

# INTERNATIONAL RUGBY BOARD

IN THE MATTER OF REGULATIONS RELATING TO THE GAME

AND IN THE MATTER OF AN ALLEGED DOPING OFFENCE BY **IRAKLI CHVIHIVIVADZE (GEORGIA)** CONTRARY TO REGULATION 21

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

## Judicial Committee:

**Dr. Barry O'Driscoll** (Ireland)  
**Gregor Nicholson** (Scotland)  
**Graeme Mew** (Canada – Chair)

## *Appearances and Attendances:*

Tim Ricketts (Anti-Doping Manager, International Rugby Board)

## For the International Rugby Board:

Susan Ahern (Counsel)

## The Player

Irakli Chvihivivadze

## For Georgian Rugby Union:

George Tchumburidze (Technical Director)

## Also Present:

Natalie Kurtanidze (Translator)

Heard: 30 March 2009 and 29 April 2009 by way of telephone conference

## **DECISION OF THE BOARD JUDICIAL COMMITTEE**

### **Introduction**

1. This is the first case involving the use of a “Specified Substance” that has come before a Board Judicial Committee (“BJC”) since the introduction of the 2009 version of the *World Anti-Doping Code* (the “Code”) and the corresponding provisions of Regulation 21 of the *Regulations Relating to the Game* (“IRB Regulations”).
2. The circumstances of this case have become disappointingly commonplace. Irakli Chvihivivadze (the “Player”) engaged in what he claims was the social use of cannabis a few days before he was due to represent his country in an international rugby match. He subsequently tested positive

following In-Competition Testing at the Georgia v Germany match played on 7 February 2009 in Germany. As a consequence, the International Rugby Board (the "Board") has alleged that the Player committed an anti-doping rule violation by reason of an adverse analytical finding for the presence of Cannabis metabolite 11-nor-9-carboxy- $\Delta^9$ -tetrahydrocannabinol (Carboxy-THC) at a concentration of 38.3 ng/ml, which is greater than the permitted threshold level of 15 ng/ml.

3. Carboxy-THC is listed under S8 Cannabinoids on the WADA List of Prohibited Substances 2009.
4. Following a preliminary review of the case in accordance with IRB Regulation 21.20, the Player was notified that he may have committed an anti-doping rule violation via the Georgian Rugby Union on 1 March 2009 and was provisionally suspended on the date the Player received notification which was 2 March 2009. The Player remains suspended, pending the outcome of his case.
5. The Player, by letter dated 10 March 2009, waived his right to have the "B" sample of his urine tested and stated:

".....I acknowledge that I received and read your correspondence concerning adverse analytical finding result from the analysis of my sample under the IRB's Anti-Doping Programme at Germany vs Georgia match. I would like to inform you that I accept the result of "A" sample and realise that I am charged with violation of Anti-Doping Regulation and am provisionally suspended pending the outcome of my case Until then, I remain at your disposal for further indications and/or questions concerning my issue."

6. This BJC was appointed to consider the Player's case.
7. The hearing took place by way of telephone conference on 30 March 2009 and 29 April 2009.

### **Anti-Doping Rule Violation Established**

8. At the outset of the hearing, the Player confirmed his admission of the presence of Carboxy-THC in his urine sample at the stated concentration and, hence, that he had used a Prohibited Substance. Accordingly, we are satisfied that the Player has committed an Anti-Doping Rule Violation contrary to Regulation 21.2.1<sup>1</sup>.

### **Evidence**

9. The BJC had before it a record which included the Doping Control Form, a Player Consent Form, the Sample Analysis Report, the Preliminary Review report and certain correspondence between the Board, the Georgia Rugby Union and the Player.

---

<sup>1</sup> 21.2 **Anti-Doping Rule Violations**

Players 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. The following constitute anti-doping rule violations:

21.2.1 The presence of a Prohibited Substance or its Metabolites or Markers in a Player's Sample

10. The hearing commenced on 30 March 2009 by way of telephone conference. The hearing was then adjourned to give the Player the opportunity to adduce further evidence. The hearing continued, and was concluded on, 29 April 2009.

#### *The Player*

11. The Player is 21 years old. He is a full-time rugby player. He has been playing the Game since the age of 12. He represented his country in the Under 19 World Championship in Dubai in March 2006, at which time he received anti-doping education from the Board. He remembers in particular being informed that the use of cannabis is prohibited in rugby.

12. In early February 2009, the Player was attending a training camp in Nancy, France with the Georgia team. The team was due to leave France for Germany on the morning of 5 February to prepare for a FIRA European Nations Cup match on 7 February.

13. On the evening of 4 February, the Player had arranged to meet a friend from his hometown in Georgia who had moved to France. They went to a bar in Nancy where they had some drinks and watched sports on TV. At some point they were joined by two acquaintances of the Player's friend. About half an hour after these individuals arrived, the Player decided to leave. Around that time, one of the individuals produced what appeared to be a cigarette. He offered it to the Player to smoke. The Player, initially thinking that the cigarette consisted of tobacco, took it, but then realised it might be something else. He declined to smoke it. The others initially laughed at him for being so cautious, but then became more unfriendly. When the Player got up to leave the two acquaintances of the Player's friend followed the Player out to the street. They taunted him for not accepting their offer of a smoke. The Player felt that the situation was potentially explosive. He was worried about his friend and the possibility that a fight could ensue. Under pressure, he took three or four puffs to get rid of them. He tried not to inhale. He then left and returned to his hotel.

14. Upon reaching the Georgia team hotel, the Player went straight to his room. He did not feel well. However, he did not tell anyone what had happened to him.

15. The Player felt that his friend was not supportive. He did not produce evidence from his friend to corroborate what happened. He claims that he no longer has a contact number for his friend and that enquiries which he made in Georgia to obtain contact information for his friend were unsuccessful. He does not know the names of his friend's acquaintances and has no means of contacting them.

#### *Georgia Rugby Union*

16. After the Union was notified of the Player's positive test, the team manager and other players were interviewed. According to Mr. Tchumburidze, nothing was said that would contradict the Player's account. The Player is said to be one of the most disciplined members of the team in terms of alcohol and tobacco use.

## **Sanctions**

17. Under 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.

18. Regulation 21.6 addresses the principle of personal responsibility and provides:

### **21.6 Roles and Personal Responsibility**

21.6.1 It is each Player’s responsibility to ensure that;

- (a) no Prohibited Substance is found to be present in his body and that Prohibited Methods are not used;
- (b) he does not commit any other anti-doping rule violation;
- (c) he is available for Sample collection; and
- (d) he informs Player Support Personnel, including, but not limited to, their doctors of their obligation not to use Prohibited Substances and Prohibited Methods and to take responsibility to ensure that any medical treatment received by them does not violate any of the provisions of these Regulations.

Further, Regulation 21.6.3 confirms that “*It is the sole responsibility of each Player, Player Support Personnel and Person to acquaint themselves and comply with all of the provisions of these Anti-Doping Regulations including the Guidelines*”.

19. Cannabis is one of the category of Prohibited Substances which the IRB Regulations and the Code recognise as “Specified Substances”<sup>2</sup>.

20. Sanctions are provided for in Regulation 21.22. Ordinarily the period of Ineligibility for Prohibited Substances for a first time offence is two (2) years (Regulation 21.22.1)<sup>3</sup>. However, this is subject to conditions for the eliminating or reducing the period of Ineligibility (Regulation 21.22.3 and 21.22.4) or conditions for increasing the period of Ineligibility (Regulation 21.22.9).

---

<sup>2</sup> Regulation 21.4.5 provides:

For purposes of the application of Regulation 21.22 (Sanctions on Individuals), all Prohibited Substances shall be “Specified Substances” except substances in the classes of anabolic agents and hormones and those stimulants and hormone antagonists and modulators so identified on the Prohibited List. Prohibited Methods shall not be Specified Substances.

<sup>3</sup> Regulation 21.22.1 provides:

The period of Ineligibility imposed for a violation of Regulation 21.2.1 (Presence of Prohibited Substance or its Metabolites or Markers), Regulation 21.2.2 (Use or Attempted Use of Prohibited Substance or Prohibited Method) and Regulation 21.2.6 (Possession of Prohibited Substances and Methods) shall be as follows, unless the conditions for eliminating or reducing the period of Ineligibility, as provided in Regulation 21.22.3 and 21.22.4, or the conditions for increasing the period of Ineligibility, as provided in Regulation 21.22.9, are met:

First violation: Two (2) years' Ineligibility.

21. Regulation 21.22.3 addresses the elimination or reduction of the period of Ineligibility for Specified Substances (including Cannabinoids) under specific circumstances in the following terms:

Where a Player or other Person can establish how a Specified Substance entered his body or came into his Possession and that such Specified Substance was not intended to enhance the Player's sport performance or mask the Use of a performance-enhancing substance, the period of Ineligibility found in Regulation 21.22.1 shall be replaced with the following:

First violation: At a minimum, a reprimand and no period of Ineligibility from the Game, and at a maximum, two (2) years of Ineligibility.

To justify any elimination or reduction, the Player or other Person must produce corroborating evidence in addition to his word which establishes to the comfortable satisfaction of the hearing panel the absence of intent to enhance sport performance or mask the Use of a performance enhancing substance. The Player's or other Person's degree of fault shall be the criterion considered in assessing any reduction of the period of Ineligibility.

### **Discussion**

22. In order to come within the ambit of Regulation 21.22.3, the burden then is on the Player to (a) establish to the satisfaction of the BJC on the balance of probabilities how the Carboxy-THC (Cannabinoids) entered his body; (b) establish to the comfortable satisfaction of the BJC that his individual Use of Cannabinoids was not intended to enhance his sport performance or mask the Use of a performance-enhancing substance;<sup>4</sup> and (c) in order to justify any reduction or elimination of the sanction the Player as a mandatory condition must produce corroborating evidence in addition to his word which establishes to the comfortable satisfaction of the BJC the absence of intent to enhance sports performance or mask the Use of a performance enhancing substance.

#### *Cause of Anti-Doping Rule Violation*

23. We are satisfied that, on the balance of probabilities, the Player's anti-doping rule violation resulted from him smoking marijuana on 4 February 2009.

---

<sup>4</sup> The nature of the burdens the Player must satisfy are set out in the Comments to Article 10.4 of the WADA Code which is available at [www.wada-ama.org](http://www.wada-ama.org). The Comment also elaborates in relation to the type of circumstances which in combination might lead a hearing panel to be comfortably satisfied of no-performance-enhancing intent, for example "the fact that the nature of the Specified Substance or the timing of its ingestion would not have been beneficial to the Athlete; the Athlete's open Use or disclosure of his or her Use of the Specified Substance; and a contemporaneous medical records file substantiating the non sport- related prescription for the Specified Substance..."

### *Lack of Intent to Enhance Sport Performance*

24. While we are prepared to accept that the Player smoked marijuana under pressure and that his use of marijuana was not intended to enhance sports performance, we cannot consider a reduced sanction in the absence of corroborating evidence. This requirement marks a departure from the previous version of the Code, which did not require corroborating evidence of the absence of intent to enhance sports performance or mask the Use of a performance enhancing substance.

### *Corroborating Evidence*

25. The Code provides limited guidance on what “corroborating evidence of the absence of intent” means. The commentary provided by the World Anti-Doping Agency (“WADA”) to Article 10.4 of the *Code* (which is replicated by IRB Regulation 21.22.3) indicates that a hearing panel must be:

... comfortably satisfied by the objective circumstances of the case that the Athlete in taking or Possessing a Prohibited Substance did not intend to enhance his or her sport performance. Examples of the type of objective circumstances which in combination might lead a hearing panel to be comfortably satisfied of no performance-enhancing intent would include: the fact that the nature of the Specified Substance or the timing of its ingestion would not have been beneficial to the Athlete; the Athlete’s open Use or disclosure of his or her Use of the Specified Substance; and a contemporaneous medical records file substantiating the non sport-related prescription for the Specified Substance. Generally, the greater the potential performance-enhancing benefit, the higher the burden on the Athlete to prove lack of an intent to enhance sport performance.

26. The Oxford English dictionary defines the verb “corroborate” as “confirm or give support to”. A review of the law and legal literature concerning corroboration is of limited assistance. Legal rules concerning the need for corroborating evidence differ in the civil and common law traditions. That said, the IRB Regulations fall to be interpreted in accordance with English law.<sup>5</sup> Whereas it used to be the case under English law – particularly in criminal cases – that corroborating evidence had to emanate from a source independent of the witness to be corroborated, the current position is that the source of the corroboration is relevant to the strength of the support offered by the evidence, rather than whether the evidence is capable of being regarded as corroborating evidence at all.<sup>6</sup>

27. Although as a matter of the English law of evidence, corroborating evidence can come from the Player himself, Regulation 21.22.3 requires that it must be evidence that is in addition to the Player’s own word. In other words, it is no longer sufficient for a Player to say “I didn’t intend to enhance my sport performance when I smoked cannabis”.

28. In this case, counsel for the Board conceded that factors which it would be open to us to consider would include the amount of Carboxy-THC found in the

---

<sup>5</sup> Bye-Law 11(b), International Rugby Board

<sup>6</sup> Colin Tapper, Cross and Tapper on Evidence, 11<sup>th</sup> ed., (Oxford University Press, 2007) at 284

Player's system and the proximity of the Player's stated consumption to the date of testing. In our view, however, a tribunal can also consider the overall context of the events related by the Player in assessing whether there is corroborating evidence of the Player's account. Corroborating evidence does not have to be evidence of what was in the Player's head at the time (such evidence will rarely, if ever, exist), but is evidence of other surrounding circumstances that are consistent with, or supportive of, what the Player says his intent was.

29. In this case it would have been helpful if the Player had been able to obtain a statement or other evidence from one of the individuals with whom he was out on 4 February. Despite the BJC adjourning the completion of the hearing in order to enable the Player to produce a witness to corroborate the Player's account of what happened, the Player could not produce anyone. Although there are parts of the Player's description of what happened that evening that we do not find entirely plausible, we do accept that the Player found himself in an unfriendly environment in which he felt pressured to smoke cannabis and that there is some basis for believing the Player when he says that he cannot produce a witness to that evening's events.

30. The hostile situation encountered by the Player, the relatively low level of Carboxy-THC in the Player's system, despite the Player having seemingly used cannabis just three days before he was tested, are also factors which, in our judgment, corroborate the Player's account. We have taken account, too, of Mr. Tchumburidze's evidence that the Player is one of the most disciplined members of the team in terms of alcohol and tobacco use. Having regard to the Comment to Article 10.4 of the Code, we would also note that the substance involved – cannabis - is widely used in recreational settings and that its potential performance-enhancing benefits for rugby union players are not great<sup>7</sup>.

31. We would emphasise that each case will turn on its own facts and that whether or not evidence should be considered as corroborative will be determined on a case by case basis having regard to all of the circumstances and the application of common sense. The lack of an independent source of corroborating evidence will usually affect the weight that a tribunal attaches to such evidence. We also note that when, as here, a hearing is conducted by telephone, credibility is harder to gauge. The Player is in such circumstances usually entitled to the benefit of any doubts about the credibility of his account.

32. In this case the Player has ultimately satisfied us that his use of cannabis was not intended to enhance sport performance.

---

<sup>7</sup> In *IRB v Vakhtang Mdzinarishvili*, 22 July 2008, the BJC commented (para 23) "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".

### *Degree of Fault*

33. Although the social use of cannabis is commonplace in many countries (but nonetheless illegal in most, including Georgia), the fact remains that the world sport community has determined that its use is inconsistent with the spirit of sport<sup>8</sup>. Accordingly when a participant in sport knowingly uses cannabis there will rarely, if ever, be circumstances where the sanction does not include a period of Ineligibility.

34. In assessing the Player's degree of fault it is useful to have regard to the guidance by WADA in its commentary to Article 10.4 of the *Code*. The comments also provides examples of arguments which would not be relevant in relation to a panel's consideration of any reduction it might consider applying. It is stated:

In assessing the Athlete's or other Person's degree of fault, the circumstances considered must be specific and relevant to explain the Athlete's or other Person's departure from the expected standard of behaviour. Thus, for example, the fact that an Athlete would lose the opportunity to earn large sums of money during a period of Ineligibility or the fact that the Athlete only has a short time left in his or her career or the timing of the sporting calendar would not be relevant factors to be considered in reducing the period of Ineligibility under this Article. It is anticipate that the period of Ineligibility will be eliminated entirely in only the most exceptional of cases.

35. The Player has received anti-doping education. Realising that he had used cannabis on the night of 4 February, he could have informed team management and been withdrawn from the team that played against Germany on 7 February. He did not do so, instead choosing to run the risk of being tested as a result of being in the team that played. We also note that there have been a number of other doping cases involving the use of cannabis by players from Georgia<sup>9</sup>. Having regard to this background as well as the

---

<sup>8</sup> The prefatory comments to the *World Anti-Doping Code* (2009) describe the fundamental rationale for the Code in these terms:

Anti-doping programs seek to preserve what is intrinsically valuable about sport. This intrinsic value is often referred to as "the spirit of sport"; it is the essence of Olympism; it is how we play true. The spirit of sport is the celebration of the human spirit, body and mind, and is characterized by the following values:

- Ethics, fair play and honesty
- Health
- Excellence in performance
- Character and education
- Fun and joy
- Teamwork
- Dedication and commitment
- Respect for rules and laws
- Respect for self and other participants
- Courage
- Community and solidarity

Doping is fundamentally contrary to the spirit of sport.

<sup>9</sup> *IRB v Davit Zhamutashvili and Davit Alexander Todua*, 27 September 2007; *IRB v Vakhtang Mdzinarishvili*, 22 July 2008

Player's position representing his country in an IRB tournament and his responsibilities as a role model for others and in particular young players in his community, the BJC considers in this case that there is a need for a condign sanction to demonstrate that the Player's cannabis use was totally unacceptable.

36. We have therefore concluded that the Player will be subject to a period of Ineligibility of four months commencing on the date of his provisional suspension, namely 2 March 2009 and continuing up to and including 1 July 2009.

37. The Player's attention is drawn to Regulation 21.22.13 (Status During Ineligibility) and, in particular 21.22.13 A(i) which provides:

No Player or Person who has been declared Ineligible may, during the period of Ineligibility, participate in any capacity in a Match and/or Tournament (international or otherwise) or activity (other than authorised anti-doping education or rehabilitation programmes) authorised or organised by the Board or any Member Union or Tournament Organiser. Such participation includes but is not limited to coaching, officiating, selection, team management, administration or promotion of the Game, playing, training as part of a team or squad, or involvement in the Game in any other capacity in any Union in membership of the IRB.

### **Decision**

38. On 7 February 2009, the Player committed an anti-doping rule violation by reason of the presence in the Player's Sample of Cannabis metabolite 11-nor-9-carboxy- $\Delta^9$ -tetrahydrocannabinol (Carboxy-THC) at a concentration of 38.3 ng/ml, which is greater than the permitted threshold level of 15 ng/ml. Carboxy-THC is listed under S8 Cannabinoids on the WADA List of Prohibited Substances 2009.

39. The sanction imposed for this Anti-Doping Rule Violation is a period of ineligibility of four months.

### **Appeal Rights**

40. This decision is final, subject to referral to a Post Hearing Review Body (Regulation 21.24) and, if applicable, an appeal to the Court of Arbitration for Sport Regulation 21.27. In this regard, attention is directed to Regulation 21.24.2, which sets out the process for referral to a Post Hearing Review Body, including the time within which the process must be initiated.

**Costs**

41. If the Board wishes us to exercise our discretion in relation to costs pursuant to Regulation 21.21.10, written submissions should be submitted to the BJC via Mr. Ricketts by 17:00 Dublin time on Friday 12 June 2009, with any responding written submissions from the Player to be provided by 17:00 Dublin time on Friday 19 June 2009.

2 June 2009

A handwritten signature in black ink, appearing to read 'Graeme Mew' with a stylized flourish at the end.

Graeme Mew, Chairman