
Decision of the National Anti-Doping Disciplinary Panel.

Case Ref: 4/2019

Anti-Doping Commission (Malta)

-vs-

**Jason Mifsud (ID No. 73386(M) - Malta
Football Association (Section Futsal)
Ref:1TSTJASMIF-19**

The National Anti-Doping Disciplinary Panel (hereinafter referred to as the 'Panel') consisting of Dr. Maria Azzopardi LL.D. as Chairperson, and Dr. Frank Testa LL.D., and Mr. Mark Zammit (Clinical Pharmacology and Therapeutics) as members.

Before the commencement of this proceeding, the Chairperson and members of the Panel declared that they are not subject to any circumstance or conflict that could negatively affect their impartiality in the case under review.

The athlete appeared before the Panel on the 20th of June 2019 at 17:15. The parties declared that they have no opposition to the composition of the Panel.

1. Preliminaries

Considered the Request by the National Anti-Doping Commission (Ref. No. 1TSTJASMIF-19) of the 14th March 2019 to the Chairperson of the Panel to schedule a sitting for the hearing of a case concerning the alleged breach by Jason Mifsud of the Anti-doping Regulations (Legal Notice 17 of 2015, Sports Act, L.N. 17 of 2015, Laws of Malta).

Took note and reviewed the following documents that were forwarded to the Panel at the initial stage by the Coordinator of the Anti-Doping Programme, namely:

- (i) The Doping Control Form dated 12th February 2019 relating to an in-competition testing;
- (ii) The Test Report of the sample dated 6th March 2019 whereby it has resulted that there is the presence of a Prohibited Substance or its Metabolites or markers in the Athletes's Sample, namely Cocaine metabolite;
- (ii) Letters dated the 7th March 2019 sent by ADC to the athlete, the Association, WADA and SportMalta of the alleged breach;
- (iii) A letter dated the 8th March 2019 from the Malta Football Association to Jason Mifsud imposing a provisional suspension.
- (iv) The request by ADC to the Panel to schedule a hearing dated the 14th March 2019;
- (vi) The Notices dated 11th May 2019 and 4th June 2019 issued by the Panel to the athlete to provide written submissions and details and the reply from the athlete.
- (vii) The written submission from the athlete's legal counsel dated 21st May 2019;
- (viii) The written submissions from ADC dated 1st July 2019.

Took note of the Notice by the Panel dated 4th June 2019 sent to the athlete to appear before the Panel on the 20th June 2019 at 17:00 and answer to the accusation being brought forward before the Panel by ADC based on Article 3 (2)(a) and (b) of L.N 17 of 2015 of the Laws of Malta, that "a prohibited substance or its metabolites or markers (Cocaine metabolite classified as non-specified substance under Section S6(a) of the 2019 WADA Prohibited List) was detected in your urine

sample collected on the 12th of February 2019). Copy of the Notice of hearing was also forwarded to the Anti-Doping Commission and Malta Football Association.

Took note of the fact that the written submissions provided by the athlete dated 21st May 2019 were notified to the Panel and ADC on the 19th of June 2019 (a day before the sitting) and thus ADC requested a period of time to submit its representations in writing. The Panel after hearing the athlete confirming under oath the content of the written submissions dated 21st May 2019 has awarded to ADC until the 4th July 2019 to submit its submissions which were presented in a letter dated 1st of July 2019 and notified to the Panel and athlete. The Panel had also awarded until the 11th July 2019 to the athlete to file a counter reply and had noted that after the 11th July 2019 the written submissions period shall be considered closed and the case put off for decision.

2. Merits:

2.1 Took note of the submissions presented by the athlete which are mainly three-fold:

i) the athlete does not understand the English language and did not understand the letter of notification received by ADC to inform him of the results of the urine testing. Therefore since he did not understand the contents of the letter, he did not have the opportunity to request the testing of the B sample. The athlete is contesting the procedure as followed and is also contesting the use of the English language in communication as sent to him, since it is claimed that this deprives him from the possibility of contesting any such information.

ii) the athlete contests the expense of €900 to conduct the second sample testing, since he claims that this is “a disproportionate burden on the athlete who in order to prove his innocence must undergo significant financial hardship.”

iii) any possible use of cocaine is in recreational settings and therefore any allegations of use by the athlete should be considered out-of-competition and in a context not related to sport performance.

2.2 Took note of ADC’s reply whereby it rebutted that:

i) notwithstanding that ADC is contesting the athlete’s defence that he could not defend himself because he is not much fluent in English, ADC has declared in its reply that it is giving another opportunity to the Athlete to analyse the B-Sample at his own expense;

ii) the cost of the B-Sample testing has to be borne by the athlete since the Athlete must prove his innocence after receiving a positive testing of the urine sample. It is him who is contesting the findings and therefore any proof required to rebut the positive result must be provided by him at his own expense;

iii) the use of cocaine is also a stimulant which is used by athletes to enhance performance in sport due to their effects on the central nervous system. “*Stimulants, such as cocaine, work to speed up parts of the brain and body, increasing the heart rate, blood pressure, metabolism and body temperature of the user. Stimulants are mainly used by athletes to reduce tiredness and fatigue, and to increase alertness, competitiveness and aggressiveness.*”

iv) ADC is contesting the athlete’s request to suspend the urine analysis and result management process and that new samples be analysed since the procedure to analyse the urine sample taken during a test is guided by the International Standard for Testing and Investigation (ISTI) issued by WADA.

v) ADC has submitted that it is the athlete that has to prove no intent and that he bears no fault or negligence for the violation on his part as required under Article 11(2) of LN 17 of 2015 of the Laws of Malta. Thus, the ADC insists on a four (4) year ban.

3. Considerations:

3.1 The Panel considers the evidence produced confirm an analytical adverse finding in the urine sample submitted by the athlete.

3.2 The Panel takes note of the provisional suspension dated 8th of March 2019.

3.3 The Panel makes reference to the defence brought by the athlete that: *"The fact that our client was served in a language he has little fluency in, and without an accompanying Maltese translation, meant that he failed to take the appropriate actions that would have allowed him to challenge the result of the test."* and concludes that notwithstanding the fact that the notice was served to him in the English language, the athlete was careless in not giving any importance whatsoever to the communication received. One must consider that this letter was sent subsequent to the doping test and thus he could well have been presumed that any communication from ADC would have been related to such testing. The athlete completely discarded the letter received for months and therefore the Panel cannot accept a justification in the sense that "he has little fluency". The athlete declares that he has "little fluency" and therefore this does not mean that he has no complete understanding of the English language. Thus, the Panel concludes that the athlete's lack of attention to a communication received from ADC cannot be justified under these circumstances.

Having said that, the Panel still believes that any communication sent to the athlete should have been provided firstly in the Maltese language and then if need be in the English language as well, so as to facilitate a better understanding of its contents.

3.4 The Panel considers that the claim brought forward by the athlete that the cost of the second testing (B-Sample) is too expensive does not mean that his right to defend himself is somehow hindered, since the costs of the B-Sample testing is not imposed on the athlete by the prosecuting body, but it is an expense which is due to the accredited laboratory conducting the testing. The ADC diligently informs the athlete of this possibility, but then it is the discretion of the athlete whether to pursue this option or not.

3.5 The Panel will move on to deal with the other points raised by the athlete and in this regard it makes reference to a basic dictum in anti-doping which is echoed in the words of Article 3 (2) (a) (i) whereby *"it is each athlete's personal duty to ensure that no prohibited substance enters his or her body. Athletes are responsible for any prohibited substance or its metabolites or markers found to be present in their samples. Accordingly, it is not necessary that intent, fault, negligence of knowing use on the Athlete's part be demonstrated in order to establish an anti-doping rule violation under sub-regulation (2) (a)."* This article confirms that every athlete has the responsibility for any substance that enters his or her body and any positive result would confirm that the athlete has failed his obligation to ensure that no prohibited substance enters his body and thus, the burden of proof shifts upon the athlete to prove otherwise.

3.6 The Panel considers that it is not sufficient that the athlete declares that any possible use of cocaine is in recreational settings and thus should be considered to have been used out-of-competition in a context not related to sport performance; because under the Prohibited List 2019, cocaine is classified under S.6 as Non-Specified Stimulants and therefore there its effects are that of a stimulant. Thus, once the athlete has been found positive to 'cocaine' substance, the burden of proof shifts upon the athlete and he is to proof how the substance entered his body or provide any

proof of no intent or no fault or negligence on his part. The contents of the submissions dated 21st May 2019 which were confirmed on oath by the athlete do not provide any explanation to rebut the positive findings.

3.7 The Panel opines that the athlete failed to successfully contest the positive testing. Moreover, he also failed to prove a convincing explanation as to how the cocaine entered the body and demonstrating that he had no fault or negligence on his part.

4. Decision:-

Therefore on the basis of the above considerations, the National Anti-Doping Disciplinary Panel rules that:

4.1 Jason Mifsud has breached the Anti-Doping Regulations, 2015 [Art. 3(2)(a)] and WADA Code Art. 2.1, whereby the presence of a prohibited substance or its metabolites or markers has been found in Jason Mifsud urine sample A that had been collected from him on the 12th February 2019.

4.2 And therefore the National Anti-Doping Disciplinary Panel as provided under Art 11(2)(a) of the Anti-Doping Regulations, 2015 and Art. 10.2.1 of the WADA Code is imposing on the athlete Jason Mifsud a suspension of ineligibility from any sports activities for a period of four (4) years commencing from the date of the provisional suspension (08.03.2019).

4.3 A copy of this decision is to be forwarded to WADA, SportMalta and the Malta Football Association

Dr. Maria Azzopardi LL.D
Chairperson

Dr. Frank Testa
Member

Mr Mark L. Zammit
Member

This 30th July 2019.