



Decision

by

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

Inge Meylemans
(born 13 January 1992)

hereafter:
("the Player")

(Nationality: Belgium)

Whereas, the Player underwent an in-competition doping test organised by the NADO Flanders ("NADOF") on 13 November 2010 in Boom, Belgium (sample no. 1919886) after the end of the game BBC Kangoeroes Boom – Basket Groot Willebroek held in the framework of the Belgian women's first division;

Whereas, the analysis of the Player's sample was conducted at the WADA-accredited Laboratory in Gent-Zwijnaarde, Belgium ("Laboratory"), which informed the NADOF on 30 November 2010 that the analysis of the Player's sample showed the presence of the prohibited substance Morphine

at a concentration ($1.3 \mu\text{g/ml}$) higher than the threshold ($1 \mu\text{g/ml}$ // *uc* $0.08 \mu\text{g/ml}$) established by the 2010 WADA List of prohibited substances;

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

Whereas, after several reminders sent by FIBA to the Basketball Federation of Belgium (“BFB”), the latter informed FIBA on 20 May 2011 that the Disciplinary Commission of the NADOF (“NADOF Commission”) had decided at its meeting of 3 May 2011 “*not to sanction Inge Meylemans*”. In the meantime, on 18 May 2011 the NADOF had sent to FIBA a copy of the NADOF Commission’s decision dated 17 May 2011 (“NADOF Decision”) in Flemish;

Whereas, after several reminders sent by FIBA to NADOF, the latter sent to FIBA on 27 June 2011 an English translation of the NADOF Decision along with related documentation. The NADOF summarised the situation as follows: “*During the hearing of the disciplinary commission the athlete has proved that the substance (...) is due to Dafalgan Codeine she took because of neck pain. She didn’t mention it to the inspecting doctor because at the time of the competition she had already stopped taking it. The medicine Dafalgan Codeine and the substances it contains are not to [be] found on the list of prohibited substances. The disciplinary commission ruled in this sense that there is no guilt and as a result no sanction has to be pronounced on the [Player]*”. The Panel has reviewed the NADOF Decision and accepts that the above is a fair summary of the NADOF Commission’s considerations;

Whereas, by letter dated 28 June 2011 FIBA informed the Player that 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 her right to be heard either in person (in which case a hearing at FIBA’s headquarters in Geneva would have to be organised) or via telephone conference on 5 July 2011;

Whereas, by letter dated 4 July 2011 NADOF questioned FIBA’s competence in this matter arguing that a) NADOF was the results management authority for the entire process and it had decided not to sanction the Player, b) articles 8 and 15.3 of the World Anti-Doping Code (“WADC”) should apply, c) the Player was not – at the time of the doping control – selected for any international competitions;

Whereas, in reply to FIBA’s questions, on 4 July 2011 the Laboratory confirmed by email that the *“screening of sample AN 827 (federation code A1919886) did not reveal the presence of codeine.”* and in a follow-up email that *“Since no codeine was detected in the sample and taking into account the concentration of 1.3 µg/ml for morphine, there do not seem to be any indications that this AAF could be attributed to the use of codeine.”*.

Whereas, on 5 July 2011 the Player – represented by her legal counsel Mr. Kurt Mollekens and her father Stiut Meylemans – was heard via telephone conference by a FIBA Disciplinary Panel composed of Ms. Eleonora Rangelova, 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 in attendance;

Whereas, the Player participated with the national team of Belgium in all eight games of the U-20 European Championships Women 2011 – Division B held in Ohrid, FYROM, between 8 and 17 July 2011;

Whereas, on 23 August 2011 FIBA informed the Player that it had requested the Laboratory to produce the A sample laboratory documentation package (“Laboratory Package”). In the same letter, FIBA invited the Player to submit specific documentary or other evidence – if any – in relation to her alleged intake of food with poppy seeds prior to the doping control;

Whereas, on 29 August 2011 FIBA forwarded the Laboratory Package to the Player and invited her to submit her position thereon within a 7-day deadline. Upon the Player's request, the deadline was extended to 27 September 2011.

Whereas, in her written statements of 4 July, 11 July, 5 September and 27 September 2011, as well as during the hearing the Player:

- did not contest the result of the test;
- submitted medical reports showing that a) she suffered for almost a year from headaches-migraines-pain in the neck, b) she was prescribed "Dafalgan Codeine" and "Tramadol" by her doctors;
- submitted witness statements from her father and the owner of a bakery close to her home (Brood Banket D'Hondt Sergeant Bvba) stating that she is buying and consuming at weekends bagels and cakes with poppy seeds, which she also did on 13 November 2011;
- argued that the source of morphine in her sample is either Dafalgan Codeine, which she last took one day before the doping control, or poppy seeds in the food she consumed at the day of the doping control;
- submitted that codeine is metabolized in the human body faster than morphine and therefore it is possible to test positive in morphine without codeine being also detected in the same sample;
- repeated almost *verbatim* the legal arguments of NADOF regarding the competence of the FIBA Disciplinary Panel;
- stated that FIBA is bound by the findings of the NADOF Commission on the basis of article 3.2.3 of the WADC;
- requested the Panel to find that it has no jurisdiction in this case or, in the alternative, that no sanction should be imposed due to absence of fault for the presence of morphine in her sample; she finally requested – *eventualiter* – that article 10.4 of the WADC should apply and a simple warning be imposed on her;
- asserted that this was her first anti-doping rule violation;



Now, therefore, the Panel takes the following:

DECISION

A period of six (6) months' ineligibility, i.e. from 18 July 2011 to 17 January 2012, is imposed on Ms. Inge Meylemans.

Reasons:

Anti-doping rule violation

1. Article 2.1 of the FIBA ADR 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 morphine, a prohibited substance listed in WADA's 2010 Prohibited List under letter S.7 (Narcotics) was found in her urine sample at a concentration (*1.3 µg/ml*) higher



than the threshold ($1 \mu\text{g/ml}$ // *uc* $0.08 \mu\text{g/ml}$) established by the 2010 WADA List of prohibited substances. The Player did not request the analysis of the B sample nor did she attempt to challenge the findings after having received and reviewed the Laboratory Package. Therefore, this fact remained uncontested.

Competence of the FIBA Disciplinary Panel

3. Article 13.7 of the FIBA ADR reads in its relevant parts as follows:

“13.7.2 In accordance with Article 15.4.1 of the Code and in order to ensure that decisions adopted by organizations other than FIBA are in line with the Code and the regulations of FIBA, the Secretary General of FIBA may, upon request or ex officio:

a) decide that a decision taken by a national member federation or by organisations outside FIBA and its national member federations (e.g. state bodies, the IOC, national anti-doping organisations or other national or international sports organisations inside or outside the Olympic movement) be adopted for the purposes of FIBA Competitions, if the following requirements are cumulatively met: [...]

b) submit a case to the Disciplinary Panel mentioned in Article 4-8.1 above.

13.7.3 The Disciplinary Panel may decide whether and to what extent a sanction shall be imposed for the purposes of FIBA Competitions on a Person sanctioned or provisionally suspended by a national member federation. [...]

13.7.5 In the event of an anti-doping rule violation within the country of a national member federation, the Disciplinary Panel is authorised to impose a provisional suspension and/or a sanction according to these Regulations if the national member federation fails to do so. The implicated Person has the right to be heard. He may be suspended provisionally before the hearing.”

4. The Player has challenged the Panel’s competence under article 13.7.5 of the FIBA ADR mentioned in FIBA’s letter of 28 June 2011 addressed to her.
5. The Panel initially notes that in the present matter the BFB failed to impose a sanction on the Player despite the fact that the latter had committed an anti-doping rule violation within BFB’s country. The BFB did not even participate in proceedings held in its country with respect to the

positive doping control of a promising young player who has consistently been a member of the national teams of Belgium (U-16 European Championships in 2008; U-18 European Championships in 2009 and 2010). Therefore, the requirements set out in article 13.7.5 of the FIBA ADR are met in this case and this Panel is competent to decide on the Player's anti-doping rule violation.

6. Further, the Panel notes that generally the procedure before the FIBA Disciplinary Panel in accordance with Article 13.7 of the FIBA ADR is *not* an appeal process. Instead, it has been clear and consistent practice for years, accepted by WADA, the FIBA Appeals' Panel and the CAS, that FIBA through the assignment of a case to its Disciplinary Panel initiates its *own* proceedings in order to take an *own* decision *for the purposes of FIBA competitions*. Even if one could assume that the BFB acted through the NADOF Commission (although no such evidence was presented by the Player) and the latter did not fail to impose a sanction (although, as will be analyzed below, it did not perform what was required under the applicable rules), cases decided by national anti-doping agencies fall under the scope of article 13.7.2 of the FIBA ADR. As happened in this case, such cases can be assigned to the FIBA Disciplinary Panel which shall then decide on a possible sanction for FIBA purposes. The reference to article 15.4.1 of the WADC clearly demonstrates that the *raison d'être* of 13.7.2 is the same: harmonization of decisions. In addition, the Panel finds that it is not bound by the mention of article 13.7.5 in the letter addressed to the Player and, be it a clerical error or not, the Panel has the right to examine the legal basis of its competence in view of the totality of the applicable regulations, namely the FIBA ADR.

7. It follows that the FIBA Disciplinary Panel is competent to decide on the Player's case.

Application of Article 10.4 FIBA ADR

8. The 2010 WADA Prohibited List provides that "*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.” Morphine belongs to the category “S.7 Narcotics” and is thus a specified substance.

9. With respect to specified substances, 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 Players or other Person’s degree of fault shall be the criterion considered in assessing any reduction of the period of Ineligibility.”

10. The Player has brought forward two possible explanations of how morphine entered her body:
a) intake of Dafalgan Codeine one day before the doping control, b) consumption of poppy seeds in bagels and cakes the morning of the doping control.

11. The Player argues that the determination of the NADOF Commission on the issue of codeine is final and therefore binding on this Panel on the basis of article 3.2.3 of the WADC, which reads as follows:

“The facts established by a decision of a court or professional disciplinary tribunal of competent jurisdiction which is not the subject of a pending appeal shall be irrebuttable evidence against the Athlete or other Person to whom the decision pertained of those facts unless the Athlete or other Person establishes that the decision violated principles of natural justice.”

12. The Panel is of the opinion that the above provision is not applicable to this case for the simple reason that it refers to facts which constitute evidence against the athlete and not in his/her

favour. Also, FIBA was not a party to the proceedings in Belgium and is not bound by the NADOF Decision in any way.

13. It follows that, in accordance with article 10.4 of the FIBA ADR (and WADC), the burden of proof is on the Player and that, in accordance with articles 3.1 and 10.4 of the WADC the standard of proof shall be (a) balance of probability¹, with respect to how morphine entered the Player's body, (b) comfortable satisfaction of the Panel, with respect to the Player's absence of an intent to enhance sport performance or mask the use of a performance enhancing substance.
14. The Player has submitted medical reports establishing both her medical condition and the prescription of Dafalgan Codeine as of mid-October 2010. The Panel accepts that the Player made use of such medication in that period. The Panel is also ready to accept that the Player took the last tablet of Dafalgan one day before the doping control, although she did not mention it on the Doping Control Form among the medication taken in the seven (7) days prior to the doping control.
15. Moreover, it is common ground that codeine is not a prohibited substance and that it is metabolized to morphine in the human body.
16. In examining this medical question the Panel will use as a starting point the FIBA ADR and, by reference, the WADC, the WADA International Standards and their respective supporting documents. The Panel finds that the WADA Technical Document TD2010DL entitled "Decision Limits for the confirmatory quantification of Threshold Substances", is of particular relevance to this case since it refers to the Decision Limit (DL) of morphine as follows:

"Morphine at a urinary concentration greater than the DL constitutes an AAF unless it is determined to be the result of the administration of a permitted substance such as codeine."

¹ See CAS 2009/A/2012 paras. 25-26 with further references to CAS jurisprudence. More recently see CAS 2010/A/2107 para. 9.5.

17. It is evident from this passage that, an athlete who attributes the presence of morphine to the intake of codeine is actually contending that the laboratory should not have reported an Adverse Analytical Finding (AAF). Therefore, if the laboratory's decision to report the AAF was correct, then morphine cannot be explained by the use of codeine.
18. In the case at hand the Laboratory reported on 30 November 2010 the AAF. The Panel accepts that any possible "variability among individuals" has been taken into account by WADA prior to setting decision limits and procedures for the reporting of positive samples and therefore such variability was considered – and rejected – by the Laboratory.
19. In addition, on 4 July 2011 the Laboratory confirmed expressly and in writing to FIBA that *"screening of sample AN 827 (federation code A1919886) did not reveal the presence of codeine."* and that *"Since no codeine was detected in the sample and taking into account the concentration of 1.3 µg/ml for morphine, there do not seem to be any indications that this AAF could be attributed to the use of codeine."* The Panel points out to article 3.2.1 of the WADC which provides that
- "WADA-accredited laboratories are presumed to have conducted Sample analysis and custodial procedures in accordance with the International Standard for Laboratories. The Athlete or other Person may rebut this presumption by establishing that a departure from the International Standard for Laboratories occurred which could reasonably have caused the Adverse Analytical Finding."*
20. The Player did not put forward any departures from the ISL nor did she have any comments on the Laboratory Package.
21. In view of the above clear statements by a WADA-accredited laboratory and after having carefully reviewed the Player's arguments and scientific articles (which indirectly suggest that the Laboratory has a certain know-how when it comes to morphine), the Panel finds that the presence of morphine in the Player's sample cannot be explained – even on a balance of probability – by the intake of Dafalgan Codeine the eve of the doping control.

22. The Panel now moves to examine the Player’s argument based on poppy seeds.
23. Firstly, there is no evidence on file which would cast doubt on the authenticity or credibility of the witness statements signed by the Player’s father and the owner of Brood Banket D’Hondt Sergeant Bvba. They suggest that the Player was usually visiting the bakery on weekends to buy bagels and cakes, including those with poppy seeds, and that she did consume such products on Saturday 13 November 2010, a few hours before the doping control.
24. Secondly, the Panel has carefully reviewed the recent scientific article “Poppy seed foods and opiate drug testing – where are we today?”² which compiles a large number of scientific articles on the so-called “poppy seed defence”. Such defence is frequently used in narcotic-related crime investigations rather than in doping matters. In a nutshell, the article recognizes that “the possibility of false-positive opiate drug tests after poppy food ingestion exists” and reveals a certain level of scientific uncertainty regarding the threshold of food use that would not lead in positive drug tests. Also, although washing and baking the poppy seeds drastically reduces the morphine content and “poppy seeds from bakeries hardly seem to pose the probability of false-positive opiate tests”, the scientists conclude that they “can currently only advise abstinence from poppy seed foods before scheduled urine tests”.
25. In view of such scientific findings, and considering
- the very low (1,3 µg/ml), marginally above the decision limit (1,2 µg/ml), quantity of morphine found in the Player’s sample;
 - the fact that opiate tests sometimes apply higher thresholds than the WADA-established threshold for morphine;

² Lachenmeier/Sproll/Musshoff, Poppy seed foods and opiate drug testing – where are we today?, *The Drug Monit*, Vol.32, Nr.1, February 2010, pp.11-18.

- the significant amount (more than 10) of scientific research studies, where the consumption of poppy seed bagels and cakes gave rise to values much higher than those found in the Player's sample³;
- the Player's thin-figure and small size (1,64m), and consequently low weight;

the Panel concludes that it is more probable than not that morphine entered the Player's body through the consumption of poppy seed bagels and cakes. The Panel can thus leave open the issue of whether the positive finding could be explained by the *combined* use of Dafalgan Codeine and poppy seeds by the Player, given also the lack of scientific evidence in this regard.

26. Further, considering the circumstances of intake, the Panel is comfortably satisfied that the Player had no intention to enhance her sporting performance when consuming products that contained poppy seeds.
27. The next issue to be determined by the Panel in order to arrive at the applicable sanction is the Player's degree of fault.
28. In numerous occasions has this Panel underlined that each player is responsible for the substance found in his/her body and that he/she has a very clear obligation arising from the applicable rules to ensure that the food, supplements or medication he/she was receiving did not contain a prohibited substance.
29. In the present case, the Panel notes that the Player participated in an official competition with a prohibited substance in her body. Also, as mentioned above, there have been numerous studies regarding the effect of poppy seeds on drug/doping tests and it does not take more than a layman's knowledge to describe how poppy flowers are illegally exploited in several parts of the world. At this point the Panel refers to the case CAS 2004/A/690 – where a professional

³ Op.cit. p.18, table 2.

tennis player tested positive to cocaine after drinking a tea prepared with coca leaves – and agrees with the CAS Panel’s conclusion that the athlete was negligent. On the other hand, the present case shall be distinguished from CAS 2004/A/690 as regards the degree of fault. More specifically, taking into account

- the young age (18 years old) of the Player and her lack of experience in doping matters at the time of the doping control, which cannot be compared with that of an experienced 27-year old tennis professional;
- the remote connection between poppy seeds and morphine, unlike the close link between coca leaves and cocaine;
- the circumstances of intake (around-the-corner bakery, consumption of commonly used products) which are not comparable to those of the tennis player (herbal tea to treat high altitude symptoms in Chile);
- the different legal framework: in 2004, Narcotics did not belong to specified substances and article 10.4 of the WADC, giving more flexibility to the hearing panels in the measurement of sanctions, had not yet been introduced;
- the jurisprudence of this Panel when assessing player’s degree of fault in cases of specified substances;

the Panel decides that a six-month period of ineligibility is appropriate for this case.

30. Considering the unusual and substantial delays in the hearing process, as evidenced on pp. 2-3 above, which are not attributable to the Player (e.g. she did not even request the B sample analysis) the Panel deems it appropriate pursuant to Article 10.9.1 of the FIBA ADR that the period of ineligibility shall start from the date after her last game in the U-20 European Championships Women 2011, i.e. from 18 July 2011.

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

Fédération Internationale
de Basketball



FIBA

We Are Basketball

International Basketball
Federation

Geneva, 21 October 2011

On behalf of the FIBA Disciplinary Panel

Eleonora Rangelova
President of the Disciplinary Panel