

INTERNATIONAL RUGBY BOARD

IN THE MATTER of the Regulations
Relating to the Game

AND

IN THE MATTER of an alleged anti doping rule
violation by **VAKHTANG**
MDZINARISHVILI contrary to
IRB Regulation 21

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

Judicial Committee

Tim Gresson (New Zealand, Chairman)
Dr Barry O'Driscoll (Ireland)
Gregor Nicholson (Scotland)

Appearances and Attendances

For the Board

Susan Ahern (Counsel for the International Rugby Board)
Tim Ricketts (Anti-Doping Manager)
Natalie Kurtanidze (Translator – Georgia Rugby Union)

For the Georgia Rugby Union

Irakli Chikava (Head of the Disciplinary Committee, Georgia Rugby Union)

The Player

Vakhtang Mdzinarishvili

Hearing

Thursday 26 June 2008 by way of telephone conference

DECISION OF THE BOARD JUDICIAL COMMITTEE

1. This is a further case involving the recreational use of cannabis during an IRB tournament. In previous Board Judicial Committee ("BJC") decisions, it has been made clear that the use of cannabinoids contravenes the Regulations Relating to the Game and the World Anti-Doping Code and violations will lead to sanctions being imposed on the player. Disappointingly, this case follows the cases of two other Georgian players Zhamutashvili and Todua¹ who were each suspended for periods of three months for recreational cannabis use following in-competition testing at the IRB Sevens World Series in Edinburgh in June 2007.

¹ *IRB v Davit Zhamutashvili and Davit Alexander Todua*, 27 September 2007

2. Vakhtang Mdzinarishvili ("the player") from Georgia was urine-tested in competition on 27 April 2008 following the match between Georgia and Romania at the IRB Junior World Trophy Tournament held in Santiago, Chile.
3. Subsequently the player's "A" sample provided in the course of the test was found to have contained the prohibited substance 11-nor-delta 9-tetrahydrocannabinol-9-carboxylic acid (a metabolite of cannabis) at a concentration level of 912ng/ml, which is a considerably higher level than that prescribed by WADA (15ng/ml). Carboxy-THC is a Prohibited Substance listed under s.8 Cannabinoids on the WADA Prohibited List 2008.
4. A preliminary review of the case undertaken by Dr Ismail Jakoet (South Africa) on 9 May 2008 in accordance with IRB Regulation 21.20 confirmed that there was no apparent departure from the International Standard for Testing, there were no TUEs (Therapeutic Use Exemptions) on file for use of the substance for the player and therefore an anti-doping rule violation by the player may have been committed in contravention of IRB Regulation 21.2.1.
5. The player was advised by letter dated 12 May 2008 of the results of the "A" sample and advised that in accordance with IRB Regulation 21.19 he was provisionally suspended. The provisional suspension became effective on 27 May 2008.
6. By letter dated 28 May 2008 the player accepted the "A" sample results. Because of the very high concentration level of Carboxy-THC found in the player's sample (a level which the IRB had double-checked with WADA's Montreal laboratory as being correctly reported), the IRB obtained on 12 June 2008 an opinion (refer Appendix A) from Professor Julia Kennedy, School of Pharmacy, University College of Cork.
7. This Board Judicial Committee has been appointed to consider the player's case. The player, through the Georgian Rugby Union, indicated that he wished to have a hearing before the BJC and to participate in that hearing by way of telephone conference.
8. The hearing took place by way of a telephone conference call on 26 June 2008. Written submissions were received prior to the hearing from the IRB. At the hearing, oral evidence was received from the player and further submissions were made on behalf of the IRB and the player.
9. The Board Anti-Doping Regulations (which adopt the mandatory provisions of the WADA Code) set out the framework under which all players can be subjected to doping control. The Regulations (and the WADA Code) are based on the principles of personal responsibility and strict liability for the presence of prohibited substances.
10. Pursuant to Regulation 21.2.1 the "*presence of a Prohibited Substance or its Metabolites or Markers in a Player's bodily sample*" constitutes an anti-doping rule violation. The violation occurs whether or not the player intentionally or unintentionally used the Prohibited Substance or was negligent or otherwise at fault.
11. Regulation 21.6 addresses the principle of personal responsibility. It provides:

"21.6.1 It is each Players responsibility to ensure that no Prohibited Substance is found to be present in his body and that Prohibited Methods are not used. It is also the personal responsibility of each Player to ensure that he does not commit any other anti-doping rule violation.

21.6.2 It is the sole responsibility of each Player and Person to acquaint himself with all of the provisions of these Anti-Doping Regulations including the Guidelines. It is also each Player's sole responsibility to notify Player Support Personnel, including, but not limited to, their doctors of their obligation not to use Prohibited Substances and Prohibited Methods and to ensure that any medical treatment received by them does not violate any of the provisions of these Regulations."

12. The Board has the burden of establishing that an anti-doping rule violation has occurred to the comfortable satisfaction of the hearing body (Regulation 21.3.1). In this regard the Player, prior to and at the hearing, acknowledged the use of the prohibited substance and accepted the analytical findings. Accordingly, we are satisfied that the Player has committed an anti-doping rule violation due to the presence of a prohibited substance namely cannabinoids in the Player's urine sample.

Sanctions – Regulatory Framework

13. Although the period of ineligibility for a first offence involving the presence of a prohibited substance is usually two years, certain "specified substances", including cannabinoids, are governed by Regulation 21.22.2, which provides as follows:

Imposition of Ineligibility for Specified Substances

21.22.2.1 The Prohibited List may identify specified substances which are particularly susceptible to unintentional anti-doping rules violations because of their general availability in medicinal products or which are less likely to be successfully abused as doping agents. Where a player can establish that the use of such a specified substance as not intended to enhance sport performance, the period of ineligibility found in Regulation 21.22.1 shall be replaced with the following:

First violation: At a minimum, a warning and reprimand and no period of Ineligibility from future Events, and at a maximum, one (1) year's ineligibility.

Second violation: Two (2) years' ineligibility.

Third violation: Lifetime ineligibility.

However, the player 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 (in the case of a second or third violation) this sanction as provided in Regulation 21.22.4.

14. Regulations 21.3.1 and 21.22.2 require us to consider whether the player has established on a balance of probabilities that his use of cannabinoids was not intended to enhance sport performance and, if so, to decide the sanction that should be imposed for a first violation by the Player.

The Player's Account

15. The player stated he had been playing rugby for ten years and had previously participated in three international tournaments. Previously he had received anti-doping education by attending IRB anti-doping seminars held in Belfast in 2007 and at the commencement of the tournament in Chile. Further, he had received

anti-doping education from his union. He was aware last year two Georgian players were suspended for recreational cannabis use. Thus, as he properly acknowledged, he was fully aware of the perils of taking cannabis during tournaments.

16. Also the player acknowledged that at the commencement of the tournament, he had signed a consent and agreement form, which clearly stipulated his obligations under the anti-doping programme.
17. He informed the BJC that he was "very upset" because his team lost its match on 24 April 2008. Essentially, the loss meant his team could not win the championship. He decided late in the evening to leave the team hotel on his own and make his way to a bar (unnamed) in Santiago where he accepted from an unidentified local person with whom he had become acquainted, a large cannabis cigarette which, without thinking of the consequences, he smoked in full. He stated he had not previously smoked cannabis. He stated that he also accepted the cigarette because he had sustained a painful injury during the match. Following his consumption of the cannabis, he felt sick. Over the following day he felt weaker and was unable to train with the team on 25 April 2008. Gradually the effects wore off, allowing him to train on 26 April 2008, ahead of his next match on 27 April 2008. Because of the effects of the cannabis, on reflection the player thought the cannabis must have been potent.
18. In response to questions from the BJC, the player discounted any suggestion that he had smoked the cannabis to enhance his performance. He did so, he stated, to forget the poor team performance and because of the painful injury he had suffered during the match. He acknowledged that cannabis use is illegal in Georgia. The player's attention was drawn to the very high level of cannabis metabolite found in his sample and to the expert opinion of Professor Kennedy (a copy of which the player confirmed he had received and had translated) however he could offer no further explanation to account for the level found in his sample.
19. He very much regretted his conduct, not only for himself but also his team, and stated he will never take prohibited substances again.
20. Mr Chikava responsibly informed the BJC that he was distressed these cases occur as they reflect poorly on the image of rugby in Georgia. The union proposed to impose strong sanctions denouncing conduct of this kind. Further, the player will also be sanctioned by the union. Also his union will increase its anti-doping education programme and more rigorous testing programmes will be put in place.
21. For the IRB, Mrs Ahern submitted that in the event of the player proving, on a balance of probabilities that the cannabis use was not to enhance his performance playing rugby during the tournament, then the BJC was empowered to exercise its discretion in determining the appropriate sanction. She submitted that if the player had satisfied the threshold, this was a "very serious case of cannabis use during a tournament". Indeed, she informed the BJC that the level of cannabis was the highest that had ever been recorded in IRB cases. She emphasised the level was significantly higher than the mean levels recorded in the research referred to in Professor Kennedy's letter.

Discussion

22. The BJC has reservations as to the veracity and reliability of the player's account. Our reasons for finding the player's evidence less than convincing included primarily:

- His account, namely whilst in a foreign city, on his own he left the hotel late at night, and in an unnamed bar accepted a large potent marijuana joint from an unnamed local person with whom he had become acquainted that evening in the bar, is not supported by any independent evidence.
- Even if the player's evidence that on the night of 24/25 April 2008 he smoked a large (and inferentially potent) cigarette is accepted and this resulted in the very high concentration levels, the research referred to by Professor Kennedy, raises some doubt as to whether the player could only have consumed cannabis on this one occasion before and during the IRB tournament.
- There was also no supporting evidence from any other member of the Georgian team (which included a coach and team doctor) confirming that during the period 24 to 26 April 2008 the player suffered a painful injury during the match. As mentioned, this was one of the reasons he said he had consumed the cannabis. Also he was "weak" (the player's description as to how he felt during the ensuing days after he smoked the cannabis), and because of these factors was unable to train for part of the period.

23. However, although the BJC has reservations about the player's account, we are satisfied that given the well-documented effects of cannabis consumption (including impaired physical reactions and cognitive function) at the time it was used there was no intention on the player's part to enhance performance but that irresponsibly it was consumed for recreational purposes.

Sanction

24. Whilst we have found the cannabis consumption was for a recreational purpose, we accept the IRB submission that the cannabis consumption was a serious violation. The high level of cannabis is troubling and, as mentioned, leads us to question whether his smoking of cannabis was limited to this one occasion.

25. Moreover, the consumption occurred against the backdrop of the player being fully aware of the perils of the use of banned substances and the 2007 suspensions of Georgian players for cannabis use.

26. As has been mentioned in previous cases, the BJC deprecates the use of cannabis prior to and during IRB tournaments. In this respect there are parallels between this case and the previous cases of Garbuzov and Rechnev² (starting point six months period of suspension reduced to four months for mitigating factors), Vadym³ (six months, no reduction for mitigating factors), Zhamutashvili and Todua (supra) (end sanction three months, mitigating factors referred to) and Nagelevuki⁴ (starting point six months suspension reduced to four months for mitigating factors). With the exception of the Vadym case, each of the players admitted cannabis use.

² *IRB v Andrey Garbuzov and Yaroslav Rechnev*, 28 September 2006

³ *IRB v Kolyshkin Vadym*, 25 July 2005

⁴ *IRB v Sireli Nagelevuki*, 16 March 2007

27. It can be seen in all these cases the BJC did not regard the player's violation as a trivial matter. Indeed, these cases also emphasised the player's position representing his national team at an international IRB tournament as a role model for others and in particular young players in his community and underscores the magnitude of the player's failure to meet his responsibilities when committing cannabis-related offences.
28. Thus, for the foregoing reasons, the BJC considers in this case there is a need for a condign sanction to demonstrate that against a background of the player having received anti-doping education and being aware of the recent cases referred to, the player's cannabis use was totally unacceptable. Taking into account the need for deterrence and the other relevant factors previously referred to, the majority of the BJC has determined that the starting point should be a seven months period of suspension. Allowing for mitigating factors, including the player's acknowledgement that he consumed cannabis during the tournament (c.f. Vadym who stated he had taken "*pain killers*"), his expressed regret and remorse that his conduct has further tarnished the image of rugby in Georgia, and his acknowledgement that he made a serious error of judgment, the sanction will be reduced to five months suspension.
30. The dissenting member of the BJC (Mr Nicholson) considered that a starting point of six months suspension reduced to four months would have been appropriate based, inter alia, on the basis of previous IRB decisions involving cannabis use and the fact that the player's consumption irrespective of the level reported in his sample was not performance enhancing. Further, in Mr Nicholson's view the lack of supporting evidence confirming that the player had suffered a painful injury during the match was not a relevant consideration.
31. Accordingly, the BJC directs that the period of suspension should commence from 27 May 2008 (being the date of the provisional suspension) until 31 December 2008. In broad terms, this period takes into account the break in the rugby season in Georgia during the period July to September.
32. This decision is subject to review by a Post Hearing Review Body (Regulation 21.25) and an appeal to the Court of Arbitration for Sport, binding on both the player and the union. For the sake of clarity, it is intended that the sanctions determined by the BJC in this matter shall replace any domestic sanctions imposed on the player by his union.
33. If the Board wishes the BJC to exercise its discretion in relation to costs pursuant to Regulation 21.21.9, written submissions should be provided to the BJC and to the player by 17.00 hours Dublin time on 28 July 2008, with any written submissions by the player in response to be provided to the Board (which shall be responsible for forwarding such submissions on to the BJC) by no later than 17.00 hours Dublin time on 7 August 2008.

22 July 2008



Tim Gresson (for and on behalf of Board Judicial Committee)
Barry O'Driscoll
Gregor Nicholson