



Decision against  
**KARL LUKE SCHEMBRI**  
taken by  
**THE CONTROL AND DISCIPLINARY BOARD**  
at its meeting held on  
Monday 09th March 2020

Chairman: Dr. Stephen Muscat  
Deputy Chairman: Dr. Karl Sammut  
Censu Galea  
Members: Keith Galea Robert Dingli  
Joe Baldacchino Paul Bugeja  
Eugenio Muscat

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Charge Nru: 036

Charge: Charge against Karl Luke Schembri (sample nr. 498060) for having failed a doping test where it results that you have tested positive for presence of Glucocorticoids / betamethasone and this in breach of inter alia Article 2 and 10 of the WADA Code 2015 and inter alia Article 4 and 6 of the MFA Doping Charter;

Match: BOV Premier League – Hamrun Spartans vs Gzira United - 18.01.2019

The Board: After having seen the charge brought against Karl Luke Schembri ('the Player');

After having seen and considered the relevant medical report issued by the Medical Committee within the Malta Football Association;

After having seen and considered all the documentation at the Board's disposal, including the documentation presented by the Player and adduced as evidence;

After having seen the relative sections of the WADA Code 2015 (hereinafter referred to as 'the Code') and the Doping Charter of the Malta Football Association, applicable at the time of the alleged offence;

After having heard the witnesses, both for the Malta Football Association and for the Player;

***Considers the following:***

Article 2.1 of the Code states that:

*"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 or knowing Use on the Athlete's part be demonstrated in order to establish an anti-doping rule violation under Article 2.1"**.*

Article 2.1.2 of the Code further states that:

*"Sufficient proof of an anti-doping rule violation under Article 2.1 is established by any of the following: presence of a Prohibited Substance or its Metabolites or Markers in the Athlete's A Sample..."*

A corollary rule to the foregoing is that athletes or other persons shall be responsible for knowing what constitutes an anti-doping rule violation and the substances and methods which have been included on the Prohibited List.

Finally, in terms of Article 2.1.3 of the Code *"Excepting those substances for which a quantitative threshold is specifically identified in the Prohibited List, the presence of any quantity of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample shall constitute an anti-doping rule violation."*

Accordingly, an anti-doping rule violation is committed under Article 2.1 of the Code without regard to an athlete's Fault. This rule has been referred to in various CAS decisions as 'Strict Liability'. As a matter of fact, an athlete's Fault is taken into consideration in determining the consequences of this anti-doping rule violation under Article 10, not responsibility. This principle has consistently been upheld by CAS.

***Further considers the following:***

In pursuance of Article 3 of the Code, the Anti-Doping Organization shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether the Anti-Doping Organization has established an anti-doping rule violation, **to the comfortable satisfaction of the hearing panel**, bearing in mind the seriousness of the allegation which is made. **This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt.**

On the other hand, where the Code places the burden of proof upon the athlete or other person alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, **the standard of proof shall be by a balance of probability.**

Sufficient proof of an anti-doping rule violation under Article 2.1 is established by *inter alia* presence of a Prohibited Substance or its Metabolites or Markers in the Athlete's A Sample where the Athlete waives analysis of the B Sample and the B Sample is not analysed. In the case in question, the Player waived analysis of the B Sample and the B Sample was not analysed. Moreover, it is clear that the analysis were carried out by a WADA-accredited laboratory, and there is **no** evidence to suggest that the laboratory in question conducted Sample analysis and custodial procedures not in accordance with the International Standard for Laboratories, as required by the Code.

***Further considers the following:***

In terms of Article 10.2.1 of the Code, the period of Ineligibility shall be four years where the anti-doping rule violation does not involve a Specified Substance, unless the Athlete or other Person can establish that the anti-doping rule violation was not intentional (Sub-article 10.2.1.1) **or** where the anti-doping rule violation involves a Specified Substance and the Anti-Doping Organization can establish that the anti-doping rule violation was intentional (Sub-article 10.2.1.2).

**It is clear that the first violation referred to above does not subsist in the case in question in so far as the anti-doping rule violation involves a Specified Substance and the second violation would subsist only if to the comfortable satisfaction of the Board, the Player is considered to have violated Article 2.2 intentionally.**

The term "intentional" is meant to identify those Athletes who cheat. The term, therefore, requires that the Athlete or other person engaged in conduct which he or she knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk.

If Article 10.2.1 does not apply, the period of Ineligibility shall be two (2) years.

In terms of **Article 10.4** of the Code *“If an Athlete or other Person establishes in an individual case that he or she bears No Fault or Negligence, then the otherwise applicable period of Ineligibility shall be eliminated.”*

As already pointed out above, this Article applies only to the imposition of sanctions, where otherwise responsibility would have already been ascertained; it is not applicable to the determination of whether an anti-doping rule violation has occurred. Moreover, in line with established case-law, it will only apply in exceptional circumstances, for example, where an Athlete could prove that, despite all due care, he or she was sabotaged by a competitor. Conversely, the No Fault or Negligence *exception* would **not** apply in the following circumstances: (a) a positive test resulting from a mislabeled or contaminated vitamin or nutritional supplement (Athletes are responsible for what they ingest (Article 2.1.1) and have been warned against the possibility of supplement contamination); (b) the Administration of a Prohibited Substance by the Athlete’s personal physician or trainer without disclosure to the Athlete (Athletes are responsible for their choice of medical personnel and for advising medical personnel that they cannot be given any Prohibited Substance); and (c) sabotage of the Athlete’s food or drink by a spouse, coach or other Person within the Athlete’s circle of associates (Athletes are responsible for what they ingest and for the conduct of those Persons to whom they entrust access to their food and drink). **However, depending on the unique facts of a particular case, any of the referenced illustrations could result in a reduced sanction under Article 10.5 based on No Significant Fault or Negligence**, referred to below.

In terms of **Article 10.5** of the Code *“where the anti-doping rule violation involves a Specified Substance, and the Athlete or other Person can establish No Significant Fault or Negligence, then the period of Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two years of Ineligibility, depending on the Athlete’s or other Person’s degree of Fault.”* (Article 10.5.1.1). *“In cases where the Athlete or other Person can establish No Significant Fault or Negligence and that the detected Prohibited Substance came from a Contaminated Product, then the period of Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two years Ineligibility, depending on the Athlete’s or other Person’s degree of Fault.”* (Article 10.5.1.2).

In any case, the No Fault or Negligence or the No Significant Fault or Negligence must be proven by the Athletes on a balance of probabilities.

***Further considers the following:***

The Player submitted findings showing that the legitimate supplements he was taking, were not contaminated in any way.

The Player also submitted literature purporting to show that topical application of the cream containing the prohibited substance (i.e. application on skin) can find its way in an

eventual urine sample and be detected in an analysis; indeed when looking at the literature on the pharmacokinetics of betamethasone there is some evidence to suggest that topical administration can lead to systemic absorption and ultimately detection in the serum, though no direct link to detection in urine after topical administration was found in the literature.

In this regard, the roughly estimated concentration of betamethasone found in one of the samples was, according to Institute of Dopinganalysis and Sportsbiochemistry Dresden (IDAS), 375ng/mL. **According to the WADA technical documents WADA TD2019MRPL and WADA TD2019DL there is no threshold for glucocorticoids but a reporting limit. Glucocorticoids found with a lower concentration than 30ng/mL should not be reported.**

Moreover, one must say that in the Medical Committee Chairman's own words (Dr. Kirill Micellef Stafrace), when one takes a closer look at the levels found in the urine sample, 375ng of betamethasone is significantly higher than could be expected to be seen with topical administration, especially given that betamethasone has been shown to have significant extra-renal clearance and the known pharmacokinetics of the drug. Indeed, even a serum concentration of 375ng would itself be much higher than what you would expect to see, let alone a single urine sample measuring 90ml.

It was also claimed in the second instance that the Athletes received TECAR therapy using cream containing betamethasone which led to a positive test. Again, according to Dr. Kirill Micellef Stafrace, no evidence could be found to suggest that TECAR, or any other form of electromagnetic stimulation can precipitate enhanced absorption via topical application.

Therefore, as such, the adverse findings remain un-explained but the Player went at great lengths to defend his position, as the number of documents he presented clearly suggest. Broadly-speaking, these documents refer to those legitimate food supplements he was consuming, which were also tested for possible contamination and scholarly articles and reports purporting to show that the adverse finding was the result of the topical application of the cream containing betamethasone. Moreover, all along, the Player's demeanor was arguably suggestive of a *forma mentis* of someone who may be said not have assumed a prohibited substance intentionally and much less by design. Moreover, the Player's own assertion that he did not assume any prohibited substance, at least intentionally, cannot be discounted.

In this regard, the Board is convinced that the Player did **not** intend to cheat.

Moreover, the Board is not morally convinced that the penalty to be applied is the maximum in the circumstances, that is a two-year ban and feels that a ban until the end of the current calendar year, that is an effective ban starting on the day that this award is duly communicated to the Player, until the 31st December 2020, would be proportional in the circumstances. In this regard, reference is made to the *Puerta* case decided definitely by CAS, significantly after the introduction of the Code and which recognized, notwithstanding

the uniformity that the Code intended to introduce, the principle of proportionality, as it were giving some leeway to an adjudicating board called to decide on the penalty to be inflicted (not the responsibility), to exercise a measure of discretion which is after all, also clearly contemplated under the Code under article 10. This discretion based on proportionality, in the Board's opinion, is also dictated in the present case by the impact that a penalty would have on the Player in question, not only his footballing career but also his other social dimensions, not least the occupational dimension.

***Therefore:***

**After having seen articles 2 and 10 of the Code and the relevant articles from the Malta Football Association Doping Charter, the Board finds the Player guilty of a doping offence under the same article 2 of the Code in terms of the charge brought against him and condemns him to a period of ineligibility from all football activities starting on the day that this award is duly communicated to the Player, until the 31st December 2020, applying thereto mitigating factors and the rule of proportionality for the purpose of scaling down the penalty, as aforesaid.**



RODNEY PISANI  
Board Secretary