

Decision

by

the FIBA Disciplinary Panel established in accordance with
Article 8.1 of the
FIBA Internal Regulations governing Anti-Doping
in the matter

Çağlar Gürle
(born 13 June 1986)

(“the Player”)
(Nationality: Turkey)

Whereas, the Player underwent a doping test on 10 January 2009 in Bursa (Turkey) after the Turkish 2nd Division game between Bursa Basketball and Bornova Belediyespor;

Whereas, the analysis of the Player's sample was conducted at the Laboratory of Ankara (Turkey) which is a WADA-accredited laboratory. The sample showed the presence of norandrosterone (>10ng/ml), noretiocholonolone, methyltestosterone (metabolite 2), methandienone (metabolite 3), which are all prohibited substances under the applicable rules. The Laboratory also reported a T/E ratio greater than 4;

Whereas, the Player waived his right to request an analysis of the B sample;

Whereas, on 16 April 2009 the Disciplinary Commission of the Turkish Basketball Federation decided to impose an eight month suspension on the Player starting from 23 January 2009 and a fine of TL 4,000;

Whereas, the Player filed an appeal against such decision only as regards the payment of the fine imposed on him, requesting *inter alia* “to pay it at the end of the 8 months prohibition penalty (sic) in 4 instalments”;

Whereas, on 25 June 2009 the Arbitration Tribunal of the Turkish Directorate of Youth and Sports rejected the Player’s appeal on the basis that “the payment of the fine in instalments could be decided during [the] execution [of the decision]”;

Whereas, on 19 August 2009 the Player filed with FIBA a letter titled “My Defence”;

Whereas, on 26 August 2009 the Player through his sister, Ms. Pinar Can Gürle, exercised his right to be 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 Anti-Doping Manager, and Mr. Andreas Zagklis, FIBA Legal Advisor, were also in attendance;

Whereas, the Player

- did not contest the result of the test;
- argued that ever since he started playing professional basketball he was considered a talented player who needed to take up weight in order to better compete against players of his size (2,08 m);
- argued that he had unsuccessfully tried to gain weight and grow his muscles in the past through dietary and training programmes suggested by doctors and trainers respectively;
- argued that during the 2008/2009 season his coach did not field him in games considering that the Player was too thin for his position. As a result the Player started thinking his body was “not normal”;
- submitted that a person approached him after a game in Istanbul and suggested to him to take “pills that help gaining weight”; the same person received a small amount of money from the Player and provided him with a plastic bag containing “about 50 pills with different colours” as well as with “ampules for injections [...] just for protecting [his] liver”;
- admitted that he did not make any research about the origin of the pills until after the positive result and that the person who provided them was not a doctor;

- submitted that he used the pills for three weeks prior to the doping control in question and that he had one injection given to him by a pharmacist;
- admitted that he “made the biggest mistake of [his] life by using th[ose] pills”;
- stated that since he was suspended in Turkey on 23 January 2009 he did not participate in any competition organised by FIBA or by a national member federation affiliated to FIBA;
- affirmed that he had committed no previous anti-doping rule violation.

Now, therefore the Panel takes the following:

DECISION

A period of two (2) years ineligibility, i.e. from 23 January 2009 to 22 January 2011, is imposed on Mr. Çağlar Gürle.

Reasons:

1. The Player has committed an anti-doping-rule violation pursuant to Article 2.1 of the FIBA Internal Regulations governing Anti-Doping (the “FIBA ADR”) since norandrosterone, noretiocholonolone, methyltestosterone (metabolite 2), methandienone and testosterone, all prohibited substances listed in WADA's 2009 Prohibited List under letter S.1.1 (Anabolic Androgenic Steroids), were found in his urine sample.
2. Further, the Panel notes that the Player admitted the anti-doping rule violation and expressed regret for his actions. Therefore, the main issue to be decided by the Panel is the period of ineligibility applicable to this case.
3. In that respect, the Panel takes note of the following provisions of the FIBA ADR:

“10.2 Ineligibility for Presence, Use or Attempted Use, or Possession of Prohibited Substances and Prohibited Methods

The period of Ineligibility imposed for a violation of Article 2.1 (Presence of Prohibited Substance or its Metabolites or Markers), [...] shall be as follows, unless the conditions for eliminating or reducing the period of Ineligibility, as provided in Articles 10.4 and 10.5, or the conditions for increasing the period of Ineligibility, as provided in Article 10.6, are met:

First violation: Two (2) years' Ineligibility.

[...]

10.6 Aggravating Circumstances Which May Increase the Period of Ineligibility

If FIBA, its Zone or a National Federation establishes in an individual case involving an anti-doping rule violation other than violations under Article 2.7 (Trafficking) and 2.8 (Administration) that aggravating circumstances are present which justify the imposition of a period of Ineligibility greater than the standard sanction, then the period of Ineligibility otherwise applicable shall be increased up to a maximum of four years unless the Player or other Person can prove to the comfortable satisfaction of the hearing panel that he did not knowingly violate the anti-doping rule. A Player or other Person can avoid the application of this Article by admitting the anti-doping rule violation as asserted promptly after being confronted with the anti-doping rule violation by FIBA, its Zone or a National Federation.”

(emphasis added by the Panel)

4. In addition, the Panel takes note of the Comment to Article 10.6 of the 2009 World Anti-Doping Code:

“Comment to Article 10.6: Examples of aggravating circumstances which may justify the imposition of a period of Ineligibility greater than the standard sanction are: the Athlete or other Person committed the anti-doping rule violation as part of a doping plan or scheme, either individually or involving a conspiracy or common enterprise to commit anti-doping rule violations; the Athlete or other Person Used or Possessed multiple Prohibited Substances or Prohibited Methods or Used or Possessed a Prohibited Substance or Prohibited Method on multiple occasions; a normal individual would be likely to enjoy the performance-enhancing effects of the anti-doping rule violation(s) beyond the otherwise applicable period of Ineligibility; the Athlete or Person engaged in deceptive or obstructing conduct to avoid the detection or adjudication of an anti-doping rule violation. For the avoidance of doubt, the examples of aggravating circumstances described in this Comment to Article 10.6 are not exclusive and other aggravating factors may also justify the imposition of a longer period of Ineligibility. [...]”

(emphasis added by the Panel)

5. The Panel finds that, in principle, the presence of five prohibited substances in the Player's sample would justify the imposition of a period of ineligibility greater than the standard sanction of two years.
6. However, after reviewing the file and especially in view of the fact that the Player
 - waived his right to request analysis of the B sample and subsequently *acknowledged* the anti-doping rule violation both before the Turkish disciplinary bodies and this Panel, providing a consistent explanation of the circumstances under which the prohibited substances entered his body;
 - due to the difficult financial situation of his family lodged an appeal against the Turkish Basketball Federation decision only as regards the payment of the fine, without challenging the fact that he committed the anti-doping rule violation;the Panel finds that the Player is entitled to avoid the application of Article 10.6 of the FIBA ADR. Therefore, the Panel holds that it is appropriate to impose on the Player a sanction of two years.
7. The Panel deems fair pursuant to Article 10.9 of the FIBA ADR that the period of ineligibility is to start on 23 January 2009, as he was unable to play professional basketball since that date due to the suspension imposed by the Turkish Basketball Federation.
8. This decision is subject to an Appeal according to the FIBA Internal Regulations governing Appeals as per the attached "Notice about Appeals Procedure".

Geneva, 28 August 2009

On behalf of the FIBA Disciplinary Panel



Antonio Mizzi
President of the Disciplinary Panel