



## **Decision**

by

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

**Dainius Salenga**  
(born 15 April 1977)

hereafter:  
(**“the Player”**)

(Nationality: Lithuanian)

**Whereas**, the Player underwent an in-competition doping test organised by FIBA on 23 December 2010 in Moscow, Russia after the end of a Euroleague game between BC Khimki Moscow Region and BC Zalgiris Kaunas;

**Whereas**, the analysis of the Player's sample was conducted at the WADA-accredited laboratory in Moscow, Russia (“Laboratory”), which informed FIBA on 29 December 2010 that the analysis showed the presence of the prohibited substance Methylhexanamine in the Player’s sample.

**Whereas**, by letter dated 6 January 2011 FIBA informed the Player regarding the adverse analytical finding. The Player was also informed that, in accordance with article 7.5.1 of the FIBA Internal Regulations governing Anti-Doping (“FIBA ADR”) he was suspended with immediate effect both for international and national competitions;

**Whereas**, by letter dated 7 January 2011 to FIBA, the Lithuanian Basketball Federation confirmed that the Player was suspended both from international and national competitions;

**Whereas**, by letter dated 12 January 2011 the Player waived his right to have the B sample analysed and requested copies of the A sample documentation package;

**Whereas**, by letter dated 31 January 2011 FIBA forwarded to the Player a copy of the laboratory documentation package and informed him that, in accordance with Article 8.1 of the FIBA ADR, the FIBA Disciplinary Panel would decide whether and to what extent a sanction should be imposed upon the Player for the purposes of FIBA competitions. In the same letter, the Player was informed about his right to be heard either by telephone conference or in person;

**Whereas**, by letter dated 7 February 2011 the Player explained his position regarding the adverse analytical finding and requested to be heard by telephone conference;

**Whereas**, on 10 February 2011 the Player – assisted by his legal representative Mr. Linas Jakas - was 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, President of FIBA's Medical Commission. Ms. Virginie Alberto, FIBA Anti-Doping Officer, Mr. Amir Ibrahim, FIBA Anti-Doping Assistant as well as Mr. Andreas Zagklis, FIBA Legal Advisor, were also in attendance;

**Whereas**, in his written statement and at the hearing the Player:

- did not contest the result of the test;
- stated that, for reasons of convenience, he keeps all capsules from his supplements and vitamins in one unlabelled bottle. He distinguishes and chooses the capsules before ingesting them on the basis of colour and shape;
- submitted that in April 2009 he received the supplement named *DMAA* (Dimethylamylamin) as a present for his 32<sup>nd</sup> birthday from a friend who had just arrived from the USA and who had also in the past brought him nutritional supplements which the Player could not find in Lithuania;
- submitted that he consulted the doctor of Zalgiris Kaunas and carefully checked the 2009 WADA list of prohibited substances and found out that the *DMAA* does not contain any prohibited substances; he then went on and used said capsules in April, May, August and September 2009 during training sessions but not during games;
- stated that in the period when he used *DMAA*, he used to keep capsules of this supplement in the same bottle together with other supplements and substances;
- stated that he did not feel satisfied with *DMAA* as a supplement and for this reason he did not use it again after he (thought that he had) run out of capsules;
- argued that he did not know that one or more capsules of *DMAA* had been left in the bottle. Due to their similarity in colour and shape, he confused *DMAA* capsules with those of Aconitum “Vitamin C prolong” before the game of 23 December 2010. This is why he subsequently noted on the doping control form that the capsules he consumed were “vitamin”;
- submitted that the *DMAA* capsules that he consumed by mistake were the reason for the positive finding;
- stated that the plastic bottle he used to keep his supplements is not transparent and it was never empty as he has been adding constantly new capsules or pills of supplements in it;
- asserted that this was his first anti-doping rule violation;
- stated that since the game in Moscow on 23 December 2010 when the doping control was made he did not play professional basketball and the contract with the basketball club



Zalgiris Kaunas was terminated by the latter after the results of the doping control were revealed;

- acknowledged that he is responsible for the anti-doping rule violation;
- requested that the 2011 WADA Prohibited List is applied to his case and that the minimum sanction of reprimand is imposed on him, since he had no intention to enhance his performance.

Now, therefore, the Panel takes the following:

### **DECISION**

**A period of six (6) months' ineligibility, i.e. from 7 January 2011 to 6 July 2011, is imposed on Mr. Dainius Salenga.**

### **Reasons:**

1. The Panel shall first deal with the issue of applicable regulations. In compliance with the World Anti-Doping Code ("WADC") and the FIBA ADR, FIBA has endorsed the WADA 2011 Prohibited List (the "New List") which has substituted the WADA 2010 Prohibited List (the "Old List"). The New List entered into force on 1 January 2011.
2. Article 16.6 of the FIBA ADR reads as follows:

*"16.6 These Anti-Doping Rules shall come into full force and effect on 1 January 2009 (the "Effective Date"). They shall not apply retrospectively to matters pending before the Effective Date; provided, however, that:*

*16.6.1 Any case pending prior to the Effective Date, or brought after the Effective Date based on an anti-doping rule violation that occurred prior to the Effective Date, shall be governed by the predecessor to these Anti-Doping Rules in force at the time of the*

*anti-doping rule violation, subject to any application of the principle of *lex mitior* by the hearing panel determining the case.*

(emphasis added by the Panel)

Besides this mention in the FIBA ADR and in Article 25 of the WADC, the application of the principle of *lex mitior* in doping cases has also been established by the Court of Arbitration for Sport (“CAS”):

*“This principle applies to anti-doping regulations in view of the penal or at the very least disciplinary nature of the penalties that they allow to be imposed. By virtue of this principle, the body responsible for setting the punishment must enable the athlete convicted of doping to benefit from the new provisions assumed to be less severe, even when the events in question occurred before they came into force.”*

*[CAS Advisory Opinion 94/128 (UCI and CONI), CAS Digest I, p.509]*

3. Article 4.4.2 of the FIBA ADR provides:

*“4.2.2 Specified Substances*

*For purposes of the application of Article 10 (Sanctions on Individuals), all Prohibited Substances shall be “Specified Substances” except (a) substances in the classes of anabolic agents and hormones; and (b) those stimulants and hormone antagonists and modulators so identified on the Prohibited List. Prohibited Methods shall not be Specified Substances.”*

4. Further, Article 10.4 of the FIBA ADR provides:

*“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.”*

5. It is evident that, although the FIBA ADR have not been amended in 2011, the classification of stimulants into specified or non-specified (as referred to in Article 4.4.2.b of the FIBA ADR) depends exclusively on the prohibited list, as annually updated by WADA. Further, Article 4.4.2 is linked to Article 10.4, which provides that the applicable period of ineligibility for cases where a specified substance was present in a player's body is different (ranging from a reprimand to two years) than the period of ineligibility for non-specified substances (two years). The Panel thus concludes that the New List, as incorporated by the FIBA ADR, clearly qualifies as *lex mitior* since it allows for a sanction of less than two years to be imposed, without seeking recourse to Article 10.5 [No (significant) Fault or Negligence].
6. In the present case, the Player committed an anti-doping rule violation since the prohibited substance Methylhexaneamine (Dimethylpentylamine) was found in his urine sample. This fact remained uncontested.
7. The Player's sample was taken on 23 December 2010, when the Old List was still applicable. Under letter S.6 of the Old List, methylhexaneamine was a non-specified stimulant. On the other hand, the New List provides:

*“All Prohibited Substances shall be considered as “Specified Substances” except Substances in classes S1, S2.1 to S2.5, S.4.4 and S6.a, and Prohibited Methods M1, M2 and M3. [...]*

*S6. Stimulants include [...] b: Specified Stimulants [...] methylhexaneamine (dimethylpentylamine) [...]*”

Consequently, methylhexaneamine is considered a specified substance under the New List.

8. In this respect, in application of the general principle of *lex mitior* and of Article 16.6 of the FIBA ADR *mutatis mutandis*, the Panel is of the opinion that the New List shall apply in the present case and methylhexaneamine shall be treated as a specified substance.

9. Furthermore, the Panel notes that the Player admitted the use of said prohibited substance at all stages of the proceedings and has been consistent in his pleadings. He was straightforward in his answers to the Panel, explained in detail the way he organised his supplements in one bottle and did not hesitate to take responsibility for his action in the following words: “I didn’t secure the necessary level of carefulness in order to prevent the prohibited stimulant getting into my body” (cf. p. 3 of Player’s brief of 7 February 2011). The Player has also produced a picture of his bottle and of the several tablets contained therein. The low levels of methylhexaneamine in the Player’s sample (15ng/ml) are not in conflict with his version of the facts either.
10. On the other hand, the Panel finds that the Player, a 34-year professional who has participated with a top-ranked national team in the highest level of national team competitions (amongst others, winning the European Championships in 2003) and has served a traditional European club for almost a decade, was indeed negligent in (a) taking so many dietary supplements without ensuring they do not contain a prohibited substance, (b) removing the tablets from their boxes and keeping them in the same bottle without any label, and (c) not emptying the bottle periodically to confirm its contents. Indeed, what one would reasonably expect happening with such an arrangement, i.e. the Player consuming the wrong capsule – in this case a capsule of *DMAA* –, was the reason for the positive finding.
11. In view of the circumstances of this case and the Player’s degree of fault, the Panel decides that it is appropriate to impose a sanction of six (6) months on him.
12. 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 the provisional suspension, i.e. on 7 January 2011,



given that the Player has not participated in any official basketball competitions since that date.

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

Geneva, 17 February 2011

On behalf of the FIBA Disciplinary Panel

Dr. Wolfgang Hilgert  
President of the Disciplinary Panel