



**Arbitration CAS 2016/A/4439 Tomasz Hamerlak v. International Paralympic Committee (IPC), award of 4 July 2016**

Panel: Prof. Michael Geistlinger (Austria), President; Ms Sylvia Schenk (Germany); Prof. Richard McLaren (Canada)

*Athletics (long distance - marathon)*

*Doping (stanozolol)*

*Personal responsibility of the athlete and involvement of the coach and the federation in the distribution of supplements*

*Proof of the source of the prohibited substance*

*Athlete's intent and burden of proof*

*Athlete belonging to a Registered Testing Pool as an argument for the question of intent/lack of intent*

*Sporting relevance of the specific promotional race as an argument for the question of intent/lack of intent*

- 1. The personal responsibility of the Athlete laid down by Articles 10.2 and 2.1.1 of the IPC Code (equivalent to the WADA Code) makes mute any effort of an athlete to justify his/her behaviour by arguing that he/she acquired the supplements, he/she considered to be the source of the prohibited substance, through his/her coach and upon the coach's recommendation from the federation. Even if a CAS panel finds also the involvement of the coach and the federation in buying and distributing supplements to athletes as risky and rather doubtful, their involvement cannot exculpate an athlete.**
- 2. Even if an athlete undertakes a series of actions in order to find out the source of the prohibited substance assuming that it originated from one of the supplements or a cream he/she used or meat he/she ate, the failure of providing any proof as to the origin of the prohibited substance cannot be repaired through his/her efforts in this respect.**
- 3. As to the athlete's intent, according to Article 10.2.1.1 of the IPC Code (WADA Code), the burden of proof lies with the athlete, who has to establish, at a balance of probability, that the anti-doping rule violation was not intentional.**
- 4. The argument that an athlete belongs to the relevant Registered Testing Pool subject to the respective whereabouts commitments and, due to excellent sportive results, has to undergo frequent doping controls is an argument which is true for all athletes on a Registered Testing Pool. However, general experience shows, that irrespective of such obligation and experience of all top-level athletes, belonging to a Registered Testing Pool does not protect against taking prohibited substances. Such an argument has no evidentiary relevance for the question of intent or lack of intent as to the commitment of an anti-doping rule violation.**
- 5. The argument that a specific promotional race was of no sportive relevance for a marathon sportsman is not relevant for the question of intent or lack of intent but merely belongs to the list of speculations.**

## **I. PARTIES**

1. Tomasz Hamerlak (the “Athlete” or “Appellant”) is a Polish athlete competing in the IPC Athletics (long distance – marathon). He competes on the international level, including participation in the Paralympic Games.
2. The International Paralympic Committee (the “IPC” or “Respondent”) is the global governing body of the Paralympic Movement. Its purpose is to organize the Summer and Winter Paralympic Games and act as the International Federation for among others Athletics.

## **II. FACTUAL BACKGROUND**

3. Below is a summary of the relevant facts and allegations based on the parties’ written submissions, pleadings and evidence adduced at the hearing. Additional facts and allegations found in the parties’ written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.
4. On 8 July 2015, while the Appellant stayed in Lausanne for a promotional 1500 m race on the day before the IAAF Diamond League Meeting, he was tested out-of-competition by Anti-Doping Switzerland upon request and under authority of the IPC. Anti-Doping Switzerland collected an A and B urine and a blood sample. The Appellant signed two Doping Control forms without additional comments and without indication of any medications and/or supplements taken. The samples were analysed by the WADA accredited laboratory in Lausanne.
5. On 30 July 2015, the laboratory reported to IPC an Adverse Analytical Finding for stanozolol metabolites. This substance is classified under SA1.1a Exogenous Anabolic Androgenic Steroids (AAS) on the 2015 WADA List of Prohibited Substances. It is not a Specified Substance and prohibited in and out of competition. The IPC’s review did neither reveal any TUE for this substance, nor a departure from the applicable WADA International Standards.
6. On 19 August 2015, IPC notified the Appellant through the National Olympic Committee of Poland of the Adverse Analytical Finding and informed him, that he was given a mandatory provisional suspension as from 19 August 2015, and about his rights according to the IPC Anti-Doping Code (“IPC-Code”).
7. On 26 August 2015, the Appellant provided the IPC with an explanation letter, where he indicated a list of dietary supplements he was using and stated that the only supplement he had changed in his daily routine was AAKG by BiotechUSA. All supplements were provided to him by the Polish Association for Disabled through his coach. He waived his right to have the B sample opened and did not ask for the laboratory documentation package, but started a process of testing AAKG.

8. On 16 September 2015, the WADA accredited laboratory of Warsaw informed the Appellant that the supplement AAKG Shock did not contain stanozolol or any of its metabolites.
9. In the following period until the hearing before the IPC Anti-Doping Committee, which was re-scheduled from 14 October 2015 to 2 December 2015 in order to give more time for the Appellant to have additional supplements (Co Q 10-marki Natrol, MSM+Wit.C-marki Biotech, Energon X1000-marki ActivLab, Magnesium Liquid-marki Mr. Big, AAKG Shock-marki Biotech) and the cream Elocon tested for stanozolol. Two of these supplements were not previously mentioned by the Appellant. Due to a much lower price for the analysis, the tests were assigned to and done by the Narodowy Instytut Leków (National Medications Institute). None of these tests, which with one exception, used the original bottles the Appellant stated to have used, was positive for stanozolol or any of its metabolites. Further to that, the Appellant presented to the IPC Anti-Doping Committee an invoice from the organisation "ATLETA" Michal Górski addressed to "Polski Związek sportu Niepełnosprawnych of 6 June 2015 for the purchase of a series of supplements from Activlab, Biogenix and Olimp. However, none of these appeared to be those previously communicated by the Appellant as a possible source of stanozolol and/or its metabolites.
10. The Appellant before the IPC Anti-Doping Committee argued orally and in writing that he never took stanozolol intentionally, that it would be illogical to use the substance in his sport in general and, given the fact that he was already qualified for the Paralympic Games in Rio, that the relevant competitions on his schedule had already successfully taken place, the competition season was closed and the promotion competition in Lausanne was not in his discipline marathon, in particular. The Appellant pointed at the fact that he was part of the Registered Testing Pool and had to undergo doping controls frequently and that none of these tests showed an Adverse Analytical Finding. He stated that he did not declare the supplements on the Doping Control Form, because the Doping Control Official had advised him that this was not necessary. The Appellant also explained that he never received anti-doping education despite his twenty years' experience in sport. He had not used the supplements to enhance performance but in order to recover faster.
11. On 27 December 2015, the Anti-Doping Committee of the IPC found that a violation of art. 2.1 IPC Code (Presence of a Prohibited Substance or its Metabolites or Markers) has been proven, that there were no grounds to apply arts. 10.4 (No Fault or Negligence), 10.6.1 (Substantial Assistance) or 10.6.3 (Prompt Admission). Also the application of art. 10.5.2 (No Significant Fault or Negligence, erroneously quoted as 10.5.1.2. in the appealed decision), was excluded pointing at the Appellant's long experience, the fact that no contaminated product could be established by the Appellant and that he did not exercise due caution using so many supplements. Thus, a period of four (4) years ineligibility was imposed with credit given to the period of provisional suspension already served by the Appellant. If applicable, the results in competitions subsequent to sample collection obtained were pronounced as disqualified as per art. 10.8 IPC Code (the "Appealed Decision").

### III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

12. On 3 February 2016, the Athlete filed his statement of appeal against the Respondent with respect to the Appealed Decision in accordance with Article R47 *et seq.* of the Code of Sports-related Arbitration (the “Code”). Within his statement of appeal, the Athlete nominated Ms. Sylvia Schenk as an arbitrator. In addition, the Athlete made an evidentiary request to the Respondent.
13. On 18 February 2016, the Respondent nominated Prof. Richard H. McLaren as arbitrator. In addition, the Respondent responded to the Athlete’s request for certain documentation in its possession and referred the Athlete to the testing laboratory for further information.
14. On 29 February 2016, the Athlete filed his appeal brief in accordance with Article R51 of the Code.
15. On 11 March 2016, the CAS Court Office, on behalf of the President of the Appeals Arbitration Division, confirmed the appointment of the Panel in this procedure as follows:  
  
President: Prof. Michael Geistlinger, Salzburg, Austria  
Arbitrators: Ms. Sylvia Schenk, Attorney-at-Law, Frankfurt-am-Main, Germany  
Prof. Richard H. McLaren, London, Ontario, Canada.
16. On 17 March 2016, the Panel directed the Respondent to produce the requested evidence. On 23 March 2016, the Respondent showed the Panel that he had already fulfilled this request by email on 1 March 2016.
17. On 24 March 2016, the Respondent filed its answer in accordance with Article R55 of the Code.
18. On 13 and 14 April 2016, the Respondent and the Appellant, respectively, signed and returned the Order of Procedure to the CAS Court Office.
19. On 22 April 2016, a hearing was held at the CAS Court Office in Lausanne, Switzerland. The Panel was assisted by Mr. Brent J. Nowicki, CAS Counsel, and joined by the following:

For the Appellant:

Mr. Tomasz Hamerlak (athlete)  
Mr. Lukasz Klimczyk (counsel)  
Ms. Illona Berezowska (interpreter)

For the IPC:

Mr. Mike Townley (counsel).

20. At the beginning of the hearing, the parties confirmed that they had no objection to the constitution of the Panel. At the conclusion of the hearing, the parties confirmed that their right to be heard had been fully respected.

#### **IV. SUBMISSIONS OF THE PARTIES**

21. The Appellant's submissions, in essence, may be summarized as follows:
- The Appealed Decision did not consider the issue of intent or its lack thereof when applying art. 10.5.2 IPC Code.
  - The sanction imposed is too harsh.
  - The Appellant did not act intentionally in the sense of art. 10.2.3 IPC Code because he never consciously used any prohibited substance. He was not aware that his behavior could amount to causing an anti-doping rule violation and moreover, he never knew that there was a serious risk that such behavior could possibly constitute an anti-doping rule violation or that its consequence was such a violation and that he knowingly disregarded the risk.
  - The Appellant, quite to the contrary, as experienced sportsman constantly chooses his nutrition supplements and food cautiously.
  - The Appellant was included in the Registered Testing Pool, fulfilled his respective duties, has been tested frequently and never was found having used any prohibited substance. Also, his biological passport did not show any atypical finding or inaccuracy.
  - The doping control took place at a promotional 1500m race, whereas the Appellant is specialized in marathon. Thus, his participation at this competition was of no relevance for him. The important sport tournaments for his sport (World Championships in London, Polish Championships in Bydgoszcz with two gold medals) with very good results were already behind him. He was already qualified for the Paralympic Games in Rio de Janeiro 2016 through his results at the World Championships in London where he was tested negative as this was also the case at the Polish Championships on 27 June 2015, only 12 days before the promotional race in Lausanne.
  - As a consequence, the prohibited substance must have entered the Appellant's body between 27 June 2015 and 8 July 2015. This can have happened only unconsciously by a contaminated food product or contaminated meat.
  - Stanozolol injected into the body is detectable up to 2 to 3 months after injection. If taken orally, it is detectable for up to 10 – 14 days. To take it in the preparation for a promotional race does not make sense.

- Stanozolol was only found in the Appellant's urine, but not in his blood sample. If taken with intent, the substance would have stayed longer in his blood.
- The long list of supplements taken should not be to the disadvantage of the Appellant, because he received them by his coach and they both verified their composition and possible content prior to the use. They also consulted web search machines. The supplements used by the Appellant are commonly used by athletes for regeneration.
- The Appellant has used these supplements for a long time and has been tested several times in this period without an Adverse Analytical Finding.
- The Appellant, therefore, was surprised by the Swiss finding, cooperated with the IPC and conducted several tests in order to find out how the prohibited substance entered his body. These tests did not provide any proof and showed his willingness to do what he could do to discover the source, even at own expenses.
- The Appellant refers to a scientific article discussing that nutritional supplements often are contaminated. This goes, in particular, for products like vitamin C, multivitamin or magnesium. The Appellant, thus, continues to suspect that the contamination of a product unconsciously eaten by the Appellant must have been the reason for the Adverse Analytical Finding.
- Any intentional use of the prohibited substance would have been directed towards improving his sporting results, which would have been illogical given that he only participated in a promotional race and considering that the Appellant was included in the Registered Testing Pool.
- The Appellant, thus, has successfully proven that he did not intentionally use the prohibited substance. Thus, art. 10.2.2 IPC Code applies, which means that at the most the Appellant should be sentenced to two (2) years ineligibility.
- Since stanozolol is not a Specified Substance, art 10.5.1.2 IPC Code applies. However, the Appellant admits not having been able to prove that the prohibited substance comes from a specific product. The Appellant states not having been able to indicate such specific product.
- The Appellant holds that art 10.5.2 IPC Code applies instead. In his opinion, that was not considered by the IPC Anti-Doping Committee. Referring to CAS 2013/A/3327, in order to minimize the risk of contaminated products athletes must read the label of the product used, must cross-check all ingredients with the WADA List of Prohibited Substances, must make an internet search of the product, must ensure the product is reliably sourced and must consult experts before consuming the product. The Appellant did all this and – as to the source of the products and expertise – took only supplements provided by his coach and sport federation.

- The Appellant considers that, as to art 10.5.2 IPC Code, the fact that he used the supplements for a long time, that he used unsuspecting ones, that he did it upon recommendation of his coach and his federation, that the same types of supplements are used by the other athletes, that there was no positive finding before, that the Appellant is generally careful as to what he ingests, that he is on the Registered Testing Pool, that the detection time of stanozolol is considerably long so that an intentional use could be easily detected, and that he did not have any anti-doping education needs to be taken into consideration. The sanction, thus shall be reduced to a period of twelve (12) months of ineligibility.
- Such period would be just and fair compared to the sanctions imposed in another case of use of stanozolol in CAS 2015/A/4129. The periods imposed there, on the basis of art 10.5.1.2, were 9 months in cases of a first Anti-Doping-Rule violation and 18 months at a second. The different legal basis does not matter in the opinion of the Appellant because of lack of intention and significant fault or negligence given in his case.

22. In his appeal brief, the Appellant made the following requests for relief:

- 1) *That the Appeal is admissible;*
- 2) *That the challenged decision is set aside and this Court rules on merits of the case by finding that:*
  - a) *The sanction imposed by IPC Anti-Doping Committee on the Appellant was excessive;*
  - b) *The Appellant has proved the lack of intention in infringement of anti-doping regulations, what results in finding the Article 10.2.2 IPC Anti-Doping Code of being the basis for imposing the penalty of Appellant, and*
  - c) *The Appellant proved that in this particular case his fault was neither significant, nor he is guilty of negligence, what results in possibility of shortening the period of penalty of ineligibility up to the half of the period of that penalty imposed on the basis of Article 10.2.2 IPC Anti-Doping Code and on that basis to impose the penalty of 12-months of ineligibility from the day of 19<sup>th</sup> August 2015 until 18<sup>th</sup> August 2016;*
- 3) *That the Respondent shall bear the costs of the arbitral proceedings and contribute an amount to the legal costs and other expenses incurred in connection with the proceedings of the Appellant according to Rule R64.5 of the CAS Code.*

23. The Respondent's submissions, in essence, may be summarized as follows:

- The IPC Anti-Doping Committee dealt with art. 10.5.2 IPC Code, but by a typographical error referred to art. 10.5.1.2.
- Additionally, the Respondent refers to the arguments of the IPC Anti-Doping Committee in the Appealed Decision (see para. 11 above).

- As to art. 10.5.2 IPC Code, the IPC Anti-Doping Committee had appreciated the interest of the Appellant in having all his supplements analysed, however, without result as to which supplement contained the prohibited substance. It noted that the list of supplements changed during the procedure from the initial list. It considered that it has remained unclear, at which periods in time the Appellant was using which products. Also the issue of the advice, request, provision and use of supplements was not clarified by the Appellant. The invoices presented to the Committee did not refer to the same products. The Appellant did not look for professional advice from a nutritionist or dietician.
- The Respondent refers to the Appealed Decision in arguing that stanozolol has a performance enhancing effect for long distance athletes.
- The Respondent asserts that the Appellant has not produced any evidence that contradicts to the finding in the Appealed Decision. On the contrary, the Appellant in his appeal brief has admitted that he could not prove where the prohibited substance comes from.
- The Respondent argues that the Appellant could not provide any evidence for how the Prohibited Substance entered his system and has not offered a credible explanation that meets his burden of proof to the standard of balance of probability.
- Based on the explanation of the Lausanne laboratory, the fact that stanozolol was found only in the urine, but not in the blood sample follows from the fact that the laboratory analyzed the blood only for other parameters.

24. In his answer brief, the Respondent made the following requests for relief:

- (a) *Dismiss the appeal brought by the Appellant;*
- (b) *Upholds the IPC's decision of 27 December 2015;*
- (c) *Orders that the Appellant bear the costs of this arbitration, if any; and*
- (d) *Orders that each of the parties bear their own legal and other costs.*

## V. JURISDICTION

25. Art. 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.*

26. Art. 13 IPC Code reads as follows:

*1. Decisions Subject to Appeal*

*Decisions made under this Code may be appealed as set forth below in Articles 13.2 through 13.7 ...*

*2. Appeals from Decisions Regarding Anti-Doping Violations, Consequences, Provisional Suspension, Recognition of Decisions and Jurisdiction*

*These decisions may be appealed: a) a decision that an anti-doping rule violation was committed, ...*

*2.1. Appeals Involving International level Athletes or International Events*

*In cases arising from participation in an International Event or in cases involving International-Level Athletes, the decision may be appealed exclusively to CAS.*

27. Para. 56 of the Appealed Decision confirms the jurisdiction of CAS based on art. 13 IPC Code.

28. Moreover, the Parties confirmed the jurisdiction of CAS by having signed the Order of Procedure.

29. Thus, the Panel finds that it has the jurisdiction to decide the present case.

## **VI. ADMISSIBILITY**

30. Art. 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.*

31. The Appealed Decision was notified to the Appellant on 13 January 2016. The appeal was submitted on 3 February 2016 and, therefore, in time. There were no objections as to the admissibility of the case.

32. The Panel holds, therefore, that the case is admissible.

## **VII. APPLICABLE LAW**

33. Art. 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.*

34. The applicable regulations are contained in the IPC Code.
35. Subsidiarily, German law as the law of the country where the IPC is domiciled shall apply.

### VIII. MERITS

36. The Appellant did not dispute that he committed a violation of art. 2.1 IPC Code (Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample) due to the fact that metabolites of the prohibited substance stanozolol were found in his urine sample taken out-of-competition on 8 July 2015.
37. Both parties agree that, as for the sanction to be imposed on such anti-doping rule violation, art 10.2 IPC Code applies. This provision, given a substance which is not a Specified Substance and which is prohibited in and out of competition, reads as follows:

*10.2 Ineligibility for presence, Use or Attempted Use, or Possession of a Prohibited Substance or Prohibited Method*

*The period of Ineligibility for a first violation of Articles 2.1, 2.2 or 2.6 shall be as follows, subject to potential reduction or suspension of sanction pursuant to Articles 10.4, 10.5 or 10.6:*

*10.2.1 The period of Ineligibility shall be four years where:*

*10.2.1.1 The anti-doping rule violation does not involve a Specified Substance, unless the Athlete or other Person can establish that the anti-doping rule violation was not intentional.*

...

*10.2.2 If Article 10.2.1 does not apply, the period of Ineligibility shall be two years.*

*10.2.3 As used in Articles 10.2 and 10.3, the term "intentional" is meant to identify those Athletes who cheat. The term therefore requires that the Athlete or other Person engaged in conduct which he or she knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk. ..."*

38. The above-quoted provisions must be understood in the light of art. 2.1.1 of the IPC Code, the first two sentences of which rule that 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*".
39. The personal responsibility of the Athlete laid down by the above rules in the opinion of the Panel makes mute any effort of the Appellant to justify his behaviour by arguing that he acquired the supplements, he considered to be the source of the prohibited substance, through

his coach and upon the coach's recommendation from his federation. Even if the Panel finds also the involvement of the coach and the federation in buying and distributing supplements to athletes as risky and rather doubtful, their involvement cannot exculpate the Appellant.

40. The Appellant undertook a series of actions in order to find out the source of the prohibited substance assuming that it originated from one of the supplements or a cream he used or meat he ate. The Appellant had, however, to admit that he could not provide any proof as to the origin of stanozolol found in his body's specimen. To try to find the origin cannot repair the failure of such efforts.
41. Moreover, the Panel considers the issue of the Athlete's intent. According to art. 10.2.1.1 of the IPC Code, the burden of proof lies with the Athlete. In the opinion of the Panel, the Appellant failed to establish by the applicable standard of proof, which is at a balance of probability, that the anti-doping rule violation was not intentional.
42. The Appellant offers mere speculations which relate to the time of having taken the prohibited substance (27 June and 8 July 2015), the source (contaminated supplement or food), and the purpose of taking the prohibited substance (no performance enhancing effect in his sport).
43. The Panel considers that the Appellant is no longer a young athlete and that none of the parties could provide the Panel with evidence that apart from the out-of-competition test, an in-competition-test was provided for by the organizers of the promotional race in Lausanne. The risk of being caught at such promotional race, therefore, seemed to be small.
44. Moreover, the argument that the Appellant belongs to the relevant Registered Testing Pool is subject to the respective whereabouts commitments and, due to his excellent sportive results, has to undergo frequent doping controls and that it would have been senseless, therefore, for him to take a prohibited substance is an argument which is true for all athletes on a Registered Testing Pool. However, general experience shows, that irrespective of such obligation and experience of all top-level athletes, belonging to a Registered Testing Pool does not protect against taking prohibited substances. The argument has no evidentiary relevance for the question of intent or lack of intent as to the commitment of an anti-doping rule violation.
45. Furthermore, the argument that the promotional race was not a race in the discipline of marathon, but only in 1500 m, and, thus, was of no sportive relevance for a marathon sportsman, in the opinion of the Panel, is not relevant for the question of intent or lack of intent. That argument belongs to the list of speculations. At the hearing, the Appellant stated that of the total number of 8 athletes who took part in the promotional race, four to five athletes were marathon specialists and, thus in a similar competitive situation to the Appellant.
46. The Panel did not follow the argument of the Appellant, a top-level sportsman for more than 20 years, handling the Adams system and double-checking the ingredients of supplements before taking them, on the website of the Polish Anti-Doping Agency, as he explained at the hearing, that he was not educated in anti-doping. It may well be that he was not offered such education by his national federation and ignored the offers of the IPC at the 2015 IPC

competitions in which the Appellant participated. However, the knowledge he showed to the Panel at the hearing proved his knowledge, thus contradicting to his own statement.

47. The Panel, therefore, holds that the Appellant could not demonstrate that the use of stanozolol happened without intent. All that he could present were mere speculations and assumptions. The Panel even wishes to emphasize that the Appellant acted risky by taking a long list of supplements, knowing from scientific articles he himself quoted, that they may be contaminated. Besides, the number and kind of supplements, indicated by the Appellant, was changed by him in the course of the proceedings, a fact, which shakes reliability and credibility of the Appellant.
48. As a consequence of all the above, the Panel holds that art. 10.2.1, and not art. 10.2.2 IPC Code has to be applied. The IPC Anti-Doping Committee correctly applied art. 10.2.1 of the IPC Code.
49. The Parties agree that neither art. 10.4, nor art. 10.6 of the IPC Code can be applied in the case at hands and the Panel sees no element in the facts of the case that contradict to this finding.
50. The Appellant also agrees that art. 10.5.1 of the IPC Code cannot be applied because he could not establish that the detected prohibited substance came from a contaminated product.
51. The Appellant argues, however, that art. 10.5.2 shall apply. This provision reads as follows:  
*“Application of No Significant Fault or Negligence beyond the application of Article 10.5.1*  
*If an Athlete or other Person establishes in an individual case where Article 10.5.1 is not applicable that he or she bears No Significant Fault or Negligence, then, subject to further reduction or elimination as provided in Article 10.6, the otherwise applicable period of Ineligibility may be reduced based on the Athlete or other Person’s degree of Fault, but the reduced period of Ineligibility may not be less than one-half of the period of Ineligibility otherwise applicable. ...”.*
52. The Appellant relied on this provision after having first come to the result that art. 10.2.2 shall apply to his case. This opinion was found not to be arguable by the Panel, however (see paras. 36 – 47 above).
53. The comment to art. 10.5.2 of the IPC Code in line with the World Anti-Doping Code reads as follows:  
*[Article 10.5.2 may be applied to any anti-doping rule violation except those Articles where intent is an element of the anti-doping rule violation (e.g., Articles 2.5, 2.7, 2.8 or 2.9) or an element of a particular sanction (e.g., Article 10.2.1) or a range of Ineligibility is already provided in an Article based on the Athlete or other Person’s degree of Fault.]*

54. The Panel has found that art. 10.2.1 of the IPC Code applies. This provision is explicitly mentioned in the above comment as including intent as an element and, therefore, is not compatible with an application of art. 10.5.2 of the IPC Code.
55. The Panel further holds that an essential difference in the facts and as a consequence of the applicable rules does not allow for any comparison of the sanction imposed in the present case and the sanctions imposed by CAS 2015/A/4129.
56. The Panel, thus, rules to dismiss the appeal and uphold the decision of the IPC Anti-Doping Committee. The sanction of four (4) years ineligibility imposed on the Appellant is confirmed, as is the application of art. 10.8 of the IPC Code.

## **ON THESE GROUNDS**

### **The Court of Arbitration for Sport rules:**

1. The appeal filed by Mr. Tomasz Hamerlak on 3 February 2016 is dismissed.
2. The decision of the International Paralympic Committee dated 27 December 2015 imposing a four-year period of ineligibility is upheld.
3. (...).
4. (...).
5. All other motions or prayers for relief are dismissed.