



Arbitration CAS 2015/A/4285 World Anti-Doping Agency (WADA) v. Russian Anti-Doping Agency (RUSADA) & Serguei Prokopiev, award of 26 February 2016

Panel: Prof. Michael Geistlinger (Austria), Sole Arbitrator

Beach volleyball

Doping (dehydrochloromethyl-testosterone)

Consent award

In cases of appeals against the sanctions initially imposed by the competent anti-doping organisation, if all parties agree that the initially imposed sanctions have been incorrect, the panel may impose the sanctions agreed upon by all parties concerned, provided those sanctions comply with the applicable anti-doping rules.

I. PARTIES

1. The World Anti-Doping Agency (the “Appellant” or “WADA”) is a Swiss private law Foundation. Its seat is in Lausanne, Switzerland, and its headquarters are in Montreal, Canada. WADA is an independent organization created in 1999 to promote, coordinate, and monitor the fight against doping in sport in all its forms.
2. The Russian Anti-Doping Agency (the “RUSADA” or “First Respondent”) is the National Anti-Doping Agency of Russia.
3. Mr. Serguei Prokopiev (the “Athlete” or the “Second Respondent”) is a beach volleyball player, and a former member of the Russian national team.

II. FACTUAL BACKGROUND

A. Background Facts

4. Below is a summary of the relevant facts and allegations based on the parties’ written submissions, pleadings and evidence adduced. 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 Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present

proceedings, he refers in his Award only to the submissions and evidence he considers necessary to explain his reasoning.

5. On 24 May 2015, RUSADA, based on its Test Distribution Plan, conducted an out of competition doping test on the eve of the European Games in Baku. The Athlete tested positive for dehydrochloromethyl-testosterone, which is classified under “S1.1a exogenous anabolic androgenic steroid” of the WADA Prohibited List. This substance is prohibited both in and out of competition and is not a specified substance.
6. On 28 May 2015, RUSADA notified the Athlete and relevant National Federation that it was conducting an investigation into a possible anti-doping rule violation.
7. In an email dated 2 July 2015, the Athlete explained that before he became a member of the Russian national team, he had been training independently under the supervision of a friend who is a fitness trainer. He maintained that this friend provided him with tablets (“Oral Turinabol”) from an unknown source in order to recover from a knee injury. He provided various medical documents showing that he had been feeling pain in his right knee joints during physical activities since mid-November 2014 and was prescribed by his doctor intra-articular injections of duralin (60 mg).
8. On 6 August 2015, the Athlete appeared before the Disciplinary Anti-Doping Committee of RUSADA and explained that over a period of 5 days, early January 2015, he took 2 tablets of Oral Turinabol a day. The Athlete’s friend appeared as his witness at the hearing and stated that he had purchased Oral Turinabol pills at a sports shop in 1999 – 2000 in order to treat inflammation in knee joints. He had kept some of these pills, not remembering their name, over the years and offered them to his friend for treating his knee problem.
9. The Disciplinary Anti-Doping Committee of RUSADA, by a decision dated 17 August 2015 (“Appealed Decision”), imposed a two-year period of ineligibility upon the Athlete, as of 28 May 2015. It is from the Appealed Decision that WADA now appeals to the Court of Arbitration for Sport (the “CAS”).

B. Proceedings before the Court of Arbitration for Sport

10. On 20 November 2015, WADA filed its statement of appeal at the CAS against RUSADA and the Athlete with respect to the Appealed Decision in accordance with Articles 13.1.3 and 13.6.1 RUSADA Anti-Doping Rules (“ADR”) and Article R47 *et seq.* of the Code of Sports-related Arbitration (the “Code”). In its statement of appeal, WADA requested the nomination of a Sole Arbitrator.
11. On 26 November 2015 and 27 November 2015, the Athlete and RUSADA, respectively, agreed that the case shall be submitted to a Sole Arbitrator.
12. On 7 December 2015, WADA filed its appeal brief in accordance with Article R51 of the Code.

13. WADA's submission, as set forth in its appeal brief, is summarized as follows: The sanction set forth in the Appealed Decision is not compliant with the anti-doping rules in force as of 1 January 2015 and that a four-year ban should have been imposed upon the Athlete as he intentionally committed an anti-doping rule violation. In its request for relief, WADA asserted as follows:
 1. *The Appeal of WADA is admissible.*
 2. *The decision rendered by the Disciplinary Anti-Doping Committee of RUSADA on 17 August 2015, in the matter of Mr. Serguei Prokopiev, is set aside.*
 3. *Mr. Serguei Prokopiev is sanctioned with a four-year period of ineligibility starting on the date on which the CAS award enters into force. Any period of ineligibility or provisional suspension effectively served by, Mr. Serguei Prokopiev before the entry into force of the CAS Award, shall be credited against the total period of ineligibility to be served.*
 4. *All competitive results obtained by Mr. Serguei Prokopiev from 24 May 2015 through the commencement of the applicable period of ineligibility shall be disqualified with all of the resulting consequences including forfeiture of any medals, points, and prizes (sic).*
 5. *WADA is granted an award for costs.*
14. On 25 December 2015, the Athlete sent an email to the CAS Court Office, generally explaining shortly his defence and expressing remorse for what had happened and stated that the Russian currency fell drastically so that he simply cannot afford to continue these legal proceedings and cover the fees.
15. On 30 December 2015, RUSADA filed its answer in accordance with Article R55 of the Code. Generally speaking, RUSADA asserted that the sanction was applied correctly because on the balance of probability the Athlete could prove that he did not have the intention to use the Prohibited Substance and, thus, Article 10.2.2 of the RUSADA Anti-Doping Rules, justifying a two-year ban, had to apply. In its request for relief, RUSADA asserted as follows:
 - i. *WADA decision [recte: appeal] is dismissed;*
 - ii. *Decision of the RUSADA Commission is upheld;*
 - iii. *RUSADA is granted an award for costs.*
16. On 4 January 2016, the CAS Court Office, on behalf of the President of the Appeals Arbitration Division and in accordance with Article R54 of the Code, informed the parties that Mr. Michael Geistlinger, Professor in Salzburg, Austria, shall decide the case as Sole Arbitrator.
17. On 11 January 2016, each party separately confirmed its preference that the Sole Arbitrator issue an award based solely on the parties' written submissions.

18. On 12 January 2016, the Athlete sent an email to the CAS Court Office conceding liability and agreeing to a period of ineligibility of four years, as requested by WADA.
19. On 18 January 2016, WADA and RUSADA both accepted that given the Athlete's concession, this arbitration shall be solved upon consent of all parties. WADA requested, however, that the costs of the arbitration shall be borne by RUSADA because it failed to issue a compliant decision. WADA also sought a fair compensation for its legal costs.
20. On the same day, the CAS Court Office noted WADA's request for costs and therefore invited the Respondents to respond to WADA's request for costs, following which the Sole Arbitrator would issue an award memorializing the parties' agreement on sanction and thereafter make a determination on costs.
21. On 29 January 2016, RUSADA informed the CAS that it did not agree with WADA's request that the costs of the arbitration should be borne solely by RUSADA and requested that each side shall bear its share of the costs.

III. JURISDICTION

22. Article R47 of the Code states that "*An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body*".
23. WADA based its appeal on Article 13.1.3 RUSADA ADR which reads as follows:

WADA Not Required to Exhaust Internal Remedies

Where WADA has a right to appeal under Article XIII and no other party has appealed a final decision within the ADA's process, WADA may appeal such decision directly to CAS without having to exhaust other remedies in the ADA's process.
24. WADA's right to appeal follows from Article 13.2.1 read together with Article 13.2.3 (f) of the RUSADA ADR since an International-Level Athlete is involved.
25. The Sole Arbitrator notes that all parties acknowledge and recognize CAS jurisdiction to render an award memorializing the parties' agreement on sanction and determining the issue on costs.
26. Therefore, the Sole Arbitrator finds that it has jurisdiction to issue this Award.

IV. ADMISSIBILITY

27. 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.

28. Article 13.6.1 of the RUSADA ADR provides that “*the filing deadline for an appeal filed by WADA shall be the later of:*

(a) Twenty-one (21) days after the last day on which any other parties in the case could have appealed, or

(b) Twenty-one (21) days after WADA’s receipt of the complete file relating to the decision”.

29. WADA received the case file regarding the Appealed Decision on 30 October 2015. The statement of appeal was filed on 20 November 2015. Therefore, the Sole Arbitrator confirms that this appeal is timely and admissible.

V. MERITS: THE PARTIES’ CONSENT AS TO THE SANCTION

30. By exchange of letters of 12 and 18 January 2016, the parties, based on a concession by the Athlete, agreed that a sanction of four-year ineligibility shall be imposed on the Athlete.

31. Such sanction for the use a substance which is not a Specified Substance, is in compliance with Article 10.2.1.1 RUSADA ADR, which reads as follows:

10.2. The Period of Ineligibility for a violation of Article 2.1, 2.2 or 2.6 shall be as follows, subject to potential reduction or suspension 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.

....

32. The Sole Arbitrator finds no legal or factual basis to reject the Athlete’s concession of liability of an anti-doping rule violation and a four-year period of ineligibility. Moreover, the Sole Arbitrator finds no reason to reject the parties’ agreement to memorialize such concession to this anti-doping rule violation and period of ineligibility in an award. The proposed four-year period of ineligibility complies with the sanctioning regime of both the World Anti-Doping Code (“WADC”) and the RUSADA ADR.

33. Accordingly, the Sole Arbitrator determines that the Athlete has committed an anti-doping rule violation in accordance with Article 2.1 of the RUSADA ADR (presence of a prohibited substance or its metabolites or markers in an athlete’s bodily specimen) and therefore shall serve

a four-year period of ineligibility in accordance with Article 10.2 of the RUSADA ADR. Any period of ineligibility served by the Athlete shall be credited against the total period of ineligibility to be served. Moreover, all competitive results obtained by the Athlete from 24 May 2015 through the commencement of the applicable period of ineligibility shall be disqualified with all resulting consequences, including the forfeiture of any medals, points, and prizes.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by the World Anti-Doping Agency against the Russian Anti-Doping Agency and Mr. Serguei Prokoviev with respect to the decision rendered by the Disciplinary Anti-Doping Committee of RUSADA dated 17 August 2015 is upheld.
 2. The decision of the Disciplinary Anti-Doping Committee of RUSADA dated 17 August 2015 is set aside. Mr. Serguei Prokoviev is sanctioned with a four-year period of ineligibility from the date of this Award, with credit given for any period of ineligibility already served.
 3. All competitive results obtained by Mr. Serguei Prokoviev from 24 May 2015 through the commencement of the applicable period of ineligibility shall be disqualified with all resulting consequences, including the forfeiture of any medals, points, and prizes.
- (...)
6. All other motions or prayers for relief are dismissed.