



**Arbitration CAS 2005/A/990 P. v. IIHF, order on request for provisional measures of 19 January 2006**

Panel: Mr Dirk-Reiner Martens (Germany), President; Mr Richard H. McLaren (Canada); Mr Hans Nater (Switzerland)

*Ice Hockey*

*Doping (nandrolone)*

*Conditions of granting an order to stay the execution of a decision*

*Irreparable harm*

- 1. As a general rule, when deciding whether to stay the execution of the decision appealed from, it is necessary to consider whether the measure is useful to protect the Appellant from irreparable harm, the likelihood of success on the merits of the appeal and whether the interests of the Appellant outweigh those of the opposite party.**
- 2. In the absence of additional and specific arguments, the mere argument of the likelihood of economic, emotional and psychological hardship due to suspension cannot justify the order of a stay as a protective measure from irreparable harm, since it is the inevitable consequence of every suspension of a professional athlete from competition.**

Whereas, on 13 December 2005, a statement of appeal was filed with the Court of Arbitration for Sport (CAS) by P., a professional ice hockey player of Ukrainian nationality (the “Appellant”) in relation to the 14 November 2005 decision of the International Ice Hockey Federation Disciplinary Committee (the “IIHFDC”);

Whereas, on 28 December 2005 an application was made by the Appellant for a stay of the execution of the decision in question;

Whereas, on 9 January 2006, the International Ice Hockey Federation (the “Respondent”) filed an answer to the application, opposing the stay.

**The Panel hereby considers:**

1. In accordance with art. R37 of the Code of Sports-related Arbitration (the “Code”), the Panel may make an order for provisional or conservatory measures.
2. In accordance with art. R47 of the Code, “An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes of regulations of the said sports-related body”.

The requirements of Article R47 of the Code are met in the present case.

3. As a general rule, when deciding whether to stay the execution of the decision appealed from, it is necessary to consider whether the measure is useful to protect the Appellant from irreparable harm, the likelihood of success on the merits of the appeal and whether the interests of the Appellant outweigh those of the opposite party (CAS 2002/A/378, order of 2 May 2002).
4. The Appellant submits that after a championship game in Mogliev, Belarus on 21 March 2005, he was rushed to the hospital for an acute heart failure. In the emergency room he was given intravenous and intramuscular injections. The Appellant contends that unbeknown to him one of these injections consisted of 1 ml of Retabolil 5 %.
5. On 1 May 2005, on the occasion of a Senior Ice Hockey Championship game between Ukraine and Sweden in Vienna, the Appellant delivered a urine sample which tested positive for norandrosterone, a metabolite of the anabolic steroid nandrolone, a prohibited substance under the IIHF anti-doping rules. The finding of norandrosterone in the Appellant’s sample is explained by him through reference to the injection of Retabolil as referred to in paragraph 4 above.
6. On 14 November 2005 the IIHFDC imposed a two-year suspension on the Appellant for having committed an anti-doping rule violation. This decision is the subject matter of the appeal filed by the Appellant on 13 December 2005.
7. The Appellant also filed an application for a stay of the execution of the 14 November 2005 IIHFDC decision.

He argues that the stay must be ordered

- to protect him from an irreparable harm in that, as a consequence of the IIHFDC’s suspension, he has no income to support his wife and child and in that he will miss the 20 January 2006 deadline for registration of players for the second round of the Belarus championship;
- because he is likely to prevail on his appeal to the CAS. According to the Appellant his chances of success have dramatically improved as against his position at the time of the

IIHFDC decision, in that he is now able to present a document which proves that he was in fact given an injection of Retabolil/Nandrolone when he was in hospital after the 21 March game;

- because his interests outweigh those of IIHF.

8. The Panel disagrees with the Appellants analysis.
9. It is undisputed that the Appellant committed an anti-doping rule violation which is shown by the *“presence of a prohibited substance or its metabolites”* in his body (art. 6.3 (a) of the IIHF Disciplinary Regulations in connection with art. 2.1 of the WADA Code). As a consequence, the Appellant must be suspended from competition for a period of two years (art. 6.3 (a) of the Disciplinary Regulations) unless the Appellant is able to prove that he bears no fault or negligence or no significant fault or negligence (art. 6.4 (c) of the IIHF Disciplinary Regulations in connection with art. 10.5.1 and 10.5.2 of the WADA Code) so that the period of ineligibility must be eliminated or reduced.
10. The arguments which the Appellant advanced in support of his contention that he will suffer irreparable harm are that his suspension is likely to cause economic, emotional and psychological hardship.

In the Panel’s view, this is the inevitable consequence of every suspension of a professional athlete from competition. The Appellant failed to bring forward any additional and specific arguments which could justify the order of a stay.

11. The Panel is also unable to find on the record as currently before it a sufficient likelihood of success in the Appellant’s case.

The only additional argument advanced by the Appellant after the IIHFDC decision is an “Expert Opinion” issued by the Ministry of Health of the Republic of Belarus (not the physician who actually treated the Appellant) which, contrary to a similar document presented to the IIHFDC, no longer lists the injection of Retabolil/Nandrolone as a “Recommendation” but as “Done”.

The Panel is unable to put such weight on this document so as to justify the order of a stay until it has heard personally from the treating physician regarding the circumstances of the Appellant’s treatment in the hospital.

#### **The Court of Arbitration for Sport rules that:**

1. The application for a stay of the execution of the decision of the International Ice Hockey Federation Disciplinary Committee of 14 November 2005 is dismissed.

(...)