

**IN THE MATTER OF PROCEEDINGS BROUGHT
UNDER THE ANTI-DOPING RULES OF
THE BRITISH BOXING BOARD OF CONTROL**

Before:

William Norris QC (Chair)

Lorraine Johnson

Professor Peter Sever

B E T W E E N:

UK ANTI-DOPING ('UKAD')

Anti-Doping Organisation

and

IVICA BAČURIN

The Athlete

DECISION OF THE ANTI-DOPING TRIBUNAL

Introduction and Facts

1. Ivica Bačurin (hereafter "the Athlete") is a professional boxer and a Croatian national, born on 11th June 1982.
2. On 15th June 2018, when he was aged 36, the Athlete was granted a licence by the British Boxing Board of Control ("BBBoC") to fight Joe Joyce, which he did at York Hall, Bethnal Green.
3. The BBBoC has adopted the UK Anti-Doping Rules ("ADR") and so all boxers licenced by that authority are subject to the ADR. The jurisdiction of UK Anti-Doping ("UKAD") and of this Panel for this case derives from the grant of that licence.
4. Following the bout, the Doping Control Officer ("DCO") collected a urine Sample In-Competition. There is no issue between the parties as to the chain of custody or as to the analysis of the A Sample which took place in accordance with the standards of the World Anti-Doping Agency ("WADA").
5. As will become apparent, the sample provided tested positive for a number of substances, which are listed as Exogenous Anabolic Androgenic Steroids on WADA's 2018 Prohibited List. As such, they are Non-Specified Substances, which are prohibited at all times. The analysis also revealed the presence of a metabolite of cannabis listed under the Prohibited List as a Cannabinoid which is a Specified Substance prohibited In-Competition only.

The Charging Process

6. On 4th September 2018, UKAD charged the Athlete with committing:

"an ADRV ("the ADRV") contrary to ADR Article 2.1, in that Prohibited Substances, namely:

- (a) *6 β -hydroxymetandienone and 17 α -methyl- 5 β -androstane-3 α , 17 β -diol (metabolites of metandienone);*

- (b) *dehydrochloromethyl-testosterone and its metabolite 3a, 4a, 5a, 17 β -4-chloro-17-hydroxymethyl-17-methyl-18-norandrostan-3-ol;*
- (c) *17a-epitrenbolone (a metabolite of trenbolone); and*
- (d) *Carboxy-THC (a metabolite of cannabis)*

were present in a urine Sample provided by you on 15 June 2018 numbered A4252872."

He was also notified, in accordance with ADR Article 7.9.1 that he was provisionally suspended with immediate effect from participation in all competitions. This is of significance because it appears that, contrary to the terms of that suspension, the Athlete did in fact take part in a further boxing bout in Zagreb on 8th September 2018.

7. The Athlete did not request testing of the B Sample, notwithstanding that the presence of these Prohibited Substances in his sample constitutes a clear violation of ADR Article 2.1.
8. For reasons explained by Professor Cowan in his report, dated 17th March 2019, UKAD conducted a further analysis of the sample which returned an AAF for Exogenous Testosterone (a Non-Specified Substance) and its metabolites. This analysis was completed in March 2019 and on 19th March 2019, the Athlete was notified that he faced a second charge, the terms of which were that:

"...in addition to the First ADRV, UKAD charges you with an ADRV ('the Second ADRV') contrary to ADR Article 2.1, in that a Prohibited Substance, namely exogenous testosterone and each of its aforementioned metabolites (namely: androsterone, etiocholanone and 5 β -androsterone-3a, 17 β -diol) were present in a urine Sample provided by you on 15 June 2018 numbered A4252872."

He was, however, also notified that as the second ADRV:

"4.4 ...arises from the same Sample as the First ADRV (given by you on 15 June 2018), it shall not be considered a second ADRV for the purposes of ADR Article 10.7.4(a)

*4.5 The First ADRV and the Second ADRV (together '**the Charges**') shall therefore be considered together as a single first ADRV and you will therefore be subject to the Consequences specified in ADR Article 10.2.1(a) for a first offence (please be referred to paragraph 4.6 of the First Charge Notice)"*

Background to the Current Hearing

9. The Athlete lives in Croatia and has only a limited grasp of English. Although he had advice at an earlier stage of the process under the pro bono scheme, it has not been straightforward to bring this case to a hearing. Nevertheless, as we shall explain further below, we are satisfied he understood the process before, in advance of, and at the hearing.
10. The evidence to which we will refer below includes two conflicting explanations which have been offered by the Athlete or, alternatively, apparently offered on his behalf.
11. The first sought to blame the positive test on the fact that he "*drank some water*" in his dressing room from an opened bottle before the test (we shall refer to this as Scenario A). The second (Scenario B) attributed it to supplements or substances that he said had been given to him by his coach who told him it would boost his motivation and will for training and improve his immune system and strength. The explanation included the assertion that he took these because he trusted his coach to give him any products that were safe.
12. Directions were issued by Sir Richard McLaughlin, originally designated as the Chairman of the Tribunal, the second (and later) set of which provided, amongst other things, that:

"1.3 Mr Bačurin shall respond to the second Notice of Charge on or before 5pm on Sunday 05 May 2019

1.4 Mr Bačurin must serve in writing copies of all evidence upon which he intends to rely on or before Tuesday 21 May 2019.

1.5 UKAD shall serve its response, including all further evidence upon which it intends to rely, on or before Friday 31 May 2019.

1.6 Mr Bačurin shall serve his submissions on the evidence before the Tribunal in writing on or before Friday 21 June, 2019.

1.7 UKAD shall serve its submissions on or before Friday July 12, 2019.

1.8 A date for hearing shall be fixed by the Tribunal in September 2019, after consultation with the Parties and subject to the availability of the members of the Tribunal."

13. UKAD has complied with those Directions, but the only material provided by or on behalf of the Athlete is that which we list below.
14. In the event, Sir Richard McLaughlin was unable to Chair the Tribunal and the Chairman identified below took his place.

Hearing on 19th September 2019

15. At the hearing at Sport Resolutions' Offices on 19th September 2019, UKAD were represented by Nisha Dutt and we connected with the Athlete by use of the video-conference facility. Because the Athlete himself does not speak English and because he and his representative were in Croatia at the other end of an internet connection, communication was not always easy. However, we are satisfied that he and his representative were able to understand and participate fully in the hearing itself.
16. It is also true that the Athlete himself spoke little or at all, and seemed to have only a limited command of English. On the other hand, he was represented by an

articulate and supportive colleague, Marin Vlahovic. In advance of the hearing, Mr Vlahovic had been in correspondence by email with UKAD and with Ms Thomas of Sport Resolutions, and he assured us that he was able to understand the proceedings and able to translate and communicate the content of those proceedings to the Athlete on whose behalf he spoke. We also gave Mr Vlahovic the opportunity to ask questions of the only witness called, as well as to make submissions, which he did.

Evidence at the Hearing and how it proceeded

17. UKAD had submitted its evidence in advance. The material statements in the reports (at least for the purposes of this decision) were those of Nick Wojek, Head of Science & Medicine at UKAD (his Statement appearing at pages 355 – 357 of our papers). The effect of the evidence he gave can be summarised in paragraph 17 of his Witness Statement, which we shall quote in full:

"The athlete has offered the explanation that the presence of the prohibited substances found in their urine sample was caused by the ingestion of dietary supplements (NB. No product details have been declared by the athlete). It is not possible to comment on this explanation without i. the details of the product(s) consumed; and ii. undertaking laboratory analysis to determine if the product(s) contained these prohibited substances without being declared on the label of the product(s)."

18. Neither the Athlete nor his representative had any questions for Mr Wojek, who would have been available to answer them if necessary.

19. The other evidence produced by UKAD came from Professor David Cowan, as at pages 359 to 367 of our papers. Professor Cowan (whose qualifications do not need to be set out in detail) answered a series of questions posed by UKAD in relation to the positive samples provided. The material paragraphs are at pages 365 to 366 and we will quote them in full:

"21. Question 8. Based upon the information set out above, are you able to provide an opinion on whether the substance listed at 4 is more likely to have been ingested In-Competition rather than Out-of-Competition? If so, what is your opinion? If you are unable to answer the question could you please explain why?"

The carboxy-THC concentration of 825ng/mL in the urine sample is relatively large to have been taken out-of-competition unless an extremely large amount had been smoked, which is very inefficient, or ingested. I am therefore of the opinion that it had been taken during the In-Competition period.

IV. Conclusions

22. In my opinion, it would be difficult to contaminate water with cannabis or an ester of testosterone that would result in the Laboratory findings of the carboxy-THC metabolite and exogenous testosterone because of the poor solubility of cannabis or an appropriate (decanoate) ester of testosterone.

23. It is also my opinion that it is highly unlikely that a contaminated supplement is the explanation for the Laboratory findings because of the number of anabolic steroids present and also the presence of cannabis. In my opinion, the combination of cannabis and anabolic steroids in a supplement is highly unlikely. Also in my opinion, although I am unable to give a definitive amount of contamination that would be needed to explain the Laboratory findings, it would be more than is likely to occur as a cross-contamination but would need to be an adulteration of the product.

24. Having considered either a contaminated drink or a contaminated supplement as the cause of the Laboratory findings, in my opinion, either scenario is a highly unlikely explanation."

20. Professor Cowan was available to give evidence orally, which he did by phoning into the video link. He confirmed that he stood by his opinion and the contents of his

report, with one exception. He said that, in the light of an account received only the day before the hearing, indicating that the Athlete had been a long-term user of cannabis, he wished to revise his opinion to the extent that he would no longer contend that cannabis must probably have been used within the 12 hours before the test. He told us that, on reflection, he thought it more likely to have its origins in the Out-of-Competition period.

21. He therefore said that he would not stand by paragraph 21 of his written opinion but, despite Mr Vlahovic's questions, he was not persuaded to qualify paragraphs 22 to 24 of the report. His opinion, therefore, which the Panel accepted, was that the Athlete had probably consumed anabolic steroids on more than one occasion (i.e. not in a single administration). He added that he thought it very unlikely that the source of all such substances would be oral administration in some manner, such as via a supplement.
22. Both in his questions and in his submissions, Mr Vlahovic sought to emphasise that that which is probable is not necessarily certain. That is, of course, true, but the standard of proof applied in proceedings such as these is that of the balance of probability. We unreservedly accept Professor Cowan's opinion that it is highly unlikely that the source of all these Non-Specified Substances was oral administration on one or even on more than one occasion. We think it most likely that the source of at least some of those substances was by a means other than oral administration, namely by injection.
23. However, even if all of the substances had been ingested orally, and even if they were "*substances*" provided by the Athlete's coach, it would make no difference to the findings which follow. That is because we find as a fact (putting things colloquially) that the Athlete either knew the products in question contained substances which were banned or, at least, was reckless as to the risk that they might.
24. We turn to the evidential material submitted by or on behalf of the Athlete. We have already referred to the first email, which was sent on the 5th September 2018 and comes from the Athlete's email address. In that email, the following was said:

"I hereby lodge an appeal against the doping test results as in my boxing career I have been tested so many times and the results were always negative.

Before the last test, I drank some water in my dressing room from an opened bottle.

I have never used any prohibited substances" [original emphasis]

25. In the course of the hearing, it was contended that the Athlete had not written, nor was he responsible for, nor did he approve the terms of that email which offered an explanation that we have characterised as Scenario A above. If it were necessary to decide this issue – which it is not – we would not accept that contention: the email came from his address and the overwhelming likelihood is that it was at least sent with his approval and knowledge.
26. Even though it was also said that he did not personally send a later email of the 18th January 2019, it does appear that he stands by the alternative explanation given therein, which we have called Scenario B.
27. We will set out the terms of that email in full, addressed as it was to UKAD and to Sport Resolutions.

"I am aware that the accusations against me are very serious, but I want to emphasize once more that in my 25 year long career I never violated any rules and did not have any problems. Also, I am very sorry that this happened near the end of my career.

Boxing has been my passion since I was 9 years old and at 25 I became a professional boxer for the Croatian national team. During my professional career I have been tested by different international organizations when I boxed with Benks, Murat Gassiejev, Schwartz, Waliusch and others. The tests were always negative. I always strictly followed all set rules, so I was very surprised by the positive test results. I would once more like to underline that I did not consciously take forbidden substances, but that it was advised to me by my coach Nikola Jurjević as something that would

help boost my motivation and will for training, and also improve my immune system and strength. I have trusted my coach that the products he gave me were safe and that he gave them to me with the only reason that I have recover.

When deciding on the punishment, please take into consideration that boxing is the only source of income for my family with five underage children, and make it as mild as possible.

I am truly very sorry for what happened."

28. Next, UKAD and Sport Resolutions received an email on 17th May 2019 on behalf of the Athlete, but written by Mr Vlahovic on his own email address. Again, we will quote the material section in full:

*"As you requested, I am sending you these **signed statemens** from Nikola Jurjević, Ivica Bačurin trainer. Nikola Jurjević accepts responsibility regarding Ivica Bačurin use of illegal substances.*

There is no need to analyse sample B.

I am using this opportunity to ask when willl [sic] this procedure be over?

*This is mr. Ivica Bačurin, **first problem** ever with illegal substances, but he honestly admitted mistake. Can we hope for a **suspension on a shorter period of time,** [REDACTED]*

29. The signed Statements in question are from a Mr Nikola Jurjević and are at pages 379 and 380 in our papers. The first is dated 14th November 2018 and the translated version reads:

"As a personal trainer and masseur I have noticed that my associate Ivica Bačurin has problems with concetration [sic] and will for training, so I have decided to help him with food supplements that he could purchased [sic] in any gym or sports store (urine medical documents from London). He was in

a phase where he lost a lot of weight, which in turn resulted in poor condition and he has lost his abilities and will for training and competitions."

30. The later email, dated 10th May 2019, at page 380 was identical save as to one additional sentence in Mr Jurjević's account:

"I bought supplements from some athletes who that time came to the training and they recommended me to try. Where did they buy it I do not know".

31. The day before the hearing, a further document was submitted on behalf of the Athlete, [REDACTED] which Sport Resolutions have helpfully translated. [REDACTED]

32. [REDACTED] Suffice it to say that the report indicated that the Athlete had been a regular smoker of cannabis since the age of 17 (hence Professor Cowan's qualification of his opinion), [REDACTED]

Discussion & Decision

33. At the beginning of the hearing, we ensured that the full details of the charges were read over to the athlete and his representative, and we are satisfied that they understood that which was read to them. Both charges were admitted but, for the sake of completeness, we should record that, had they not been admitted, we would have no hesitation in finding each of them proven.

34. The Athlete had no Therapeutic Use Exemption in place for any of the Prohibited Substances and we are satisfied, pursuant to ADR Article 8.3.1 that UKAD has established commission of those offences.

35. ADR Article 2.1 is a strict liability offence. As UKAD's submissions expressly state:

"32. ADR Article 2.1 is a strict liability offence. As ADR Article 2.1.1 expressly states, it is not necessary for UKAD to prove intent, fault, negligence or knowing use of the Prohibited Substance by Mr Bačurin in order to sustain the Charge; nor is that an alleged lack of intent, fault, negligence or knowledge a valid defence to such a Charge."

36. It follows that the only issue we have to decide is that of sanction. We accept and follow UKAD's contention that since the second ADR arises from the provision of the same sample, it should not be considered as a second ADRV for the purposes of ADR Article 10.7.4(a):

"35. As ADRV2 arises from the same Sample as ADRV1 (provided on 15 June 2018), it should not be considered as a second ADRV for the purposes of ADR Article 10.7.4(a)."

37. As usual, therefore, the first question in relation to sanction is whether the ADRV was *"intentional"*. For convenience, we record the relevant provisions of ADR Article 10.2 as follows:

"10.2 Imposition of a Period of Ineligibility for the Presence, Use or Attempted Use, or Possession of a Prohibited Substance and/or a Prohibited Method"

The period of Ineligibility for an Anti-Doping Rule Violation under Article 2.1, 2.2 or 2.6 that is the Athlete's or other Person's first anti-doping offence shall be as follows, subject to potential reduction or suspension pursuant to Article 10.4, 10.5 or 10.6:

10.2.1 The period of ineligibility shall be four years where:

- (a) 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.*

(b) The Anti-Doping Rule Violation involves a Specified Substance and UKAD can establish that the Anti-Doping Rule Violation was intentional.

10.2.2 If Article 10.2.1 does not apply, the period of ineligibility shall be two years."

38. It follows that the period of ineligibility is four years unless the Athlete can demonstrate, on the balance of probabilities, that his actions were unintentional. The relevant definition is in ADR Article 10.2.3 and referred to in UKAD's submissions:

"38. Therefore, the period of ineligibility is four-years unless Mr Bačurin can demonstrate, on the balance of probability, that his action were not intentional. The definition of intentional can be found at ADR Article 10.2.3:

10.2.3 As used in Articles 10.2 and 10.3, the term 'intentional' is meant to identify those Athletes... who cheat. The term, therefore, requires that the Athlete ... 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 disregard that risk..."

39. As we have already indicated, we think that the strong probability is that at least some part of the presence of the prohibited substances in his sample is most probably explained by deliberate administration other than orally. But whether the administration was orally or by (for example) injection is unimportant in the present case. Even if the source were the "products" supplied by his coach (who has given no direct oral evidence) and however obtained, we would find that the Athlete had consumed such product when he either knew or should have known that doing so might well create a significant risk of an ADRV and manifestly disregarded that risk in acting as he did.

40. We record that the Athlete chose (or was advised) not to give oral evidence himself and to submit to cross-examination and that the trainer and alleged supplier of the 'products' only submitted short written (but signed) statements.
41. We must decide the matter on the evidence we have heard and on inferences we draw from the written material submitted. Having done so, we conclude, as we have said, that the overwhelming probability is that the Athlete either intended to cheat or, at the very least, conducted himself in such a way as to manifestly disregard the risk of an ADRV.
42. In those circumstances, the Panel finds as follows:
- (i) We find that Mr Bačurin committed an ADRV under ADR Article 2.1, in that he had the Presence of a Prohibited Substance or its metabolites or markers in his Sample provided on 15 June 2018;
 - (ii) That the ADRV was committed intentionally pursuant to ADR Article 10.2.3;
 - (iii) That we must therefore impose a period of ineligibility of four years under ADR Article 10.2.1
 - (iv) Such period of ineligibility shall run from 9th September 2018, because this is not a case where (pursuant to ADR 10.11.2) we can characterise the Athlete's admission as "*timely*" and because he had failed to respect his provisional suspension by boxing as he did on 8th September 2018.
43. Further, and pursuant to the foregoing, we direct that under ADR Articles 9.1 and 10.8, we should disqualify / cancel the results both of the Athlete's bout on 15th June 2018 and that on the 8th September 2018.



William Norris QC

For and on behalf of the Tribunal

30 September 2019

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