



## **Decision**

by

the FIBA Disciplinary Panel established in accordance with  
Section H.7.8.3 of the  
Internal Regulations governing Doping Control ("IR")  
in the matter

**Damien Lamone KINLOCH**

**(born 4 January 1980)**

**("the Player")**

(Nationality: USA)

**Whereas**, the Player is a professional basketball player.

**Whereas**, in 2005 the Player was suspended for four games for a doping offence in France on the basis of a positive test for cannabis.

**Whereas**, the Player underwent a doping test on 26 March 2008 in Abdi İpekçi Arena, Istanbul (Turkey) after a game of the regular season of the Turkish league between Efes Pilsen and the Player's club, Alpella Basketbol Kulübü (the Club).

**Whereas**, despite the fact that the result of measurements of the pH value and the specific gravity of the urine is to be indicated on the Official Doping Control Report pursuant to H 7.7.2.9 of the IR, the respective boxes in the form were not filled out on the occasion of the sample collection of Player's urine on 26 March 2008.

**Whereas**, the analysis of the Player's A sample was conducted at the Laboratory of Ankara (Turkey) which is a WADA-accredited laboratory.

**Whereas**, a prohibited substance (Tetrahydrocannabinol metabolite), listed in WADA's Prohibited List (which is in force since 1 January 2008) under letter S8, was found in the Player's urine in a quantity of  $171,99 \pm 2,55$  ng/ml (the threshold being 15 ng/ml).

**Whereas**, in two emails sent respectively on 28 and 29 August 2008 the Ankara laboratory confirmed that measurements of the pH value and the specific gravity of the urine were carried out at the laboratory upon arrival pursuant to Art. 5.2.4.1.2 of the WADA International Standard for Laboratories and that the values were in line with the standards of the Laboratory thus allowing proper testing.

**Whereas**, based on the adverse analytical finding in respect of the Player's A sample, the Turkish Basketball Federation (TBF) Disciplinary Board by decision no. 82 of 15 April 2008 provisionally suspended the Player and notified the decision on the same day to Mr. Kerim Sen as "the authorized person in the club" vis-à-vis the Federation. In this notification the player was invited to request the opening of the B-Sample as soon as possible.

**Whereas**, according to the 18 June 2008 TBF Disciplinary Board decision no. 117, (see below), the Club notified TBF decision no. 82 to the Player and terminated the employment contract with him. Mr. Ömer Kart, the Player's Manager, was also informed by fax of April 29, 2008.

**Whereas**, on 8 May 2008 the Player's Attorney filed a petition to the TBF Disciplinary Board against the above decision,

- confirming that the Club had notified the Player informing him that his employment contract was terminated, and
- contending that no notification to the player was made until the day of the 8 May 2008 petition.

**Whereas**, on 13 May 2008 the Disciplinary Board of TBF advised the Player's Attorneys

- that according to Art. 50 of the Discipline Directive "the notification sent to the athlete's sport club is accepted as it is send to athlete" and by sending the notification to the Club's Manager, the athlete was considered to have been duly informed.
- that based on the annexes to the Player's Attorneys petition, the Club "has notified the athlete and ended his relationship with the Club".
- that the athlete is required to know the anti-doping rules, which in any event were sent to the athlete's club on 15 April 2008 with the invitation to declare whether he wanted the B-sample to be opened.

**Whereas**, as can be seen from the 18 June 2008 TBF decision (see below) the TBF wrote to the Player's Attorneys on 6 June 2008, granting a further five days to request the opening of the B sample, as follows:

*"(omissis) Besides in the framework of Doping Legislation you stated in detail in your petition for preventing any loss of right on behalf of the sportsman as a result of any lack of communication between*

*Club-Sportsman-Representative, within the scope of Doping Legislation, you shall file an application in a written form to us within 5 days (involving information whether you request to be present in the course of analysis or not) for the analysis of the sample (B) and if you do not file a written and clear application this shall mean that you do not request for the analysis of sample (B) and the case shall accordingly be evaluated. (omissis)".*

**Whereas**, on 9 June 2008 the Player's Attorneys replied to TBF Disciplinary Board contending that the 5-day period granted for the declaration of the opening of the B-sample "has no legal basis", as the regulations provided for a 10-day period.

**Whereas**, no request to examine the B sample was received from the Player or his Attorneys at any time.

**Whereas**, on 18 June 2008 TBF Disciplinary Board rendered its decision no. 117, rejecting all of the Player's arguments and imposing on him a two years' ineligibility period starting from the date of the notification.

**Whereas**, on 24 June 2008 the Player's Attorneys appealed the TBF Disciplinary Board decision no. 117 before the Board of Arbitration of the Directorate of Youth and Sports, which dismissed such an appeal, holding that "no acts contrary to the provisions of the legislation were performed".

**Whereas**, on 2 September 2008 the Player and his Attorneys, Mr. E. Tunç Lokum and Ms. Z. Nilüfer Koçer, were heard via telephone conference by a FIBA Disciplinary Panel composed of Mr. Antonio Mizzi, President of FIBA's Legal Commission and of Dr. Heinz

Günter, Vice President of FIBA's Medical Commission. Ms. Cendrine Guillon, FIBA's Anti-Doping Officer and Dr. Dirk-Reiner Martens, FIBA Legal Advisor were also in attendance.

**Whereas**, during the hearing the Player

- denied that he has used cannabis;
- submitted
  - (i) that the doping test procedure was invalid, because the pH and the specific gravity of his urine sample were not reported in the Official Doping Control Report, and
  - (ii) that the Turkish Basketball Federation failed to grant to the Player sufficient time to decide whether he wanted the B sample to be tested;
- confirmed that he exhausted all possible appeals against the TBF Disciplinary Board decision before the Turkish authorities; and
- confirmed that in 2005 a sanction was imposed on him in France for the use of cannabis.

**Whereas**, during the hearing the Player's Attorneys stated that the Player had not requested the opening of the B sample, because in his view the departure from WADA's International Standard for Testing in respect of the failure to measure the pH value and the specific gravity at the time when the sample was taken, had already invalidated the entire test.

NOW, therefore the Panel takes the following (Art. H.7.8.3.1 IR):



## DECISION

**A period of two years ineligibility, i.e. from 15 April 2008 to 14 April 2010, is imposed on Mr. Damien Lamone KINLOCH.**

### Reasons

1. The Panel's decision is based on H.7.8.5.5 of IR which provides that

*"In the event that a basketball Player is found guilty of doping during Doping Control tests conducted under the control of organisations outside FIBA and its national member federations (e.g. state bodies, the IOC or other national or international sports organisations inside or outside the Olympic movement), the Disciplinary Panel shall decide whether and to what extent a sanction shall be imposed on the Player for the purposes of FIBA Competitions; in taking the decision the reliability of the doping test and of the analysis of the sample and the substance detected shall be taken into account." (emphasis added)*

2. The Panel notes that according to the IR it is called upon to make an own decision based on the IR and independently of the decision of the TBF. The Panel thus does not review or adopt the TBF decision, but simply examines the "reliability of the doping test and of the analysis of the sample and then takes a decision based on the IR.

**A) As to the regularity of the test.**

3. The Player raised as his first objection that the test carried out on the Player's A sample is to be declared invalid, because the pH value and the specific gravity of his urine were not measured and not indicated in the Official Doping Control Report.
4. The Panel notes that there are two points in time on which measurements of the pH value and the specific gravity of the urine are to be carried out.
5. The first measurement of pH and of the specific gravity of the urine is to be made at the time of the sample collection pursuant to Art. C 4.15 of WADA's International Standard for Testing, which provides that

*"The DCO shall use the relevant laboratory's guidelines for pH and specific gravity to test the in the collection vessel to determine if the Sample is likely to meet the laboratory guidelines. If it is not, then the DCO shall follow Annex F – Urine Samples – Samples that do not meet laboratory pH and specific gravity guidelines."*

6. The *ratio* of said provision is to ascertain that the pH and the specific gravity of the urine are sufficient (pursuant to the standards of the laboratory which is going to examine the samples, which may be different from other laboratories, no minimum standard requirements having been fixed in the IR or the WADA rules) for the laboratory to carry out the test.
7. If such values are too low, it may be difficult for the laboratory to trace doping substances in the sample, this being clearly to the advantage of the athlete. In these cases the test is repeated by the DCO.

8. If a doping substance is found (in particular in the event of positive results far in excess of the threshold, as is the case here), even though the pH and /or specific gravity are below the standard, there is no doubt that there is a doping violation. The pH and the specific gravity of the urine have no impact on the outcome of the test but may render the test impossible.

9. Art. H.7.3.3. of the IR states that

*"departures from the International Standard for Testing which did not cause an Adverse Analytical Finding or other anti-doping rule violation shall not invalidate such results."*

10. In line with the above provision Art. H.7.8.3.5 of the IR further provides for that

*"any complaint against faulty laboratory proceedings is not valid unless these faulty proceedings had an influence on the results of the Doping Control tests."*

11. The Panel is of the view that the absence of the record on the Official Doping Control Report of the pH and of the specific gravity of the sample did not cause or influence the Adverse Analytical Finding on the Player's sample and that therefore the result of such test is valid.

12. It should be added that measurements of pH and of specific gravity of the urine were carried out at the Laboratory in accordance with Art. 5.2.4.1.2. of WADA's International Standard for Laboratories, which provides that



*"The Laboratory shall measure the pH and the specific gravity."*

13. The *ratio* of this provision is to be found in the need to ascertain that the sample is apt to be tested, e.g. that it is not too diluted.
14. The Panel notes that the Laboratory made the measurements of the pH and the specific gravity upon arrival of the sample and that they were in line with the laboratory standards, which in any event supersedes any possible lack of measurement at the sample collection.
15. In the Panel's views the outcome of such measurements confirms that the test is reliable and valid. The Player's argument in this respect must fail.

**B) As to the alleged breach of notification rules**

16. With regard to the Player's argument that he was not directly informed about the result of this doping test and that the further 5-days deadline for requesting the opening of the B sample was too short, the Panel notes that these arguments relate to possible violations of due process in respect of the national anti-doping rules.
17. As stated above, issues outside the scope of H.7.8.5.5 of IR are not to be reviewed by the Panel. Therefore, arguments made in respect of the national proceedings are irrelevant for this decision unless they relate to the reliability of the test or the analysis of the sample or unless the Player has not been granted an opportunity at all to have the B-test performed. .

18. Without prejudice to the foregoing para 18, the Panel in any event notes the following:
19. The allegation that the player was not directly informed must fail since at the latest at the time of the 8 May 2008 petition of his Attorneys, the Player was informed.
20. As to the argument of an sufficient time for the Player's decision-making on the opening of the B-sample, the Panel notes
- that at the very latest when the Player's Attorneys got involved (i.e. in early May 2008), the Player must be deemed to know that he has the right to request the opening of the B-sample, and
  - that on 6 June 2008 the Player was given an additional 5 days to make his decision in this regard.
21. The Panel finally notes that the Player's Attorneys confirmed during the hearing by the FIBA Disciplinary Panel that they deliberately refrained from requesting the opening of the B-sample because in their view the procedure for the examination of the A-sample was invalid and therefore no examination of B-sample was necessary. The Player had all the necessary time to request the opening of the B-sample, but deliberately failed to do so.

### C) Conclusion

22. It is therefore the Panel's view that the Player committed an anti-doping-rule violation pursuant to H 7.2.1.1. of the IR as a prohibited substance was found in his urine sample.

23. WADA's Prohibited List identifies cannabinoids as a Specified Substance, for which, according to H 7.8.2.2. of the IR, in the event that the Athlete can establish that the use of such substances was not intended to enhance his sport performance, the period of ineligibility is as follows

"First violation: at a minimum, a warning and reprimand and no period of Ineligibility from future Events, and at a maximum one (1) year's ineligibility.

Second violation: two (2) years Ineligibility

Third violation: lifetime Ineligibility

24. Since this is the Player's second violation with a specified substance the Panel has no option than to impose two years ineligibility, starting from the day in which he was provisionally suspended, i.e. from 15 April 2008.

The Panel wishes to add that in the Player's favour it is assumed that there was no intention on his part to enhance his sport performance.

25. This decision is subject to an Appeal according to the FIBA Internal Regulations governing Appeals as per the attached "Notice about Appeals Procedure".

Geneva, 25 September 2008

On behalf of the FIBA Disciplinary Panel



Antonio Mizzi  
President of the Disciplinary Panel