



## **Decision**

by

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

**Riste Stefanov**  
**(born 30 August 1981)**

hereafter:  
**(“the Player”)**

(Nationality: Former Yugoslav Republic of Macedonia)

**Whereas**, the Player underwent an out-of-competition doping test on 13 January 2012 in Athens, Greece;

**Whereas**, the analysis of the Player's sample (sample No: 1923728) was conducted at the WADA-accredited Laboratory in Athens, Greece (“Laboratory”). On 14 February 2012 the Laboratory informed the Greek NADO (“ESKAN”) that the analysis of the Player’s sample showed the presence of the prohibited substance “*19-norandrosterone (nandrolone metabolite)*” in a concentration (“*9.2 ng/ml*”) and that further analysis with the GC/C/IRMS method would be required;

**Whereas**, by letter dated 14 February 2012 the ESKAN requested the Player's club Ilisiakos BC to confirm whether it would cover the expenses of the further analysis in the WADA-accredited laboratory in Cologne, Germany, in the amount of EUR 1,800. By return correspondence of the same day, Ilisiakos BC informed the ESKAN that, due to its financial difficulties, it could not cover the costs for the further analysis;

**Whereas**, by letter dated 15 February 2012 the ESKAN informed the Hellenic Basketball Federation ("HBF") of Ilisiakos BC's refusal and asked whether the HBF would be ready to pay for the further analysis. By return correspondence of the same day, the HBF replied that it would bear such expenses. Also on the same day, the HBF informed Ilisiakos BC, that the Player would be allowed to participate in competitions pending the further analysis at the Cologne laboratory;

**Whereas**, on 19 March 2012 the ESKAN informed the HBF and Ilisiakos BC that the Laboratory confirmed the adverse analytical finding for 19-norandrosterone, in the value initially reported which exceeds the decision limit (2.5 ng/ml) established by the 2012 WADA List of prohibited substances, and asked Ilisiakos BC to inform the Player of his right to request the analysis of the B bottle;

**Whereas**, on 22 March 2012 the ESKAN informed the HBF and Ilisiakos BC that, after several attempts to communicate with the Player and/or his representatives, on 21 March 2012 the Player's agent Mr Potapatiou had written to the ESKAN that the Player did not wish to have the B bottle analysed;

**Whereas**, by letters of the same day the HBF referred the case to the One-Member Judicial Panel of the Greek League/HEBA ("HEBA Judge") and imposed a provisional suspension on the Player;

**Whereas**, on 9 April 2012 a hearing was conducted before the HEBA Judge. The Player and his legal counsel presented the Player's arguments on the matter and submitted a brief with the Player's position along with supporting documentation;

**Whereas**, on 25 April 2012 the HEBA Judge decided to impose the following sanctions on the Player:

- “a. Temporary prohibition of participation to every kind of athletic meetings and organizations of all sports **for three (3) months** from the date of publication of the present decision (25-4-2012).*
- b. Deprivation of every kind of benefits of the State and the athletic Federations and possible tax exemptions, as well as the interruption of possible scholarships granted to him.*
- c. Restitution of every financial benefit granted after the date of the commitment of the violation.*
- d. Fine of three thousand (3000,00) Euros.*
- e. Deduction and exclusion from participation to the administration, institution or committee of any athletic institution or athletes' club for one (1) year from the date of publication of the present decision (25-4-2012).”*

(hereinafter "the HEBA Decision")

**Whereas**, on 7 May 2012 the World Anti-Doping Agency ("WADA") contacted ESKAN requesting the full case file, in order for WADA "to review the case in view of a potential appeal";

**Whereas**, on 15 May 2012 the HEBA Judge provided HBF with a copy of the Player's file and with his comments on the HEBA Decision, referring in particular to the statement of Dr. Labachevski (see below p.8). On 18 May 2012 the HBF forwarded the file to FIBA and WADA;

**Whereas**, by letter dated 29 May 2012 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 his right to be heard either in person (for which a hearing in FIBA's headquarters in Geneva would have to be organised) or via telephone conference on 12 June 2012;

**Whereas**, on 4 June 2012 the Player confirmed his preference to and participation in a hearing by telephone conference and submitted his position in writing;

**Whereas**, on 12 June 2012 the Player was heard via telephone conference by a FIBA Disciplinary Panel composed of Dr. Wolfgang Hilgert, member of FIBA's Legal Commission and of Dr. Souheil Sayegh, Deputy-Chairman of FIBA's Medical Commission; Ms. Virginie Alberto, FIBA Anti-Doping Officer as well as Mr. Andreas Zagklis, FIBA Legal Advisor, were in attendance;

**Whereas**, on 13 June 2012 the Player submitted the requested medical documentation (which contained *inter alia* images, diagnoses and MRIs) in support of his position;

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

- he does not contest the result of the test;
- he has been a member of his country's national team for ten years. In late July 2011 he was in Slovenia preparing with his national team for the Eurobasket 2011. During a friendly game against Slovenia in Ptuj on 24 July 2011, he suffered a fracture in his right foot. After a first examination on site by the team doctor, it became apparent that the nature of the injury was complex. For this reason and also due to the severe pain that he still felt, he returned to his country and was referred to the authorised orthopaedic surgeon of his national team, Mr. Goran Vidoevski (hereinafter "Dr. Vidoevski");
- his national federation referred him to Dr Vidoevski and he felt obliged to comply with such instructions since he is a member of the national team and also because he would not be reimbursed by the federation's insurance company if he would visit another doctor;

- since this was his first serious injury, he was examined by Dr Vidoevski for the first time in his career;
- Dr. Vidoevski informed him about the seriousness of the injury (with the diagnosis “St. Post Stress fractrum ossis metatarsalis V pedis”) and suggested a suitable treatment consisting of physiotherapy for 20 days;
- as a result of his injury, he was not able to participate in the Eurobasket 2011 in Lithuania;
- despite following the rehabilitation programme and having had 20 additional days of physiotherapy in September 2011, he would still be in a lot of pain and unable to participate in sporting activities;
- towards the end of October 2011 and while the pain persisted, he was examined again by Dr Vidoevski, who prescribed and performed on him an injection of Decadurabolin 2ml/200mg;
- he did not ask Dr. Vidoevski about the content of the injection and the latter simply informed him that it would alleviate pain, without any indication that it contained a prohibited substance. He was in great pain for many months and wanted to feel better, so he trusted and followed the medical advice given by the federation's authorised doctor. Said facts were confirmed in a written statement dated 2 March 2012 by Dr. Vidoevski;
- his foot responded well to the treatment with the injection and he started playing basketball again, initially for the club MZT Skopje and as of January 2012 in Ilisiakos BC, in Greece;
- he did not ask for the analysis of bottle B because on 27 March 2012 he received an expert opinion by Prof. Dr. Nikola Labachevski of the Medical School in Skopje confirming that the nandrolone found in his body was a result of the injection by Dr. Vidoevski in October 2011;
- he has played professional basketball in Europe for almost a decade and has never tested positive to any doping control. However, he has not received any anti-doping education and he was not familiar with the term Therapeutic Use Exemption;
- due to his constant moving from country to country he does not have his own physician at his side who could advise him in such cases;

- he has not participated in any competitions after the provisional suspension imposed on him by the HBF on 22 March 2012, being unable to secure a new contract due to the HEBA Decision;
- it is the first time in his whole career as professional basketball player that he is accused of an anti-doping rule violation;

Now, therefore, the Panel takes the following:

### **DECISION**

**A period of twenty two (22) months' ineligibility, i.e. from 22 March 2012 until 21 January 2014 is imposed on Mr. Riste Stefanov.**

#### **Reasons:**

1. Article 2.1 of the FIBA Anti-Doping Regulations ("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 ADR since 19-norandrosterone, a metabolite of nandrolone and a prohibited substance listed in WADA's 2012 Prohibited List (the "2012 Prohibited List") under letter S.1.1.a (Exogenous Anabolic Androgenic Steroids) was found in his urine sample in a concentration exceeding the decision limit established by WADA. 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. Therefore, the applicable sanction for the presence of 19-norandrosterone in an athlete's sample is, in principle, two (2) years of ineligibility.

5. The Panel takes note of the Player's argument that the positive finding can be explained only by the injection performed by Dr. Vidoevski during the last stage of his rehabilitation from a fracture in his foot.

6. 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.

7. The Panel makes reference to a letter of Dr. Vidoevski dated 2 March 2012 which reads in its relevant parts as follows (certified translation into English provided by the Player):



*“[...] The fracture was treated during August and September, but even after the treatment, the patient complained he was feeling strong pain in the injured foot, whereby towards the end of October that same year, it necessary [sic] to prescribe only one ampoule of Decadurabolin 2ml/200mg. [...]*

*After the injection, the condition of the patient was improved and he was back to full weight bearing of the foot [...]*”

8. Also, the expert opinion of Prof. Dr. Nikola Labachevski, dated 22 March 2012 reads in its relevant part as follows (certified translation into English provided by the Player):

*“(...) It can be concluded that the detected concentrations of nandrolone metabolite (19-norandrosterone) in the urine sample are due to the application of the depot preparation Decadurabolin in a dose of 200mg in therapeutic aims, by the specialist orthopaedic surgeon (...)*”

9. Considering a) Prof. Labachevski’s expert opinion, the conclusions of which are medically plausible, b) the high dosage of Decadurabolin, and c) the letter of Dr. Vidoevski, which confirms the Player’s version of the facts, the Panel finds that the positive finding can be explained by the administration of nandrolone through the above-mentioned injection in late October 2011.
10. Further, the Panel’s duty is to review the circumstances surrounding the Player’s anti-doping rule violation and to 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 definition of the term in the World Anti-Doping Code; see also CAS 2006/A/1025).



12. With respect to the circumstances surrounding the administration of the prohibited substance to the Player, Dr. Vidoevski stated the following in his letter of 2 March 2012;

*“[...] I wish to underline that this injection was received by the patient for a therapeutic aim, in order to alleviate his pain, and that he was not informed or warned regarding the modalities of its elimination from the body or any other side effects. [...]”*

13. When asked by the Panel at the hearing, the Player honestly admitted that he did not ask Dr Vidoevski what was contained in the injection and that he had full trust in him since he was the authorised doctor of the national team. The Player was apparently in a desperate situation, not being able to recover from the injury and feeling considerable pain 3 months after the fracture in his foot. He also submitted that he felt obliged to visit this particular doctor who collaborates with his national federation since the injury took place while playing for the national team and at a time when he was not under contract with any club.
14. The Panel notes that the Player is a 31-year old professional athlete who has competed at the highest level for many years and is not inexperienced with sports injuries. Approximately 3 years before this injury he had undergone surgery to cure a herniated disc. Also, there is no evidence on file that the national federation of the Former Yugoslav Republic of Macedonia prohibited the Player from seeking advice from another doctor; the mere fact that the expenses might not be borne by the federation does not constitute a binding instruction under which the Player could not have refused the injection prescribed by Dr. Vidoevski.
15. Furthermore, even one could argue that the Player had no right of choice of the doctor and no right to refuse the treatment, the Panel finds that the Player had, in any event, a very clear obligation arising from the applicable rules to ensure that the medication he was receiving did not contain a prohibited substance. Such duty was delegated by the Player to Dr. Vidoevski either directly (being the Player’s preferred doctor) or through the national federation (being

the federation's preferred doctor). The delegation of such duty, however, does not excuse the Player from his responsibility.

16. 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. It would indeed be to the severe detriment of the fight against doping if players were in a position to assign their obligations to third persons and consequently avoid any liability for the presence of a prohibited substance in their sample (CAS 2008/A/1597).
17. An international-level player with considerable experience like the Player in this case is expected to refuse an injection from a doctor who fails to mention even its content. Solely the fact that this one injection was able to improve his medical condition more than the continuous treatment with other (permitted) substances were able to, should have alarmed the Player. At a minimum, he was expected to have the curiosity of personally inquiring the nature of the medication which was injected to him.
18. Thus, the Panel shares the views expressed in CAS 2008/A/1488:

*"In consideration of the fact that athletes are under a constant duty to personally manage and make certain that any medication being administered is permitted under the anti-doping rules, the prescription of a particular medicinal product by the athlete's doctor does not excuse the athlete from investigating to their fullest extent that the medication does not contain prohibited substances. [...]"*

*While it is understandable for an athlete to trust his/her medical professional, reliance on others and on one's own ignorance as to the nature of the medication being prescribed does not satisfy the duty of care as set out in the definitions that must be exhibited to benefit from finding No Significant Fault or Negligence. It is of little relevance to the determination of fault that the product was prescribed with "professional diligence" and "with a clear therapeutic intention". To allow*



*athletes to shirk their responsibilities under the anti-doping rules by not questioning or investigating substances entering their body would result in the erosion of the established strict regulatory standard and increased circumvention of anti-doping rules.”*

19. Hence, under the applicable rules, an athlete who takes no precautions and relies totally on the decisions made by his support personnel should be ready to bear the consequences for the latter's fault or negligence. The Panel regrets to find that such harsh –but indeed fair– rule applies also in the case of the Player.
20. At this point the Panel considered carefully its jurisprudence on similar cases where the team doctor administers a prohibited substance to a player.
21. On the one hand, the Panel finds that the Player’s degree of fault was much higher than that of Andrey Chernysh, a 17-year-old player who was living far from his family, had been repeatedly hospitalised for fractures in his legs and his life (including medical treatment) was at large controlled by the club that had provided him with a scholarship. Chernysh’s doctor had also acted on its own initiative and was punished with a life-ban for the administration of the substance and for having apparently told the young player that the injection contained vitamins. In the present case the Player had the required experience as well as status – being one of the country’s best basketball players for the last decade – to raise several questions to Dr. Vidoevski or to seek a second opinion prior to accepting the injection. For this reason the Panel considers a sanction as low as 1 year to be inadequate for this case.
22. On the other hand, the Panel finds that the Player’s negligence is not identical to that of Eddin Orlando Santiago, a player with a chronic medical condition who allowed the team doctor to perform repeated injections on him as part of a medical treatment. Of course, the criterion required by the FIBA ADR is “no significant fault or negligence” and not simply *less* fault or negligence when compared to a player who received a 2-year ban. However, in the Panel’s opinion it is important that the Player was under the impression that he had no other choice but

to follow the instructions of this doctor who was operating in a specialised orthopaedic clinic and had been selected as external collaborator by the highest basketball authority of the country; the Player was under a stressful condition of continuous pain for 3 months; he was not under contract (and thus daily contact) with a club that would take care of him; and accepted only one injection by Dr. Vidoevski during off-season.

23. Based on the above findings, the Panel holds that it is appropriate to impose on the Player a sanction very close to the default 2-year ban, namely a period of ineligibility of twenty-two months. 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.

24. Pursuant to Article 10.9 of the FIBA ADR the period of ineligibility is to start on the date of the Player's provisional suspension by the HBF, i.e. on 22 March 2012.

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

Geneva, 9 July 2012

On behalf of the FIBA Disciplinary Panel

Dr. Wolfgang Hilgert  
President of the Disciplinary Panel