

DECISION
№ 5
Sofia, 11.12.2013

The Bulgarian Sport Arbitration (BSA) with the Bulgarian Olympic Committee (BOC), at an open hearing on 28.11.2013, in the following panel of arbiters:

CHAIRPERSON: Margarita ZLATAREVA
MEMBERS: Trifon BALEVSKI
Bozhidar VASSILEV

and secretary Kamelia Ignatova, having examined the report of the Chairperson Margarita ZLATAREVA pursuant to arbitration case №5 with the registry of BSA for 2013, in order to rule its decision took the following into consideration:

Proceedings are pursuant to Article 7, paragraph 1, item 3 of the BSA Rules for Resolution of Arguments (RRA).

Proceedings are regarding an appeal of the World Anti-Doping Agency (WADA) against Decision № 06/33/2013 of 20.05.2013 on disciplinary file № 06/33/2013 of the Disciplinary Commission with the Bulgarian Olympic Committee, whereby Alex Zlatomirov IVANOV, snowboard athlete, member of Sports Club Monten, has been imposed a sanction of "period of ineligibility of 6 (six) months" starting on 30.03.2013 due to doping violations found during testing on 30.03.2013.

At the time of testing the applicable regulation is the current Regulations on Doping Control in Training and Competition Activities of 2011 (promulgated SG 35/2011), in force as of 03.05.2011, hereinafter referred to as RDCTCA, and the criterion for consequences of any prohibited substance found in the Urine sample of the athlete is the 2013 List of Prohibited Substances of the World Anti-Doping Agency (WADA).

I. As regards the competence of the Bulgarian Sport Arbitration

According to Article 60, paragraph 5 of RDCTCA the Bulgarian Sport Arbitration with BOC is competent, in its capacity as an appellate instance, to hear appeals against decisions of the Disciplinary Commission with BOC. This competence is pursuant to a by-law issued by the Council of Ministers on the grounds of Article 45, paragraph 3 of the Law on the Physical Education and Sports (LPES). The Regulations on Doping Control in Training and Competition Activities is mandatory for all licensed sports organizations and their members, as well as all athletes who have obtained their rights to compete from the respective sports organization.

In its Statutes the Bulgarian Ski Federation whose athlete has been charged with doping violations has accepted the jurisdiction of BSA in cases of doping control. Its athletes are subject to the administrative powers of the Anti-Doping Center with the Minister of Youth and Sports which is the national

authority responsible for doping control in sports, and to the procedure for establishment of violations, determination of sanctions, and appeals under the RDCTCA.

In view of the above, there are grounds for arbitration pursuant to Article 10, paragraph 5 of the BSA Rules for Resolution of Arguments (RRA of BSA).

Filing an appeal before BSA and the defendant's participation in arbitration proceedings means acceptance of the above Rules. Therefore, the ruling arbitration panel has been elected in accordance with the rules set out in Article 22, paragraph 1 and paragraph 2 of RRA of BSA (see orders of 28.10.2013 and 11.11.2013 of the Chairperson of BSA), and each of the three arbiters has signed a statement of impartiality and independence.

II. As regards the admissibility and scope of proceedings

1. With Decision № 06/33/2013 of 20.05.2013 on disciplinary file № 06/33/2013 the Disciplinary Commission with BOC has imposed the sanction of "period of ineligibility of 6 (six) months starting on 30.03.2013" on Alex Zlatomirov Ivanov, snowboard athlete, member of Sports Club Monten, *for the presence of prohibited substance "metabolite of Metandienon" in his doping sample (it is a prohibited substance classified under Section S1, Anabolic Androgenic Steroids of the WADA 2013 List of Prohibited Substances and Methods) and for the use of a prohibited substance.*

The decision was appealed by the World Anti-Doping Agency in its part regarding the term of sanction imposed *with a request to increase the term of ineligibility from six months to one year.* The appeal formulates a complaint that the decision regarding the term of sanction is unlawful. It is sustained that even if assumed that the conditions for reduction of the total 2-year period of ineligibility pursuant to Article 64 of RDCTCA exist, the provision of Article 67, paragraph 2 of RDCTCA allows the reduced term to not exceed the half of the applicable period. It is stated that for this specific case it can be assumed that the origin of the prohibited substance has been identified, as well as that there are exceptional circumstances allowing the application of Article 67, paragraph 2 of RDCTCA.

The defendant in the appeal, Alex IVANOV (who is of age as of the time of hearing of the arbitration proceedings), sustains that the prohibited substance has got into his system through a dietary supplement he has used for recovery, he is not guilty and agrees with the increase of his term of eligibility to one year.

The Bulgarian Ski Federation takes no position on the dispute.

Upon consideration of the case no new evidence has been presented.

2. Pursuant to Article 60, paragraph 6, item 2^{ff} of RDCTCA the World Anti-Doping Agency has the right to appeal a decision of the Disciplinary Commission with BOC also in cases where the anti-doping violation has been established at the athlete's national level. Therefore, the appeal has been brought by a legitimated person and on time, it is against an act subject to appeal, and hence it is admissible.

3. In principle the appeal does not object to the option for reduction of the main term of ineligibility of two years of the accused athlete. Therefore, in its ruling *the Bulgarian Sport Arbitration shall limit the examination of decision within the scope of application of Article 67, paragraph 2 of RDCTCA and the admissible period of sanction as indicated by the defendant.*

III. As regards the merits of the case

The ruling arbitration panel, considering the complaints made in the appeal with regard to the data from the disciplinary file, held that the complaint is well-founded.

1. With regard to the violations of anti-doping rules pursuant to Article 6, paragraph 1, item 1 of RDCTCA – existence of prohibited substances in the sample of the athlete pursuant to Article 6, paragraph 1, item 2 of RDCTCA – use of a prohibited substance by an athlete based on a doping control procedure carried out by the Anti-Doping Center, Article 64, paragraph 1 of RDCTCA provides for a period of ineligibility of two years. This is the main provision to be applied in case such violations have been found, unless the sanctioning body has indisputably established that the set of facts under any of the provisions allowing for mitigation of the penalty are present.

In exceptional circumstances precluding significant fault or negligence by the athlete, and when the way the prohibited substance has entered the athlete's system has been established, the applicable total period of ineligibility of two years may be reduced to maximum one year – Article 67, paragraph 2 of RDCTCA.

By the contested decision a period of ineligibility of six months that does not match in any regulation, has been set in violation of the above rules. This is so because the "metabolite of Metandienon" found in the athlete's system is not listed as a "specific substance" in the WADA 2013 List of Prohibited Substances and Methods so as to give ground to the application of Article 66, paragraph 1 of RDCTCA allowing the sanction to be set in the range from a reprimand to up to 2 years. The fact that the prohibited substance found in the athlete's Urine sample does not fall within the section about specific prohibited substances is not mentioned in the Disciplinary Commission's decision.

2. Apparently, the only provision whereby the usual period of ineligibility of two years may be reduced is Article 67, paragraph 2 of ODCTC, notwithstanding that in the contested decision the applicable provision is not mentioned.

2.1. For this specific case the applicant, a.k.a. WADA, finds that the origin of the prohibited substance found in the system of Alex Ivanov has been established. According to athlete's explanations at the preliminary hearing with ADC, the meeting of the Disciplinary Commission and before arbitration panel of BSA, the substance for recovery he takes on a regular basis from one and the same store, on the packaging of which the existence of anabolic steroids is not mentioned, could have been contaminated. The explanation is considered sufficiently probable because taking steroids is absolutely contraindicated for the athlete's chronic disease as verified in the medical records under the case.

2.2. The second condition for application of Article 67, paragraph 2 of RDCTCA, seen as established for the specific case in WADA's appeal, is that there is no significant fault or negligence by the athlete. The autonomous interpretation of the World Anti-Doping Code with regard to cases of "no significant fault or negligence" (the athlete should prove that the reason for his positive test result is due to contaminated multivitamins the origin of which has no relation to the prohibited substance and the athlete has shown great vigilance) and *especially the scope of proceedings outlined in the appeal* allows to proceed to reduction of the total period of ineligibility.

Considering the above, the arbitration panel finds that the decision should be amended in the section regarding the period of sanction and the period of ineligibility of six months as defined shall be increased to one year.

3. The decision shall be amended also with regard to the initial date of ineligibility.

Disciplinary Commission has assumed that the term of the sanction has started on 30.03.2013 – the day on which the sample was taken. This finding is not in line with the by-laws of RDCTCA. According to Article 75, paragraph 1 of RDCTCA the starting date of ineligibility shall be the date of decision to impose the sanction made at the hearing, i.e. the date of Disciplinary Commission's

decision of 20.05.2013. The term of suspension shall always be deducted. Only in cases of major delays in the hearing or another stage of the doping control due to reasons that are beyond the athlete, an earlier date can be set for the beginning of the ineligibility period, such as the date on which the sample was taken – Article 75, paragraph 2 of RDCTCA.

In these proceedings there is explicit evidence that on 22.04.2013 the Bulgarian Ski Federation has suspended the rights to compete of Alex Ivanov and there are no circumstances requiring the application of Article 75, paragraph 2 of RDCTCA. Therefore, 22.04.2013 shall be considered to be the starting date of the athlete's ineligibility period of one year.

Given the above considerations, the ruling arbitration panel assumes that the contested decision of the Disciplinary Commission shall be amended and the sanction of Alex Zlatomirov Ivanov shall be increased from six months to one year starting on 22.04.2103.

In view of the request for the attribution of costs of the proceedings, the athlete must be ordered to pay to WADA the BGN equivalent of Euro 250, which represents the sum paid by bank transfer and the costs incurred for translation of documents.

The Bulgarian Ski Federation which is implementing the decisions of BSA shall be notified of the extended term of ineligibility of Alex IVANOV.

Considering the above, the arbitration panel:

D E C I D E D:

AMENDS Decision № 06/33/2013 of 20.05.2013 under disciplinary case № 06/33/2013 of the Disciplinary Commission with BOC, whereby ALEX ZLATOMIROV IVANOV, resident of Sofia, 9A, 418th Str., snowboard athlete, member of Sports Club Monten has been imposed a sanction of "period of ineligibility of six months" for the presence of prohibited substance "metabolite of Metandienon" (prohibited substance classified under Section S1, Anabolic Androgenic Steroids) and its use – doping violations under Article 6, paragraph 1, item 1 and 2 of the Regulations on Doping Control in Training and Competition Activities, and **INCREASES** the period of ineligibility to **ONE YEAR** and **CHANGES** the starting date of ineligibility to **22 April 2013**.

SENTENCES Alex Zlatomirov IVANOV to pay to WADA the BGN equivalent of Euro 250, expenses made to the case.

This decision can be appealed before the Court of Arbitration for Sport in Lausanne, Switzerland within 21 calendar days of its receipt.

Copies of this decision shall be sent to the World Anti-Doping Agency, to Alex IVANOV at Sofia, 9A, 418th Str., and to the Bulgarian Ski Federation.

Written notice shall be sent to: the International Ski Federation and the Anti-Doping Center, Sofia.

CHAIRPERSON: M. ZLATAREVA
Signature illegible



MEMBERS: Tr. BALEVSKI
Signature illegible

B. VASSILEV
Signature illegible

For the authenticity of the translation!