

Appeal Commission
Beside
NATIONAL ANTI-DOPING AGENCY
Bucharest

DECISION

No. 9/09.12.2010

The Appeal Commission summoned on 09.12.2010, 18.30 H, at the National Anti-Doping Agency's official seat in Bucharest, 37-39 Basarabia Blvd, District 2, in order to solve the appeal formulated by WADA (World Anti-Doping Agency), official seat in Canada, Stock Exchange Tower 800 Victoria Square, Suite 1700, PO Box 120, Montreal, Quebec, 4421B7 represented by Mr. François Kaiser, 1, Place Saint-François, PO Box 7191, 1002, Lausanne, Switzerland, against the Decision no. 25/10.08.2010 of the *Hearing Commission for athletes and their support personnel who violated the anti-doping rules* beside ANAD establishing not to apply any sanction of ineligibility to the athlete TRIFAN MIRUNA, registered to Petrolul Ploiești Sport Club, residing in Ploiești, 38B Izvoare Street, Ploiești Country pursuant to provisions of art.46 of Law 227/2006 regarding prevention and fight against doping in sport, republished.

The Appeal Commission meeting was attended by the following members:

- Mrs. Floarea CHIVU – Chairperson
- Mrs. Carmen TROCAN – member
- Mr. Dragos CONDREA – member
- Mr. Alin Florin CARSTOIU – member
- Mrs. Elena Magdalena COSTACHE – member

On 12.10.2010, respectively 09.12.2010, members of the Appeal Commission beside National Anti-Doping Agency summoned in order to make a decision in this case.

On 12 October 2010 the following members were present:

- Mrs. Floarea CHIVU-- member
- Mrs. Carmen TROCAN – member
- Mr. Alin Florin CÂRSTOIU – member

In the absence of the Chairman of the Appeal Commission, the hearing session was chaired by the eldest member of the present members, respectively by Mrs. Floarea CHIVU, pursuant to art.11 of Order no. 47/2009 of ANAD's President regarding Regulation of set up and functions of Appeal Commission, with further changes and completions.

The followings were heard during the meeting:

- The (minor) athlete Trifan Miruna Elena legally represented by Mr. Trifan George, as parent, identified with IC series PH, no. 238087, residing in Ploiești, 38B Izvoare Street, Ploiești County
- Mr. Boboc Xenofonte, athlete's coach, identified with IC series PH, no. 379312, residing in Ploiești, 1 Dediței Street, bl. 116, sc. C, et. 3, ap. 56, Ploiești County.

At the session of December 9, 2010 Mrs. Graziela Vajjala, chairperson of Hearing Commission for Athletes and their support personnel who violated the anti-doping rules affirmed that Decision no. 25/12.08.2010 must be annulled because in the case of the athlete Miruna Elena TRIFAN the strict responsibility principle provided by national and international legislation should be applied.

On September 23, 2010 World Anti-Doping Agency (WADA) appealed against the National Anti-Doping Agency of Romania (ANAD) and against Miss Miruna Elena TRIFAN – the (minor) athlete, registered to Petrolul Ploiești Sport Club, contesting Decision no. 25/12.08.2010 of the Hearing Commission for athletes and their support personnel who violated the anti-doping rules beside ANAD.

By reviewing the preliminary aspects the Appeal Commission takes note that the appeal was submitted in due time.

Regarding the grounds, the Appeal Commission establishes:

- when submitting the appeal, WADA took into account that the athlete Miruna Elena Trifan was minor and that she was a national level athlete, registered to Petrolul Ploiești Sport Club, while the club was a member of Romanian Athletics Federation. Considering that the legal conditions of the appeal to the Appeal Commission beside ANAD were valid, WADA proceeded accordingly.

Thus, WADA keeps in mind the followings in order to establish the anti-doping rules violation: Miruna Elena Trifan was tested positive following the in competition doping testing, on the occasion of "Grand Prix J3" event (event no.2), on 19.06.2010. The analytical result of the sample of the athlete with the code number **1939482A**, indicated the presence of 18-nor-17alfa-methyl-17beta-hidroxymethyl-androst-1,4,13-trien-3one, metabolite of metandienone. Metandienone is a prohibited substance included in the 2010 Prohibited List. It was also noted that the athlete did not require the analysis of B sample and had not required a therapeutic use exemption. By reviewing the proofs in the file, WADA considered that the case was subject to Law no. 227/2006, republished, providing that the athlete was going to be suspended from sport activity for a period of two (2) years. WADA grounded its request on the fact that the conditions of art. 46(2) of Law no. 227/2006 republished, regarding the elimination of the sanction were not met.

Regarding elimination or reduction of the sanction, WADA reviewed the terms established by law and requested the Appeal Commission to have the athlete proving that she showed no fault and that she was not negligent. WADA considered that pursuant to the strict responsibility principle, the athlete Miruna Elena Trifan was responsible for the substance found in her body. However, it admitted the possibility of meeting the legal conditions for reduction of the two years sanction, invoking the CAS casuistry regarding the young age and the inexperience as important factors to determine the guilty level of the athlete.

In relation with the appeal submitted by WADA, with the answer presented by the athlete Miruna Elena Trifan, legally represented by Trifan George, as parent, with the point of view of the chairperson of Hearing Commission for athletes and their support personnel who violated the anti-doping rules and taking into account the other evidences from the file, the Appeal Commission took note of the following:

De facto, on 19.06.2010 following the doping control conducted on sport discipline athletics in Bucharest, the analytical result of the sample of the athlete TRIFAN Miruna Elena with the code number 1939482A, indicated the presence of 18-nor-17alfa-methyl-17beta-hidroxi-methyl-androst-1,4,13-trien-3one, metabolite of metandienone; the substance is included in the class S1.1.a of the 2010 Prohibited List.

In the course of the process of investigating the case, on 08.07.2010 during the hearing session the athlete stated that she had no knowledge about what could get the analytical result; she also stated that all the drugs were given to her by her coach, Mr. Boboc Xenofonte. On 09.07.2010 Mr. Boboc Xenofonte, the coach of the athlete Miruna Elena Trifan, gave a written statement to the National Anti-Doping Agency, admitting that he administered 6 pills of NAPOSIM to the athlete Miruna Elena Trifan, without the medical staff notice, without athlete's or member of her family's knowledge. By reviewing all the evidences in the file, the Hearing Commission for the Athletes and their support personnel who violated the anti-doping rules established that the athlete showed no fault and the coach was guilty entirely and rendered Decision no. 25/12.08.2010, deciding not to apply the suspension sanction from the sport activity to the athlete Miruna Elena Trifan, invoking as legal grounding the provisions of art. 46, paragraph (2) of Law 227/2006 regarding prevention and fight against doping in sport republished, which established that the act will not be an anti-doping rule violation if the athlete prove that she did not know or she did not suspect and she had not the possibility to know or to suspect that she used or that someone gave her prohibited substances or methods. Also, by Decision no. 29/12.08.2010, the Hearing Commission for the Athletes and their support

personnel who violated the anti-doping rules decided the lifetime ineligibility of the coach, Mr. Boboc Xenofonte from any sport activity.

Taking into account that:

- the athlete Miruna Elena Trifan is minor;
- is a national level athlete, not international, participated only in National Contest for Children in 2009 and in Junior 3 National Contest in 2010 – therefore, there is no reason to talk about her experience;
- she has never been tested;
- she was not informed regarding the in competition and/or out of competition anti-doping rules;
- the coach Mr. Boboc Xenofonte admitted that he gave to her (athlete) pills of NAFOSIM without the medical staff's notice and without athlete's or member of her family's knowledge before Grand Prix J3;

The Appeal Commission establishes that the athlete Miruna Elena Trifan did not show a significant fault or negligence regarding the way the prohibited substance got into her body, therefore provisions of art.46, paragraph (3) of Law 227/2006 republished being applicable.

Taking into account provisions of article 46, paragraph (1) of Law 227/2006 regarding prevention and fight against doping in sport republished, taking into account the statement of the chairperson of the Hearing Commission for athletes and their support personnel who violated the anti-doping rules, supporting the applicability of the strict responsibility principle of the athlete for finding the prohibited substances in his/her body and it is not necessary to prove the intention or the fault to establish the anti-doping rules violation.

Taking into account the provisions of art.30 letter a) of Order no. 47/2009 of ANAD's President regarding Regulation of set up and functions of Appeal Commission, with further changes and completions;

Taking into account the Minutes of the Appeal Commission's session elaborated on October 12, 2010, respectively 9 December 2010, as parts of the present decision,

In unanimity

D E C I D E S :

1. To Admit the Appeal submitted by World Anti-Doping Agency (WADA), on 23 September 2010.
2. To dismiss the Decision no. 25/12.08.2010 of the Hearing Commission for athletes and their support personnel who violated the anti-doping rules beside ANAD.
3. Establishes the ineligibility of the athlete Miruna Elena Trifan for a period of one (1) year from any sport activity. The ineligibility period begins to run from July 8, 2010.

The results in sport competitions obtained by the athlete Miruna Elena Trifan starting July 8, 2010 until the date of the current decision will be disqualified with all the consequences, including the withdrawal of any medals, points and prizes.

The decision of the Appeal Commission may be appealed directly to the Court of Arbitration for Sports in Lausanne, in up to 21 days since the notification.

The current decision is mandatory.

**CHAIRPERSON OF APPEAL COMMISSION,
FLOAREA CHIVU**