



UEFA APPEALS BODY

JUDGEMENT

Hearing of 22 December 2008

Chairman: Michel Wuilleret, Switzerland
Members: Goetz Eilers, Germany
Michael Maissen, Netherlands

in the case

Nikolay Pavlov, appellant,
Represented by Alexander M. Georgiev, lawyer, Sofia, Bulgaria,

versus

UEFA, appellee,
Represented by its chief disciplinary inspector, Gerhard Kapl

following

the UEFA Control and Disciplinary Body's decision of 23 November 2008 to suspend the appellant player for two years from 11 September 2008 for violating an anti-doping rule and to request that FIFA extend the suspension to give it worldwide effect.

Whereas:

In fact:

A.

At the end of the UEFA Cup match FK Borak v PFC Lokomotiv Sofia on 14 August 2008, the player Nikolay Pavlov from the Bulgarian side was selected for a doping control.

Two samples were taken, in accordance with the UEFA Anti-Doping Regulations (hereafter: AD), and sent for analysis at the *Agence française de lutte contre le dopage* (AFLD, hereafter: the laboratory).

On 10 September 2008, the UEFA Anti-Doping Unit wrote to PFC Lokomotiv Sofia to inform the club that the player, Pavlov, had tested positive. In the first sample, 19-norandrosterone at a concentration of over 2ng/ml (about 31.9ng/ml) and 19-noretiocholanolone (about 4.4ng/ml) were found. The club was also told that the player could request an analysis of his B sample.

In an email dated 25 September 2008, Nikolay Pavlov asked that his B sample be analysed. He added, however, that he could not afford to attend the counter-analysis in France. The B sample was therefore opened on 9 October 2008 without the player or his representative present.

In the counter-analysis (B sample) the same substances were detected as in the A sample. The player and his representative were informed in an email dated 13 October 2008.

In his statement of 18 September 2008, Nikolay Pavlov confirmed, in substance, having taken substances prescribed by his doctor, Dr Georgi Kasabov, who he trusted fully. It was not so much medication as nutritional supplements. The label on the bottle was clearly marked "NO DOPING".

B.

In the meantime, the chairman of the UEFA Control and Disciplinary Body provisionally suspended Nikolay Pavlov on 11 September 2008 with immediate effect pending a final decision by the first instance body.

C.

In its decision of 21 October 2008, the Control and Disciplinary Body suspended Nikolay Pavlov from all domestic, international, friendly and official fixtures for two years from 11 September 2008 and asked FIFA to extend the decision so as to give it worldwide effect.

The Control and Disciplinary Body found that the player, Pavlov, had not requested a therapeutic use exemption (TUE), that the concentrations of the substances found could not have been produced endogenously and that, from a medical perspective, the health problems described by the player in his statement did not justify the use of the medication prescribed. Furthermore, the prescription was undated and the player had not requested a TUE to treat the pneumonia from which he claimed to be suffering.

Considering that nandrolone is a class S1 anabolic steroid included on the UEFA and WADA prohibited substances lists and its presence above a certain concentration threshold (2ng/ml for nandrolone) constitutes a breach of the anti-doping regulations, the UEFA Control and Disciplinary Body found that an anti-doping rule violation, punishable under Article 12 et seq. of the UEFA Disciplinary Regulations (hereafter: DR), had been committed.

In deciding on the length of the suspension, the Control and Disciplinary Body took account of the fact that the player was unable to provide a satisfactory explanation for the nandrolone found in his body. Nor did he manage to prove that the rule violation had been committed without fault or negligence on his part (Article 17(3) DR). Under these circumstances, the Control and Disciplinary Body decided that a standard two-year suspension was proportionate.

D.

On 24 October 2008, Nikolay Pavlov appealed against the Control and Disciplinary Body's decision of 21 October 2008.

He substantiated his appeal in the statement of 2 November 2008. He called for the decision to be overturned and the suspension therefore lifted. Alternatively, he requested that the disciplinary measure be reduced, in accordance with Article 12bis(2)(a) DR. Finally, he requested that the disciplinary measure be suspended, in application of Article 15bis DR.

Nikolay Pavlov did not contest the facts established. He did, however, point out that the analyses of the two samples, A and B, had produced different results, namely different levels of 19-norandrosterone and 19-noretiocholanolone (31.9ng/ml and 32.9ng/ml of the first substance, 4.4ng/ml and 5.5ng/ml of the second). These differences called into question the merits of analyses carried out. Moreover, in their reports, the experts, Dr Jacques Liénard and Dr Martial Saugy, said that the prohibited substances had come from contaminated nutritional substances the player had taken. However, the doctor treating the appellant, Dr Georgi Kasabov, claimed to be unable to find the same product and carry out an identical injection. To the astonishment of the appellant, Dr Georgi Kasabov had said that he was not sure of the exact contents of what he had prescribed, delivered and administered to him.

As regards the Control and Disciplinary Body's finding that the appellant had requested no TUE for treatment of his pneumonia, this was a mistake. The appellant had suffered from the illness as a child and it had been successfully treated by Dr Georgi Kasabov. He therefore had no reason to request a TUE, as he had long since been cured. This was reported to UEFA only as an explanation for the appellant's complete trust in his doctor.

The appellant did, however, contest the legal conclusions the Control and Disciplinary Body drew from the facts established and he did not agree that the provisions of paragraph 2.01 AD took precedence over the general rules established in Article 17(1) and (3) and Article 12bis(2) DR. In his opinion, the

norms of the Anti-Doping Regulations served to describe and explain but did not constitute a *lex specialis* with respect to the general rules of the Disciplinary Regulations for the determination of disciplinary measures. In particular, it was unacceptable to deviate from the general principles established by Article 17(1) and (3) and Article 12bis(2) DR, as well as the principles of the Swiss Criminal Code and European legislation. The appellant bore no fault or negligence and, contrary to the Control and Disciplinary Body's findings, he had given a sufficiently convincing explanation for the presence of the prohibited substance in his body (taking nutritional supplements prescribed by his doctor). At the very least, these were mitigating circumstances which the disciplinary body should take into account, together with his youth, lack of experience in top-level competitions, spotless record and personality, and the local conditions (lack of adequate pharmaceuticals' trading controls).

E.

Through its disciplinary inspector, UEFA lodged its response to the appeal on 18 December 2008. It called for the appeal to be rejected and the Control and Disciplinary Body's decision upheld, with the cost of the proceedings borne by the appellant.

F.

The chairman opened the appeal hearing. He noted the parties' presence.

Nikolay Pavlov was accompanied by Alexander M. Georgiev, while UEFA was represented by its disciplinary inspector, Dr Gerhard Kapl.

The chairman informed the parties of the procedure that would be followed and advised them that the discussions would be recorded. They took note, requested no other information and raised no objection.

Martial Saugy, head of the Swiss anti-doping laboratory, gave evidence. He confirmed the results of the analyses that were carried out in accordance with the prescribed procedure. He explained that norandrosterone and

noretiocholanolone were both metabolites of nandrolone, an anabolic steroid that, in general terms, enhanced athletes' sporting performance by increasing their muscle mass. Levels of resistance and recovery were likewise enhanced. In light of the concentration of norandrosterone detected (31.9ng/ml), well above the 2ng/ml threshold permitted by WADA, there was no question of it being produced endogenously. The presence of noretiocholanolone (4ng/ml) confirmed the involvement of exogenous products.

Dr Georgi Kasabov, general practitioner and specialist in sports medicine, was then called as a witness.

He said that he was the official doctor for Spartak Plovdiv, the first professional club Nikolay Pavlov had played for, before being transferred to Lokomotiv Sofia. He had successfully treated Pavlov for pneumonitis using antibiotics (azithromycin) in March 2008. He had subsequently prescribed a treatment designed to enhance the player's fitness to help him overcome the consequences of his illness and enable him to withstand the physical pressure put on professional footballers. The treatment had comprised nutritional supplements and Tribulus Terrestris. He had obtained these substances on the unofficial market, from a supplier whose name he could not remember but would have in his files, which he had forgotten to bring to the hearing. The products could not be purchased legally, but could be found on the internet. He had informed himself of the contents of the supplements simply by checking the label on the bottle and had performed no special analyses. He said that he had spoken about it to Nikolay Pavlov, who had paid the due amount. The club did not cover this sort of treatment. Despite knowing the risks inherent in taking such products of dubious origin, he did not hesitate to prescribe them to the player, who had agreed without asking any particular questions.

Nikolay Pavlov confirmed, in substance, the statement given by his doctor. He had had no desire to take any prohibited substances and had trusted his doctor. He had not asked him any particular questions and had accepted the explanations given. He hoped to be able to continue playing professional

football and to keep moving up. He therefore had no interest in taking prohibited substances that could crush all his hopes.

Since no other evidence was called, the parties were given the floor to plead, reply and rejoinder.

Nikolay Pavlov's lawyer briefly summarised some of the arguments put forward in the grounds for appeal. He did not contest the results of the analyses but denied that his client had intentionally committed an anti-doping rule violation, or done so out of negligence. A two-year suspension risked ending his career, which was only just beginning. He called for the decision to be overturned, or alternatively for the disciplinary measure to be reduced and, at least partially, suspended.

UEFA, for its part, confirmed the terms of its answer to the appeal.

To end, the chairman gave the floor to Nikolay, who claimed to have never taken drugs in any form. He did not understand how the steroid had entered his body other than through the supplements prescribed by his doctor, Dr Georgi Kasabov. He asked the court to bear in mind the fact that the contested decision would prematurely end his footballing career and all the financial sacrifices his parents had made would have been for nothing.

The arguments given by the parties in support of their cases – in their written statements and during the hearing – are included in the legal considerations below in so far as they help to resolve the dispute.

With the proceedings closed, the Appeals Body deliberated and decided as follows.

In law:

1.

The Appeals Body has the jurisdiction to hear an appeal against a Control and Disciplinary Body decision under the terms of Articles 48 and 54 DR.

The appeal was lodged by the deadline and in the form required. The grounds for appeal were submitted and Nikolay Pavlov paid the appeals fee within the prescribed deadline. The appeal is therefore admissible under Articles 49, 50, 52 and 53 DR.

The Appeals Body is competent to deal with the merits of the appeal.

2.

Doping is a constant preoccupation of international sports organisations and national governments. The fundamental aims of doping controls are to uphold and preserve the ethics of sport, to safeguard the physical health and mental integrity of football players, and to ensure that all competitors have an equal chance. Doping controls were introduced to ensure that the results of the matches in UEFA's competitions are a fair reflection of the strength of the contenders (see preamble to the UEFA Anti-Doping Regulations).

As is the case in most sports organisations, UEFA's case law on doping enshrines the principle of the player's strict liability, according to which the player is responsible for any prohibited substances found in their body. UEFA consequently has the burden of establishing whether an anti-doping rule violation has occurred (Article 3.01 AD, 2008 edition). However, if the laboratory detects in the player's bodily tissues or fluids a substance prohibited by the Anti-Doping Regulations, it is considered a *prima facie* case of doping. The player may rebut this presumption by establishing that a departure from the International Standard for Laboratories occurred, in which case UEFA has the burden of establishing whether the departure caused the adverse analytical finding (Article 3.02 AD). The principle of strict liability on the part of the player,

who can of course rebut the presumption, is made explicit in Article 12(3) DR. Likewise, under paragraph 3.02 AD it is presumed that accredited laboratories have analysed the samples in accordance with the WADA International Standard for Laboratories. This provision is reiterated in Article 12(4) DR.

So, while the criminal law system says that a suspect is presumed innocent until proven guilty, in sports law the opposite applies: if an anti-doping rule violation has occurred, the athlete is presumed guilty.

It is with these principles in mind that the present case must be examined.

3.

- a) To begin, the court notes that the Control and Disciplinary Body's decision outlines the rules and case law principles applicable to the present case in a clear and comprehensive manner, so it can be referred back to for the main. Moreover, the court would like to point out that the exceptional detail of the original decision shows how carefully the Control and Disciplinary Body tried to weigh up the interests present. The seriousness of the offence and the consequences the disciplinary measures could have, if imposed, clearly justified more than the summary examination of the case provided for in the regulations (see Article 45(1) and (2) DR).
- b) That being so, the court notes that, for the main, Nikolay Pavlov does not contest the facts established, that is, in short, that after having conducted a doping control and analysed the samples in accordance with its Anti-Doping Regulations, UEFA provided evidence of two metabolites of a prohibited substance having been found in two urine samples taken from the appellant, who failed to provide proof to the contrary. In particular, and despite proposing to do so (see grounds of the appeal, p10, section IV "Evidences", point 3), he has not provided proof that the prohibited substances entered his body via the nutritional supplements prescribed by Dr Georgi Kasabov.

That being so, even if the nutritional supplements provided by his doctor did contain significant traces of the nandrolone metabolite, explaining the presence of very high concentrations identical to those found by the accredited laboratory, this would not have overturned the presumption of guilt in the sense of the abovementioned provisions. It would have simply explained the exogenous origin of the prohibited substances. It would not, therefore, have absolved the appellant from his responsibility for the anti-doping rule violation established.

It is also noteworthy that Nikolay Pavlov made no reservations or remarks during the doping control procedure. In particular, he did not mention any treatment or therapy that could explain the presence of the substances detected. In fact, none of the medication or other products he has admitted to taking could explain the presence of nandrolone metabolites, assuming of course that the compositions indicated correspond exactly with the contents of the nutritional supplements taken by the appellant. As regards the antibiotic prescribed and administered by his doctor in March 2008, it has no bearing on the situation detected and denounced.

c) In light of the above considerations, the case file (in particular the reports by the accredited laboratories), and finally the parties' statements, the court is in no doubt that Nikolay Pavlov is guilty of violating the anti-doping regulations. Moreover, the substances detected are not "specified" substances in the sense of Article 12bis(2) DR (see World Anti-Doping Code, The 2008 Prohibited List, International Standard, p11, Specified Substances*). Therefore, the appellant cannot benefit from Article 12bis(2) DR which stipulates a minimum of a warning and a maximum of a one-year suspension for a first doping offence involving a "specified" substance.

4.

a) Conforming to the general rules of law, the punishment is fixed according to the circumstances, the severity of the offence and the reputation of the accused. In addition to its law enforcement function, the punishment should pursue a preventative and educational aim. The disciplinary authority must, moreover,

reserve the right to punish all misconduct, from the most slight to the most serious. In the event of a doping offence, however, special rules have been established. It is possible for the disciplinary body to reduce the length of a standard suspension if the player explains how the prohibited substance entered their body and proves that their fault or negligence in relation to the breach of the anti-doping rule in question was insignificant (Article 17(3) DR). Also, the disciplinary measures listed in Article 12bis and 12ter(a) and (b) DR can only be reduced by half, at the most. If suspensions for an indefinite period are to be reduced, the reduced period of suspension may not be less than eight years (Article 17(4) RD).

The competent authority can thus, when assessing the specificities of a particular case, reduce or increase the ordinary suspension period if the severity of the offence committed or the age or track record of the accused demands that it deviate from the normal, "standard" period of suspension.

b) Nandrolone is an anabolic steroid the effect of which is to alter the muscle mass of the person taking it, improve their stamina and resistance, increase their aggressiveness and reduce their impression of fatigue. There is no doubt, then, that its consumption violates the principle of sporting fairness and presents, in the short or long term, a danger to the physical and mental integrity of the person taking it. Moreover, regular consumption and high doses enhance physical potential (muscle mass) and sporting performances, while a single use, at a low dose, has no notable effect. In other words, the quantities consumed represent an aggravating factor in that regular usage and a high dosage demonstrate a considered and deliberate intention to cheat. Also, the nature of the substance – specifically designed to artificially enhance the athlete's physical qualities – proves that there was an intention on the part of the person taking it to give themselves an unlawful advantage over their opponents and to ensure they can perform better than they otherwise could. Finally, the court notes that the appellant is 21 years old and has been playing football professionally since 2005. He is therefore an experienced player who must be

aware of the dangers of doping and the poor example it sets to younger athletes.

- c) Considering the elements outlined above and the fact that Nikolay Pavlov failed to establish to the satisfaction of the court how the prohibited substances entered his body, or prove that his fault or negligence was insignificant, the Control and Disciplinary Body rightly applied Article 12bis(1) DR, imposing a two-year suspension for a first doping offence. To say the least, its conduct was not arbitrary and it did not exceed or abuse its extensive discretionary power. It was also right to request that the suspension be given effect worldwide. It would be shocking if the appellant were suspended only from UEFA competitions and the measure were not extended to all categories of match, including domestic, international, friendly and official fixtures. The educational, deterrent and exemplary effect of the punishment would be greatly reduced if the suspension were applied only to UEFA competitions in which the appellant could potentially be selected to participate.

5.

The evidence given by the appellant's doctor, who is also the club doctor for Spartak Plovdiv, the player's statements, and those of his representative, have established that Dr Georgi Kasabov did not hesitate to obtain products from the unofficial market, if not black then at least grey, which, in his own words, cannot be bought legally in Bulgaria. In exchange for payment, he prescribed these products not only to Nikolay Pavlov but to some of his team-mates too. He said he was aware of the dangers such practices posed and yet he was happy to follow the labels on the bottles, which would arouse suspicion in anyone the slightest bit attentive. As this clearly shows, Dr Georgi Kasabov's behaviour calls into question his respect for the Anti-Doping Regulations that he submits to as an official club doctor affiliated to the Bulgarian Football Union. In his own pleadings, he admitted to having been in possession of prohibited substances, to having traded them for money, and to having prescribed and administered them to players for whom he was medically responsible at Spartak Plovdiv. This

just goes to show how questionable Dr Georgi Kasabov's actions were. In fact, they seem sufficiently suspicious to the court for it to officially commission the disciplinary inspector to conduct an investigation in accordance with Article 30(3) DR.

6.

a) For all the reasons discussed above, the appeal is rejected and the Control and Disciplinary Body's decision of 21 October 2008 is upheld.

b) Under Article 63 DR, the costs of the proceedings, which include all the expenses of the Appeals Body, must be shared among the parties at fair discretion, in accordance with the outcome of the proceedings.

The appellant has been unsuccessful in all his submissions. The costs of this case are therefore charged to him.

7.

The chairman informed the parties present orally of the decision. Brief grounds were given and the operative part of the decision presented to the parties. They will receive the full written decision at a later date (Articles 64 and 66 DR).

The Appeals Body

decides:

- 1. The appeal is rejected. Consequently, the decision of the Control & Disciplinary Body dated 21 October 2008 is confirmed.**
- 2. The costs of the proceedings amounting to CHF 5,000.- shall be borne by the appellant under deduction of the appeal's fee.**

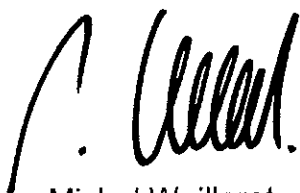
3. This decision is final subject to the provisions of Article 66 of the Disciplinary Regulations.

4. It is communicated to:

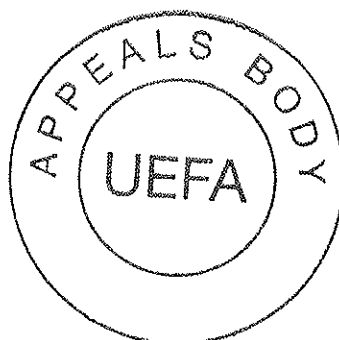
- a) the parties
- b) the Control & Disciplinary Body
- c) the UEFA administration
- d) The Bulgarian FA

UEFA APPEALS BODY, Nyon (Switzerland), 22nd December 2008

The Chairman:



Michel Vuilleret



Notification on:

