



Arbitration CAS 2008/A/1565 World Anti-Doping Agency (WADA) v. International Military Sports Council (CISM) & Federico Turrini, award of 4 November 2008

Panel: Mr Conny Jörneklint (Sweden), President; Mr Guido Valori (Italy); Mr Michele Bernasconi (Switzerland)

Aquatics (swimming)

Doping (19-norandrosterone)

Dies a quo of the time limit for the filing of the appeal

Presence of a prohibited substance

Conditions of reduction of the period of ineligibility based on exceptional circumstances

Determination of the disciplinary sanction

1. It is very important that international sports law rules are equally applied for all parties, no matter if they are athletes or organizations, and that the application also must be foreseeable for those involved. If a party which have not taken part in the proceedings leading to the appealed decision shall have a fair opportunity to file an appeal it must be aware of that decision. In spite of the wording of the applicable rule, according to the applicable procedural rules, international sport law and CAS case law, the time limit for the filing of the appeal should not be counted from the date when the decision has been made, but when the party appealing the decision has been notified of such decision. In any event, it is for the respondent to prove that the decision was communicated more than 21 days prior to the appellant's statement of appeal.
2. The presence of 19-norandrosterone which is an endogenous anabolic androgenic steroid at a concentration greater than 2 ng/ml in an athlete's bodily specimen constitutes a doping violation incompatible with an endogenous production of the substance.
3. It is the professional duty of an athlete to consult the rules and to be well aware of all the duties an athlete has to fulfil. In this respect, an athlete must be active to ensure that no prohibited substance enters his/her body. As said in the Commentary to WADC, an athlete cannot rely on advice from his/her personal physician in these matters, especially when the doctor is no expert on sports medicine. The fact that an athlete is a professional is also relevant. If the athlete has not done anything to ensure this, s/he has not established that he bears no significant fault or negligence. There is therefore no ground to reduce the sanction on this basis.
4. It is well established that a two-year suspension for a first time doping offence is legally acceptable. Pursuant to the rules, the period of provisional suspension voluntarily accepted by an athlete shall be credited against the total period of ineligibility to be served. Furthermore, it is required by fairness that the starting date of the period of

ineligibility should not constitute a disadvantage for the athlete when the process from the sample collection to the date when the sanction can be imposed has been far too long.

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 international independent organization created in 1999 to promote, coordinate, and monitor the fight against doping in sport in all its forms.

Mr Federico Turrini (“the Athlete” or “Mr Turrini”) is a professional swimmer, who is enrolled in the Italian army.

International Military Sports Council (“CISM”) is a non-governmental international sports association composed of the armed forces of member nations. Its purpose is to promote sport activity and physical education between armed forces. CISM organizes sports events opened to its members. Its registered office is in Brussels, Belgium.

Mr Turrini participated in the 2007 Military World Games held in Hyderabad, India, which took place between 14 and 21 October 2007.

Mr Turrini was subject to an in-competition test on 19 October 2007 after his victory in the swimming race of 400 meter individual medley. He tested positive to 19-norandrosterone at a concentration higher than the threshold limit of 2 ng/ml and he did not request the analysis of the B-sample.

In a decision dated 15 January 2008, CISM Discipline Commission refrained to pronounce any sanction against Mr Turrini except for the cancellation of the results he obtained in the 2007 Military World Games.

On the Doping Control Form Mr Turrini declared that he used the medications of Enterofermina, Aminoacidi and Supradin.

In a letter to CISM of 11 December 2007 the Athlete explained as follows: At the time of the race he needed an ocular therapy and took the medication Keratyl®, eye drops, prescribed to him by his personal medical physician Dr. Mario Bosi. The use of Keratyl was not declared neither at the time of the race or later during the sample collection procedure simply because the Athlete could not imagine that Keratyl, being an eye drop, could be on the Prohibited List. Furthermore, no specific advice or side effect was noticed by him in the directions of use of Keratyl. He would like to underline that his behaviour was absolutely not intentional, being well aware of the fact that the winner of the race would be selected for a doping test.

The Athlete has never claimed that there were no prohibited substances in his body and he has never protested against the accuracy of the test. After having reconstructed the matter with his family,

physician and medical officer of his team he decided not to carry out the analysis of the B-sample, because he believed he could be able to fully explain his situation.

After being informed of the adverse analytical findings, the Italian Delegation of CISM by a letter of 7 December 2007 informed CISM Sport Director Colonel Jefferson Hernandez that the Athlete intended to clear himself sending all the probative documents to CISM as soon as possible and that he waived his rights to request the B-sample testing procedure.

In a defence memory filed to CISM the representative of the Athlete Dr Giovanni Biagi formulated among others the following:

- When the Athlete was abroad during the summer he started an ocular therapy due to an evident corneal inflammation. When he was back to Italy the same therapy was continued under supervision of his physician, Dr. Mario Bosi.
- In fact the Athlete showed the eye drops Keratyl to his physician who approved the therapy but he did not comment anything about content of Nandrolone in the eye drops.
- The Athlete still confirms that at the time of the doping test he did not mention to have used Keratyl because he did not think that an eyewash could contain ingredients that could be on the prohibited list, especially as no specific information were found on the drops package.
- Further to his victory in the Military World Championships he also has achieved very good results at various levels in national and international meetings. In many occasions he has been subject to doping controls which never before have resulted in adverse analytical findings.
- On 7 January 2008 CISM invited the Athlete to a hearing on 15 January 2008 which was sent to the Italian Delegation and not to the Athlete himself.
- Since CISM is regulatory connected to WADA for procedures and disciplinary matters from the date of the waive of the B-sample there is a term of 3 weeks within the Athlete should be invited to a hearing in front of the CISM Commission.
- As the Athlete as early as on 7 December 2007 asked by fax to be invited to a hearing the official convocation for proceedings has been sent too late and without noticing directly to the Athlete.
- For these reasons the Athlete asked for cancelling the proceedings as they were not compliant with the regulations.
- The way of administration of Nandrolone cannot have affected or improved the sports performance of the Athlete.
- Keratyl is not marketed by Italian pharmacies, although it can be provided from Swiss apothecaries. Differently from the Italian enhancing performance drug boxes, it does not report the antidoping icon characteristic of Italian health system.
- According to what was confirmed by physician Dr. Bosi to the pharmacology expert Dr. Mario Giorgi, the Athlete used the eye drops solution exactly as prescribed, that is

respecting the recommended dosage, 1-2 drops in each eye for 1-4 times per day for 15-20 days.

- The eye drops therapy was terminated a few days before the Athletes departure for the Hyderabad meeting.

On 15 January 2008 CISM Discipline Commission held a hearing in the case. The Athlete was present and was accompanied by his representative Dr. Biagi.

In its decision of 15 January 2008 the CISM Discipline Commission stated that it considered the following:

- *“The analytical result and the procedures of sample collection in accordance to the WADA code and procedures;*
- *The administrative follow-up of the CISM Headquarters in line with WADA Code and Procedures;*
- *The use of Keratyl as medically oriented without any intention to enhance the physical and sporting performances of the Athlete;*
- *That even if the use of Keratyl was medically oriented, the Athlete did not hand over any medical certificate nor any Therapeutic Use Exemption (TUE);*
- *The goodwill demonstrated by the Athlete, at all steps of the procedure”.*

The Commission continued:

“CISM Discipline Commission, after a deep analysis of the Defence Memorial presented by the Athlete and the records and files received at the CISM General Secretariat, formulates the following sanctions:

- 1. The Athlete, Federico Turrini is recognized as responsible of negligence.*
- 2. All his personal results obtained at the 4th CISM Military World Games are cancelled.*
- 3. The Athlete, through his CISM Delegation, is requested to undergo 2 out-of-competition tests in a period of 6 months starting from today, 15 January 2008. All costs related will be covered by the Italian Delegation to CISM. The results of these out-of-competition tests will be sent to CISM General Secretariat and to FINA.*
- 4. In case of any positive finding in the samples of Corporal Federico Turrini during a probatory period of two years starting from today 15 January 2008 onwards, he will be automatically suspended for a period of two years of any CISM Competition.*
- 5. CISM Discipline Commission decided to communicate the case and current decisions to the FINA responsible authorities”.*

In a letter dated 12 May 2008 the Antidoping Department of the National Olympic Committee of Italy (CONI-NADO), through its Head of the Department Marco Arpino informed WADA *“that on 5 May 2008 we received the file regarding the antidoping case of the Italian swimmer Mr Federico Turrini”.*

On 23 July 2008, the CISM acknowledged receipt of the negative results of the two anti-doping controls carried out on the Appellant. Taking into account the facts (1) that the Athlete fulfilled his obligations under the challenged decision; (2) that the tests were carried out under the foreseen

circumstances; and (3) that both tests were negative, the CISM decided to close its file and not to suspend the Athlete. The Athlete was moreover officially declared non guilty of doping by the CISM.

On 30 May 2008, WADA filed its Statement of Appeal.

The Statement of Appeal challenged the decision of the CISM Discipline Commission.

WADA filed its Appeal Brief on 9 June 2008.

On 16 June 2008, the Athlete filed an answer, in a so called “Defence memorandum”, with the following motion:

“PRELIMINARY - a preliminary Ruling by the President of Division is requested on the overt inadmissibility of the appeal on the grounds of the missed respect of the deadline as per article 4.9 of the CISM Anti-Doping Regulation”.

On 25 June 2008 the Deputy President of the Appeals Arbitration Division considered the arguments raised by the parties in the question of admissibility and found that the appeal by WADA had not been filed manifestly late according to Art R49 of the Code of Sports-related Arbitration (“the Code”).

In the answer filed on 3 July 2008 the submissions of the Athlete may be summarized as follows:

- a) The appeal of WADA shall be declared not admissible.
- b) The total lack of guilt of the Athlete shall be ascertained.
- c) The Athlete shall be discharged of any consequence due to a violation of anti-doping rules.

Subsidiary the Athlete has submitted that the decision of the CISM Discipline Commission should be upheld.

In case that the Athlete’s considerations are not accepted he requests that the sanction is limited as much as possible.

The CISM did not file any answer.

All parties requested that the CAS Panel should issue its decision before the beginning of the 2008 Beijing Olympic Games, *id est* no later than 7 August 2008. WADA expressly requested that the Panel issued a decision without a hearing. By letters dated 23 July 2008 both parties agreed to not hold a hearing and consented to a decision to be rendered based solely upon the written submissions.

Due to the exceptional circumstances of the case, the Panel according to Art R56 of the Code accepted further exhibits and arguments from all the parties.

LAW

CAS Jurisdiction

1. The jurisdiction of CAS, which is undisputed by the parties, derives from Article 4.9 of the CISM Anti Doping Regulations (CISM-ADR) and Art. R47 of the Code.
2. Under Art. R57 of the Code, the Panel has the full power to review the facts and the law. The Panel did not therefore examine only the formal aspects of the appealed decision but held a trial de novo, evaluating all facts and legal issues involved in the dispute.

Applicable Law

3. As the seat of CAS is in Switzerland, this arbitration is subject to the rules of Swiss private international law (“LDIP”) governing international arbitration. According to Article 187(1) LDIP, the arbitral tribunal decides in accordance with the law chosen by the parties or, in the absence of any such choice, in accordance with the rules with which the case has the closest connection.
4. Art. R58 of the 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. WADA has argued that the CISM-ADR shall be applicable on this case and that the decision being appealed was rendered under such regulations. The Respondents have not challenged this.
6. In the absence of a choice of law by the parties, the Panel therefore determines that the dispute is to be decided according to:
 - (a) The CISM-ADR which refers to WADC and FINA Doping Control Rules
 - (b) Belgium law as the CISM is domiciled in Brussels, Belgium
 - (c) As to procedural issues, the procedural rules of the CAS Code, supplemented by Swiss procedural law and principles applicable to an arbitration court sitting in Switzerland.

Admissibility of Appeal

7. The appeal was filed on 30 May 2008. According to Art 4.9 of the CISM-ADR a right of appeal against a decision of the CISM Discipline Commission may be exercised by WADA before CAS within a deadline of 21 days.
8. The Athlete has declared that the appeal is inadmissible as it is filed too late. He has argued: The possibility for WADA to appeal the decisions taken by a competent body is within 21 days from the decision date that in this case dates back to 15 January 2008. Art 4.9 of the CISM-ADR leaves no room for interpretation, the objective being the total protection of the legal security. With the total respect for the rules and for the competent bodies the Athlete decided to auto-suspend himself from all the agonistic races for the period between the date of the transmission of the positive test result, which was on 3 December 2007, and the latest appeal date of the decision of the CISM Discipline Commission, which was on 5 February 2008. Only after being totally sure that his position was clear when he realized that none of the competent bodies had proposed an appeal within the term set out by Art 4.9 of the CISM-ADR he started his activity again. The assumption according to which the right to appeal can be extended to the date of the transmission to the concerned person by the bodies is not in any way set out and cannot be deducted from other sources. Such a method would create a situation in which the person could be at any moment submitted to a revision of the first degree ruling, without any safeguard for the date starting from which the ruling cannot be appealed. The CISM-ADR, therefore, is unequivocal on this point and this must lead to that the appeal be declared inadmissible.
9. WADA has maintained that the appeal is admissible and has argued as follows: On 12 May 2008 CONI-NADO sent to WADA the motivated decision rendered by the CISM Disciplinary Commission. The Statement of Appeal filed by WADA on 30 May 2008 was lodged within the time limit set forth under CISM-ADR. WADA also complied with the provisions of Art R48 of the Code and paid the Court office fee as per Art R65.2.
10. Art 4.9 of CISM-ADR states that a right to appeal against the decision of the CISM Discipline Commission may be exercised by the athlete before the CAS, IF or WADA in Lausanne Switzerland. The Appeal shall be made within 21 days following the CISM Discipline Commission's decision.
11. According to the wording of the applicable rule it seems as there is no possibility to extend the term longer than 21 days following the decision.
12. The Panel has considered the issue of admissibility according to international and national rules for appeals to courts and other bodies. In CAS case law this issue has been dealt with e.g. in the case CAS 2007/A/1413. The CAS panel stated the following (para 52 – 57):

“52. Under Swiss law, in cases of appeals against decisions issued by associations pursuant to Article 75 of the Swiss Civil Code (SCC), the dies a quo of the time limit for the filing of the appeal is not when the decision has been made, but when the party appealing the decision has been notified of such decision. More precisely, the time limit starts to run when the appellant has become aware of the decision. It is not necessary that the decision be

formally notified to him by the decision-making body; it is sufficient if the appellant knows of the decision (see, e.g., Heini/Scherrer, Basler Kommentar, Zivilgesetzbuch I, p. 498 s.).

53. According to certain commentators, based on good faith principles, the time limit for the filing of the appeal should already start to run if the appellant had the possibility to know, and should have known, about the decision (Oswald, La relativité du temps en relation avec l'art. 75 CC, to be published in Mélanges SSJ, Basel 2008; Heini/Scherrer, Basler Kommentar, Zivilgesetzbuch I, p. 498 s.; Donzallaz, La notification en droit interne Suisse, Staempfli Editions SA, Berne 2002, p 574 and cases cited).

The moment when a person becomes aware of a decision depends on the circumstances of the case. It may be, for example, when the decision is made if that party participates to the relevant assembly or meeting, it may be when it receives the minutes of the relevant meeting, or when it receive formal notification of the decision. In addition, based on good faith principles, the time limit may start to run before the appellant acquires actual knowledge of the decision, if, in the particular circumstances of the case, the party should have enquired about the decision, for example in cases where that party knew that a decision was to be made, or has been made.

The question arises whether these principles should also apply to appeals made before CAS, in particular appeals based on Article 13.5 of the Rules (of the FIG Anti-Doping Rules: remark of the Panel).

According to CAS case law, provisions set out in the rules governing sports associations may derogate to Article 75 SCC. In particular, they may provide for a different statute of limitations or they may provide that the time limit starts to run when the decision has been formally notified to the appellant (see, e.g., CAS 2002/A/432, in Reeb, Rec. II, p. 419 ss.; CAS 2002/A/399, in Reeb, Rec. III, p. 383 ss.; CAS 2005/A/487; see also Rigozzi, L'arbitrage international en matière sportive, Helbing & Lichtenhahn, Basle 2005, p. 541; see, however, Riemer, p. 359 s.).

In the present case, Article 13.5 provides that the time limit to appeal a decision starts to run when the appealing party has received the decision, by “registered letter with acknowledgement of receipt”. However, concerning parties which were not a party to the proceedings, Article 13.5 of the Rules provides that the dies a quo of the time limit is the “notice of the decision”.

13. The Panel notes that in a lot of international sports federations the time limit for the appeal is 21 days “from the date of the receipt of the decision concerning the appeal”. For example, in the FINA Doping Control Rules – to which the Appellant is bound as he is a professional swimmer – this time limit is described in the following way (Art. 13.6):

“The deadline to file an appeal to CAS shall be twenty-one (21) days from the date of receipt of the decision by the appealing party and FINA. The above notwithstanding, the following shall apply in connection with appeals filed by a party entitled to appeal but which was not a party to the proceedings having lead to a decision subject to appeal:

- *Within a deadline of ten (10) days from receipt of the decision, such party/ies shall have the right to request from the body having issued the decision a copy of the file on which such body relied.*
- *If such request is raised within the above deadline, then a new appeal deadline will run for the concerned party from the day the copy of the file is received.*

The above notwithstanding, the filing deadline for an appeal or intervention filed by WADA shall be the later of:

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

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

14. The time limit set forth in the CISM-ADR is 21 days following the CISM Discipline Commission regardless if the appealing party was not a party to the proceedings having lead to the decision subject to appeal or not. The Panel has the view that it is very important that international sports law rules are equally applied for all parties, no matter if they are athletes or organizations, and that the application also must be foreseeable for those involved. If a party which have not taken part in the proceedings leading to the appealed decision shall have a fair opportunity to file an appeal it must be aware of that decision. In spite of the wording of the applicable rule the Panel finds according to the procedural rules that are applicable in this case, international sport law and CAS case law that the time limit for the filing of the appeal should not be counted from the date when the decision has been made, but when the party appealing the decision has been notified of such decision. The Panel advises CISM to change Art 4.9 in the CISM-ADR to clarify the matter.
15. According to CAS case 2000/A/257 and CAS No. 98/195 the Panel holds that it is for the Respondent to prove that the decision was communicated more than 21 days prior to the Appellant's statement of appeal. As there are no other documents or evidences than those presented by WADA the Panel in this case accepts that WADA first on 12 May 2008 got the motivated decision rendered by the CISM Disciplinary Commission. This means that the appeal by WADA was lodged within the required time limit.
16. For these reasons the Panel finds that the appeal is admissible.

The Merits

17. The main issues to be resolved by the Panel are:
 - a) Did the Athlete violate the applicable anti-doping rules?
 - b) Does the Athlete bear any fault or negligence?
 - c) Is the Appellant's alleged fault or negligence significant?
 - d) How to determine the sanction, if any?
 - e) What is the starting point of ineligibility, if any?
- A. *Did The Athlete Violate The Applicable Anti-Doping Rules?*
18. Regarding sanctions and procedures Art 4.8 B of the CISM-ADR states that the procedures and sanctions proposed by the CISM Discipline Commission will be based on WADA's World Anti-Doping Code, as well as the International Federations regulations, or CISM regulations in the case that the sport is not represented by a Federation. This means that the rules governing this matter are, in addition to CISM-ADR, the World Anti-Doping Code and the FINA Doping Control Rules.

19. According to Art 4.1 B of the CISM-ADR the last updated WADA list of banned substances will serve as a reference document. The Application of the WADA 2007 Prohibited List is confirmed both by Art 4 of WADC and Art DC4 of the FINA Doping Control Rules.
20. According to Art. 2 of the WADC *“The following constitute anti-doping rule violations:*
 - 2.1. *The presence of a Prohibited Substance or its Metabolites or Markers in an Athlete’s bodily Specimen.*
 - 2.1.1. *It is each Athlete’s personal duty to ensure that no Prohibited Substance enters his body. Athletes are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their bodily Specimens. Accordingly, it is not necessary that intent, fault, negligence or knowing Use on the Athlete’s part be demonstrated in order to establish an anti-doping violation under Article 2.1. (...)*
 - 2.1.2. *Excepting those substances for which a threshold concentration is specifically identified in the Prohibited List, the detected presence of any quantity of a Prohibited Substance or its Metabolites or Markers in an Athlete’s Sample shall constitute an anti-doping rule violation”.*
21. The Athlete was subject to an in-competition test on 19 October 2007 after his victory in the swimming race of 400 meter individual medley in the 2007 Military World Games. He tested positive for 19-norandrosterone at a concentration higher than the threshold limit of 2 ng/ml and he did not request the analysis of the B-sample.
22. The Athlete has accepted the result of the analysis and referred to that he before and at the time of the competition took the medication Keratyl, eye drops, prescribed to him by his personal medical physician Dr. Mario Bosi.
23. 19-norandrosterone is an endogenous Anabolic Androgenic Steroid that is on the WADA 2007 Prohibited List under class S 1, Anabolic Agents.
24. The laboratory found the presence of 19-norandrosterone at a concentration greater than 2 ng/ml in the Athlete’s bodily specimen. This is incompatible with an endogenous production of the substance which is in accordance to the explanation given by the Athlete.
25. It is therefore established that the Athlete committed an anti-doping rule violation according to Art 2.1 of the WADC.
- B. *Does The Athlete Bear Any Fault Or Negligence?*
26. In Art 10.5 of WADC there are rules for elimination or reduction of the period of ineligibility based on exceptional circumstances.
27. Art 10.5.1 of WADC states that *“if the Athlete establishes in an individual case involving an anti-doping rule violation under Article 2.1 (Presence of Prohibited Substance or its Metabolites or Markers) or Use of a Prohibited Substance or Prohibited Method under article 2.2 that he or she bears No Fault or Negligence for the violation, the otherwise applicable period of Ineligibility shall be eliminated. When a Prohibited Substance or its Markers or Metabolites is detected in an Athlete’s Specimen in violation of Article 2.1 (Presence of Prohibited*

Substance), the Athlete must also establish how the Prohibited Substance entered his or her system in order to have the period of Ineligibility eliminated”.

28. Article 10.5.2 of WADC, which, among others, applies to an anti-doping violation according to article 2.1, provides that *“if an Athlete establishes in an individual case involving such violations that he bears no Significant Fault or Negligence, then the period of Ineligibility may be reduced, but the reduced period of Ineligibility may not be less than one-half of the minimum period of Ineligibility otherwise applicable. (...) When a Prohibited Substance or its Markers or Metabolites is detected in an Athlete’s Specimen in violation of Article 2.1 (Presence of Prohibited Substance), the Athlete must also establish how the Prohibited Substance entered his or her system in order to have the period of Ineligibility eliminated”.*
29. In order to fix the sanction, it is therefore the Panel’s duty to determine whether, under the circumstances of the particular case, the Athlete established that he bore no fault or negligence, or no significant fault or negligence.
30. The Appellant never violated an anti-doping rule before and 19-norandrosterone is not on the WADA list of specified substances (Art 10.3 WADC). The Panel must thus apply article 10.2 of the WADC which provides for a 2 years’ ineligibility in the case of a first violation of article 2.1 of the WADC. As provided in article 10.5 of WADC, the Athlete has the opportunity to establish the basis for eliminating or reducing this sanction as provided in articles 10.5.1 or 10.5.2.
31. According to Appendix 1 “Definitions” of WADC, an Athlete does not bear a fault or negligence if he establishes *“that he or she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he or she had Used or been administered the Prohibited Substance (...)”*. An Athlete does not bear a significant fault or negligence if he or she establishes *“that his or her fault or negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence, was not significant in relationship to the anti-doping rule violation”*.
32. In the Commentary to Art 10.5 of WADC it is stated that Article 10.5 is meant to have an impact only in cases where the circumstances are truly exceptional and not in the vast majority of cases.
33. It is further stated in the Commentary to Art 10.5 of WADC: *“To illustrate the operation of Article 10.5, an example where No Fault or Negligence would result in the total elimination of a sanction is where an Athlete could prove that, despite all due care, he or she was sabotaged by a competitor. Conversely, a sanction could not be completely eliminated on the basis of No Fault or Negligence in the following circumstances: a) a positive test resulting from a mislabelled or contaminated vitamin or nutritional supplement (Athletes are responsible for what they ingest [Article 2.1.1] and have been warned against the possibility of supplement contamination); b) the administration of a prohibited substance by the Athlete’s personal physician or trainer without disclosure to the Athlete (Athletes are responsible for their choice of medical personnel and for advising medical personnel that they cannot be given any prohibited substance); c) sabotage of the Athletes food or drink by a spouse, coach or other person within the Athlete’s circle of associates (Athletes are responsible for what they ingest and for the conduct of those persons to whom they entrust access to their food and drink. However, depending on the unique facts of a particular case, any of the referenced illustrations could result in a reduced sanction based*

on No Significant Fault or Negligence. (For example, reduction may well be appropriate in illustration (a) if the Athlete clearly establishes that the cause of the positive test was contamination in a common multiple vitamin purchased from a source with no connection to Prohibited Substances and the Athlete exercised care in not taking other nutritional supplements)”.

34. The Athlete submits that he bears No Fault or Negligence or at least that he bears No Significant Fault or Negligence.
35. The Athlete argues as follows: After he learned that he had been tested positive to Nandrolone or its metabolites he realized that the findings could be related to an ocular therapy that he started during summer 2007 while he was abroad for vacation. He was given Keratyl in the night of 16 September 2007 in Nice in a medical Centre for first aid when he came back from a vacation in Spain. He had developed a herpetic keratitis caused by an excessive use of contact lenses. As he was facing serious health problems – a corneal ulcer that could cause the loss of an eye – and in difficult conditions – he was abroad and had limited knowledge of the language he used the product trusting the indications given by the doctor. He followed at any time the ordination given to him. The product was not bought in a pharmacy as he got it directly from the doctor who visited him to solve the serious problems of that moment. At that moment, very late at night, when visited by the doctor he said that he was going back to Italy and that was why he received the medication directly. When he was back to Italy the same therapy was continued under supervision of his physician Dr. Mario Bosi. In fact he showed the eye drops Keratyl to his physician who approved the therapy but he did not comment anything about content of Nandrolone. The therapy was necessary to recover from the evident corneal inflammation. There were no objections from Dr. Bosi, who has no experience in medical sports practice. He was not careful enough to imagine that the eye drops could be detected in a test. It is anyway a medication for external use and a topical medicine. The use of Keratyl was fundamental for healing his eye. If it the healing had failed he could have lost his eye. Only after the recall from CISM he realized the 1 % content of Nandrolone in the eye drops. The eye drops therapy was terminated a few days before his departure for the 2007 Military World Games. It must be enhanced that Keratyl is not marketed in Italy and that the drug box he bought did not have the antidoping icon which is characteristic in the Italian health system.
36. According to a letter from the Athlete to CISM dated 11 December 2007 he still needed the ocular therapy at the time of the race.
37. Dr. Mario Bosi has in a written statement declared that he met the Athlete on 18 September 2007 in his office. The Athlete was back from his holidays in France where he caught a keratitis on one eye and was taking Keratyl eye drops. On the basis of the good results of the eye drops Dr. Bosi suggested him to continue the therapy to recover completely.
38. The first question to be answered is whether the Athlete has established that he bore *No Fault or Negligence*. The Panel accepts the Athlete’s explanation to what caused the Adverse Analytical Finding in the test. This means that it is accepted that he used the medication Keratyl® because of his corneal inflammation and that he discussed the therapy with his doctor, who was inexperienced in sports medicine. The Panel does also accept that the box containing the

medication did not have any warning of Nandrolone on it. As stated in the Commentary to Art 10.5 of WADC, a sanction cannot be completely eliminated on the basis of No Fault or Negligence when the administration of a prohibited substance has been by the Athlete's personal physician or trainer without disclosure to the Athlete. As laid out in the Commentary the Athletes are responsible for their choice of medical personnel and for advising medical personnel that they cannot be given any prohibited substance. The conclusion of this is that the Athlete in this case has not established that he bore No Fault or Negligence.

39. The next question to be answered is whether the Athlete has established that he bore *No Significant Fault or Negligence*. In this connection it must be taken into consideration that the Athlete is a professional swimmer. According to Art 2.1.1 of WADC it is each Athlete's personal duty to ensure that no Prohibited Substance enters his body. Athletes are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their bodily Specimens.
40. In the Commentary to Art 10.5 of WADC the Panel has got some guidance in which situations a Significant Fault or Negligence can be deemed to exist. The Panel has also looked to past CAS cases where *No Significant Fault or Negligence* was found and the period of ineligibility reduced based on medical prescriptions being the cause of the Doping Offence, see among others CAS OG 06/001, CAS 2005/A/830, CAS 2005/A/873, CAS 2005/A/951 and CAS 2007/A/1356.
41. In this case the Panel has considered the following circumstances. The Athlete is a professional swimmer. It is the professional duty of an athlete to consult the rules and to be well aware of all the duties an athlete has to fulfil, among others to ensure that no Prohibited Substance enters his body. As said in the Commentary to WADC, the Athlete cannot rely on advice from his personal physician in these matters, especially when the doctor is no expert on sports medicine. It is rather easy to get information about the components of Keratyl. A simple search on the Internet exposes that the active ingredient in Keratyl is Nandrolone sodium sulphate. The Athlete in this case admits that he did nothing to ensure that the medication did not contain any forbidden substance. For example he did not even ask his doctor if Keratyl could be dangerous to use in this respect. He simply relied on his doctor to warn him if the medication did contain anything on the Prohibited List.
42. It is the Panel's view that an Athlete, in order to fulfil his or her duty according to Art. 2.1. of the WADC, has to be active to ensure that a medication that he or she uses does not contain any compound that is on the Prohibited List. In the present case, the Athlete has not done anything to ensure this. The Panel is of the view that the Athlete has not established that he bears No Significant Fault or Negligence. It is therefore no ground to reduce the sanction according to Art 10.5.1 or 10.5.2 of the WADC (for a similar case see CAS 2008/A/1488, especially paragraphs 7.11 ff.

C. *What Is The Sanction And How Should It Be Calculated?*

43. According to Art 10.2 of the WADC, *“Imposition of Ineligibility for Prohibited Substances and Prohibited Methods”* it is said that *“Except for the specified substances identified in Art 10.3, the period of Ineligibility imposed for a violation of Art 2.1 (presence of Prohibited Substances or its Metabolites or Markers (...)) shall be: First violation: Two (2) years’ ineligibility. (...) However, the Athlete or other Person shall have the opportunity in each case, before a period of ineligibility is imposed, to establish the basis for eliminating or reducing this sanction as provided in Art 10.5”*.
44. As has been explained in section IV.4.2 Art 10.5 of WADC offers a possibility to the Athlete to establish that he or she bears no Fault or Negligence or No Significant Fault or Negligence for the violation.
45. It is well established that a two-year suspension for a first time doping offence is legally acceptable (KAUFMANN-KOHLER/MALINVERNI, Legal opinion on the conformity of certain provisions of the draft World Anti-Doping Code with commonly accepted principles of international law, 2003, N°62 et seq., p. 22; CAS 2001/A/337). Referring to Art. 10.2 of the WADC, and taking into due consideration all elements of this case and all evidence submitted by the parties, the Panel considers as adequate in this case to impose a 2 years period of suspension.
46. The Panel has already found that Art 10.5 of WADC cannot be applied in this case as the Athlete has not established either that he bore No Fault or Negligence or that he bore No Significant Fault or Negligence. Accordingly the decision of CISM Discipline Commission shall be set aside.

D. *What Is The Starting Point Of Ineligibility?*

47. Pursuant to Art. 10.8 *“The period of Ineligibility shall start on the date of the hearing decision providing for Ineligibility or, if the hearing is waived, on the date Ineligibility is accepted or otherwise imposed. Any period of Provisional Suspension (whether imposed or voluntarily accepted) shall be credited against the total period of Ineligibility to be served. Where required by fairness, such as delays in the hearing process or other aspects of Doping Control not attributable to the Athlete, the body imposing the sanction may start the period of Ineligibility at an earlier date commencing as early as the date of Sample collection”*.
48. The Athlete has asserted that he voluntarily suspended himself from the date on which he learned of the positive test results, i.e. on 3 December 2007, to the date when he thought that the decision of CISM Disciplinary Commission could not be appealed any more, which was on 5 February 2008. The Panel has no reason to mistrust this assertion. This period shall therefore according to Art 10.8 of WADC be credited against the total period of Ineligibility to be served.
49. The Athlete has claimed that it is not fair that the process from the Sample Collection to the date when the Sanction can be imposed has been far too long. To some extent, the Panel shares this contention: It is not attributable to the Athlete that WADA learned so late about the

decision from CISM Discipline Commission. The Panel finds that it is required by fairness that the period of Ineligibility may start as early as on 6 February.

E. Disqualification of Results

50. Art 9 of WADC provides that “*A violation of these Anti-Doping Rules in connection with an In-Competition test automatically leads to Disqualification of the individual result obtained in that Competition with all resulting consequences, including forfeiture of any medals, points and prizes*”. Art 10.7 states “*In addition to the automatic Disqualification of the results in the Competition which produced the positive Sample under Article 9 (Automatic Disqualification of Individual Results), all other competitive results obtained from the date a positive Sample was collected (whether In-Competition or Out-of-Competition), or other doping violation occurred, through the commencement of any Provisional Suspension or Ineligibility period, shall, unless fairness requires otherwise, be Disqualified with all of the resulting consequences including forfeiture of any medals, points and prizes*”.
51. Based on Art 9 of WADC the Panel hereby confirms the decision of the CISM Discipline Commission with respect to the disqualification of the results of the Athlete obtained at the Event. The CISM Discipline Commission ruled that only the result obtained in the Event should be disqualified, and not the other results achieved. WADA has requested that further results be disqualified. According to Art 10.7 of WADC the Panel finds that all competitive results obtained by the Athlete from 19 October 2007 until the date of the present decision – which was rendered in its dispositive part on Monday 4 August – shall be disqualified with all of the resulting consequences including forfeiture of any medals, points and prizes.

The Court of Arbitration for Sport rules:

1. The appeal filed by WADA on 30 May 2008 is admissible.
 2. The decision of CISM Discipline Commission dated 15 January 2008 in the matter of Federico Turrini is set aside.
 3. Federico Turrini is sanctioned by a two (2) years ineligibility, which started on 6 February 2008. The period of voluntary suspension from 3 December 2007 to 5 February 2008 shall be credited against the total period of ineligibility to be served.
 4. All competitive results obtained by Federico Turrini from 19 October 2007 until the date of the present decision shall be disqualified with all of the resulting consequences including forfeiture of any medals, points and prizes.
 5. All other prayers for relief are dismissed.
- (...).