



Decision

by

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

Kerem Gönlüm
(born 22 November 1977)

hereafter:

(“the Player”)

(Nationality: Turkish)

Whereas, the Player underwent an in-competition doping test on 14 June 2009 in Istanbul (Turkey) on the occasion of a game between Efes Pilsen (“Club”) and Fenerbahçe Ülker for the Turkish Basketball League (“TBL”);

Whereas, the analysis of the Player's sample (# 2355651) was conducted at the Laboratory of Cologne (Germany), which is a WADA-accredited laboratory. On 15 July 2009 the laboratory informed the Turkish Basketball Federation (“TBF”) that the sample showed the presence of cathine in a concentration (10,7 µg/ml) above the threshold determined in the applicable rules (5 µg/ml);

Whereas, on 10 August 2009 the TBF provisionally suspended the Player and removed him from the list of its Men's National Team for the Eurobasket 2009;

Whereas, on 3 September 2009 the Cologne Laboratory informed TBF that

- the analysis of the B sample (which was attended by Prof. Ahmet Araman on behalf of the Player) confirmed the above positive finding,
- no pseudoephedrine or phenylpropanolamine could be detected in the sample, and
- the sample # 2355580 (which belonged to the Player's team-mate Mr. X) contained also cathine in a concentration which can "roughly be estimated to be 3 µg/ml", i.e. below the applicable threshold;

Whereas, on 26 October 2009 the TBF Disciplinary Committee imposed a "one year deprivation of rights and 10.000 TL fine" on the Player;

Whereas, following an appeal by the Player, on 17 December 2009 the Arbitration Board of the Turkish General Directorate for Youth and Sports imposed a "one year ban from competitions" on the Player and confirmed the monetary fine;

Whereas, on 27 January 2010 FIBA informed the Player of his right to request a hearing either by telephone conference or in person;

Whereas, on 15 February 2010 the Player informed FIBA that he would opt for a hearing in person to be organised in this matter;

Whereas, on 19 March 2010 at the FIBA Headquarters in Geneva (Switzerland) the Player was personally heard 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.

The following persons were also in attendance:

For the Player:

Dr. Cesare Jermini (Swiss counsel), Mr. Yildiray Efil and Ms. Berrak Tatar (Turkish counsels), Dr. Laurent Rivier (scientific expert), Mr. Cesur Kilinc and Mr. Alper Yilmaz (Club representatives).

For FIBA:

Ms. Cendrine Guillon (Anti-Doping Manager), Mr. Amir Ibrahim (Anti-Doping Assistant), Mr. Benjamin Cohen (Legal Affairs Manager) and Mr. Andreas Zagklis (Legal Advisor).

Whereas, in his written submissions of 17 and 24 March 2010 as well as during the hearing before the FIBA Disciplinary Panel the Player

- confirmed that, as declared on the doping control form, he did not take any medication in the 7 days before the doping control except for Vitamin C and a commonly used pain-killer (Novalgine) suggested by the team doctor;
- stated that his performance at the game in question was far below his average performance in the 2008/2009 TBL season, as reflected by his personal statistics, and thus there was no enhancement of his performance;
- argued that, since he is thirty-two years old, has had a career with significant achievements at national and international level (among which 101 participations with the Turkish Men's national team and 137 Euroleague appearances) and had renewed his contract with the Club for three more seasons and higher remuneration only a few weeks before the doping control, he had no reason or interest to resort to doping in order to enhance his performance;
- stated that he does not suffer from any chronic disease nor faced any injury in the days before the doping control. In fact he had no serious injuries in his long career and his

weight (102 kgs) is normal for his size (2.08m) and has remained stable throughout the last five years;

- provided a detailed report on his whereabouts, actions and persons accompanying him during the 48 hours before the doping control, from the moment the Club's delegation checked-in the hotel until the end of the sample collection process;
- did not contest the laboratory results and confirmed that he collaborated with the TBF from the moment he learned about the positive finding;
- argued that he did everything that was objectively possible to establish how cathine entered his body ;
- stated that he acted with all reasonable diligence during the relevant period in time, by following the team schedule and consuming exactly the same drinks and food as the rest of his team-mates;
- affirmed that he had committed no previous anti-doping rule violation and that, would he be sanctioned for two years, his career would come to an end.

The Panel has also received written witness or expert statements by the following persons:

- Dr. Laurent Rivier
- Mr. Kaya Peker (team-mate with whom the Player shared the hotel room)
- Mr. Mario Kasun (team-mate)
- Mr. Ergin Ataman (Club's coach)
- Mr. Yüksel Tezel (Club's trainer)
- Mr. Erşan Ateş (Club's doctor)
- Mr. Bahattin Tapan (Club's masseur)

Now, therefore, the Panel takes the following:

DECISION

A period of one year ineligibility, i.e. from 10 August 2009 to 9 August 2010, is imposed on Mr. Kerem Gönlüm.

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 cathine, a prohibited substance listed in WADA's 2009 Prohibited List (the “2009 Prohibited List”) under letter S.6.b (Specified Stimulants) was found in a concentration above the threshold in his urine sample. The 2009 Prohibited List expressly mentions that *“Cathine is prohibited when its concentration in urine is greater than 5 micrograms per millilitre”*. This fact remained uncontested.
3. Article 10.4 of the FIBA ADR reads as follows:

“10.4 Elimination or Reduction of the Period of Ineligibility for Specified Substances under Specific Circumstances

Where a Player or other Person can establish how a Specified Substance entered his or her body or came into his or her possession and that such Specified Substance was not intended to enhance the Player’s sport performance or mask the use of a performance enhancing substance, the period of Ineligibility found in Article 10.2 shall be replaced with the following:

First violation: At a minimum, a reprimand and no period of Ineligibility from future Events, and at a maximum, two (2) years of Ineligibility.

To justify any elimination or reduction, the Player or other Person must produce corroborating evidence in addition to his or her word which establishes to the comfortable satisfaction of the hearing panel the absence of an intent to enhance sport performance or mask the use of a performance enhancing substance. The Player or other Person’s degree of fault shall be the criterion considered in assessing any reduction of the period of Ineligibility.”

4. With respect to the prohibited substance in question, the expert opinion produced by Dr. Rivier (“Rivier Opinion”) reads in relevant parts as follows:

“Either in the natural form (as herb) or as pills/capsules, Cathine HCl is administered per os, only. After oral application, Cathine is absorbed via the intestines and eliminated via the kidneys. The medium half-life of elimination ($t_{1/2}$) of Cathine given alone is about 3 hours (BASF, technical information July 2009). This is a shorter time compared when a mixture of drugs is applied [...]

Cathine [...] suppresses the feeling of hunger, reduces the amount of sleep needed and generally acts as stimulant. [It] may be contra-productive in sport and more specifically in Basketball, as the eyes are no more able to react to variations in light intensities. [...]

It is quite unrealistic to calculate accurately the dose that has been possibly ingested by [the Player] and when in relation to the level [...] found in his urine. [A] rough estimate may indicate that the urine levels could have stay (sic) above the 5 µg/ml level in a 70 Kg BW healthy individual for no more than 15 hours. For the present athlete (more than 100 Kg BW) this time period would be approx. 30% less. [...]

[In the present case] khat leaves have not been chewed nor other [Over The Counter] drug preparations have not (sic) been ingested which contain pseudoephedrine or any other similar phenylethylamines able to produce norpseudoephedrine by metabolism when ingested. I can thus agree [...] that Cathine only was taken by the athlete, excluding possible intake of any other medicines, the usage of which is known to give raise to the detection of Cathine in urine.”

5. The Player has produced detailed documentation and witness statements with respect to his schedule before the doping control. He has been facilitated in his efforts by the fact that the Club's administration decided to have the entire team lodged in a hotel for two nights (12 and 13 June 2009) before the game of Sunday, 14 June 2009. In fact the Player has been able to reconstruct before this Panel with details where he was, what he did and what he ate/drank before and during the game. Except for the moments he visited the bathroom, he has been either with the entire team or with his team-mate Kaya Peker in room 712 of the hotel. In summary, the Player's exhaustive research came to the conclusion that "some of the food or drinks consumed in the hotel contained the substance".
6. Given that cathine is only administered *per os* and that it cannot have entered the Player's body through the chewing of khat or through the consumption of an "over the counter" product, the Panel shall focus on what the Player consumed in advance of the doping control which took place at 22.15 on 14 June 2009.
7. The Panel notes that the Player during the game used an isotonic drink which is provided by a Club's sponsor ("powerade") in sealed cans. This fact was confirmed by multiple witnesses since the Club – unlike other basketball teams – does not follow a practice of isotonic powder solutions where a member of the team prepares the players' refreshments before each game. Also, the Player confirmed that he cannot have inadvertently chosen a can opened by another player, since his shirt number was written on top of the can which he used throughout the game.
8. At the hearing the Player mentioned more than once that the last time he accessed an unsealed product was at the "coffee break" (including cheese toast, coffee, tea, juice, cookies and pasta) which took place between 17.30 and 18.00 at the hotel.

9. The Panel is ready to accept such argument. Indeed, if the Player had received cathine earlier in the day he would not be – according to uncontested medical evidence – in a position to sleep for two hours between 15.00 and 17.00 on 14 June, which he did according to the established schedule. One of the main effects of cathine is suppressing the need of sleep and the Player’s morning practice (1-hour shooting practice) is by no means an exercise so tiring that a professional basketball player of his level would be able to sleep even under the effect of cathine. Also, the Rivier Opinion makes it very unlikely that cathine could have entered and remained in the Player’s body in such high concentration from the time of his lunch (which was completed at approximately 13.45) until the doping control, i.e. almost 9 hours later.
10. In addition, the Panel notes that the detection of a low concentration of cathine in Mr. X’s sample, with whom the Player has had no social contact outside their professional activities, speaks in favour of a contamination in the products offered to the Player just before the game.
11. In view of the totality of the evidence before it and on a balance of probability (Article 3.3 of the FIBA ADR) the Panel considers that cathine entered the Player’s body through the meal served to the team at 17.30 on 14 June 2009.
12. Therefore, cathine being a specified substance, the Player must further “*produce corroborating evidence in addition to his or her word which establishes to the comfortable satisfaction of the hearing panel the absence of an intent to enhance sport performance or mask the use of a performance enhancing substance*”, in order to have the otherwise applicable sanction eliminated or reduced. The Panel notes at this point that the standard of proof is higher when it comes to assessing the Player’s degree of fault as a criterion for a possible reduction of the period of ineligibility.
13. The Player has been able to demonstrate that cathine is neither a popular stimulant nor in fact a substance with considerable – if any – enhancing effect for a basketball player. Although the

Efes Pilsen – Fenerbahçe Ülker matches attract a lot of public attention due to a traditional and local sporting rivalry, the Player has successfully participated in dozens of them in his career and he had just accomplished an important personal aim: he renewed his employment contract for three more seasons and for significantly higher remuneration. Also, the circumstances surrounding the presence of such substance in his body do not suggest that the Player had any intention to enhance his performance.

14. Further, 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.
15. In the present case, the Panel finds the Player negligent in that he did not take all necessary precautions to exclude any reasonable chance of having a prohibited substance entering his body. The fact that the Player assigned such duty to the Club’s personnel and the Club has used the same hotel for at least 5 years cannot automatically lead to an elimination of the period of ineligibility. Further supporting circumstances would be required to show that the presence of cathine in the products served to the team were totally outside the Player’s and his support personnel’s reach. Such legal and factual requirement has not been met.
16. On the other hand, the Panel is of the opinion that the Player’s degree of negligence is not significant. He did not receive any nutritional supplements or medication from unknown sources (see also CAS 2006/A/1025, para. 11.5.7): he just attended the team’s activities and had his meals served in a well accommodated hotel.
17. Based on the above findings, the Panel holds that it is appropriate to impose on the Player a sanction of one (1) year. 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.

18. The Panel deems it appropriate pursuant to Article 10.9 of the FIBA ADR that the period of ineligibility is to start on 10 August 2009, i.e. the date of the provisional suspension imposed by TBF, since the Player has not been able to participate in national or international competitions since that date.
19. This decision is subject to an Appeal according to the FIBA Internal Regulations governing Appeals as per the attached “Notice about Appeals Procedure”.

Geneva, 20 April 2010

On behalf of the FIBA Disciplinary Panel

Antonio Mizzi
President of the Disciplinary Panel