

WORLD RUGBY

IN THE MATTER OF THE REGULATIONS RELATING TO THE GAME

AND IN THE MATTER OF ALLEGED DOPING OFFENCES BY **MAXIM GARGALIC** (MOLDOVA) CONTRARY TO REGULATION 21

BEFORE A JUDICIAL COMMITTEE APPOINTED PURSUANT TO REGULATION 21.20 and 21.21 CONSISTING OF:

Judicial Committee:

Joseph de Pencier (Canada)
Dr Ismail Jakoet (South Africa)
Graeme Mew (Canada – Chair)

Appearances

Yvonne Nolan and *Ben Rutherford*, Counsel for World Rugby

Attendances

David Ho (Anti-Doping Manager – Compliance and Results, World Rugby)
Vasile Revenco, President, Federația de Rugby din Moldova

Hearing: 29 September 2014 by telephone conference

REASONS FOR DECISION

1. World Rugby, which at the time of the hearing in this matter was known as the International Rugby Board alleges that Maxim Gargalic (the "Player") committed an anti-doping rule violation contrary to Regulation 21.2.1 of the *Regulations Relating to the Game* as a result of an adverse analytical finding for the Presence of a Prohibited Substance, namely 19-norandrosterone, in a urine sample provided on 5 April 2014.
2. These allegations arise from an in-competition doping control procedure undertaken at the 2014 FIRA-AER European Nations Cup, Division 1B match between Poland and Moldova in Siedlce, Poland.
3. 19-norandrosterone is listed in S1.1B Endogenous Anabolic Androgenic Steroids on the World Anti-Doping Agency's 2014 List of Prohibited Substances (which appears at Schedule 2 of Regulation 21).
4. Following a preliminary review of the case undertaken in accordance with Regulation 21.20.1, the Player was notified, via the Federația de Rugby din Moldova (the "Union"), that it was alleged that he had committed an anti-doping

rule violation. The Player was provisionally suspended, pending the outcome of his case, with effect from 3 July.

5. The Player initially sent World Rugby an explanatory note in which he denied having broken sport anti-doping rules. He did not request testing of the B Sample which was provided by him during the sample collection process.

6. The independent members of this Judicial Committee ("JC") have been appointed by the Chairman of the Judicial Panel of World Rugby to consider the Player's case.

7. Following receipt of the JC's Minute No. 1, in which certain directions for the conduct of the hearing were given, the Player clarified in a letter to the JC *via* the Union and World Rugby that "I declare that I broke anti-doping rules but it was not my fault".

Anti-Doping Rule Violation Established

8. At the commencement of the hearing, the Player confirmed that there had been an anti-doping rule violation on his part, contrary to Regulation 21.1.1,¹ but maintained that there was no fault on his part.

Hearing Record

9. The JC had before it a record which included the Doping Control Form, the Terms of Participation for the 2014 FIRA-AER European Nations Cup, a Team Member Consent Form, an Analysis Result Record from the Department of Anti-Doping Research Institute of Sport - Warsaw, the Preliminary Review Report by Prof David Gerard, a copy of the World Rugby Anti-Doping Education Resources provided by World Rugby to the Union, the Player's statement dated 22 July 2014, an undated "Explanatory Note" from the Player, a "Discharge Epicrisis" from Moscow City Clinical Hospital, a "Referral Extract" from Dr. Marcel Platon dated 12 March 2013, an undated statement of Dr Marcel Platon, a letter from the Player dated 25 August 2014 and a submission from the Union dated 25 September 2014.

10. At the hearing, the Player gave oral testimony at the hearing. Information was also provided orally by the Union's President

11. Written submissions were received from World Rugby before the hearing and oral submissions were made by the legal representative of World Rugby at the hearing and by the Player.

Facts

12. The facts are straightforward.

13. The Player has been playing rugby since 2007 and turned professional in 2009. He is 25 years of age and has been making appearances for the Moldovan national team since 2009.

¹ The presence of a Prohibited Substance or its Metabolites or Markers in a Player's Sample.

14. He was diagnosed with a right shoulder strain which led to a first surgical intervention in 2010. He had the surgery in Bucharest. It was followed by three weeks of “prescribed mobilisation”, then physiotherapy and exercise in the gym and the pool for a number of months.

15. Although he noticed some improvement, the shoulder continued to trouble the Player. In 2012 he underwent further surgery in Moscow. The result was still not entirely satisfactory. He had reduced mobility in the shoulder and reduced strength in the arm. He also sustained further injury to the shoulder.

16. The Player had reconciled himself to living with his injured shoulder. Then a masseuse who had been treating him suggested that he consult Dr Marcel Platon, an orthopaedic doctor in Chişinău.

17. Dr Platon is not a sports doctor. However, the Player told him he was a sportsman and could not take certain remedies.

18. The Player confirmed that at the time he consulted with Dr. Platon he knew that he could not take any medication containing prohibited substances. However, he had not seen the Prohibited List and was not familiar with what substances were prohibited.

19. Dr. Platon noted in his Referral Extract” dated 12 March 2013 that:

“The patient addressed on March 12, 2013 with complaints on pain in joint region of the right shoulder after post trauma and post operation period. Atrophy of right superior member muscles. Treatment was prescribed.”

Various “Curative and work recommendations” are then listed, namely:

Remedial physiotherapy and medicine treatment.

1. Tab. Arcoxia 120mg, No 14, one tab. per day.
2. Retabolil solution intramuscular, 50mg., 15 days, 1 injection per day.
3. Benevron No. 10, 1 tab. per day.
4. Kinetotherapy [sic] + physiotherapy.
5. Massage + exercise therapy.

20. According to the Player, he was assured by Dr. Platon that the medicines that had been prescribed did not contain any prohibited substances.

21. The Player did not check with the team doctor, the Union or with any sports medicine practitioner before starting the course of treatment prescribed by Dr. Platon.

22. The Player received a series of daily injections over 15 days. He took no steps to check whether what he had been prescribed contained any prohibited substances.

23. A cursory internet search would have revealed that Retabolil contains nandrolone. Information available online from the Ministry of Health of the Republic of Moldova notes that a 1 ml vial of retabolil contains 25 or 50mg nandrolone deconoate in oily solution for injection.

24. The JC was shown examples of packaging of the Retabolil product available in Moldova. The brand name Retabolil in Cyrillic letters is “Ретаболил”. The words “нандролонов деканоат” appear on the packaging. The English translation for these words is “nandrolone decanoate”.

25. The results of the treatment prescribed by Dr. Platon were good. The Player recovered his strength. He claims that he did not realise that he had been treated with a prohibited substance

26. The Player had not previously undergone doping control measures before being tested on 5 April 2014.

27. There is no reference on the Doping Control Form, completed at the time the Player was tested, to Retabolil or nandrolone.

28. The concentration of nandrolone found in the Player’s sample was 4.6ng/mL.

29. After being notified of his adverse analytical finding, the Player contacted Dr. Platon and after reviewing what he had prescribed quickly identified the Retabolil injections he had received a year earlier as the cause of his positive test.

30. No evidence was led as to the plausibility of a nandrolone concentration of 4.6ng/mL remaining in the Player’s system over a year after receiving his last injection of Retabolil.

31. For his part, Dr. Platon did not make himself available to give evidence at the hearing. In his statement (translated), untested by cross-examination, he wrote:

As a consequence of your request I wish to communicate you that Mr. Maxim Gargalic, appealed to me in a critical posttraumatic post-operative condition with muscular atrophy of the upper limb on the right side and limited amplitude of motion. After the examination he was prescribed a complex rehabilitation treatment, including medication treatment that contains Retabolil (nandrolone decanoate) and I communicate you that it isn't a banned pharmaceutical preparation in the treatment of patients with such a diagnosis.

In the case of Mr. Maxim Gargalic I haven't took into consideration that it is a pharmaceutical preparation banned to the sportsmen and it is included on the antidoping list.

32. The Player’s evidence is that he was not seeking to improve his sporting results.

Discussion

33. The presumptive sanction for an adverse analytical finding based on the presence of nandrolone is a period of Ineligibility of two years. This can be reduced if the Player can establish no fault or negligence, or no significant fault or negligence on his part (as provided for by Regulations 21.22.4 and 21.22.5:

21.22.4 No Fault or Negligence:

If a Player establishes in an individual case that he bears No Fault or Negligence, the otherwise applicable period of Ineligibility shall be eliminated. When a Prohibited Substance or its Markers or Metabolites is detected in a Player's Sample in violation of Regulation 21.2.1 (presence of Prohibited Substance), the Player must also establish how the Prohibited Substance entered his or her system in order to have the period of Ineligibility eliminated. In the event this Regulation is applied and the period of Ineligibility otherwise applicable is eliminated, the anti-doping rule violation shall not be considered a violation for the limited purpose of determining the period of Ineligibility for multiple violations under Regulation 21.22.10.

21.22.5 No Significant Fault or Negligence:

If a Player or other Person establishes in an individual case 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 period of Ineligibility otherwise applicable. If the otherwise applicable period of Ineligibility is a lifetime, the reduced period under this section may be no less than 8 years. When a Prohibited Substance or its Markers or Metabolites is detected in a Player's Sample in violation of Regulation 21.2.1 (presence of Prohibited Substance), the Player must also establish how the Prohibited Substance entered his or her system in order to have the period of Ineligibility reduced.

34. In our view, the Player cannot avail himself of the reduced sanctions provided for in Regulations 21.22.4 or 21.22.5.

35. The commentary to Articles 10.5.1 and 10.5.2 of the *World Anti-Doping Code*, which are the equivalent provisions to Regulations 21.22.4 and 21.22.5, states:

Articles 10.5.1 and 10.5.2 are meant to have an impact only in cases where the circumstances are truly exceptional and not in the vast majority of cases

36. As the Player undertook no due diligence of his own and blindly took a series of injections following which he made a recovery that was significantly better than two surgeries had been able to achieve, he cannot establish that there was no fault or negligence on his part. All he needed to have done to be alerted to a concern about what he was taking was ask to see a product label for Retabolil or a basic search on the internet.

37. In *CCES v Galle*, a 23 April 2009 decision of the Sport Dispute Resolution Centre of Canada, it was held that even where an athlete is given an erroneous injection of what the athlete understood to be routine vitamins by a coach (but which was actually Deca-Durabolin and where the athlete had no knowledge that her coach was connected to steroids) a finding of No Significant Fault or Negligence could not be made. The arbitrator in that case held:

At this juncture, I do not propose to review the decisions referred to by the CCES because, to a large extent, they turn on their particular facts. However, those decisions reflect the high standards to which athletes are subject in order to promote and ensure drug-free sport for all competitors. In the result, I find that pursuant to Rule 7.38 [equivalent to Regulation 21.22.1], the appropriate sanction is a period of two years of ineligibility from sport. (pages 20-21)

38. In *IRB v Nuñez*, a player was unwittingly administered Deca-Durabolin (a product containing nandrolone) as part of treatment for extreme pain while he was sedated. The Judicial Committee's medical members considered the administration of nandrolone would not have been predictable and accordingly the Judicial Committee held that there was No Significant Fault or Negligence on the Player's part on the basis that, at paragraph 76, he "would have had no reason to believe that the pain treatment he was receiving from [his doctor] incorporated the administration of nandrolone."

39. The circumstances in the present case bear little resemblance to those in *Nuñez*. Not only did the Player fail to take any steps to check what he was taking before embarking on his course of treatment, he continued to take Retabolil injections for 15 days. Despite the effectiveness of the treatment, no alarm bells went off.

40. Nor can it be said that the Player was young and naïve. He was aware of anti-doping regulations and he was an experienced professional player with access to specialist health care providers and advice.

41. We note that the Union will establish a Medical and Anti-Doping Committee, and commend it for doing so. But this cannot absolve the Player from his failure to discharge his basic personal responsibility for the substances ingested by him. His fault or negligence are such that he cannot qualify for a reduced sanction.

Decision

42. The Player has committed an anti-doping rule violation contrary to Regulation 21.2.1 as a result of an adverse analytical finding for the Presence of a Prohibited Substance, namely 19-norandrosterone.

43. The applicable sanction is a period of Ineligibility of two years, commencing on 3 July 2014 and ending on (but including) 2 July 2016.

44. The Player's attention is drawn to Regulation 21.22.13 which provides, *inter alia*, that:

- (i) No Player or other Person who has been declared Ineligible may, during the period of Ineligibility, participate in any capacity in a Match and/or Tournament (International or otherwise) or activity (other than authorised anti-doping education or rehabilitation programmes) authorised or organised by World Rugby or any Union or Tournament Organiser. Such participation includes but is not limited to coaching, officiating, selection, Team management, administration or promotion of the Game, playing, training as part of a Team or squad,

or involvement in the Game in any other capacity in any Union in membership of World Rugby.

- (ii) ... no Player or other Person who has been declared Ineligible may, during the period of Ineligibility, participate in any capacity in any athletic contest or any activity in any sport (other than authorised anti-doping education or rehabilitation programmes) authorised or organised by any Signatory or any Signatory's member organisation, or in any athletic contest in any sport authorised or organised by any professional league

45. The full text of Regulation 21.22.13 concerning status during Ineligibility should be consulted.

Costs

46. If World Rugby wishes us to exercise our discretion in relation to costs pursuant to Regulation 21.21.10, written submissions should be provided to the BJC via Mr. Ho by 17:00 Dublin time on 8 December 2014 with any responding written submissions from the Respondent to be provided by no later than 17:00 Dublin time on 15 December 2014.

Review

47. This decision is final, subject to referral to a Post Hearing Review Body (Regulation 21.25) or an appeal, where the circumstances permit, to the Court of Arbitration for Sport (Regulation 21.27). In this regard, attention is also directed to Regulation 21.24.2, which sets out the process for referral to a Post-Hearing Review Body, including the time within which the process must be initiated.

28 November 2014

A handwritten signature in black ink, appearing to read 'Graeme Mew' with a stylized flourish at the end.

Graeme Mew, Chairman