Arbitration CAS 2013/A/3435 Tomasz Stepien v. Polish Rugby Union, award of 4 July 2014

Panel: Prof. Martin Schimke (Germany), President; Mr Piotr Nowaczyk (Poland); Mr Ken Lalo (Israel)

Rugby
Doping (methylhexaneamine)
Procedural deficiencies occurred at the previous instance and de novo review by the CAS
Specified substances under Article 10.4 WADC and intent to enhance performance
Purpose and rationale of Article 10.4 WADC
"Performance-enhancing" intent of doping- relevance
Principle of "contra proferentem" and restrictive interpretation of Article 10.4 WADC
Intent
No distinction between direct and indirect intent in case of a restrictive interpretation of intent
Risks linked to the use of nutritional supplements

1. **The CAS provides an opportunity for a full new hearing with full power to review the facts and the law. According to consistent CAS jurisprudence, errors during the prior proceedings and the prior hearing can, if at all, only be the basis for a successful appeal when the errors in the process below somehow affect a party's right to fully present a case before CAS. Therefore, any alleged inadequacies in the prior hearing could be cured by the right to a new hearing before CAS. In light of the given possibility of a full appeal to the CAS, "due process" arguments concerning the proceedings before the previous instance can be deemed as cured.**

2. **Regarding specified substances, Article 10.4 WADC is the most specific provision and takes precedence over others. 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 10.2 shall be replaced, for a first violation, with at a minimum, a reprimand and no period of ineligibility from future events, and at a maximum, two years of ineligibility. In order to satisfy the condition that the specified substance was not intended to enhance the athlete's sport performance, the athlete must establish the absence of intent to enhance sport performance at the time of its ingestion. The key question is whether the intent to enhance sport performance relates to the use of the specified substance or to the product in which it was contained.**

3. **Whether or not to follow a broad or restrictive interpretation of Art. 10.4 WADC must be decided depending on the purpose of the rule. The underlying rationale of this provision is that there is a greater likelihood that specified substances, as opposed to other prohibited substances, could be susceptible to a credible non-doping explanation and that the latter warrants - in principle - a lesser sanction. What Art. 10.4**

wants to account for is, in principle, that in relation to specified substances there is a certain general risk in day to day life that these substances are taken inadvertently by an athlete. The question is what happens if the risk at stake is not a "general" but a (very) specific one that the athlete has deliberately chosen to take.

4. **The characteristic of "performance-enhancing" as such is neutral. An athlete is entitled to consume any substance that seems useful to enhance his sport performance as long as this substance is not listed on WADA's Prohibited List, Therefore, the primary focus can obviously not be on the question whether or not the athlete intended to enhance his sport performance by a certain behaviour (i.e. consuming a certain product), but moreover if the intent of the athlete in this respect was of doping-relevance. In this respect, the WADC itself recognizes the difference between legitimate performance enhancement and the use of a prohibited substance.**

5. **In accordance with CAS jurisprudence, the principle of "*contra proferentem*" alone justifies a restrictive interpretation of the element of "intent to enhance sport performance" in Article 10.4 WADC. It is clear that the restrictive interpretation (i.e. intent must relate to the prohibited substance in question) favours the athletes.**

6. **Intent is established if an athlete knowingly ingests a prohibited substance.**

7. **Drawing a distinction between direct and indirect intent would lead to a broad interpretation of the term "intent" in Article 10.4 WADC, and thus to an interpretation to the detriment of athletes. This approach would contradict the applicable principle of "*contra proferentem*" and is, therefore, an approach that should not be taken.**

8. **The numerous warnings of the well-known risks linked to the use of nutritional supplements exist and are widely published for many years. WADA's website contains *inter alia* the following warning: *"Extreme caution is recommended regarding supplement use. The use of dietary supplements by athletes is a concern because in many countries the manufacturing and labelling of supplements may not follow strict rules, which may lead to a supplement containing an undeclared substance that is prohibited under anti-doping regulations. A significant number of positive tests have been attributed to the misuse of supplements and taking a poorly labelled dietary supplement is not an adequate defense in a doping hearing".***

I. PARTIES

1. Mr. Tomasz Stepien (the "Appellant" or "Athlete") is an international-level rugby player from Warsaw, Poland playing at the highest level of rugby in the country. He currently plays for the Polish club Arka Gdynia. The Athlete has a "day job" and he is practicing and playing rugby on a non-professional basis.

2. The Polish Rugby Union ("Respondent") is the national representative federation for the sport of rugby in Poland. It has been a member of the International Rugby Board since 1988.

II. FACTUAL BACKGROUND

A. Background Facts

3. A summary of the most relevant facts and background giving rise to this appeal will be developed based on the parties' submissions and the testimony provided during the hearing. Additional facts may be set out, where relevant, in connection with the legal discussion which follows. The Panel refers only to the facts it considers necessary to explain its reasoning. The Panel, however, specifically notes that it has considered all the factual allegations, legal arguments, and evidence submitted by the parties in the present proceedings.

1. The Supplement: Jack3d

4. On 12 September 2014, the Athlete obtained a free sample of the supplement *Jack3d* from a salesperson at a local vitamin shop. The salesman assured him that the product was free of any prohibited substance, as it was a revised formula (thus, the sample), and acceptable for an athlete to ingest. The Athlete submits that he knew *Jack3d* contained a prohibit substance(s), but that he believed this new *Jack3d* product was "geranium free".

5. The Athlete did not immediately ingest the *Jack3d*, instead taking the product home to look up the product ingredients.

6. The packaging of the product was in English, however, the ingredient label on the sample was in Polish. Consequently, the Athlete analysed the ingredients of the product in Polish (his native tongue) for prohibited substances and the Athlete maintains that there were no prohibited substances on the Polish label, including geranium.

7. Since the supplement came in a single-serve package, the Athlete discarded the packaging after its use. Despite efforts to obtain an additional sample for purposes of this proceeding, the Athlete could not produce the packaging or original ingredient list. He did, however, produce a web printout of a similar *Jack3d* label in English, which the Athlete submitted as an English label which includes geranium as an ingredient, but not representative of the Polish label of the product he ingested.

8. Based upon the assurances of the salesman and his research on the ingredients of the product, the Athlete ingested the product prior to a training session later that day. At the hearing, the Athlete testified that he ingested the product "out of curiosity".

2. The Doping Control Examination

9. Two days later, on 14 September 2014, following an inter-league match, the Appellant was randomly selected for a doping-control urine examination. The Appellant, who had been

subjected to multiple doping-control examinations during his 15-year playing career, did not object to the examination. He declared his use of a supplement on his Doping Control Form but not the one in question, *Jack3d*.

10. Following his doping-control examination, the Athlete was informed by the Polish Commission against Doping in Sport (the "Commission") that his urine sample tested positive for *methylhexaneamine* ("MHA"), a Prohibited Substance classified under S6 Stimulants (Specified Stimulants) on the World Anti-Doping Agency ("WADA") 2012 Prohibited List. The substance is prohibited in-competition only.

11. The Athlete, having never heard of MHA, analysed the ingredient labels on all his supplements and medicines for the inclusion of MHA and its other known names, such as "geranium stem," which came to his attention only after he received the letter from the Commission informing him of his positive result for MHA. Such letter also indicated that MHA is also identified on supplements as "geranium".

12. This was the Athlete's first anti-doping rule violation.

13. The Athlete was also given the opportunity to test his B Sample. Such offer was refused, however, by the Athlete as he understood from colleagues of his that this was costly and that he would be required to pay for it from his own resources, which were limited.

3. The First-Instance Hearing

14. On 15 October 2013, the Athlete received a text message informing him that the Games and Disciplinary Commission of the Polish Rugby Union (the "DC") had scheduled a hearing on the Athlete's case two days later, on 17 October 2013. The Athlete immediately requested that such hearing be adjourned as he had no counsel and was unable to make the 6 hour journey to the hearing.

15. In response, the DC adjourned the hearing one day – until 18 October 2013 – by which time the Athlete prepared a written statement and drove to and attended the hearing. The Athlete was not permitted to supplement his written statement at the hearing or to explain further issues relating to the circumstances by which he ingested the MHA. Instead, the Athlete was only permitted to submit a pre-written statement. The Athlete asserts that only two (2) of the four (4) Commission members were present at the hearing (noting that the Chairman was not present). Such assertion was not contested by the Respondent.

16. On 6 November 2013, the Commission wrote to the Athlete confirming that the Athlete had given up his right to test his B Sample and therefore confirmed the violation of the Respondent's anti-doping regulations.

17. Approximately two weeks later, by letter dated 21 November 2013, the DC informed the Athlete that he had been suspended for a two (2)-year period (the "Appealed Decision"). Such letter also noted that the Athlete, as an international-level player, was entitled to appeal such decision to the Court of Arbitration for Sport ("CAS").

B. Proceedings before the Court of Arbitration for Sport

18. On 12 December 2013, the Athlete filed his statement of appeal (designated as his appeal brief) at the CAS against the Respondent in accordance with Article R47 *et seq.* of the Code of Sports-related Arbitration (2013 edition). Within his statement of appeal, the Athlete requested a three-member panel and nominated Mr. Piotr Nowaczyk as an arbitrator.

19. On 20 December 2013, the CAS Court Office acknowledged receipt of the Athlete's statement of appeal and granted the Respondent a period of twenty (20) days to file its answer. Such letter also invited the Respondent to select an arbitrator within a period of ten (10) days and to confirm English as the language of the proceedings within three (3) days.

20. On 6 January 2014, the CAS Court Office wrote to the parties confirming that the Respondent failed to nominate an arbitrator (R53 of the Code) and did not object to English as the language of the proceedings (R29 of the Code).

21. On 16 January 2014, the CAS Court Office wrote to the parties confirming that the Respondent failed to file an answer in accordance with R55 of the Code. Within such letter, the parties were asked whether they preferred a hearing to take place in this appeal.

22. On 5 February 2014, the CAS Court Office informed the parties that in accordance with Article R54 of the Code, the Panel appointed to decide this appeal has been constituted as follows:

President:	Prof. Dr. Martin Schimke, attorney-at-law in Düsseldorf, Germany
Arbitrators:	Mr. Piotr Nowaczyk, attorney-at-law in Warsaw, Poland
	Mr. Ken Lalo, attorney-at-law in Gan-Yoshiyya, Israel

23. On 13 February 2014, the Athlete informed the CAS Court Office that it would like to have a hearing in this appeal. The Respondent did not respond.

24. On 28 February 2014, the CAS Court Office, on behalf of the Panel, invited the parties to sign the Order of Procedure, which would confirm the extent of the CAS's jurisdiction to decide this appeal. To the extent a party did not consent to CAS jurisdiction, they were invited to state their respective comments within seven (7) days of receipt of such invitation.

25. On 7 March 2014, the Athlete signed and returned the Order of Procedure.

26. On 10 March 2014, the Respondent wrote the CAS Court Office and stated that it would not sign such Order of Procedure unless it was determined who would pay its expenses in connection with such appeal if it turned out that the Appealed Decision was correct.

27. On 10 March 2014, the CAS Court Office wrote to the parties and noted that in accordance with Article R64.5 of the Code, the Panel would decide which party shall bear the costs of the arbitration in its final award.

28. On 13 March 2014, the Respondent informed the CAS Court Office that it would not sign the Order of Procedure for financial reasons and was again refusing to pay any costs associated with this appeal.

29. On 26 March 2014, the CAS Court Office called the parties to a hearing on 4 April 2014.

30. On 31 March 2014, the Athlete confirmed his participation at the hearing.

31. On 1 April 2014, the Respondent informed the CAS Court Office that it did not intend to participate in the hearing, despite being offered to participate by telephone or video conference.

32. On 4 April 2014, a hearing was held at the CAS headquarters in Lausanne, Switzerland. The Athlete was present with his counsel, Dr. Rafal Morek. The Panel was also present and was assisted by Brent J. Nowicki, counsel to the CAS. The Respondent did not participate.

33. At the hearing, the Athlete presented the Panel with a bundle of earlier circulated and new documents. It was explained that Dr. Morek delivered the bundle to the Respondent prior to the hearing, and that such documents were received without objection. The bundle principally contains rules, cases, webpage printouts, and various documents already in the file. The Panel reserved decision on whether to admit such documents in accordance with Article 44.1 of the Code.

34. The Athlete and his Counsel explicitly confirmed at the end of the hearing that the Athlete's right to be heard had been fully observed, in particular at the hearing, and that there are no objections whatsoever as to how the Panel has carried the proceedings.

35. On 9 April 2014, the CAS Court Office invited the Respondent to comment on the admissibility of the bundle handed in at the hearing, no later than by 16 April 2014. Within this same deadline, the parties were asked to provide the Panel with a translated copy of the applicable rules associated with the procedure, as well as to confirm whether any such sanction should be governed by the World Anti-Doping Code, the Model Rules/the Union Rules, or any other anti-doping rules.

36. On 16 April 2014, the Respondent filed its submission on the applicable rules, but did not object to the Athlete's submission of documents at the hearing.

37. On 17 April 2014, the Athlete filed his submissions on the applicable rules.

38. On 23 April 2014, the CAS Court Office acknowledged receipt of the parties' respective submissions on the applicable rules, and invited the parties to make any final written submissions on the appeal.

39. On 30 April 2014, both parties filed final written submissions with the CAS Court Office.

III. SUBMISSIONS OF THE PARTIES

A. The Athlete's Submission

40. The Athlete's submission, in essence, may be summarized as follows:

- He is a well-respected, veteran rugby player for Poland who has a spotless record of no disciplinary sanctions throughout his entire career. He has an entirely clean history as a player and despite numerous drug tests throughout his career, he has never tested positive for any banned substance.

- He ingested *Jack3d* that was given to him by a salesman at a vitamin store in a sample pack. The salesman assured him that such product did not contain any banned substances. He had heard of *Jack3d* in the past, and was aware that it contained a prohibited substance, but he understood that the formula of *Jack3d* was modified not to include prohibited substances and since the product was given to him as a sample of a new product he believed it to be the new formula on the market. The ingredients label did not identify a prohibited substance and he felt comfortable that he was ingesting a legal product and was convinced that the product was "geranium-free". Moreover, he checked the ingredients of the product, in Polish, against the prohibited list of substances, which he obtained on-line.

- He ingested the product during a training session two days before a league match and the test which ended with the positive result and in doing so, he had no intent to enhance his performance. This is evidenced by the fact that his team was already a high-level performer in the Polish rugby league and the opponent for the upcoming game was not competitive. Indeed, the Athlete's team won the match 71-0. Moreover, he had already competed in the more important stretch of his playing calendar as the upcoming games were relatively insignificant. So he had no need to "improve" his performance.

- Rugby is an amateur sport in Poland and athletes who take part in competitions do not undergo anti-doping education. The Respondent has failed to provide any information which establishes that the Athlete was provided with any anti-doping materials or education prior to his positive test. Indeed, the only anti-doping education he recalls was provided at the Junior World Cup event which took place in Italy approximately 15 years ago.

- His first instance hearing deprived him of any right to defend himself. He was given only two (2) days' notice of the hearing and had to drive 6 hours to attend the hearing. Only two (2) of the four (4) members of the Commission were present, and one of the members told him prior to the hearing that his sanction would start at two (2) years, but could likely be more. He was not allowed to speak at the hearing, he was not asked any questions, and the panel merely read his statement, which he prepared the day before the hearing. No other information was provided to him and, despite his requests, he was not given any of his documentation concerning the positive results. He felt as if his sanction was pre-determined by the Commission before he arrived.

41. At the hearing, the Athlete called Mr. Dariusz Komisarczuk, the Athlete's coach, as a witness. Mr. Komisarczuk testified by telephone that the Athlete is a leader on his team and that he represents Poland in an honourable manner. He proceeded to confirm that the Athlete is a model player and person, and a valuable member of the Polish National Rugby Team. Mr. Komisarczuk strongly condemns doping use and believes that the Athlete's ingestion of MHA was unintentional. He has no direct connection with the Respondent with respect to this sanction, but does believe that the Athlete has personally suffered and would like the Athlete to return to competition as soon as possible.

42. As a prayer for relief in his statement of appeal, the Athlete requests *"positive consideration of my appeal and change of the decision, as in the appeal"*. In this regard, the Athlete requests that the period of ineligibility be reduced to a period of six (6) months.

B. The Respondent's Submission

43. The Respondent did not submit an answer in this appeal and did not otherwise participate in the hearing. It did, however, provide the applicable rules considered by the Respondent when deciding upon the Athlete's sanction in response to the Panel's inquiry dated 9 April 2014.

44. Separately, by letter dated 30 April 2014, the Respondent stated as follows: *"Each athlete in Poland have a chance to call (whole day) to Polish Antidoping Committee in order to get information concerning doping, nutrients allowed, etc. During trainings led by their educational section JACK3D is an example of nutrient that contains prohibited helping centres"*.

IV. ADMISSIBILITY

45. Article R49 of the Code provides as follows:

> *In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late.*

46. Article 21.27.6 of the Rules of the International Rugby Board ("IRB"), i.e. Regulation 21, which is – in particular in light of Article 21.14.1 of the IRB Rules - the only rule of the federation which may be taken into consideration, provides the same 21-day time limit:

> *Save in respect of an appeal by WADA, the time to file an appeal to CAS shall be 21 days from the date of receipt of the written decision by the appealing party. The above notwithstanding, the following shall apply in connection with appeals filed by a party entitled to appeal in accordance with these Anti-Doping Regulations but which was not a party to the proceedings having led to the decision subject to appeal:*
>
> *(a) Within 14 days from notice of the decision, such party/(ies) shall have the right to request from the body that issued the decision a copy of the complete file on which such body relied; and*

(b) If such a request is made within the 14-day period, then the party making such request shall have 21 days from receipt of the complete file to file an appeal to CAS.

47. The Athlete was notified of the Appealed Decision on 21 November 2013.

48. The Athlete subsequently filed his statement of appeal on 12 December 2013, and therefore, complied with the time limits prescribed under Article R49 of the Code. Consequently, this appeal is timely.

V. JURISDICTION

49. Article R47 of the Code provides as follows:

An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body.

50. In accordance with Article 2(2) of the Disciplinary Rules of the Polish Rugby Union ("Disciplinary Rules"), the Respondent and its constituents have subscribed to and adopted the WADA Code, which provides for the right of international-level athletes to appeal a decision of the DC to the CAS in accordance with Article 13.2.1 of the WADA Code and 21.27.2 (a) IRB respectively.

51. Moreover, the Panel notes that in the Respondent's letter dated 21 November 2013 (i.e the Appealed Decision), the Respondent informed the Athlete as follows:

The competitor taking part in international games is hereby entitled to appeal against the aforesaid decision to the Court of Arbitration for Sport (CAS) in Lausanne (Switzerland).

52. In addition, the Athlete – on specific request of the Panel – confirmed at the hearing that he is an international-level athlete and that CAS has jurisdiction over this matter.

53. Separately, the Panel notes that jurisdiction follows from the Order of Procedure, which was duly signed by the Athlete, and that the Respondent did not dispute CAS jurisdiction throughout this arbitration. Accordingly, the Panel is satisfied that CAS has jurisdiction to decide this appeal.

54. Finally, the Panel notes that the Athlete, in an error of caution, also sought to appeal the Appealed Decision with the Court of Arbitration for Sport at the Polish Olympic Committee ("POC"). The Panel understands that the current CAS appeal was pursued by the Athlete in lieu of the appeal before the POC, and that such appeal before the POC was later procedurally dismissed.

VI. APPLICABLE LAW

55. Article R58 of the Code provides as follows:

The Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.

56. The parties agree that the Disciplinary Rules apply to this dispute which, in turn, adopt both the WADA Code ("WADC") and the IRB Rules (see § 2 Disciplinary Rules). In particular, the Appellant confirmed in a personal statement during the hearing that he always felt subject to said rules. The Panel also notes that the Respondent, the sports organization that issued the Appealed Decision, has its seat in Poland.

57. Given the foregoing, the Panel considers that this appeal shall be decided on the basis of the Disciplinary Rules and, where necessary, the WADC and the IRB Rules. The law of Poland will apply subsidiarily.

VII. MERITS

A. Admission of Documents Bundle

58. As an initial matter, the Panel determines that the bundle of documents provided by the Appellant at the hearing is admissible pursuant to Article R56 of the Code. Such documents were delivered by the Appellant to the Respondent in advance of the hearing without objection from the Respondent. Moreover, by letter dated 9 April 2014, the CAS Court Office invited the Respondent to comment on the admissibility of the bundle handed in at the hearing. Again, no such objection was raised. The Panel deems the Respondent's silence in this regard as an agreement to the admission of such documents to the case file.

B. Examination of the contested decision

a. DC's competence to impose a sanction

59. The DC's competence to impose a sanction on a competitor derives from §§ 14 3.d., 16 1.b. Disciplinary Code.

b. Procedural deficiencies of the prior proceedings before the Polish Rugby Union

60. The CAS provides an opportunity for a full new hearing with full power to review the facts and the law (R57 of the Code). According to consistent CAS jurisprudence, errors during the prior proceedings and the prior hearing can, if at all, only be the basis for a successful appeal when the errors in the process below somehow affect a party's right to fully present a case

before CAS. Therefore, any alleged inadequacies in the prior hearing could be cured by the right to a new hearing before CAS (see e.g. CAS 1994/129).

61. In light of the given possibility of a full appeal to the CAS and the hearing held in the case at hand, the Appellant's "due process" arguments concerning the proceedings before the Polish Rugby Union can be deemed as cured.

C. Anti-Doping Rule Violation

62. The Appellant did not and is not objecting to the integrity of the sample collection process as well as to the accuracy of the laboratory's finding of a prohibited substance. Rather, the Athlete explicitly confirmed at the hearing that he accepts the results of the analysis of the A-Sample and did not contest the findings of MHA in his urine sample.

63. Article 21.4.1 IRB states that *"these Anti-Doping Regulations incorporate the Prohibited List which is published and revised by WADA"*. As mentioned above, MHA is a Prohibited Substance classified under S 6 Stimulants (Specified Stimulants) on the WADA 2012 Prohibited List.

64. The Athlete did not have a therapeutic use exemption in place at the time of the anti-doping violation.

65. Consequently, the violation by the Appellant of Article 21.2.1 IRB and Article 2.1 WADC respectively (presence of a prohibited substance or its metabolites or markers in an athlete's bodily specimen) is established

D. Applicability of Article 10.4 WADC

66. The issue that still needs to be decided here is whether, despite the finding of an anti-doping violation, the standard two-year period of ineligibility should be reduced in reliance on the applicable articles of the current WADC and the IRB Rules, respectively.

67. Regarding Specified Substances, Article 10.4 WADC is the most specific provision and takes precedence over others.

68. Article 10.4 WADC, which is identical to Article 21.22.3 IRB Rules, states:

> *"10.4 Elimination or Reduction of the Period of Ineligibility for Specified Substances under Specific Circumstances*
>
> *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 10.2 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 of Ineligibility. 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's or other Person's degree of fault shall be the criterion considered in assessing any reduction of the period of Ineligibility".

69. It is undisputed that the Prohibited Substance in question is a specified substance and can be traced back to the free sample of the food supplement *Jack3d* that the Athlete took prior to the sample collection. Therefore, the first two conditions/prerequisites of Article 10.4 WADC have been satisfied.

70. In order to satisfy the third condition, the Athlete must establish the absence of intent to enhance sport performance at the time of its ingestion. This element of intent in Article 10.4 WADC (and in corresponding doping rules such as Article 21.22.3 IRB Rules in the case at hand) has in recent periods been the subject of various discussions and interpretations among CAS panels, national doping panels, and jurists. The starting point of the debate surrounding the correct interpretation of the condition *"absence of an intent to enhance sport performance"* is the fact that in the second paragraph of Article 10.4 WADC there is no mention of the word *"substance"* (as there is in the first paragraph) in connection with the evidential burden to *"produce corroborating evidence"* that the Athlete did not intend to enhance sport performance. Therefore, the key question is whether the intent to enhance sport performance relates to the use of the specified substance or to the product in which it was contained.

a. Overview of the conflicting decisions and the debate

71. One of the first jurisprudential approaches taken by CAS on the subject was introduced in the *Oliveira* decision (CAS 2010/A/2107). In this decision, the panel stated the following:

72. *"The Panel does not read clause two of Article 10.4 as requiring Oliveira to prove that she did not take the product (...) with the intent to enhance sport performance. If the Panel adopted that construction, an athlete's usage of nutritional supplements, which are generally taken for performance-enhancing purposes, but which is not per se prohibited by the WADC, would render Article 10.4 inapplicable even if the particular supplement that is the source of a positive test result contained only a specified substance. Although an athlete assumes the risk that a nutritional supplement may be mislabelled or contaminated and is strictly liable for ingesting any banned substance, Article 10.4 of the WADC distinguishes between specified and prohibited substances for purposes of determining an athlete's period of ineligibility. Art. 10.4 provides a broader range of flexibility (i.e., zero to two years ineligibility) in determining the appropriate sanction for an athlete's use of a specified substance because "there is a greater likelihood that Specified Substances, as opposed to other Prohibited Substances, could be susceptible to a credible, non-doping explanation". See Comment to Article 10.4.*

73. *If the Panel adopted USADA's proposed construction of clause two of Article 10.4, the only potential basis for an athlete to eliminate or reduce the presumptive two-year period of ineligibility of ingestion of a specified substance in a nutritional supplement would be satisfying the requirements of Article 10.5, which requires proof of "no fault or negligence" or "no significant fault or negligence" for any reduction. Unless an athlete could satisfy the very exacting requirement for proving that "no fault or negligence", the maximum possible reduction for use of nutritional supplement containing a banned substance would be one year. This consequence would be contrary to the WADC's objective of distinguishing between a specified substance and a prohibited substance*

in determining whether elimination or reduction of an athlete's period of ineligibility is appropriate under the circumstance".

74. Since then, at least eleven CAS panels have expressly dealt with the approach taken in the *Oliveira* decision. Various legal articles have also summarized this - in part contradictory - CAS jurisprudence, in addition to discussing the difficulties surrounding the interpretation of Article 10.4 WADC. In the subsequent sections the Panel will briefly outline the discussion on the basis of and with specific references to these sources.

75. The approach taken by the arbitral tribunal in *Oliveira* (i.e. the intention to enhance sport performance applies to the use of the specified substance and not to the product itself) has - in principle - been expressly followed by the CAS panels in the cases CAS 2010/A/2229 no. 83-84, CAS 2011/A/2645 no. 78-81, CAS 2011/A/2677 no. 59-61, CAS 2011/A/2615 and 2618, CAS 2012/A/2756 para. 8.49, CAS 2012/A/2747 (*de Goede*), and CAS 2012/A/2822 para 8.9 (*Qerimaj*) (see also DE LA ROCHEFOUCAULD E., CAS jurisprudence related to the elimination or reduction of the period of ineligibility for specified substances, CAS Bulletin 2/2013, pages 18-27).

76. In *Qerimaj,* in particular, the panel extensively elaborated on the arguments that follow the reasoning in *Oliveira*. According to that panel:

77. *"First, the wording of Art.10.4 IWF ADP speaks in favour Oliveira, Paragraph 1 expressly links the intent to enhance performance to the taking of the specified substance. It is true, that this link is not repeated in the second paragraph that constitutes a rule of evidence. However, the second paragraph does not exclude similar interpretation either.*

78. *It follows from the above that whether or not to follow a broad or restrictive interpretation of Art. 10.4 IWF ADP must be decided depending on the purpose of the rule. The underlying rationale of Art.10.4 IWF ADP is that -as the commentary puts it- "there is a greater likelihood that specified substances, as opposed to other prohibited substances, could be susceptible to a credible non-doping explanation" and that the latter warrants - in principle - a lesser sanction. What Art. 10.4 IWF ADP wants to account for is, in principle, that in relation to specified substances there is a certain general risk in day to day life that these substances are taken inadvertently by an athlete. The question is what happens if the risk at stake is not a "general" but a (very) specific one that the athlete has deliberately chosen to take. The Respondent submits that Art. 10.4 IWF ADP was not intended for such cases. If an athlete chooses to engage in risky behaviour (by taking nutritional supplements), he should not benefit from Art.10.4 IWF ADP. The Panel is not prepared to follow this interpretation for the following reasons:*

79. *(1) The Panel finds it difficult to determine what patterns of behaviour qualify for risky behaviour as defined above. This is all the more true since -in particular when looking at elite athletes- most of their behaviour is guided by a sole purpose, i.e. to maintain or enhance their sport performance. The term 'enhance sport performance' is like an accordion that could be interpreted narrowly or widely: at one end of the spectrum, if an athlete takes -e.g.- a cough medicine, in most circumstances it will be to enable him to recover quicker in order to train again or to compete. Were the Panel to adopt a similar interpretative attitude, then it would risk outlawing a very wide spectrum of activities that are remotely only connected to sports performance. It is very difficult to draw an exact dividing line between products taken by an athlete that constitute a "normal" risk*

and products that constitute high risks in the above sense, preventing the application of Art.10.4 IWF ADP from the outset. It is not for this Panel to act as a legislator by drawing this dividing line. It is for this Panel though to decide on the instant case, and the reasoning above should be understood as underscoring our resolve to thwart a wide interpretation of the term 'enhance sport performance'.

80. *(2) It follows from the above that whether or not the behaviour of the athlete as such is intended to enhance his sport performance is not a sufficient criteria to establish the scope of applicability of Art. 10.4 IWF ADP. This is all the more true since - as the arbitral tribunal in Oliveira has stated - nutritional supplements are usually taken for performance-enhancing purposes which is not per se prohibited. The characteristic of "performance-enhancing" as such is neutral. An athlete is entitled to consume any substance that seems useful to enhance his sport performance as long as this substance is not listed on WADA's Prohibited List, Therefore, the primary focus can obviously not be on the question whether or not the athlete intended to enhance his sport performance by a certain behaviour (i.e. consuming a certain product), but moreover if the intent of the athlete in this respect was of doping-relevance,*

81. *(3) Finally, the view held by the Panel is also in line with the commentary in Art. 10.4 IWF ADP. The latter reads - inter alia: "Generally, the greater the potential performance-enhancing benefit, tire higher the burden on the Athlete to prove lack of an intent to enhance sport performance". Thus, the commentary assumes that there is a sliding scale with regard to the standard of proof in relation to absence of intent. The more risky the behaviour is in which an athlete engages the higher is the standard of proof for the absence of fault. It is exactly this sliding scale that the Panel will apply in the case at hand".*

82. Contrary to the *Oliveira* approach discussed above, the panel in *Foggo* (CAS A2/2011) held that the mere fact that the athlete did not know that the product contained a specified substance did not in itself establish the relevant lack of intent. Moreover, if the athlete believes that the ingestion of the substance will enhance his or her sport performance, although the athlete does not know that the substance contains a banned ingredient, Article 10.4 cannot be satisfied.

83. In *Kutrovsky* (CAS 2012/A/2804), the majority of the panel adopted the *Foggo* approach. Accordingly, *"an athlete's knowledge or lack of knowledge that he has ingested a specified substance is relevant to the issue of intent but cannot, pace Oliveira, of itself decide it"*. The majority of that panel held that the reading of the second condition should not differentiate between the specified substance and a product in which it may be contained. The specified substance mentioned in the second condition is the same specified substance as the one mentioned in the first condition. This interpretation is confirmed by the language of the Article, in particular by the use of the word "such" attached to specified substance in the second condition. Precisely, according to that panel, *"the specified substance in the Second Condition refers to the specified substance in the form in which it has been established under the First Condition to enter the athlete's body [...] it follows that in order to meet the Second Condition the athlete must establish that in taking the specified substance in the form in which he took it, he did not intend to enhance his performance"*. As a consequence, *"the First and Second Conditions must be read together since the Second Condition only falls to be considered if the First Condition is satisfied"* (*see* DE LA ROCHEFOUCAULD E., l.c. (Fn.1), page 23; see also CAS 2013/A/3388).

84. The Panel is aware that similar reasoning was also recently adopted in CAS 2013/A/3029: *"[The panel] does not accept that an athlete's ignorance that a product contains a Specified Substance can establish absence of intent for the purposes of Article 10.4. In plain words, and in contradiction with Oliviera, if an athlete believes that a product enhances performance he cannot invoke the benefit of Article 10.4 just because it is accepted that he did not know that the product contained a banned substance. This would have the absurd result of rewarding competitors for being -- and remaining -- ignorant of the properties of the products they ingest, contrary to a fundamental objective of the anti-doping regulations, namely to create powerful incentives for competitors to take active and earnest initiatives to inform themselves".*

b. Opinion

85. After carefully weighing the various arguments, the Panel has decided to adopt the view of the advocators of the approach taken by the arbitral tribunal in *Oliveira* as described above and just recently in CAS 2013/A/3316.

86. The same applies to the specific and detailed discussion in the *de Goede* decision regarding the argumentation in the *Kutrovsky* case. In addition to relying on the panel's reasoning in *Qerimaj*, the panel in *de Goede* convincingly deduced and argued that the reasoning of the panel in *Kutrovsky* appears not only to contradict the rationale of the *"reduction mechanism"* in the WADC but also to contradict itself. The Panel of the case at hand also relies in full on the respective statements in the *de Goede* case, with which it concurs without reservation (see CAS 2012/A/2747, para. 7.13, 7.14).

87. Finally, the Panel agrees with the view expressed in the literature regarding the comments to Article 4.3.2 of the WADC, wherein it is stated that *"[u]sing the potential to enhance performance as the sole criterion [for including a substance on the Prohibited list] would include, for example, physical and mental training, red meat, carbohydrate loading and training at altitude",* the WADC itself recognizes the difference between legitimate performance enhancement and the use of a prohibited substance (see RIGOZZI/QUINN, Inadvertent Doping and the CAS, Part II, The relevance of a "credible non-doping explanation" in the application of Article 10.4 of the WADA Code, LawInSport, November 2013 with further confirming references to the genesis of Article 10.4 WADC.)

88. In the Panel's view, there is another reason that supports the approach taken in the *Oliveira, Qerimaj,* and *de Goede* cases. As explained and emphasized many times in the aforementioned CAS jurisprudence and in the literature, Art 10.4 WADC is anything but clear and is in fact most ambiguous. Generally in such cases, and particularly in doping cases, CAS decisions have consistently applied the principle of *"contra proferentem"*, meaning that an ambiguity in a regulation must be construed against the drafter of such regulation. The Panel would like to highlight the following chain of CAS decisions and statements in connection with the interpretation of doping rules:

- CAS 94/129, award dated 23 March 1995, Digest of CAS Awards 1986–1998 (Berne 1998), p 187, 197–98, and in particular the passages at para. 55: *"The fight against doping is arduous, and it may require strict rules. But the rule-makers and the rule-appliers must begin by being strict with themselves. Regulations that may affect the careers of dedicated athletes must be predictable.*

They must emanate from duly authorised bodies. They must be adopted in constitutionally proper ways. They should not be the product of an obscure process of accretion. Athletes and officials should not be confronted with a thicket of mutually qualifying or even contradictory rules that can be understood only on the basis of the de facto practice over the course of many years of a small group of insiders".

- The aforementioned passage has been cited with approval many times since, e.g. by the CAS panel in CAS 2009/A/1752 & 1753, award dated 10 June 2010, para 6.11.

- In the above quoted CAS 2009/A/1752 & 1753 case at para. 4.28, the CAS panel resolved a conflict between the IOC anti-doping rules and the 2013 WADC (and therefore the case) in favour of the athlete on the basis that *"contradictions in the applicable rules must be interpreted contra proferentem, i.e. to the detriment of the promulgator of the conflicting or contradictory provision"* (See also CAS 2008/A/1461, award dated 10 September 2008).

- See also CAS 2011/A/2612, award dated 23 July 2012, para. 107 (ambiguities in the IWF Anti-Doping Rules should be resolved in favour of the athlete, with the four-year ban stipulated in those rules *"read down"* to comply with the two-year ban stipulated in the WADC).

- See also CAS 2007/A/1437: *"Therefore, at this stage of its reasoning, the Panel must consider the legal requirements of said provision. Pursuant to CAS case law, the different elements of a federation shall be clear and precise, in the event they are legally binding for athletes and/or clubs (see CAS 2006/A/1164; CAS 2007/A/1377). The Panel is of the opinion that inconsistencies shall be on the charge of the legislator (the federation)".*

89. In light of this clear and consistent CAS jurisprudence, and in addition to all other arguments, the Panel – according to the same reasoning of the arbitral tribunal in CAS 2013/A/3316 – finds that the principle of *"contra proferentem"* alone justifies a restrictive interpretation of the element of *"intent to enhance sport performance"* in Article 10.4 WADC – in accordance with the *Oliveira* doctrine and contrary to the wider interpretation of *Foggo, Kutrovsky* and others. It is clear that the restrictive interpretation (i.e. intent must relate to the prohibited substance in question) favours the athletes.

c. Consequences for the case at hand

90. Following the *Oliveira, Qerimaj, de Goede, etc.* approach, intent is established if an athlete knowingly ingests a prohibited substance. In this connection, the Panel notes the following:

91. The Appellant submitted and personally declared in a credible and consistent way, that *Jack3d* was given to him by a salesman at a vitamin store in a sample pack and that the latter assured him that the product does not contain any banned substances. After a further independent check of the ingredients of the product on the internet the Athlete felt comfortable that he was ingesting a legal product free of prohibited substances.

92. In light of this and in the absence of evidence to the contrary, the Panel is comfortably satisfied that the Athlete lacked (direct) intent to enhance sport performance through consuming MHA at the time of its ingestion according to Article 10.4 WADC (Article 21.22.3 IRB).

93. But although the panels in *Qerimaj* and *de Goede* followed *Oliveira,* they also went further and established a distinction between direct and indirect intent. According to both decisions, Article 10.4 WADC will still apply if the athlete, rather than being *reckless*, was "only" *oblivious*. In this connection, the panels in *Qerimaj* and *de Goede* state: *"If - figuratively speaking - an athlete runs into a "minefield" ignoring all stop signs along his way, he may well have the primary intention of getting through the "minefield" unharmed".*

94. The Panel in the case at hand – again with the same arguments elaborated in CAS 2013/A/3316 – finds the aforementioned approach neither persuasive nor helpful for a number of reasons, as outlined below.

95. First, the panels in *Qerimaj* and *de Goede* themselves stress and admit that the distinction between indirect intent (which excludes the applicability of Article 10.4 WADC) and the various forms of negligence (that allow for the application of said Article) *"is difficult to establish in practice"*. In *de Goede,* the panel even added that, *"The assessment whether or not an athlete acts with (direct or indirect) intent within the meaning of art. 39.3 of the Previous JBN Rules (art. 10.4 WADC) is further complicated if the substance at stake is prohibited in-competition only, but was ingested by the athlete out-of-competition"*. Despite these obvious and described difficulties, the panels in *Qerimaj* and *de Goede* are of the view that one should take into account the distinction between direct and indirect intent although no explicit indication of this can be found in Article 10.4 WADC. Contrary to the reasoning in *Qerimaj* and *de Goede*, the Panel sees no such indication in the following comments to Article 10.4 WADC either:

96. *"Generally, the greater the potential performance-enhancing benefit, the higher the burden on the Athlete to prove lack of an intent to enhance sport performance"* (see *Qerimaj* para. 2.(3))

or

97. *"Examples of the type of objective circumstances which in combination might lead a hearing panel to be comfortably satisfied of no performance-enhancing intent would include: the fact that the nature of the Specified Substance or the timing of its ingestion would not have been beneficial to the Athlete"* (see *de Goede* para. 7.16).

98. These aspects undoubtedly function as a kind of factual presumption when determining whether or not an athlete (directly) intended to enhance his or her sport performance. However, particularly in light of the fundamental principles of *"contra proferentem"* and legal certainty, the comments quoted above do not necessarily justify such a wide interpretation of the term *"intent"* in Article 10.4 WADC to include indirect intent as well.

99. Secondly, it is this same difficulty of drawing an exact dividing line that is used by the panel in *de Goede* to refuse the application of a broader interpretation of another special term in Article 10.4 WADC, seeing in such difficulty an undermining of the principle of legal certainty, which

requires to avoid the distinction between direct and indirect intent in this context. The Panel in *de Goede*, when discussing the *Kutrovsky* case, states: *"Finally, arguments of legal certainty also speak against the jurisprudence in Kutrovsky. The latter tries to differentiate between the ingestion of a substance in a sporting and a non-sporting context. In case of the former, the athlete, in principle, always acts intentionally, thus, precluding the possibility of a reduction according to art. 39.1-5 of the Previous JBN Rules (art. 10.4 WADC). The Sole Arbitrator finds it difficult to determine what patterns of behaviour potentially qualify for application of art. 39.1-5 of the Previous JBN Rules (art. 10.4 WADC) and which not. (…)In consequence if one were to follow the jurisprudence in Kutrovsky it would be - in the view of the Sole Arbitrator - nearly impossible to draw an exact (i.e. non-arbitrary) dividing line between products taken by the athlete that qualify for an application of art. 39.1-5 of the Previous JBN Rules (art. 10.4 WADC) and which not".*

100. Thirdly, it is the Panel's view that if the *Oliveira* approach includes the "minefield" analogy - i.e. the product contains so many warning flags about its contents that it can be presumed that the user of it knew that it contained a prohibited substance - then in most cases one effectively arrives at the same conclusion contemplated by the *Foggo/Kutrovsky* approach, namely that there was an intention to ingest not only the product but also all of the ingredients of the product.

101. Finally, the Panel sees no compelling reason to take into account the said distinction between direct and indirect intent, since - as correctly explained in detail in *de Goede* - *"The differences as to the consequences of the different views (Oliveira and Kutrovsky) are - contrary to what may appear at first sight - not tremendous".*

102. It follows from the above that drawing a distinction between direct and indirect intent would lead to a broad interpretation of the term "intent" in Article 10.4 WADC, and thus to an interpretation to the detriment of athletes. In the Panel's view, this approach would contradict the applicable and previously explained principle of *"contra proferentem"* and is, therefore, an approach that should not be taken.

103. Therefore, the Panel sees no reason to assess any degree of indirect intent that the Athlete may possibly have had. Rather, the Panel remains with its conclusion, as stated above, that the Athlete had no intent within the meaning of Article 10.4 WADC.

E. Determining the period of ineligibility

104. The fact that the Athlete had no intent within the meaning of Article 10.4 WADC does not, however, automatically lead to the impunity of his wrongdoing. The extent to which the Appellant is eligible for a reduction of the standard period of ineligibility still has to be determined, in a second step. The possible sanctions pursuant to Article 10.4 WADC and Article 21.22.3 IRB range from a minimum sanction, consisting of a reprimand and no period of ineligibility, to a maximum sanction, consisting of a two–year period of ineligibility. According to Article 10.4 WADC, the degree of the athlete's fault (e.g. light or gross negligence) is the decisive criterion in assessing the appropriate period of ineligibility.

105. In this connection the Panel notes the following:

- The numerous warnings of the well-known risks linked to the use of nutritional supplements exist and are widely published for many years (see e.g. CAS 2003/A/484, CAS 2005/A/847, CAS 2008/A/1629, CAS 2008/A/1510, CAS 2007/A/1445, and CAS 2009/A/1915).

- WADA's website contains *inter alia* the following warning under the *"Questions & Answers"* section:

  "Extreme caution is recommended regarding supplement use.

  The use of dietary supplements by athletes is a concern because in many countries the manufacturing and labelling of supplements may not follow strict rules, which may lead to a supplement containing an undeclared substance that is prohibited under anti-doping regulations. A significant number of positive tests have been attributed to the misuse of supplements and taking a poorly labelled dietary supplement is not an adequate defense in a doping hearing".

- It should also be noted that the Appellant had access to internet and from an internet research the Panel found that, in particular, the website of the International Rugby Board seems to contain excellent and exemplary publications regarding the risks of the use of nutritional supplements (for example hand books, special flyers and brochures with case studies etc.).

- The Respondent has indicated, in its letter dated 30 April 2014, that: *"Each athlete in Poland have a chance to call (whole day) to Polish Antidoping Committee in order to get information concerning doping, nutrients allowed, etc. During trainings led by their educational section JACK3D is an example of nutrient that contains prohibited helping centres".*

- The Athlete was aware that *Jack3d* contained a prohibited substance, but assumed that he was ingesting a sample of a new *Jack3d* formula which was free of prohibited substances (see Appellant's letter dated 30 April 2014 in which it is stated that the Athlete *"heard about JACK3D in the past, but was convinced that its new revised formula was geranium-fee* (sic)*"*). Under such circumstances the Athlete was to take increased precautions to ensure that this was indeed the formula which had no prohibited substances.

- Finally, in his written statement of 18 October 2013 the Appellant declared:

  "I am aware that as an active sports person and regular representative of the Polish National Team, I must be extremely cautious when it comes to the choice of supplements".

- It follows that any lack of education in relation to anti-doping rules and procedures and/or failures of the Respondent in this regard – as submitted by the Appellant's counsel in the letter dated 30 April 2014 (p.3) – can in no way be a complete excuse for the Appellant's use of the prohibited substance in question. To the contrary, it has to be assumed that the Athlete was informed and well aware of the risk of using supplements.

- The further fact that the Appellant did not declare his use of *Jack3d* on the Doping Control Form and did not use the supplement in an open manner and in a full view of the testing officials, is also not a reason to lessen the Athlete's degree of fault.

- On the other hand, the Appellant did not merely rely upon the assurances of the salesman but conducted an internet research into the product and its substances and compared each ingredient on the label of the supplement to the Prohibited List but found no matches. However, this is the most basic and the easiest precaution available to an Athlete. This applies all the more in the case at hand because the Athlete – according to his own submissions – received a special treatment under doctor's supervision. It is obvious that he could have carried out further precautionary steps, in particular, to consult a doctor and/or a physician, or his coach.

- During the hearing, the Appellant did express regret for what happened and was cooperative and honest about the circumstances which lead to the Adverse Analytical Finding.

106. Based on all of the above and after carefully reviewing the relevant CAS case law, notably the decisions mentioned above as well as other decisions that do not involve the *Foggo/Oliveira* debate but that involve sanctions in relation to the degree of the Athlete's fault under 10.4 (e.g. 2012/A/2518, CAS 2012/A/2701, CAS 2012/A/2959), the Panel concludes that the Athlete is to be sanctioned with a period of ineligibility of ten (10) months.

F. Commencement of the ineligibility period

107. Article 21.22.12 IRB Rules (Article 10.9 WADC) provides that the period of ineligibility - in principle - starts on the date of the "hearing decision made providing for Ineligibility". Whether this refers to the date of the Decision or the CAS decision is not quite clear. The Panel is of the opinion that the decisive time is the day on which whatever respective instance (here CAS) makes its decision. The period of ineligibility should therefore begin on the date on which this decision is issued (see also *de Goede* CAS 2012/A/2747, para. 81).

108. However, according to Article 21.22.12 (b) IRB Rules *"where the Player (…) promptly (which, in all events, for a Player means before the Player competes again) admits the anti-doping rule violation after being with [it], the period of Ineligibility may start as early as the date of Sample collection (…). In each case, however, where this Regulation 21.22.12 (b) is applied, the Player (…) shall serve at least one-half of the period of Ineligibility going forward from the date (…) the sanction was otherwise imposed".*

109. Here, it is noted that the Athlete fully admitted the anti-doping rule violation upon notification of his Adverse Analytical Finding, and fully cooperated with the Polish Rugby Union throughout the underlying investigation and proceeding. In this regard, he accepted his suspension as of 21 November 2013 and has refrained from any participation since the imposition of such suspension (approximately seven (7) months) (i.e. more than one-half of the applicable sanction herein). As such, the Panel finds that the requirements of Article

21.22.12 have been met and, therefore, the start date for the Athlete's suspension shall be 14 September 2013.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The Appeal filed by Mr. Tomasz Stepien against the decision of the Games and Disciplinary Commission of the Polish Rugby Union dated 21 November 2013 is partially upheld.

2. The decision of the Games and Disciplinary Commission of the Polish Rugby Union dated 21 November 2013 is set aside and replaced with the following:

3. Mr. Tomasz Stepien is sanctioned with a period of ineligibility of ten (10) months, commencing on 14 September 2013.

4. (…).

5. (…).

6. All other or further claims are dismissed.