



Arbitration CAS 2008/A/1516 World Anti-Doping Agency (WADA) v. Comitato Olimpico Nazionale Italiano (CONI), Federazione Italiana Tennis Tavolo (FITET) & Valentino Piacentini, award of 11 September 2008

Panel: Mr Patrick Lafranchi (Switzerland), Sole Arbitrator

Table tennis

Doping (cocaine)

Exceptional circumstances

Suspension already served

- 1. The list of circumstances which may but do not have to lead to a reduction of the suspension cannot be exhaustive. In other words, it is not limited to the exemplifying list contained in the comment regarding art. 10.5.2 of the World Anti Doping Code or related provisions. However, no exceptional circumstances can justify an elimination or reduction of the stipulated suspension in the case of an athlete who knew prior to consuming the cocaine positively of the character of the substance which he may well have consumed in a state of euphoria but nevertheless in knowledge of the circumstances and finally intentionally.**
- 2. The suspension already served has to be credited against the two-year suspension imposed in favour of the athlete.**

The Appellant World Anti-Doping Agency (WADA), is an independent international anti-doping agency, whose aim it to promote, coordinate, and monitor, at the international level, the fight against doping in sports in all its forms.

The Comitato Olimpico Nazionale Italiano (CONI), is a public corporation and the umbrella organization of the Italian sport associations. It organizes and strengthens the national sport and promotes the spreading of sports activities.

The Federazione Italiana Tennis Tavolo (FITET), is one of the associations of CONI and aims at the spreading, development, organization and regulation of table tennis in Italy.

Mr. Valentino Piacentini is an Italian citizen and was professional table tennis player before being suspended for the present matter to be decided on.

On the occasion of an in-competition test performed on a urine sample provided by Mr. Piacentini, during the Italian National Championship on June 8, 2007 Mr. Piacentini tested positive to two metabolites of cocaine.

Mr. Piacentini was summoned to appear before the CONI Ufficio di Procura Anti-Doping, for a hearing which was held on June 19, 2007 during which he admitted having ingested cocaine two days before the Italian National Championship at a party in Milan.

By decision dated October 4, 2007 the CONI Ufficio di Procura Anti-Doping referred Mr. Piacentini to the Corte di Appello Federale to be suspended for a period of one year. On November 15, 2007 the Corte di Appello Federale suspended Mr. Piacentini for one year for his doping offence.

On December 21, 2007 WADA filed an appeal with the Giudice di Ultima Istanza in materia di doping del CONI, against this decision. On February 4, 2008, the Giudice di Ultima Istanza in materia di doping del CONI suspended Mr. Piacentini for one year and eight months for his violation of the CONI Norme Sportive Antidoping 2005 (“CONI Rules”).

On March 17, 2008 WADA filed a Statement of Appeal to the CAS against the decision of the Giudice di Ultima Istanza in materia di doping del CONI. WADA requested that the CAS had to rule that:

- “1. The Appeal of WADA is admissible.*
- 2. The Decision of GUI rendered on February 4, 2008 in the matter of Mr. Valentino Piacentini is set aside.*
- 3. Mr. Valentino Piacentini is suspended for two years, starting on the date of the CAS hearing. Any period of suspension (whether imposed to or voluntarily accepted by Mr. Valentino Piacentini) before the entry into force of the CAS award shall be credited against the total period of suspension to be served.*
- 4. All competitive results obtained by Mr. Valentino Piacentini from June 8, 2007 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.*
- 5. WADA is granted an award for costs”.*

With the letter of March 26, 2008 CONI informed CAS that it intends to waive the exercising of the material parties’ rights in the present case and accept the upcoming award of CAS.

With the letter of March 27, 2008 FITET informed CAS that it also intends to waive the exercising of material parties’ rights in the present proceedings and to accept the upcoming award of CAS.

On March 27, 2008 WADA filed the Appeal Brief to CAS in which it confirms the motions of the Statement of Appeal dated March 17, 2008.

With the letter of April 24, 2008 Mr. Piacentini informed CAS inter alia that he will not be able to participate in a possible hearing before CAS for cost reasons.

With the letter of April 30, 2008 CAS suggested the parties to submit their dispute to a Sole arbitrator. With the letter of May 15, 2008 CAS determined that the parties did not raise any objections against

the appointment of a sole arbitrator. With the letter of May 22, 2008 the parties were informed about the appointment of Mr. Patrick Lafranchi as sole arbitrator.

With the letter of June 4, 2008 and pursuant to a request from the Sole arbitrator, CONI informed that Mr. Piacentini had suspended sports activities since July 12, 2007.

With the letter of June 16, 2008 the parties were informed that none of the parties had applied for the execution of a hearing and that the sole arbitrator would pass his decision in writing accordingly.

With the letter of July 21, 2008 CAS notified to the parties that all parties signed the Order of Procedure and returned it to CAS.

With regard to applicable law, WADA asserts that Mr. Piacentini is a member of FITET and that FITET unconditionally subjects itself to the Regolamento antidoping of CONI pursuant to art. 6 clause 5 of Statuto Federale. Furthermore, the decision under appeal was made by the Giudice di Ultima Istanza in materia di doping del CONI applying the CONI Rules. For these reasons, the CONI Rules are applicable in the present proceedings.

Furthermore, WADA asserts that cocaine is a prohibited substance pursuant to the WADA Prohibited List, that this substance had been proven in the body of Mr. Piacentini and that, for this reason, Mr. Piacentini committed a violation of the CONI Rules.

WADA also asserted that a reduction of the suspension should occur only in cases where the circumstances are truly exceptional and that, in this case, Mr Piacentini should be suspended two years.

All Respondents renounced making statements in the matter.

LAW

CAS jurisdiction

1. The jurisdiction of CAS *in casu* is based on Art. 13.2.3 of the World Anti-Doping Code (WADC) and on Art. 20.5 of the CONI rules which incorporated Art. 13.2.3 of the WADC into the CONI Rules.
2. The parties confirmed that CAS has jurisdiction to hear the present appeals by signing the Order of Procedure.
3. Article R57 of the CAS Code provides that on an appeal to CAS the Panel has “*full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance*”.

Admissibility and applicable law

4. Article R58 of the CAS Code provides the following:
“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”.
5. Mr. Piacentini is a member of FITET which subjects itself to the Regolamento antidoping of CONI pursuant to art. 6 clause 5 of Statuto Federale FITET. Thus, the CONI Rules are applicable in the present case.
6. Pursuant to art. 20.5 para. 3 CONI Rules, WADA is entitled to file an appeal with CAS against decisions in the last instance of the competent sports courts. This decision was announced in this case by the Giudice di Ultima Istanza in materia di doping del CONI on February 4, 2008. The motivated decision was sent to WADA on February 25, 2008.
7. As the CONI rules do not set the time limit to appeal, art. R49 of the Code of Sports-related Arbitration is applicable. Pursuant to this provision: *“[i]n 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”.*
8. Filed on March 17, 2008 the appeal of WADA is admissible.

Discussion

9. The facts of the case are uncontested to a large extent. Mr. Piacentini was made subject to a doping control on the occasion of the Italian table tennis championships on June 8, 2007. In the urine sample of Mr. Piacentini, the two metabolites of cocaine, Benzoyllecgonine and Ecgoninemethylester, were proved by the antidoping laboratory in Barcelona.
10. Mr. Piacentini confessed in the previous instances to have consumed cocaine two days prior to the Italian table tennis championships at a party in Milan. Mr. Piacentini furthermore stated for the records that he consumed the cocaine in a moment of euphoria but not with the intention to increase his athletic performance capability.
11. Cocaine is a stimulant which is listed in the WADA 2007 Prohibited List (and in the WADA 2008 Prohibited list) under S6 (Stimulants). The CONI Rules expressly refer to the WADA 2007 Prohibited List. Thus, it is established that Mr. Piacentini violated art. 1.2 CONI Rules.
12. Pursuant to art. 19.2 CONI Rules, an athlete is sentenced to a regular suspension of two years in case of the first violation. Art. 19.5 of the CONI Rules lists reasons which may lead to an elimination or reduction of the stipulated suspension.

13. In its reasoning for the reduced sentence for Mr. Piacentini, the previous instance invokes art. 19.5.2 CONI rules (corresponding to art. 10.5.2 of the World Anti Doping Code) within the framework of the decision appealed from. This standard stipulates that the duration of the suspension may be reduced if the athlete proves in the individual case with regard to such violation that he acted neither intentionally nor in grossly negligent manner. The previous instance considers that Mr. Piacentini made a serious and credible confession, that it was possible to verify the statements of the athlete medically and that the type of the substance ingested did not increase his athletic performance capability. The previous instance qualified the circumstances named as exceptional within the meaning of art. 19.5.2 CONI Rules and reduced the regular suspension provided for in art. 19.2 CONI Rules from two years to one year and eight months.
14. WADA counters that in the present case no exceptional circumstances were given that might justify a reduction of the suspension and adds practice cases of CAS for substantiation. The comment regarding art. 10.5.2 World Anti Doping Code exemplarily lists the following circumstances which may but do not have to lead to a reduction of the suspension:
 - Presence of a positive test result due to a mislabeled or contaminated vitamin or nutritional supplement;
 - Administration of a prohibited active ingredient by the personal physician or trainer of the athlete without disclosure to the athlete;
 - Sabotage of the athlete's food or drink by the spouse, coach or another person within the athlete's circle of associates (cf. also CAS 2007/A/1364).
15. The list above cannot be exhaustive, in other words, it must be possible that also other facts are subsumed under art. 19.5.2 CONI Rules. However, the Sole arbitrator asserts that the present case corresponds in no way to an exceptional circumstance pursuant to the standard mentioned and its interpretation, as Mr. Piacentini knew prior to consuming the cocaine positively of the character of the substance which he may well have consumed in a state of euphoria but nevertheless in knowledge of the circumstances and finally intentionally. In this connection, WADA rightly states that the CAS pursues a strict award practice in this regard (cf. CAS 2005/A/847, CAS 2007/A/1364).
16. Thus, art. 19.5.2 CONI Rules is not applicable in the present case and a two-year suspension due to consumption of prohibited substances pursuant to art. 1.2 CONI Rules will be imposed on Mr. Piacentini.
17. Mr. Piacentini has been inactive in terms of sports since July 12, 2007 according to a credible statement of CONI. In this connection, WADA files an application that Mr. Piacentini should be suspended as of the date when the CAS hearing took place, crediting the sanction already served. As is known, no party sought the execution of a hearing in the present proceedings. Accordingly, the suspension served since July 12, 2007 will be credited against the two-year suspension imposed in favor of Mr. Piacentini. Therefore Mr. Piacentini is sanctioned by a two (2) years ineligibility, which started on July 12, 2007. The competitive results obtained by Mr.

Piacentini from June 8, 2007 to July 12, 2007 are disqualified with all of the resulting consequences including forfeiture of medals, points and prizes.

The Court of Arbitration for Sport rules:

1. The appeal filed by the WADA on March 17, 2008 is admissible.
2. The appeal filed by the WADA on March 17, 2008 is upheld, and the appealed Decision issued by the Giudice di Ultima Istanza in material di doping del CONI on February 4, 2008 is varied to impose a two-year sanction.
3. Valentino Piacentini is declared ineligible for competition for two years commencing on July 12, 2007. The competitive results obtained by Mr. Piacentini from June 8, 2007 to July 12, 2007 are disqualified.
4. (...).
5. All other prayers for relief are dismissed.