

JUDICIAL AWARD DELIVERED BY THE FISA DOPING HEARING PANEL

sitting in the following composition

Members: **John Boulton**
 Tricia Smith
 Jean Christophe Rolland

In the case of
Maksym KONTSEVYY (UKR)

The Facts

The Anti-Doping Organization of Russia, RUSADA, conducted in competition tests at the Grand Moscow Regatta on 6 June 2009 in accordance with the regulations of the World Anti-Doping Code. A urine sample was collected on 6 June 2009 (the "Sample") from athlete Maksym KONTSEVYY (the "Athlete").

The sample taken from the Athlete was numbered 2425311 and recorded on the Doping Control Form. The Athlete signed this form and received a copy. The Athlete declared on the form that he had taken no medications or supplements during the seven days before the test and made no comments on the doping control procedure. The WADA accredited laboratory in Moscow received the "A" sample on 10 June 2009.

Certificate of Analysis No. 09-509-4 indicated that the sample showed the presence of exogenous testosterone which is on the 2009 Prohibited Substances/Methods List of the World Anti-Doping Code. Testosterone is an anabolic androgenic steroid in class S1 (Anabolic Agents).

The Athlete was notified by FISA through the Ukrainian Rowing Federation on 18 August 2009 with details of the possible anti-doping violation and of a provisional suspension from national and international competition. All correspondence with the Athlete was conducted through the Ukrainian Rowing Federation.

On 19 August the Ukrainian Rowing Federation requested to proceed with the analysis of the B sample.

The analysis of B sample 2425311 took place at the Moscow Laboratory on 4 September 2009 and confirmed the A analysis of the same sample. Certificate of Analysis No. 09-509-5 showed that

- the T/E ratio was greater than 4 (6.7)
- the Isotope Ratio Mass Spectrometry (IRMS) analysis indicated "exogenous origin of testosterone".

The Moscow Laboratory reported the results to FISA on 7 September 2009. The Athlete was informed of the B counter analysis result on 9 September 2009 and in accordance with Article 8.1 of the FISA Anti-Doping Rules was invited to attend and participate in a hearing before a FISA Anti Doping Hearing Panel or provide a statement in written format.

The Ukrainian Rowing Federation confirmed the receipt on 29 September 2009 of the complete documentation package prepared by the Moscow Laboratory.

Hearing

The Ukrainian Rowing Federation informed FISA on 23 September that the Athlete chose to not attend a hearing and that he planned to submit a statement in writing.

A scanned handwritten statement from the Athlete in Ukrainian was received by FISA on 30 September 2009. The English version of the athlete's statement was received on 1 October 2009.

In his submission the Athlete claims that he was sure that he did not use prohibited substances, but he acknowledges the laboratory reports which state otherwise. He writes that in the past year, he used different training methods, he trained at the "swimming pool, fitness centre and in a weight room etc..." "...they said it was really progressive and safe and it would help me quickly increase power and weight of my body. The program included ingestion of sports drinks and as I was told, vitamin complexes. I did not ask the title of the substances I used as I accustomed to trust people...." The athlete then says that he regrets this trust and he apologises to his colleagues and the rowing community and that the worst thing he could expect in life is suspension from "his favourite work" rowing.

Applicable law

The applicable rules

The applicable rules are the FISA Anti-Doping Rules in force at the time of the test (6 June 2009). These rules are consistent with the World Anti-Doping Code.

The relevant rules

The relevant rules in this case are the FISA Anti-Doping Bye Laws including but not limited to:

- Article 2.1.1 which states it is each Rower's personal duty to ensure no Prohibited Substance enters his body;
- Article 10.2 which sets a period of two years' ineligibility for a first violation for the substance here concerned, and which provides that the athlete shall have the opportunity to establish the basis for eliminating or reducing this sanction as provided in Article 10.5;

Article 10.5 which provides for elimination or reduction of the period of ineligibility based on exceptional circumstances: (10.5.1) elimination in the case of “no fault or negligence” and establishing how the prohibited substance entered his or her system; (10.5.2) reduction to no less than one half of the minimum period of ineligibility in the case of “no significant fault or negligence”;

Merits

According to FISA Rules and the World Anti-Doping Code, the burden of proof is on the athlete to rebut the presumption of guilt established by the presence of a prohibited substance in his body or fluid.

The Panel is satisfied that a positive test was established by the evidence of the laboratory analysis. In fact the Athlete did not dispute the findings of the test. The sanction for an anti-doping rule violation in this case is a two year period of ineligibility.

The Panel must then decide if the Athlete provided sufficient evidence of exceptional circumstances and no fault or negligence (Article 10.5) or no significant fault or negligence (10.5.2) to reduce the period of ineligibility. Under the Article the Athlete must also explain and give evidence as to how the Prohibited Substance entered his body.

Maksym Kontsevyi's explanation of how the substance entered his body was that he had been given sports drinks and vitamin complexes which contained the prohibited substance as part of a training programme at a sports facility. He claimed that he was told the programme was safe but that he did not ask what he was being given as he was accustomed to trusting people.

With regard to his explanation relating to no fault or negligence, or no significant fault or negligence, the Panel finds that the Athlete's explanations only suggested a way that the substance could have entered his body. No evidence was presented which established how the substance came to be in his system.

The Panel finds that the Athlete's explanations relating to no fault or negligence to be insufficient and finds that the Athlete was at fault and was negligent. Not having questioned what he was given to consume at the sports facility was negligent on his part.

Athletes are responsible for the medications and substances they take into their bodies. It is not a sufficient explanation that he was unaware of ingesting a prohibited substance through sports drinks or vitamin complexes given to him by another person. It was his responsibility as an athlete to make every effort to ensure that he was not taking a prohibited substance.

An athlete must be aware that it is his responsibility to check any substance given to them and be able to make an informed decision about taking a substance or not. It is important that a national federation provides comprehensive anti-doping education to increase the athletes' awareness about their duties and rights in all circumstances related to Anti-doping.

The Panel notes with concern the delay between the taking of the sample on 6 June 2009 and the receipt of the B sample analysis on 7 September 2009, however the delay does not affect the Panel's finding of a doping offence and ultimately has no bearing on the Panel's decision.

FOR THESE REASONS

The FISA Doping Hearing Panel finds:

1. Maksym Kontsevyi has committed an Anti-Doping Rule Violation under the Anti-Doping By-Laws.
2. Maksym Kontsevyi is suspended and ineligible for two years from national and international competition.
3. The period of ineligibility commences from the date of the provisional suspension, 18 August 2009.
4. This award is rendered without costs.

Lausanne, 1 February 2010

For the FISA Doping Hearing Panel:

John Boulton

Tricia Smith

Jean Christophe Rolland