

DECISION

№ 6

Sofia, 15.01.2014

The Bulgarian Sport Arbitration with the Bulgarian Olympic Committee, at an open meeting on 08.01.2014 in the following panel of arbitrators:

CHAIRPERSON: Margarita ZLATAREVA

MEMBERS: Tsvetan ATANASOV

Hristo STOEV

and secretary Kamelia Ignatova, having examined the report of the rapporteur Tsvetan Atanasov on arbitration case № 6 in the BSA registry for 2013 has taken into consideration the following in order to pronounce:

The proceedings are pursuant to Article 7, paragraph 1, point 3 of the BSA Rules for resolution of arguments.

The proceedings were launched in response to the appeal of decision № 004/9/2012 from 17.02.2012 of the World Antidoping Agency (WADA) on disciplinary exchange of letters № 004/9/2012 of the Disciplinary Commission of the Bulgarian Olympic Committee, with which Vasil Galev ILIEV, athlete in boxing of the TRAKIETS Boxing Club was imposed the penalty "6 (six) months period of ineligibility" starting on 17.02.2012 for due to doping violations disclosed on 12.11.2011.

At the moment of the test the applicable normative act was Regulations on doping control in training and competition activities from 2011 (RDCTCA) (promulgated in SG 35/2011), in force as of 03.05.2011, a criterion for the consequences of the prohibited substance discovered in the urine test of the athlete *CLENBUTEROL* is in the List of Prohibited Substances of the World Anti-Doping Agency (WADA) for 2011.

I. On the competence of the Bulgarian Sport Arbitration

According to Article 60, paragraph 5 of RDCTCA the Bulgarian Sport Arbitration with BOC is competent to hear appeals as an appellative instance against decisions of the Disciplinary Commission of BOC. This competence is pursuant from a by-law issued by the Council of Ministers on the basis of Article 45, paragraph 3 of the Law on physical education and sport (LPES). The Regulations on doping control in training and competition activities is

mandatory for the licensed sport organizations and their members, as well as for sportspersons who have gained their competitor rights through the respective sport organization.

The Bulgarian Boxing Federation whose member was charged with a doping violation has adopted in its Statute the jurisdiction of BSA for doping control. Its athletes are subject to the administrative power of the Anti-Doping Center at the Minister of physical education and sport who is the national authority performing doping control in sports, as well as of the procedure for disclosing violations, determination of sanctions and appeals on the grounds of RDCTCA.

In view of the above there are grounds for arbitration under Article 10, point 5 of the BSA Rules for resolution of arguments RRA).

Appealing before BSA and the defendant's involvement in the arbitration proceedings means acceptance of the regulations of these rules. Therefore the ruling arbitration team was elected in accordance with the rules of Article 22, paragraphs 1 and 2 of the BSA RRA (see order of the BSA chairperson from 16.12.2013) and each of the three arbitrators has signed an impartiality and independence declaration.

II. On the subject of disagreement

1. With decision № 004/9/2012 from 17.02.2012 on disciplinary exchange of notes № 004/9/2012 the Disciplinary Commission of BOC has rules the penalty "6 (six) months period of ineligibility" to Vasil Galev Iliev, athlete in boxing of the TRAKIETS Boxing Club starting on 17.02.2012 for *discovered presence of the prohibited substance Clenbuterol* in his doping test (prohibited substance from section "S1. Anabolic Agent/ 2. Other anabolic agents" from the List of Prohibited substances for 2011 of the World Anti-Doping Agency) and *for use of a prohibited substance*.

The decision was appealed by the World Anti-Doping Agency /WADA/ in its part regarding the gravity of the imposed penalty with the demand to amend it and impose the penalty indicated in Article 64, par.1 of RDCTCA two years of ineligibility. The demand of the World Anti-Doping Agency is stated in detail in the text of the appeal. The appeal expresses arguments on the lacking justification of the decision to impose a reduced penalty, lacking justification for referring to mitigated provisions and improper imposing of the sanctions envisaged in RDCTCA in this particular case.

The defendant Vasil Galev Iliev did not appear and did not contest the order and manner of making the test, analysis of the test and its result. He did not use his right of control analysis of test "B".

The Bulgarian Boxing Federation, through its authorized representative Ventsislav Nikolov Nikolov has decided to accept the appeal of the World Anti-Doping Agency /WADA/.

The arbitration jury, having examined the appeal of the disciplinary exchange of letters, accepted the following as facts:

2. The appeal was filed by a legitimated person against an appealable act and is therefore acceptable.

The appeal is justified in its essence.

For the established violations of the Antidoping rules of Art. 6, par.1, p. 1 RDCTCA – presence of a prohibited substance in the test of an athlete and of Art. 6, par.1, p. 2 RDCTCA – use of a prohibited substance by a sportsman based on a doping control procedure held by the Anti-doping Center on the grounds of Art. 64, par.1 of the Regulations on doping control in training and competition activities from 2011 envisages a period of ineligibility of two years. This is the main provision that should serve as a reference in cases of discovering the said violations, unless the sanctioning authority established unequivocally the facts described in some of the provisions mitigating the sanction.

It does not become clear from the appealed decision which provisions of the Ordinance the Disciplinary Commission has referred to in order to impose a penalty lesser than the envisaged one. This panel of arbitrators thinks that in view of the completeness of this explanation it would be appropriate to explore whether any of the facts included in the provisions mitigating or excluding the responsibility of the athlete exist.

The penalty determined in **Art. 64, par. 1 of RDCTCA** can be reduced in the presence of the conditions referred to in **Art.66** of the latter. In order to use this provision however, the following conditions should be present: the used substance should be *specific*; the athlete should present indisputable evidence that the presence of the substance in his system was occasional and that it was in no way meant to boost his sports achievements or conceal another prohibited substance. It is indisputable that the discovered substance *Clenbuterol* **is not** a specific substance in accordance with the List of Prohibited substances for 2011 of the World Anti-Doping Agency. Therefore the arbitration panel believes that Art. 66 of RDCTCA is not applicable to this particular case.

The arbitration panel also believes that the other privileged provision of RDCTCA that frees the athlete from responsibility or reduces the envisaged penalty by half, namely **Art. 67** of RDCTCA is not applicable. In order to be applicable, the athlete should either prove absence of guilt, so that he is not penalized at all, or a negligible guilt, so that the penalty is reduced by half. As pointed out in the justification of decision 004/9/2012 from 17.02.2012 on disciplinary exchange of letters №004/9/2012 of the Disciplinary Commission of BOC the athlete took the substance without informing either the coach or any specialized medical person of that and therefore his purposeful action of using the prohibited substance is in this case indisputable. Thus no justification exists to apply the provisions of Art. 67 of RDCTCA.

It should be taken into consideration that **Art. 6, par. 1, letter A and par. 2, letter B** impose the burden of the due care in taking medication of any kind on the competitors. Therefore when imposing a penalty in the order of this ordinance the penalizing authority should account of the athlete's presumption

of guilt pursuant from these provisions and when imposing penalties lesser than the envisaged should have collected substantial evidence of the guilt as the competitor's attitude to his own actions.

In view of the above this arbitration panel assumes that the appealed decision of the Disciplinary Commission should be modified by increasing the penalty imposed on Vasil Galev ILIEV from six months **to two years**.

The Bulgarian Boxing Federation implementing the decisions of BSA should be notified of the increased period of ineligibility imposed on Vasil Galev ILIEV.

On the above-stated grounds the arbitration panel:

DECIDED:

MODIFIES decision № 004/9/2012 from 17.02.2012 on disciplinary exchange of letters № 004/9/2012 of the Disciplinary Commission of BOC imposing on Vasil Galev ILIEV with address in Pazardzhik, 4 Mesta Str, athlete in boxing of the TRAKIETS Boxing Club the penalty of "6 (six) months of ineligibility" for discovered presence of a prohibited substance *Clenbuterol* (prohibited substance from section "S1. Anabolic Agents/2 Other anabolic agents" from the List of Prohibited substances for 2011 of the World Anti-Doping Agency) in his doping test and *for use of a prohibited substance* – doping violations in the meaning Art. 6, par. 1, p.1 and 2 of the Regulations on doping control in training and competition activities, effective as of 17.02.2012 **by INCREASING the imposed penalty to TWO YEARS.**

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

Copies of this decision should be sent to the World Anti-Doping Agency, to Vasil Galev ILIEV with address in Pazardzhik, 4, Mesta str, and the Bulgarian Boxing Federation.

A written notice of this decision should be sent to: the Anti-Doping Center, Sofia and the International Boxing Association (AIBA).

CHAIRPERSON: Margarita ZLATAREVA
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MEMBERS: Tsvetan ATANASOV
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Hristo STOEV
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For the authenticity of translation!