

## **WORLD RUGBY**

IN THE MATTER OF THE WORLD RUGBY REGULATIONS RELATING TO  
THE GAME

AND IN THE MATTER OF ALLEGED ANTI-DOPING RULE VIOLATIONS BY  
**MAXIM GARGALIC** (MOLDOVIA) CONTRARY TO REGULATION 21.22.13B

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

### Judicial Committee:

**Joseph de Pencier** (Canada)  
**Dr Ismail Jakoet** (South Africa)  
**Graeme Mew** (Canada – Chair)

### Written Submissions received from:

*Yvonne Nolan*, counsel for World Rugby  
Maxim Gargalic (the “Player”)

Hearing conducted by way of written submissions.

## **REASONS FOR DECISION**

1. Maxim Gargalic is an experienced international professional rugby player from Moldova. He was selected for in-competition drug testing on 5 April 2014 as a result of which he tested positive for the presence of 19-norandrosterone (nandrolone).
2. Following a preliminary review, undertaken in accordance with Regulation 21.20.1, the Player was notified, via the Federatia de Rugby din Moldova (the "Union"), that it was alleged that he had committed an anti-doping rule violation. The Player was provisionally suspended, pending the outcome of his case, with effect from 3 July.
3. The notification letter informed the Player that:

Pending resolution of that matter, you are now Provisionally Suspended in accordance with Regulation 21.19.1 from participating in any Matches, training as part of a team or squad, refereeing, otherwise acting as a Match Official, coaching, selecting, organising, administering or promoting Rugby in any Union in membership of the IRB as set out in full in Regulation 21.22.13.

Further on in the same letter it is stated:

In accordance with Regulation 21.19, please note that, you are now provisionally suspended from playing or training for your team or Union or participating in any other team or any organised rugby activity until this matter has been resolved.

4. At a hearing before a Judicial Committee on 29 September 2015, the Player admitted that he had committed an anti-doping rule violation, but maintained that it was not his fault.
5. In its decision of 28 November 2014, the Judicial Committee held that the Player had committed an anti-doping rule violation contrary to Regulation 21.2.1 and imposed a sanction of a period of Ineligibility of two years, commencing on 3 July 2014 and ending on (but including) 2 July 2016<sup>1</sup>.
6. World Rugby subsequently received information that the Player had played for Enisey-STM Krasnoyarsk in 8 matches during the 2013/2014 Russian Club Competition from 7 July 2014 to 15 September 2014, during the time that he was provisionally suspended.
7. On 24 February the Anti-Doping Manager – Compliance and Results of World Rugby wrote to the Player about the information that had been received, informing him that a violation of the prohibition against participation during a period of Ineligibility would constitute a breach of Regulation 21.22.13 (Status During Ineligibility) and notifying him that the matter would be referred to a Judicial Committee.
8. This Judicial Committee (“JC”) was then appointed to consider the matter.
9. On 16 March 2015 directions were given by the JC, which, in summary, said that unless the parties made representations to the contrary, the hearing would be conducted on a review and consideration the documentary record and written submissions which the parties were invited to make. No objection to these directions was raised.

### Hearing Record

10. The JC had before it a record which included the letter dated 3 July 2014 from World Rugby (then known as the International Rugby Board) to the player notifying him of his adverse analytical finding and provisional suspension, a “Player Statistics” printout from the [www.itsrugby.co.uk](http://www.itsrugby.co.uk) website, written submissions from World Rugby and an “Explanatory Note” from the Player.

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<sup>1</sup> [World Rugby v Maxim Gargalic](http://www.itsrugby.co.uk), Judicial Committee, 28 November 2014  
<http://keeprugbyclean.worldrugby.org/downloads/cases/88/J-141128-GM-Gargalic-Reasons.pdf>

## Regulations

11. The applicable regulations are those in force in 2014.

12. The definition of “Provisional Suspension” in Regulation 21 is contained in the “Anti-Doping Definitions” which provide, in respect of the Consequences of Anti-Doping Rule Violations:

A Player or other Person’s violation (or in the case of a Provisional Suspension, alleged violation) of an anti-doping regulation may result in one or more of the following:

(a) Ineligibility means the Player or Person is barred for a specified period of time from participating in any Match or other activity as set out in Regulation 21.22.13A or funding as provided in Regulation 21.22.13C;

(b) Provisional Suspension means the Player or other Person is barred temporarily under Regulation 21.19 or 21.16.2 from participating in any Match or other activity (as set out in Regulation 21.22.12) prior to the final decision at a hearing conducted under Regulation 21.20;

and

(c) Disqualification means the Team’s results in a particular Match, Series of Matches, Tournament and/or International Tour are invalidated, with all resulting consequences, including forfeiture of any medals, points and prizes.

13. The regulations applicable to Ineligibility provide:

### 21.22.13A - Prohibition Against Participating During Ineligibility

(i) 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 World Rugby 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 World Rugby.

### 21.22.13B - Violation of the Prohibition of Participation During Ineligibility

Where a Player or other Person who has been declared Ineligible violates the prohibition against participation during Ineligibility described in Regulation 21.22.13A, the medals and any prizes arising out of such

participation shall be forfeited and the period of Ineligibility which was originally imposed shall start over again as of the date of the violation. The new period of Ineligibility may be reduced under Regulation 21.22.5 if the Player or other Person establishes he bears No Significant Fault or Negligence for violating the prohibition against participation. The determination of whether a Player or other Person has violated the prohibition against participation, and whether a reduction under Regulation 21.22.5 is appropriate, shall be made by World Rugby or Union or Tournament Organiser whose results management led to the imposition of the initial period of Ineligibility.

14. Also relevant is Regulation 21.22.12, which provides:

Except as provided below, the period of Ineligibility shall start on the date of the hearing decision providing for Ineligibility or, if the hearing is waived, on the date Ineligibility is accepted or otherwise imposed. Any period of Provisional Suspension (whether imposed or voluntarily accepted) shall be credited against the total period of Ineligibility to be served.

...

(c) If a Provisional Suspension is imposed and respected by the Player then the Player shall receive a credit for such period of Provisional Suspension against any period of Ineligibility which may ultimately be imposed.

### The Evidence

15. The Player does not dispute that between 7 July and 15 September 2014 he played eight matches for Enisey-STM Krasnoyarsk in the Russian Club Competition.

16. The Player claims not to have understood that he was suspended. He says:

I would like to explain his accusation under anti-doping rule violation that the provisional suspension in my opinion is not the final answer, and I waited until the final juridical commission did not announce his decision after hearing to. Thus rely on my lack of knowledge and not fully understanding this concept as the provisional suspension. At the moment, it has become quite clear! I'm sorry .

### Discussion

17. The Player's Explanatory Note seems to suggest that, because the provisional suspension was not the Judicial Committee's "final answer", the Player mistakenly believed that he was entitled to continue to play until the Judicial Committee issued its final decision after the Player's hearing.

18. This is the same Player who claimed to be unaware that he was using a Prohibited Substance despite receiving a series of daily injections over 15 days

of a substance, the packaging for which informs the reader that the product contains “nandrolone decanoate”.<sup>2</sup>

19. The Player is either wilfully blind or untruthful as to his understanding of the terms of the provisional suspension. There is no other plausible interpretation of the words “provisionally suspended” such that the Player might have reasonably believed that he was entitled to continue to play rugby. Further, the Regulations themselves are abundantly clear on the Player’s status while under provisional suspension.

20. Accordingly, World Rugby submits that the Player has breached Regulation 21.22.13A, which addresses the meaning and effect of Ineligibility.

21. Regulation 21.22.12, provides that the period of Ineligibility runs from “the date of the hearing decision providing for Ineligibility ...”, it is also provided that if a period of Provisional Suspension has been “respected by the Player then the Player shall receive a credit for such period of Provisional Suspension against any period of Ineligibility which may ultimately be imposed”.

22. Implicit in these provisions is that a term of Provisional Suspension can form part of the “total period of ineligibility imposed”.<sup>3</sup>

23. A violation of the terms of Ineligibility imposed on a Player or other person is in and of itself an anti-doping rule violation, which can be addressed, as in the present case, by initiating a fresh proceeding against the alleged transgressor.

24. The Player did not respect the Provisional Suspension which he had been notified of. His excuse for not doing so is, at best, disingenuous.

25. In the absence of any evidence of mitigating circumstances (i.e. no significant fault or negligence on the Player’s part), the period of Ineligibility (being a period of two years) which was originally imposed should start over again as of the date of the latest violation and all medals and any prizes arising out of such participation in the Game while provisionally suspended shall be forfeited.

### Decision

26. The Player has committed a breach of Regulation 21.22.13 (Status During Ineligibility), as a result of playing the Game while provisionally suspended from doing so.

27. The appropriate sanction is that the period of Ineligibility which was originally imposed (two years) shall start over again as of the date of the violation, namely 15 September 2014, with the result that the Player’s period of suspension will now run from 15 September 2014 to 14 September 2016. The Player will also forfeit all medals and any prizes arising out of his participation in the Game while provisionally suspended.

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<sup>2</sup> [World Rugby v Maxim Gargalic](#), Judicial Committee, 28 November 2014, at paras 22-25

<sup>3</sup> 2009 WADC Article 10.9 (World Rugby Regulation 21.22.12) in dealing with the commencement of the Ineligibility period says that “Any period of Provisional Suspension (whether imposed or voluntarily accepted) shall be credited against the total period of Ineligibility imposed”. That “total period” may therefore include any Provisional Suspension.

28. The Player is reminded of the provisions in Regulation 21.22.13 concerning his status during Ineligibility.

#### Costs

29. If the Board wishes us to exercise our discretion in relation to costs pursuant to Regulation 21.21.10, written submissions should be provided to the JC via Mr. Ho by 17:00 Dublin time on 10 July 2015 with any responding written submissions from the Respondent to be provided by no later than 17:00 Dublin time on 24 July 2015.

#### Review

30. This decision is final, subject to referral to a Post Hearing Review Body (Regulation 21.25) or an appeal, where the circumstances permit, to the Court of Arbitration for Sport (Regulation 21.27). In this regard, attention is also 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.

29 June 2015

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

Graeme Mew, Chairman