
Decision of the National Anti-Doping Disciplinary Panel.

Case Ref: NADDP 20210104

Anti-Doping Commission (Malta)

-vs-

**Isabel Grech – ID No. 0070288M
(Member of the Malta Volleyball Association)**

The National Anti-Doping Disciplinary Panel (hereinafter referred to as the 'Panel') consisting of Dr. Maria Azzopardi as Chairperson, and Professor Janet Mifsud and Dr. Abigail Gauci as members.

Before the commencement of these proceedings, the 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 representatives of the parties confirmed that there is no objection to the composition of the Panel.

The hearing of the case was conducted through a visual telecommunication platform.

1. Preliminaries

Considered the Request by the National Anti-Doping Commission of the 24th February 2020 to the Chairperson of the Panel to schedule a sitting for the hearing of a case concerning the alleged breach by Isabel Grech of the Anti-doping Regulations (Legal Notice 17 of of 2015, Sports Act, Chapter 455, 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 Program and other documents presented by the athlete during the hearing of the case, namely:

- i. A copy of the Authorization Letter by the NADO to DCO to carry out Doping Tests and official match team list for the game.
- ii. The Doping Control Officer Report Form, Supplementary Report Form and documents relating to the participation of Isabel Grech dated 02/02/2020.
- iii. Letter of Notification by NADO to Isabel Grech of a possible violation of the Anti-Doping Rules dated 04/02/2020.
- iv. The letter by NADO to the National Association/Federation of the alleged breach by Isabel Grech dated 04/02/2020.
- v. The letter from the athlete's advocate dated 07/02/2020.
- vi. Letter of Acceptance for the Provisional Suspension signed by the athlete and dated 03/02/2020.
- vii. The request to the Panel to schedule a hearing dated 24/02/2020.
- viii. Notification of Hearing by the NADDP dated 20/04/2020 and 21/10/2020.
- ix. Various correspondences relevant to the case submitted by both parties.
- x. Attendance sheet week ending 24/1/2020.

Took note of the Notice issued by the Panel to Isabel Grech to appear before the Panel requesting the athlete to answer the accusation based on Article 3(2)(c) of L.N 17 of 2015 of the Laws of Malta:

“Evading sample collection, or without compelling justification, refusing or failing to submit to sample collection after notification as authorized in these regulations:

Provided that, ‘evading sample collection’ shall also be achieved if it is established that an athlete was deliberately avoiding a doping control official to evade notification or testing.”

Copy of the Notice of hearing was also forwarded to the Anti-Doping Commission, the Malta Volleyball Association and SportMalta.

Took note of the evidence as well as the oral and written submissions submitted by the parties.

2. Merits:

2.1 When the case was called on the 14th December 2020 appeared the athlete Isabel Grech assisted by Dr Franco Galea and Dr Michael Sciriha and Dr. Christina Borg DeBono, Dr. Lucienne Attard and Ignatius Zammit on behalf of the NADO. The Panel heard the witnesses brought forward by the athlete, namely David Caruana – the athlete’s principal at work and Vlahovic Branislav, Vice President with the Malta Volleyball Association and former coach of the athlete as well as the considerations presented by both parties.

2.2 During the hearing Dr. Galea submitted that the athlete is not contesting the violation attributed to her and confirms on behalf of the athlete that she understands that her actions constitute a breach of Article 3(2)(c). However, the submissions put forward by the athlete are based on circumstances that the athlete was facing which according to her merit a reduction of the suspension and thus requests that the suspension does not exceed the minimum established by law. Dr. Galea refers to the medical report prepared by Dr. Ray Fenech MD dated 23rd January 2020 for a medical prescription of Toularynx Codeine – 180ml, Otrivin Nasal Spray, Augmentin 625mg and it was also advised to make use of Ventolin Acchaler and also the administration of a shot of Rocephin. Furthermore, as confirmed by the athlete’s head at her workplace and the attendance sheet, the athlete was absent from work because she was ill. The athlete’s legal counsel declared that the day of the match the athlete had consumed the prescribed medication but at no point during the hearing, the athlete gave evidence to confirm the declarations put forward by the defense counsel. Furthermore, it has been pointed out that the athlete has been warned by the DCO of the consequences of her refusal but her refusal was due to the fact that she was taking such medication and at that point was not aware that she could have requested a Therapeutic Use Exemption. Finally, Dr. Galea explains that although the violation results, the athlete’s refusal to conduct the test was not intentional but out of fear and ignorance of the applicable regulations. On the basis of the above the athlete’s legal counsel requested that on the basis that the violation was not intentional, the period of ineligibility applicable is that of 2 years and given the circumstances of the case requests that such is eliminated or reduced.

2.3 NADO submitted that Ms. Grech that there are no valid circumstances or justifications at law to merit a reduction in the suspension imposed by law for evading sample collection. Dr. Borg Cristina emphasizes that during sample collection, the DCO has explained the consequences of her actions to the athlete and it is confirmed in the Supplementary Report Form drafted at the time of the athlete’s refusal.

3. Considerations:

3.1 Taking into consideration the non-contestation on part of the athlete on the violation being brought against her, the Panel can firmly conclude that the facts of the case have been proven.

3.2 The Panel remarks that it will not delve into the arguments exchanged between the parties during the hearing whether the medication taken by the athlete would have resulted in a positive result or not

because the accusation being brought forward in this case relates to the refusal on part of the athlete to conduct the testing which violation the athlete is not contesting.

3.3 The perm of this case is the defense being brought forward by the athlete whereby it is being contended that the athlete's action was not intentional. The defense counsel argues that she had no intention to cheat but rather she acted out of fear of the outcome of the test and her ignorance of the applicable procedures and rules in relation to medication taken by her.

3.4 The Panel does not agree with the interpretation being given by the athlete to the "*intentional element*" emanating from Article 11(3)(a). In this case, the evidence being brought forward shows a deliberate choice by the athlete to refuse to provide sample collection notwithstanding that she admittedly confirms that the DCO in charge had warned her of the consequences of such refusal. Every athlete is responsible to ensure that no prohibited substance enters his or her body and if there is any doubt, it is no justification to refuse to adhere to sample collection due to fear or any other reason. The athlete intentionally refused to provide the sample for testing and therefore the accusations subsist. Furthermore, one cannot claim ignorance of the applicable regulations since it is the athlete's duty to adhere to the anti-doping regulations and to conduct the necessary research if there is the possibility of a TUE. More importantly she was fully aware of the consequences to be faced once she refused to conduct the test.

3.5 On the basis of this argument the Panel makes reference to Definitions arising from Article 11(2)(c) L.N. 17 of 2015 which stipulates that:

"(c) as provided for in sub-regulations (2) and (3), 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 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...."

Thus, the Panel is convinced that the athlete was fully aware that her decision to refuse to conduct the test constituted an anti-doping rule violation. Notwithstanding such knowledge, the athlete disregarded the consequences of such decision. The athlete chose to evade the test because of her fear that she would fail it. What made her afraid was her fear that she would fail and this fear led her to the decision to refuse the test. It is extremely difficult to see how her refusal could be said that this shows that there was no substantial fault or negligence in terms of Article 11 (3)(a) and (4) L.N. 17 of 2015. Thus, the Panel opines that there are no sufficient evidence or valid justifications to prove that the athlete's conduct was not intentional and on the contrary the Panel is convinced that the athlete willingly disregarded the obligation on her to conduct the test.

4. Decision:

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

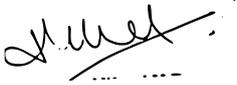
4.1 Isabel Grech has breached the Anti-Doping Regulations, 2015 [Art. 3(2)(c)] and WADA Code (Art. 2.3) by evading sample collection.

4.2 And therefore the National Anti-Doping Disciplinary Panel as provided under Art 11 (3) (a) of the Anti Doping Regulations, 2015 and Art. 10.3.1 of the WADA Code is imposing on the athlete Isabel Grech a suspension of ineligibility from any sports activities for a period of four (4) years commencing from the date of the 3rd February 2020, being the date of her provisional suspension.

4.3 A copy of this decision is to be forwarded to the Malta Volleyball Association.



Dr. Maria Azzopardi B.A. LL.D. LL.M (Sports Law)
Chairperson



Prof Janet Mifsud M.D.
Member



Dr. Abigail Gauci B.A. LL.D. LL.M (Int. Sports Law)
Member

This, the 4th day of January 2021.