



Decision

by

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

Andrey Chernysh
(born 30 August 1990)

hereafter:
(“the Player”)

(Nationality: Russian)

Whereas, the Player underwent an out-of-competition doping test organised by the Russian Anti-Doping Agency (“RUSADA”) on 7 July 2009 in Moscow (Russia) during a training camp of the Russian Basketball Federation (“RBF”) for U-19 players;

Whereas, the analysis of the Player's sample was conducted at the Laboratory of Moscow, which is a WADA-accredited laboratory. On 16 July 2009 the laboratory informed RUSADA, FIBA and WADA that the sample showed the presence of metabolites of nandrolone, namely 19-norandrosterone in a concentration above the threshold determined in the applicable rules (5,4 ng/ml \pm 0,8) and 19-noretiocholanolone.

Whereas, the Player did not request an analysis of the B sample;

Whereas, on 20 July 2009 the RBF imposed a sanction of three months with immediate effect on the Player;

Whereas, on 25 August 2009 the RBF decided to declare the Player eligible to participate in competitions as of 1 September 2009 and to initiate along with RUSADA an investigation on the circumstances surrounding the positive finding and the possible involvement of Dr. Yuriy Voronchickhin (“Dr. Voronchickhin”), medical doctor of the club BC Avtodor Saratov (“BC Avtodor”), who had been treating the Player after a series of injuries. In the meantime Dr. Voronchickhin would also remain suspended;

Whereas, on 8 September 2009 BC Avtodor terminated its employment relationship with Dr. Voronchickhin “for committed violation”;

Whereas, on 18 January 2010 the RBF confirmed its decision regarding the Player and imposed a life-time ban on Dr. Voronchickhin;

Whereas, by letter of the same day the RBF sent to FIBA a copy of the Player’s file;

Whereas, on 16 March 2010 the Player – assisted by Mr. Rodionov, President of BC Avtodor – exercised his right to be heard via telephone conference by a FIBA Disciplinary Panel composed of Dr. Wolfgang Hilgert, member of FIBA's Legal Commission and of Dr. Heinz Günter, Vice President of FIBA's Medical Commission. Ms. Cendrine Guillon, FIBA Anti-Doping Manager as well as Dr. Dirk-Reiner Martens and Mr. Andreas Zagklis, FIBA Legal Advisors, were in attendance;

Whereas, the Player at the hearing:

- did not contest the result of the test;
- stated that he is an amateur basketball player who plays in the 3rd division in Russia and that, during the last years, he was attending a boarding sports school in Saratov far from his family; BC Avtodor was covering his living expenses;
- stated that the doping test in question was the first in his career, while training with a group of players who were candidates for the U-19 national team of Russia;
- submitted that he was never selected in the final roster of the national team and has not played any international game in his career;
- submitted that in a period of approx. 18 months (July 2007 – January 2009) he suffered from three serious injuries and was operated three times. In 2008 he had two fractures (of the instep bone of the right hand and of the left leg fibula), most likely because he was very thin for his size (2.14m) and had a “weak bone system”;
- submitted that between January and March 2009 he was treated initially in the “Saratov Scientific and Research Institute of traumatology and orthopedics of Roszdrav” and subsequently was under the supervision of Dr. Voronchickhin who performed two injections on him without informing him about the substance injected;
- argued that, although he did not ask Dr. Voronchickhin about the substance injected, he had no idea that the injection could contain any prohibited substance;
- stated that he actually remained suspended from 20 July until 1 September 2009, i.e. for a period of forty two days;
- affirmed that he had committed no previous anti-doping rule violation.

Now, therefore, the Panel takes the following:

DECISION

A period of one years' ineligibility less forty two days already served, i.e. from 15 April 2010 to 4 March 2011, is imposed on Mr. Andrey Chernysh.

Reasons:

1. Article 2.1 of the FIBA Internal Regulations governing Anti-Doping (the "FIBA ADR") edition 2009 reads as follows:

"ARTICLE 2 ANTI-DOPING RULE VIOLATIONS

Players and other Persons shall be responsible for knowing what constitutes an anti-doping rule violation and the substances and methods which have been included on the Prohibited List.

The following constitute anti-doping rule violations:

2.1 The presence of a Prohibited Substance or its Metabolites or Markers in a Player's Sample.

2.1.1 It is each Player's personal duty to ensure that no Prohibited Substance enters his or her body. Players are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples. Accordingly, it is not necessary that intent, fault, negligence or knowing Use on the Player's part be demonstrated in order to establish an anti-doping violation under Article 2.1. [...]"

2. The Player has committed an anti-doping-rule violation pursuant to Article 2.1 of the FIBA FIBA ADR since metabolites of nandrolone, a prohibited substance listed in WADA's 2009 Prohibited List (the "2009 Prohibited List") under letter S.1.1.b (Endogenous Anabolic Androgenic Steroids when administered exogenously) was found in a concentration above the threshold in his urine sample. The 2009 Prohibited List expressly mentions that for norandrosterone "*an Adverse Analytical Finding reported by a laboratory is considered to be*

scientific and valid proof of exogenous origin of the Prohibited Substance. In such case, no further investigation is necessary". This fact remained uncontested.

3. According to Article 10.2 of the FIBA ADR

"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."

4. The Panel takes note of the Player's argument that the positive finding can be explained only by the injections performed by Dr. Voronchickhin during the last stage of his rehabilitation from two bone fractures.
5. In that respect, Article 10.5 of the FIBA ADR provides that if a Player establishes that he bears no fault or negligence (10.5.1) or no significant fault or negligence (10.5.2) the otherwise applicable period of ineligibility shall be reduced or even eliminated. In the event that the Player has violated Article 2.1 of the FIBA ADR, like in the present case, he must also establish how the Prohibited Substance entered his system.
6. The Panel makes reference to a letter by Dr. Voronchickhin dated 27 October 2009¹ and addressed to the President of RBF. The letter in its relevant part reads:

"During the 2007-2008 season Andrey Chernysh was operated upon injury of the knee joint meniscus, upon fracture of the instep bone of the right hand, and upon the fracture of the left leg fibula. In order to accelerate the regeneration and to decrease the treatment period, I decided to treat Andrey Chernysh with the course of nandrolone injections (2 injections on 26 January, 2009 and on 5 February, 2009). These injections were made in the recovery period in non-competitional (sic) period. The decision was made without

¹ The letter bears the date "27 October, 2007" which obviously is a clerical error, since it refers to facts that took place in 2008 and 2009.

previous agreement with the club and without informing the player. Besides I did not suppose that he could be called on to play for the National Team of another ages (sic) than he was.”

7. In view of the evidence before it and the reports by RBF and RUSADA, who investigated the matter and reached the same conclusion, sanctioning Dr. Voronchickhin with a life-time ban, the Panel finds that nandrolone was administered to the Player through the above-mentioned injections.
8. In this respect, the Panel is mindful of the principles laid down in Article 2.1.1 of the FIBA ADR and the relevant CAS jurisprudence and underlines that “It is each Player’s personal duty to ensure that no Prohibited Substance enters his or her body.” On numerous occasions this Panel has emphasized that a player cannot shift his own responsibility under the rules to his support personnel, be it technical, medical or other.
9. The Panel has received unclear evidence about the discussions between the Player and Dr. Voronchickhin. Although they have both testified that the Player was not informed about the content of the injections, the “Report No 3” by the RBF mentions that the Player was told “that these were vitamin injections”. In any event, the Panel considers the Player to be negligent in either not asking Dr. Voronchickhin at all or not enquiring in more detail what was being administered to him.
10. The Panel’s duty is therefore to review the circumstances surrounding the Player’s anti-doping rule violation and examine whether the level of his negligence would justify a reduction of the otherwise applicable period of ineligibility (see CAS 2004/A/690).
11. In this context, the definition of “No Significant Fault or Negligence” requires the Panel to look at the totality of the circumstances (see CAS 2006/A/1025): the Player has been living in Saratov away from his family and suffered the first two injuries before reaching the age of eighteen and the third only a few months after reaching adulthood. Indeed, a 17-year old

amateur player of 2.14m who lives in a boarding school has no easy task in overcoming back-to-back fractures of his bones: he has no alternative but to leave himself in the hands of the doctors. The Panel finds that the Player diligently selected the doctors treating him, since he was at the beginning treated in a hospital specialised in traumas and subsequently followed the rehabilitation program designed by the team doctor, a person to whom BC Avtodor had entrusted since 1999 the treatment of junior players.

12. Although the Player was not able to prove that he took all necessary precautions to exclude any reasonable chance of having a prohibited substance entering his body, the Panel is of the opinion that the Player's actions with respect to his treatment over this period of 18 months were proper and adequate at all times but for the two injections by Dr. Voronchickhin. It is evident that Dr. Voronchickhin acted entirely on his own initiative and – admittedly – attempting to impress his employers by expediting the rehabilitation of a multi-injured young player. The Panel feels that the Player's responsibility is not in question; however it should entail a reduced sanction. For such a player and under so unique circumstances as described above, the Panel agrees with the opinion expressed by the CAS that "*the requirements to be met by the qualifying element No Significant Fault of Negligence must not be set excessively high*" (CAS 2004/A/624 para. 81 et seq). Such a legal approach should apply to the case at hand where a Player, competing in an amateur sporting environment, found himself alone and in a very young age to deal with the recovery from three serious and successive orthopaedic surgeries.

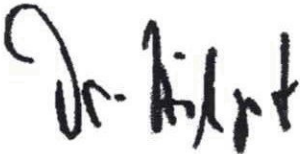
13. Based on the above findings, the Panel holds that the Player's negligence was not significant and that it is appropriate to impose on him a sanction of one (1) year. The period of forty two days that he already served on the basis of the RBF decision shall be credited against the aforementioned one-year period of ineligibility. The Panel emphasizes that it reached the above conclusions on the basis of very particular circumstances as evidenced, and without therefore intending to give any direction whatsoever for future cases.

14. The Panel deems it appropriate pursuant to Article 10.9 of the FIBA ADR that the period of ineligibility is to start on the date of this decision, i.e. 15 April 2010, since the Player has been participating in competitions already since 1 September 2009.

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

Geneva, 15 April 2010

On behalf of the FIBA Disciplinary Panel



Dr. Wolfgang Hilgert
President of the Disciplinary Panel