

## Decision of Korea Anti-doping Appeal Panel

- Hearing No.: No. 2011-4
- Athlete for Hearing
  - Name : Hyungchul Kang                      ○ Gender : Male
  - Date of Birth : Feb. 21, 1982              ○ Team : Busan City
  - Address: 102-402, Hanhwa-GGoome-Green Apt, 205-2, Nonhyun-dong, Gangnam-gu, Seoul
- Sport / Event : Shooting / Rapid fire pistol
- Appellant : World Anti-doping Agency (WADA)
- Appellee : Korea Anti-doping Agency (KADA) and Athlete Hyungchul Kang
- Substance of Appeal : Appeal for Decision of Three-Month Period of Ineligibility for the Athlete  
Hyungchul Kang

With respect to the case no. 2011-4, the Korea Anti-doping Appeal Panel hereby concludes as follows based on the result of the first and second hearings of the Korea Anti-doping Appeal :

December 8, 2011

Korea Anti-doping Appeal Panel

Yonghwan Song(Chairperson) \_\_\_\_\_

Yoon-Joon Yang(Member) \_\_\_\_\_

Ji-Yeol Yoo(Member) \_\_\_\_\_

## I. Background and Facts

1. The Athlete Hyungchul Kang (hereinafter referred to as the “Athlete Kang”) competed in the 91st National Sports Festival - Shooting Competition on 9 October, 2010 in Changwon City, Korea. Right after the competition, Athlete Kang was subject to In-Competition-Test. DCO took the sample of urine from Athlete Kang. The serial number of the sample is 2521218 (Exhibit 3).
2. This sample was sent for analysis to the Korea Institute of Science and Technology, Doing Control Cent, in Seoul. The A-sample tested positive to Propranolol on 15 November 2010 (Exhibit 4) ..
3. Propranolol is a beta-blocker, classified under the category P2 of the 2010 WADA Prohibited List. Propranolol is both Prohibited Substances in Particular Sports and Specified Substance.
4. It has violated Article 6.1 of Korea Anti-Doping Agency Code (hereinafter referred to as the “KADA Code”)

### **6.1 The Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample.**

- a. *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. Accordingly, it is not necessary that intent, fault, negligence or knowing Use on the Athlete's part be demonstrated in order to establish an anti-doping rule violation under Article 6.1.*
  - b. *Sufficient proof of an anti-doping rule violation under Article 6.1 is established by either of the following: 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; or, where the Athlete's B Sample is analyzed and the analysis of the Athlete's B Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the Athlete's A Sample.*
  - c. *Excepting those substances for which a quantitative threshold is specifically identified in the Prohibited List, the presence of any quantity of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample shall constitute an anti-doping rule violation.*
  - d. *As an exception to the general rule of Article 2.1, the Prohibited List or International Standards may establish special criteria for the evaluation of Prohibited Substances that can also be produced endogenously.*
5. On 18 November 2010, Korea Anti-Doping Agency (hereinafter referred to as the “KADA”) informed Athlete Kang in written notification that he has committed Article 6.1 and it is in the condition of being sanctioned as two years of Ineligibility under Article 47 of KADA Code and also in the condition of being elimination or reduction of period of Ineligibility under Article 49.

### **47. Imposition of Ineligibility for Presence, Use or Attempted Use, Possession of Prohibited Substances and Prohibited Methods**

*The period of Ineligibility imposed for a violation of KADA Code Article 6.1 (Presence of Prohibited Substance or its Metabolites or Markers), Article 6.2 (Use or Attempted Use of Prohibited Substance or Prohibited Method) and Code Article 6.6 (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 Article 49 through Article 53, or the conditions for increasing the period of Ineligibility, as provided in Article 54, are met : First violation: Two (2) years' Ineligibility.*

**49. Elimination or Reduction of Period of Ineligibility for Specified Substances under Specific Circumstances**

① *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 47 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' Ineligibility.*

② *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 or other Person's degree of fault shall be the criteria considered in assessing any reduction of the period of Ineligibility.*

6. Athlete Kang waived his right to have the B sample tested and has admitted the fact of the presence of Propanolol in his sample and of the doping offence.
7. On 14 December 2010, based on the results of the first and second hearing, Korea Anti-Doping Disciplinary Panel concluded to impose three months of period of Ineligibility on Athlete Kang.
8. On 25 July 2011, KADA submitted the report of Disciplinary Panel for the first half year of 2010. (26 Athletes including Kang)
9. On 1 August 2011, at the request of World Anti-Doping Agency (hereinafter referred to as the "WADA"), KADA submitted the related documents concerning the Reduction of Ineligibility period of Athlete Kang. (7 Athletes including Kang)
10. On 9 August 2011, at the request of WADA, KADA submitted the Full Case File (3 Athletes including Kang) ; Decision of Disciplinary Panel, Lab result, Doping Control Form, administration confirmation document, Telephone Conversation with Medical Facilities and Athlete's statement (Exhibit 5 & 10).
11. On 29 August 2011, WADA filed its full statement of appeal against Athlete Kang and Korea Anti Doping Disciplinary Panel (Exhibit 2).
12. On 29 September 2011, KADA informed WADA Confirmation of Ingredient was missing from the Full Case File submitted on 9 August 2011 and supplement it. It includes the statement of Pharmacist Jang Hae Kyu (hereinafter referred to as the "Pharmacist Jang") that he added Beta-Blocker to the medicine.
13. The first hearing and Appeal Panel took place on 30 September 2011 and the second hearing and

Appeal Panel was held on 8 December 2011 in sequent.

## II. Applicable rules

14. The Korea Anti-Doping Agency Code applies to all persons who are members of a national sport federation or of a national sport federation's affiliated members, club, team or associations or leagues (Article 3.6.1 and 3.6.2 of KADA Code). Since Athlete Kang is affiliated with the Korea Shooing Federation, KADA Code applies.

### **3. Application of Rules**

① KSC, KOSAD and their National Sports Federations shall accept this KADA Code and incorporate the KADA Code either directly or by reference into their governing documents, constitution and/or rules and thus as part of the rules of sport and the rights and obligations governing their members and Participants.

② The application of the KADA Code to Participants is based on the membership obligations that exist between National Sports Federations and their members or Participants through those individuals' agreement to participate in sport according to its rules.

③ As a condition of receiving financial and/or administrative assistance from the Korea Government, KSC or KOSAD, National Sports Federations shall accept and abide by the spirit and terms of the National Anti-Doping Program and the KADA Code, including the application of its sanctions to individuals, and shall respect the authority of, and cooperate with, the KADA in all anti-doping matters which are not governed by the rules of the relevant International Federation in accordance with the Code.

[Comment to Article 3. ③: NADOs are encouraged to work cooperatively with their Governments to ensure that the adoption and implementation of National Federation anti-doping policies are a pre-condition to receiving any financial and/or other assistance from the Government and/or the KADA.]

④ By the adoption of this KADA Code and their incorporation into their governing documents and rules of sport, National Sports Federations recognize the authority and responsibility of the KADA for implementing the National Anti-Doping Programme and authorize the KADA to carry out Doping Control and their members and Participants accordingly recognize and accept this authority and responsibility. The International Federation and the KADA respect each other's authority and responsibility as foreseen in the Code.

⑤ By the adoption of this KADA Code and their incorporation into their governing documents and rules of sport, National Sports Federations also formally submit the National Sports Federation and all Athletes under its jurisdiction or control or subject to its governing documents or rules of sport to this KADA Code. They agree to abide by the decisions made pursuant to this KADA Code, in particular the decisions of the Korea Anti-Doping Disciplinary Panel and the Korea Anti-Doping Appeal Panel. Their International Federations, members and Participants accordingly recognize and accept this submission and agreement subject to the rights of appeal foreseen in these rules.

⑥ The KADA Code applies to all Persons who: are members of a National Sports Federation, regardless of where they reside or are situated; are members of a National Sports Federation's affiliated members, clubs, teams, associations or leagues; participate in any capacity in any activity organized, held, convened or authorized by a National Sports Federation or its affiliated members, clubs, teams, associations or leagues; and participate in any capacity in any activity organized, held, convened or authorized by a National Event organization.

### III. Decision of the Korea Anti-Doping Disciplinary Panel

15. As Prohibited Substance, Metabolites or Markers found to be present in his sample, he has committed Anti-Doping regulation under the Article 6.1 of KADA Code.
16. Athlete Kang has waived his right to request to test sample B. He has admitted that the presence of Beta Blocker, Prohibited Substance was detected from his sample and committed the Doping Regulation.
17. It is undisputed that Propranolol was identified from Athlete Kang's sample on 9 October 2012. There was not any record regarding TUE application of Athlete Kang.
18. Based on KADA Code, Athlete Kang has violated Article 6.1 and is eligible to be imposed two years of Ineligibility at the first commission. However, as Propranolol is defined as the Specified Substance, the period of Ineligibility could be deducted under the Article 49(Elimination or Reduction of the Period of Ineligibility under Specific Circumstance applicable).

***49. Elimination or Reduction of Period of Ineligibility for Specified Substances under Specific Circumstances***

*① 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 47 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' Ineligibility.*

*② 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 or other Person's degree of fault shall be the criteria considered in assessing any reduction of the period of Ineligibility.*

19. Athlete Kang has managed to satisfy the members of Disciplinary Panel that successfully established how the illegally made medicine entered his body through “Banha Hubak Sasimtang”.
20. Athlete Kang has established that he took an oriental medicine made illegally by Pharmacist Jang just because to treat his symptoms of dyspepsia and headache by submitting all related document including medical records (administration confirmation document, ingredients confirmation document and athlete's statement). And the members of Disciplinary Panel were satisfied with his statement (Exhibit 6).

21. For the reasons given above, The Disciplinary Panel concludes as follows.
- A. A doping offence contrary to KADA Code Article 6.1 has been established.
  - B. Under KADA Code Article 49.1, a 3 months of Ineligibility shall be imposed on the Athlete Kang is 3 months from 14 December 2010 to 13 March 2011.
  - C. Under KADA Code Article 45 and 46, the athlete is subjected to automatic disqualification of the results obtained in competition on 9 October 2010.

**45. Automatic Disqualification of Individual Results**

*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.*

*[Comment to Article 45: When an Athlete wins a gold medal with a Prohibited Substance in his or her system, that is unfair to the other Athletes in that Competition regardless of whether the gold medalist was at fault in any way. Only a "clean" Athlete should be allowed to benefit from his or her competitive results. For Team Sports, see Article 60 (Consequences to Teams).*

*In sports which are not Team Sports but where awards are given to teams, Disqualification or other disciplinary action against the team when one or more team members have committed an anti-doping rule violation shall be as provided in the applicable rules of NADO.]*

**Article 46 Disqualification of Results in an Events During which an Anti- Doping Rule Violation Occurs**

*① An anti-doping rule violation occurring during or in connection with an Event may, upon the decision of the ruling body of the Event, 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 46. ②.*

*[Comment to Article 46. ①: Whereas Article 45 (Automatic Disqualification of Individual Results) Disqualifies the result in a single Competition in which the Athlete tested positive, this Article may lead to Disqualification of all results in all races during the Event.*

*Factors to be included in considering whether to Disqualify other results in an Event might include, for example, the severity of the Athlete's anti-doping rule violation and whether the Athlete tested negative in the other Competitions.]*

*② If the Athlete establishes that they bear No Fault or Negligence for the violation, the Athlete's individual results in the other Competitions shall not be Disqualified unless the Athlete's results in Competitions 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.*

#### **IV. Grounds for Decision of the Korea Anti-Doping Appeal Panel**

22. The ground of appeal by the WADA may be summarized as follows:

‘Pursuant to Article 49 of the KADA Code, in order to eliminate or reduce the period of Ineligibility with respect to Specified Substances under Specific Circumstances an athlete must establish how a Specified Substance entered his body and that such Specified Substance was not intended to enhance the Athlete’s sport performance or came into his her possession and mask the use of a performance

enhancing substance. However, the Athlete has not failed to established sufficiently how the Prohibited Substances entered his body or came into his possession. In addition, the beta-blocker is a substance that had the positive impact on his sport performance in the shooting sport (Exhibit 12&13). As such, it is unjust to apply Article 49 of the KADA Code to reduce the sanction. Therefore, it is reasonable to impose the two (2) years period of Ineligibility under Article 47 of the KADA Code.’

23. First of all, we find the ground of appeal by the WADA is reasonable as Prohibited Substance of beta-blocker detected in the sample has the positive effect to enhance the performance in the shooting sport. It has been widely known in the shooting field that a beta-blocker is of help for stable firing at the target by reducing the heart rates of athletes. The Athlete Kang has insisted that as his event is the rapid fire pistol which requires a prompt firing, a beta-blocker does not have the sport performance enhancing effect; however, it was not accepted by the Appeal Panel. The Athlete Kang has also argued that it does not have the sport enhancing effect because based on the information provided by a pharmaceutical company (Daewoong Pharmaceutical) that has made the Pranol Pill, the maximum efficacy duration period of the Pranol Pill is 12 hours, (Exhibit 11) Moreover, it has passed three (3) days after his ingestion, they might remain too little amount to enhance his performance. We find, however, that since it has been detected in urine sample of the Athlete on the date of competition, it has actually affected his sport performance as a result.
24. We have reviewed the ground for appeal by the WADA that the Athlete has not established sufficiently how the Prohibited Substance enters his body. The Athlete Kang has made the following arguments at the hearing of the Korea Anti-doping Appeal Panel, held at 10:00 a.m. on September 30, 2011: “In order to treat his symptoms of dyspepsia and headache, he has informed the Pharmacist Jang that he was an athlete and has explained his symptoms, and then purchased and ingested the “Banha Hubak Sasintang” made of five medicinal herbs (Banha, Hwanggeum, Hwangryeon, Gyen Gang, Gamcho). The Pharmacist Jang has illegally added a medicine of beta-blocker components (Pranol Pill), which is a Pharmaceutical medicine prescribed by doctor and he was has failed to inform the Athlete Kang of the above fact.” We find that the Athlete’s arguments are consistent with the facts of the Confirmation of Ingredients of Pharmacist Jang (December 1, 2010), Statement of

Pharmacist Jang (October 31, 2011) and the Pharmacist's Confirmation (November 14, 2011)(Exhibit 8&9).

25. In other words, because the medicine given to the Athletic Kang by the Pharmacist Jang has been sold without the prescription of a doctor, it is an illegal medicine that violates the Pharmaceutical Law Korea. However, we find that the Athlete has not known of the fact. Also we find it is acceptable that although the Athlete Kang has stated that he was an athlete, the Pharmacist Jang has added the Prohibited Substance but failed to inform the Athlete Kang thereof.
26. In this case, the Pharmacist Jang is found to hold both the license of Pharmacist and the license of herbalist. In Korea, Pharmacists may prepare and sell pharmaceutical medicines according to the prescriptions of doctors, and may sell general medicines, over-the-counter medicine without a prescription of doctors. Herbalists are qualified to prepare and sell medicinal herbs using Oriental medicines according to 100 designated prescriptions.
27. The Pharmacist Jang has argued that he has sold "Banha Hubak Sasimtang" prepared and held for his own ordinary ingestions with respect to the symptoms similar to those complained of the Athlete Kang, and has denied the illegal preparations of prohibited medicines in a telephone call with Director of Doping Control Team, KADA on November 30, 2010 for fear of being subjected to punishments for the illegal preparations and sales of pharmaceutical medicines. Subsequently, upon the strong request of the Athlete Kang, he has executed the 'Confirmation of Ingredients' that confirms his adding Pranol Pill to the "Banha Hubak Sasimtang" and has submitted the confirmation through the Athlete on December 2, 2010. Mr. Dong Hyun Noh, the medicine team head of the Association of Korea Oriental Medicine, has testified by telephone that "Banda Sasimtang" is a medicine in the form of "Tang" prepared for dyspepsia, gastritis, etc. Mr. Yoon Joon Yang, a doctor of Ilsan Paik Hospital (also a member of appeal panel) testified that Pranol Pill is a medicine that is effective for blood vessel pulsating head ache. Under the totality of the circumstances, we find that it is sufficiently probable that Propranolol has been mixed with "Banha Hubak Sasimtang" for treatment purposes.
28. However, from the perspective of Article 49.2 of the KADA Code, which provides that "The level of negligence of an athlete and other related parties is a barometer to take into consideration in

evaluating reductions of the period of Ineligibility.” The Athlete Kang has purchased and ingested a medicine which has no indication of ingredients recommended by the Pharmacist at the drugstore without any diagnosis or prescription by a doctor. Moreover, although Athlete Kang alleges that he asked the Pharmacist of ingredients at the time of purchasing the medicine, he has not clearly requested the Pharmacist Jang to exclude the Prohibited Substance. (Panel do not accept the allegation because that the Athlete has argued but the Pharmacist has denied the fact that the Athlete has requested the Pharmacist to exclude any prohibited medicine). Additionally, Athlete Kang has taken the substance without making sufficient efforts to confirm whether the Prohibited Substance was included. In these regards, we cannot find that the Athlete has fully complied with the obligations of athletes to prevent any Prohibited Substance from being ingested into his or her own internal bodies (Article 6.2.1).

29. The Athlete Kang has argued at the first hearing on September 30, 2011 that since the KADA was late to file with the WADA the “Confirmation of Ingredients” of the Pharmacist Jang submitted by the Athlete Kang, it has established unfavorable environments to the Athlete. We find, however, that according to what the KADA has confirmed with the WADA, the primary basis for appeal by the WADA is not whether there is the Confirmation of Ingredients, but the serious of negligence of the Athlete and the fact that a beta-blocker has a great effect on the sport performance in the shooting field.
30. With respect to the new arguments made in the “Opinion Related to the Appeal Hearing” submitted by the Athlete Kang on December 6, 2011; firstly, an appeal should be filed within fourteen (14) days from the date of decision of Disciplinary Panel under Article 67.1, KADA Code but the WADA has filed the appeal in a lapse of filing dead line. It is an unacceptable procedure, which does not secure legal reliability and security or protect the human rights of athletes. As to this argument, we find that the WADA has the right to appeal under Article 63.3, and under Article 63.4 KADA Code, it should be reasonable to apply the provision of “the filing deadline of an appeal file by WADA shall be ... 21 (twenty-one) days after WADA’s receipt of the complete file relating to the decision.” Although in terms of the structure of paragraphs under Article 63.4, Although there is a little possibility to interpret that the filing deadline for an appeal is applicable only to appeals to the Court

of Arbitration for Sport, we find that when provisions the appeal related including Article 63.3 are reasonably interpreted as a whole, the filing deadline for the appeal of the WADA cannot be said to be expired. (Exhibit 7).

**67. Hearings Before the Korea Anti-Doping Appeal Panel**

- ① A Person entitled to appeal a decision of the Korea Anti-Doping Disciplinary Panel who wishes to do so shall lodge notice of the appeal with the Korea Anti-Doping Appeal Panel within fourteen (14) days of the date of the decision of the Korea Anti-Doping Disciplinary Panel. The Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample.
- ② The appointed members shall have had no prior involvement with the case, or any aspect of the case. In particular, no member may have previously considered any TUE application or appeal involving the same Athlete as in the current case. Each member, upon appointment, shall disclose to the Chair any circumstances likely to affect impartiality with respect to any of the parties.
- ③ If a member, appointed by the Chair to hear a case, is unable, for whatever reason, to hear the case, the Chair may appoint a replacement or appoint a new hearing panel from the pool.
- ④ The Korea Anti-Doping Appeal Panel has the power, at its absolute discretion, to appoint an expert to assist or advise the panel as required by the panel.
- ⑤ The KADA has the right to join proceedings and attend hearings of the Korea Anti-Doping Appeal Panel as a party.
- ⑥ The International Federation and/or the National Sports Federation concerned, if not a party to the proceedings, the National Olympic Committee, if not a party to the proceedings, and WADA each have the right to attend hearings of the Korea Anti-Doping Appeal Panel as an observer.
- ⑦ Hearings pursuant to this Article should be completed expeditiously and in all cases within three (3) months of the date of the decision of the Korea Anti-Doping Disciplinary Panel, save where exceptional circumstances apply.
- ⑧ Hearings held in connection with Events may be conducted on an expedited basis.

**63. Appeals from Decisions Regarding Anti-Doping Rule Violations, Consequences, and Provisional Suspensions**

- ① The following decisions may be appealed exclusively as provided in this Article 63.
  1. A decision that an anti-doping rule violation was committed.
  2. A decision imposing Consequences for an anti-doping rule violation.
  3. A decision that no anti-doping rule violation was committed.
  4. A decision that an anti-doping rule violation proceeding cannot go forward for procedural reasons (including, for example, prescription).
  5. A decision under Article 58. ③ (prohibition of participation during Ineligibility)
  6. A decision that the KADA lacks jurisdiction to rule on an alleged anti-doping rule violation or its Consequences.
  7. A decision by the KADA not to bring forward an Adverse Analytical Finding or an Atypical Finding as an anti-doping rule violation.
  8. A decision not to go forward with an anti-doping rule violation after an investigation under KADA Code Article 35.
  9. A decision to impose a Provisional Suspension as a result of a Provisional hearing or in violation of Article 38.
  10. Any other decision made under this KADA Code.
- ② 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. In case under Article 63. ②, the following parties shall have the right to appeal to CAS.
  1. Athlete or other Person who is the subject of the decision being appealed.
  2. The other party to the case in which the decision was rendered.
  3. The relevant International Federation.
  4. The International Olympic Committee or International Paralympic Committee, as applicable, where the decision may have an effect in relation to the Olympic Games or Paralympic Games, including decisions affecting eligibility for the Olympic Games or Paralympic Games.
  5. WADA .

*[Comment to Article 63.②: CAS decisions are final and binding except for any review required by law applicable to the annulment or enforcement of arbitral awards.]*

③ In cases involving national-level Athletes, that do not have a right to appeal under Article 63.2, the decision may be appealed to the Korea Anti-Doping Appeal Panel. In case under Article 63.3, the following parties shall have the right to appeal to Korea Anti-Doping Appeal Panel.

1. Athlete or other Person who is the subject of the decision being appealed.
2. The other party to the case in which the decision was rendered.
3. Relevant International Federation.
4. National Olympic Committee.
5. National Anti-Doping Organization of the Person's country of residence.
6. WADA.

④ For cases under Article 63.3, WADA and the International Federation shall also have the right to appeal to CAS with respect to the decision of the National-level reviewing body. Any party filing an appeal shall be entitled to assistance from CAS to obtain all relevant information from the KADA whose decision is being appealed and the information shall be provided if CAS so directs. The filing deadline for an appeal or intervention filed by WADA shall be:

1. The alter of Twenty-one (21) days after the last day on which any other party in the case could have appealed.
2. The alter of Twenty-one (21) days after WADA's receipt of the complete file relating to the decision.

31. Secondly, with respect to the argument that the WADA's request of the two (2) years period of Ineligibility is inequitable in light of the similar domestic cases, the cases of the four athletes mentioned by the Athlete Kang (Eun Ji Lim, Hae Seong Chae, Gwang Jin Ryu, and Hong Cheol Park) all have hospital diagnosis records, and the medicines in question were subject for approvals of TUE or did not have a little direct effect on the sport performance. Therefore, we find that the cases cannot be directly comparable to the case of the Athlete Kang.
32. Mr. Chil Hwa Lee, the hearing chairperson of the KADA, has taken the position that "the Disciplinary Panel of the KADA has rendered the decision of three (3) months sanction based on the KADA's statistical criteria for sanctions as to Specified Substances, without knowing of the policy of the International Shooting Sport Federation that strict sanctions are required where a beta-blocker is found out of shooting athletes." He has stated his opinion that "Since we find that the appeal of the WADA as to the use of a Beta-Blocker is acceptable in some respects, it could be unavoidable to impose a disqualification for one (1) year or so," and testified that "In the future, we will make and implement some criteria for reductions of sanctions with respect to the Specified Substances."
33. As a whole, we find that ; firstly, it is confirmed that in order to treat his insignificant diseases (dyspepsia and headache), the Athlete Kang has informed the Pharmacist Jang at a near drugstore that he was an athlete and then has explained his symptoms, purchased and ingested the "Banha

Hubak Sasimtang” recommended by the Pharmacist Jang. Secondly, the Pharmacist Jang has illegally added to the medicine a beta-blocker (Pranol Pill) but failed to inform the Athlete Kang thereof. Therefore, we also find that firstly, how the Specified Substances entered his body was established. Secondly, we find that it substantially established that the Specified Substance was not intended to enhance the Athlete’s sport performance or mask the use of a performance enhancing substance. Thirdly, the Athlete is a national level of athlete. Therefore he is available to fall under the requirements for reduction under Article 49 of the Korea Anti-Doping Code (Exemptions or Reduction of Period of Ineligibility with Respect to Specified Substances under Special Circumstances).

34. It has been widely known and generally accepted in the sports world that although a beta-blocker is a Specified Substance, it has the directly enhancing sport performance in the shooting event. Also the Athlete Kang has not received any prescription of doctors, has not clearly requested the Pharmacist to exclude the Prohibited Substance, and has purchased and ingested a medicine without any indication of ingredients and without making sufficient efforts for self-defense to confirm before his ingestion whether the Prohibited Substance was included. Therefore, we find that the Athlete Jang has not fully complied with the obligations of athletes to ensure that any Prohibited Substance is not entered into one’s bodies (Exhibit 12&13).
35. We find that the primary grounds for appeal by the WADA are two reasons. Firstly, a beta-blocker has a great effect on the sport performance in the shooting event. Secondly the serious of negligence of the Athlete. Therefore, we don’t think the argument of the Athlete Kang is reasonable that the delay of submitting relevant documents from KADA to WADA has caused this appeal.
36. With respect to the objection brought by the Athlete Kang that the filing deadline for an appeal has expired, we find it proper under the KADA Code.
37. For these reasons, we find the grounds of appeal by the WADA excessive, which seeks the sanction of the two (2) years of Ineligibility under Article 47 of the KADA Code (Disposition of Ineligibility as to the Existence, Use, or Attempt to Use, or Holding of Prohibited Substances and Prohibited Means. As such, we conclude that Athlete Kang is subject to the sanction of one (1) year and two (2) months of Ineligibility, by applying the reduction under Article 49 of the KADA Code

(Exemptions or Reduction of Period of Ineligibility with Respect to Specified Substances under Special Circumstances).

## **V. Decision of the Korea Anti-Doping Appeal Panel**

### **a) Reduction of Period of Ineligibility**

38. The Athlete Kang argued that he has stated that he was an athlete to the Pharmacist Jang when purchasing the medicine to treat his insignificant disease (dyspepsia and headache). The Pharmacist Kang also admitted that he illegally added the Pranol Pill, which could only be prescribed by a doctor, but did not inform the Athlete Kang thereof. Under the totality of the circumstances, as Athlete Kang managed to establish how the Prohibited Substances entered his body or came into his possession and that the substance was not intended to enhance performance or mask the presence of a performance enhancing substance, it is accepted to reduce the sanction for a violation under Article 49 of the Korea Anti-Doping Code (Elimination or Reduction of Period of Ineligibility with Respect to Specified Substances under Special Circumstances).

### **b) Rules and Responsibilities of Athletes**

39. However, the beta-blocker detected in the sample of Athlete Kang has the direct effect to enhance performance in the shooting sport. Though there are some circumstances beyond the control of the Athlete such as the Pharmacist Jang has illegally added the Prohibited Substance but failed to inform the Athlete, it is the fact that the Athlete has not clearly requested the Pharmacist to exclude the Prohibited Substance and has taken them without making sufficient efforts to confirm whether the Prohibited Substance was included. In that regard, it seems that the Athlete has not fully complied with the obligations of athletes to ensure that any Prohibited Substance is not entered into one's bodies (Article 6.2.1).

### **c) Period of Ineligibility**

40. Therefore, it is considered that the ground of appeal pursuant to Article 47(Ineligibility for the presence, use or attempted use, or possession of Prohibited Substances), imposing the two (2) years

period of Ineligibility filed by the World Anti-doping Agency is excessive, we concluded one (1) year and two (2) months of Ineligibility under Article 49 of the KADA Code (Elimination or Reduction of Period of Ineligibility with Respect to Specified Substances under Special Circumstances).

41. Taking into consideration the fact that the Athlete Kang has voluntarily suspended his athletic activities after the date of the first hearing for appeal of Anti-doping Appeal Panel, the period of Ineligibility shall be started from September 30, 2011(the date of the first hearing for appeal). The previously sanctioned period of Ineligibility (for three (3) months: December 14, 2010 to February 13, 2011) shall be counted to the total period of Ineligibility.

**d) Disqualification of Results**

42. Pursuant to Article 45 (Automatic Disqualifications of Competition Results) and Article 46 (Disaccreditation of Competition Results), all competition results including any medals, points and awards obtained at the competitions on and from October 9, 2010(the date of sampling) until the expiration of the period of Ineligibility shall be disqualified and forfeited. However, the competition results and the event results obtained between the date after the expiration date of the three (3) months period of Ineligibility imposed by the Disciplinary Panel and before the date of decision of this Appeal Panel (from February 14, 2011 to September 29, 2011) shall be accepted under the proper athlete qualifications.