman;

Having heard the athlete's means of defence, prepared by Mr. Michael Lehner, lawyer in Heidelberg (Germany) and by himself;

01. The appeal is admissible since it has been lodged in due form and within the prescribed time-limit.

02. The facts which the athlete is charged with date back to the period during which the 13 July 2007 Flemish Parliament Act on medically justified sports practice was effective and the aforementioned amendments (by the stated 21 November 2008 Flemish Parliament Act) had not yet been introduced; likewise the above mentioned 20 June 2008 Flemish Government Decree implementing the 13 July 2007 Flemish Parliament Act on medically justified sports practice had at that time not been amended yet (by the stated 19 December 2008 Decree).

It is appropriate to update the facts which the athlete is charged with to meet the new amendments specified above, whereby it is also established that these new definitions have the same facts in mind as those that form the basis of the claim and the athlete has thus had the opportunity to defend himself;

However, since the sanctions which were laid down at the time of the current judgment are different from those which were defined at the time of the facts, the least serious sanction must be applied if the violation which the athlete is charged with would be accepted according to both the definition at the time of the facts and the current definition.

03. After renewed investigation and on the basis of the dossier documents, the violation by the athlete is still proved according to both the definition at the time of the facts and the current definition.

The athlete's assertion that he was not aware of the prohibited substance entering his body is completely incredible and not in any way made plausible.

The Disciplinary Council is of the opinion that the athlete is fully and personally accountable to the extent that the sanction to be imposed, in case of a first proven violation such as this one, consists of a two-year period of ineligibility; the athlete does neither indicate nor offer to demonstrate anything which could possibly make him entitled to a reduction or a suspension of the period of ineligibility that is provided for in the regulations.

04. In this respect it must be stated that the disciplinary procedure has suffered a considerable delay which cannot be attributed to the athlete; for this reason the period of ineligibility must start at an earlier date than that of the current judgement, namely on the date of the sampling, especially now that it turns out that the athlete had actually already been temporarily suspended by his own team at the time.

05. The administrative fine imposed by the Disciplinary Committee is legal and adjusted to the nature of the proven violation and the person of the sportsperson so that it must be confirmed; in this way the athlete is encouraged to refrain from such practices in the future.

06. The Disciplinary Committee has, on justified grounds, estimated the share in the costs for the proceedings in first instance, which is at the expense of the athlete, at 370 EUR.

07. It is appropriate to sentence the athlete to paying the costs of the appeal procedure and to set the amount for this at 25 EUR.

**ON THESE GROUNDS,
THE DISCIPLINARY COUNCIL**

Rendering judgment in absentia of the World Anti-Doping Agency (WADA) and for the remainder in a defended action and by majority of votes,

Admits the appeal,

Amends the appealed decision and rendering judgment again,

Decides that the violation committed by the athlete is proven, both according to the definition at the time of the facts and to the current definition.

Declares the athlete ineligible for a two-year period, which means that he is prohibited during that period to participate in any competition as an athlete as well as in any other capacity, whereby it must be stated that this sanction does not exclude the athlete from practising sport for mere recreational purposes,

Sentences the athlete to pay an administrative fine of 500 EUR,

Notes 11 September 2008 as the start date of this period of ineligibility and 10 September 2010 as the end date,

Estimates the athlete's share in the costs of the proceedings in first instance at 370 EUR and sentences him to pay this share as well as the costs of the appeal for an amount of 25 EUR.