

# FÉDÉRATION INTERNATIONALE DE GYMNASTIQUE



FONDÉE EN 1881

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## Proposal of Decision from the Disciplinary Commission to the attention of the Presidential Commission

### Mr. Marian DRAGULESCU (ROU), presumed whereabouts failures

#### Facts

Mr. Marian Dragulescu (“**the Gymnast**”) has been competing for the National Federation (« **NF** ») of Romania (« **ROU** ») since 1994 in the discipline of Mens Artistic.

On 19<sup>th</sup> December 2008, the FIG informed him, through his NF, that he was included in the FIG 2009 RTP List.

On 30<sup>th</sup> December 2008, the Federatia Romana de Gimnastica (“**ROU-NF**”) informed FIG that Marian Dragulescu, and two other Romanian gymnasts, “[had] ended their career as active athletes”.

On 19<sup>th</sup> January 2009, FIG acknowledged receipt and informed the ROU-NF that, as requested, the three mentioned gymnasts were taken out of the FIG 2009 RTP List. FIG also requested the ROU-NF to inform the gymnasts that, according to article 5.6.2 FIG Anti-Doping Rules (“**ADR**”) “should they wish to return to competition, they would have to inform FIG, make themselves available for out-of-competition testing and submit their whereabouts at least 6 months prior to their return to an international competition”.

In May 2009, a new Licence system has been implemented at FIG. Any gymnast willing to compete at an international event has been required to have a FIG Licence, this being compulsory since the 41<sup>st</sup> Artistic Gymnastics World Championships in October 2009.

In this regard, an application form to request a FIG Licence dated 15<sup>th</sup> June 2009 and signed by the Gymnast was sent to FIG. The FIG Licence of the Gymnast was issued on 1<sup>st</sup> October 2009, as part of the first set of licences issued.

The Gymnast competed in 2009 at the 41<sup>st</sup> Artistic Gymnastics World Championships in London, from 13<sup>th</sup> to 18<sup>th</sup> October 2009 in which he placed twice first and at the EnBW World Cup Cat. A in Stuttgart from 13<sup>th</sup> to 15<sup>th</sup> November 2009, in which he placed once fourth.

The Gymnast has been tested twice at the 41<sup>st</sup> Artistic Gymnastics World Championships in London, on 17<sup>th</sup> and 18<sup>th</sup> October 2009. Both tests were negative.

Following his results at the World Championships, he was included in the FIG 2010 RTP List, according to the criteria for inclusion in the 2010 RTP List published on the FIG website.

From January 2009 until December 2009, the Gymnast never informed FIG of his intent to return to competition and availability for out-of-competition testing. He did not submit any whereabouts in this period.

When the FIG Anti-Doping Department compiled the 2010 RTP List, at the end of 2009, it became aware that the Gymnast had competed without informing FIG of his intent to return from retirement.

On 4<sup>th</sup> January 2010, the Gymnast was notified, through his NF, that he was included in the FIG 2010 RTP List. He was therefore requested to submit his whereabouts through the ADAMS system for the first quarter of the year, January to March 2010, by 7<sup>th</sup> January 2010. His NF was requested to confirm to FIG that the Gymnast had received the notification and had completed the whereabouts within the set deadline.

On 16<sup>th</sup> February 2010, FIG sent a reminder to the ROU-NF informing that the Gymnast had still not completed his whereabouts for the first quarter and asking the whereabouts to be fully completed immediately but latest by 19<sup>th</sup> February 2010.

On 2<sup>nd</sup> March 2010, FIG sent a new reminder to the ROU-NF informing that the Gymnast had still not completed his whereabouts for the first quarter.

On 8<sup>th</sup> March 2010, the whereabouts of the Gymnast were completed for the rest of the month of March 2010.

On 12<sup>th</sup> April 2010, upon request of FIG in the letter addressed to the Gymnast on 4<sup>th</sup> January 2010 and following a reminder from FIG dated 8<sup>th</sup> April 2010, the ROU-NF sent FIG the Confirmation Receipt Form, signed by the Gymnast on 9<sup>th</sup> April 2010, confirming that the Gymnast had received the FIG RTP whereabouts information and his ADAMS account.

The Gymnast was informed of the submission of the case against him to the FIG Disciplinary Commission on 13<sup>th</sup> April 2010. He did not submit any written submission but requested a hearing.

The hearing was held in Lausanne, at FIG Headquarters on 30<sup>th</sup> July 2010. The Gymnast presented himself alone in front of the Disciplinary Commission.

During the hearing, the Gymnast explained that he had indeed retired from competition at the end of 2008 and that in the first half of 2009 he was just acting as a coach in a small club. He explained that he had not been informed by his NF of his inclusion in the 2009 RTP List. For him, it was public that he had retired and he expected his Federation to inform anyone of his retirement.

In May-June 2009, the Gymnast started to train again, after some injuries. According to his explanation, his NF did not believe that he could come back to competition after a 9 month break.

He declared that he did not know anything about the FIG Licences, nor about the Licence request made to FIG in his name in June 2009, that he had never seen the card and that he did not have his. He explained that the NF had always done all the administrative tasks for the gymnasts so that they could better concentrate on gymnastics.

He affirmed that the first time he had heard about whereabouts was at the end of 2009 and that he had not known what to do until his NF explained that he had to inform about his daily locations.

He admitted that his NF had forwarded to him the letter sent by FIG at the beginning of 2010, that he had received his ADAMS account, that he had been requested by his NF to check his emails and update his account. He said that he had asked for the help of the Romanian National Anti-Doping Agency.

The Gymnast acknowledged that he did not complete his whereabouts until March 2010 and that he neglected the following months, as he had personal problems and because he was thinking at the beginning that it was optional. He specified that he was not trying to hide something but that he was not focused on this because his mind was somewhere else. To support his argument, he added that he had always complied with doping tests when requested.

He confirmed that he was not very concerned about administration and did not realise the importance of the doping documents.

The whereabouts information of the Gymnast on ADAMS from March to July 2010 provided only his daily residence, except for March where his training location was registered as an all day location on top of his daily residence.

## **In Law**

### Violation number one

The Disciplinary Commission considers that Marian Dragulescu competed without having satisfied the requirement of article 5.6.2 FIG ADR to notify FIG about his return to competition six months prior to his return even though he had been duly informed by FIG, through his NF. Because he failed to give the required notice to FIG he did not make himself available for out-of-competition testing for at least six months prior to returning to competition as required by article 5.6.2 FIG ADR.

Article 5.6.2 FIG ADR is a rule designed to prevent athletes from retiring in order to avoid the prospect of drug testing and returning to competition immediately after what might be called a doping break. The rule exists to deter doping, help ensure a level playing field and promote confidence in the integrity of Gymnastic competitions.

Even if the ROU-NF had thought that the request of Licence could have been considered as a notification of return to competition, it was not made six months prior to the participation of the Gymnast in the World Championships.

According to article 5.6.2 FIG ADR, the Gymnast remains responsible of notifying FIG. However, as the ROU-NF seems to make itself responsible of the complete administration of its gymnasts,

the ROU-NF should have been more careful on the anti-doping requirements and on the given deadlines, furthermore as it had been duly informed by FIG.

The Disciplinary Commission consequently considers that a request for a FIG Licence does not substitute the notification of the return to competition.

The Disciplinary Commission notes nevertheless that FIG could have stopped the Gymnast from competing at the World Championships as the requirements to return to competition were not met.

According to the new version of the FIG ADR, reviewed on 27<sup>th</sup> February 2010, article 5.6.2 states that “a participation in an International Event without complying with [the procedure for returning to competition following retirement] automatically leads to Disqualification according to Article 9 of the [FIG ADR]”. Considering that this specification was not in the FIG ADR applicable to this case, the Disciplinary Commission considers that the disqualification is not compulsory.

The Disciplinary Commission will not disqualify the results obtained as it considers that there was no indication that the Gymnast committed his offense for the purpose of avoiding drug testing and because the NF failed in its responsibility to educate and advise the Gymnast in a responsible manner, considering that the Gymnast did put his trust in his federation to make sure the applicable rules were respected.

The Disciplinary Commission concludes that for the first violation, as the purpose of the whereabouts requirements is to test the top athletes, as the Gymnast has been tested twice during the 41st World Championships and as the results were both negative, a Whereabouts Failure is a sufficient sanction.

#### Violation number two

The Disciplinary Commission considers that upon the notification to be included in the FIG 2010 RTP List, the Gymnast did not comply with his duty to complete whereabouts for the first quarter within the given deadline, even though he had received two reminders.

The Disciplinary Commission concludes that FIG should record a second Whereabouts Failure against the Gymnast, according to articles 11.3.5 IST and 5.5.2 FIG ADR.

#### Violation number three

Considering that in the whereabouts of the Gymnast there were no training location, work or any regular activity such as his travel to Lausanne, for the quarters one to three of 2010, the Disciplinary Commission observes that the Gymnast did not duly comply with his duty to give complete information about his daily whereabouts in accordance with articles 11.3.1 IST and 5.5.1 FIG ADR.

According to the Disciplinary Commission, the declarations of the Gymnast show that he did not have the conscience of the importance of having accurate whereabouts. For instance, he realised that he should have made a modification for his travel to Lausanne only when the Panel told him

so during the hearing. He believed that as FIG was aware of his travel he did not have to update his whereabouts.

The Disciplinary Commission stresses that the whereabouts are not only for FIG but in order for all Anti-Doping Organisations to organise anti-doping tests. The whereabouts requirements reflect the important duty of athletes and national federations to ensure that all FIG RTP gymnasts be available for out of competition drug testing.

In fact, the Disciplinary Commission estimates that it would be unfair to the Gymnast to consider a third violation for the fact that he appeared before the Disciplinary Commission without having previously made the necessary changes in his whereabouts, since he was at the hearing to defend himself about the other mentioned violations.

Therefore, the Disciplinary Commission considers that the Gymnast was sincere in his statements and that a third whereabouts violation, under these circumstances, implying a minimum of one year suspension in accordance with article 10.3.3. FIG ADR, would be too strong. It therefore gives the Gymnast a strong warning.

The Disciplinary Commission therefore underscores that the Gymnast should be very careful in the future with the whereabouts requirements because if any new whereabouts failure is recorded against him within 18 months, his case would be sent to the Disciplinary Commission again and this time he would be sanctioned with a minimum of one year suspension to a maximum of two years suspension, according to article 10.3.3 FIG ADR.

The Gymnast promised at the hearing that he would fully complete the whereabouts for the 4<sup>th</sup> quarter and also that he would make the due changes to the remaining period of the 3<sup>rd</sup> quarter so that it would in fact correspond to his true daily life and not just something vague like it was at the time of the hearing (everyday “a casa” – at home). He promised to make these changes by 15<sup>th</sup> August 2010.

The Disciplinary Commission trusts that this decision will be read by all of FIG's member federations who bear the responsibility to undertake to educate their athletes regarding whereabouts and the retirement process and who are hereby advised that future violations of athlete whereabouts requirements may be met with higher sanctions.

The Disciplinary Commission stresses that a National Federation has the responsibility to inform its gymnasts of any communication. It cannot consider as sufficient to just make the gymnasts sign documents. Gymnasts have to be informed and be aware of the content of any document they sign. National Federations have the duty of educating their gymnasts, in regard to doping and FIG Rules, and the duty to ensure the respect of the FIG ADR and collaboration with FIG, even when the responsibility of completing whereabouts is with the gymnasts. Article 12 FIG ADR allows FIG to sanction NFs who do not fulfill these obligations.

For these reasons, and on the basis of Articles 5.5.2, 5.6.2 FIG ADR, 11.3 IST the Disciplinary Commission considers that there was a violation of the FIG Anti-Doping Rules and proposes to the Presidential Commission to:

- **record a Whereabouts Failure against Marian Dragulescu for not having satisfied the requirements of article 5.6.2 FIG ADR to notify FIG about his return to competition six months prior to his return and for not having made himself available for out-of-competition testing;**
- **record a second Whereabouts Failure against Marian Dragulescu for the non completion of his whereabouts of the first Quarter of 2010 within the requested deadlines;**
- **give Marian Dragulescu a strong warning for the incomplete whereabouts submissions he has made.**

Costs of Proceedings:

According to article 12.3 FIG ADR, the costs of the disciplinary proceedings (including the hearing expenses, the Disciplinary Commission and Presidential Commission) shall be paid by the Federatia Romana de Gimnastica for an amount of CHF 6217.-.

Remedy:

The appeal duly signed by the Appellant and with rationale, shall be sent in writing, to the address of the FIG headquarters to the attention of the FIG Appeal Tribunal within 21 days from the notification of the decision. The Appellant shall indicate if his appeal is intended to be dealt with within the framework of a hearing or review of the case, without appearance of the parties.

Should the Appellant wish to call witnesses or experts, a hearing shall be held.

The appeal shall either be directly delivered to the FIG headquarters at the latest within the appeal deadline or to a Swiss post office at the latest by midnight of the last day of the deadline. The Appellant is responsible for showing proof, within a time limit to be determined by the President of the Appeal Tribunal, that his appeal has been lodged in due time, otherwise, the appeal shall be considered inadmissible.

The Appellant shall pay in advance the expenses of CHF 5,000.- to the FIG account at the same time as he shall lodge his appeal and at the latest by the end of the time limit for the appeal. While this amount shall be reimbursed to the appellant in the event that his appeal is allowed, this amount shall be kept by the FIG in the event that his appeal is considered inadmissible or is fully or partly rejected. The FIG is exempt from the obligation to pay the expenses in advance for its appeal.

Should the Appellant omit to pay in advance the expenses of CHF 5'000.- within the time limit, his appeal shall be considered inadmissible.

The appeal statement shall contain an account of the facts, the reasons for the appeal, the presentation of all evidence relied on by the appellant or an offer to present all the evidence (such as, the request for the hearing of witnesses or the request for an expert) and the arguments of the Appellant, failing which it shall be considered inadmissible.

The Appellant shall not be authorized to produce new elements of proof once his appeal is submitted, unless he justifies that he has not been able to do so for reasons beyond his control or his behest. The Appeal Tribunal may automatically conduct the investigations they may deem necessary.

Lausanne, 18 August 2010

**Fédération Internationale de Gymnastique**

**In the name of the Disciplinary Commission**



Mr Hached GHARBI  
President



Mrs Margarida DIAS FERREIRA  
Member



Mr Paul Engelmann  
Member