



Fédération Internationale
de Basketball

FIBA

International Basketball
Federation

We Are Basketball

16 February 2006

DECISION

in the matter

**WADA World Anti-Doping Agency
and Mr. Ermal Kurtoglu**

vs.

FIBA Fédération Internationale de Basketball

FIBA AC 2005-6

1. **The motions of the First and Second Appellant are dismissed.**
2. **The First and Second Appellant shall bear the costs of the proceedings in equal shares.**

I.

1. The basketball player Ermal Kurtoglu (hereinafter referred to as "Player" or "the First Appellant", born on 12 February 1980, is both an Albanian and a Turkish citizen. On 10 May 2005 the Player underwent a medical examination and was found to suffer from hair loss. To prevent further hair loss, the use of the medication "Propecia" was prescribed to him by his doctor Dr Emirali Haminoglu. Propecia is a commonly used remedy against hair loss. The Player took the medication Propecia on a regular basis.



Fédération Internationale
de Basketball

FIBA

International Basketball
Federation

We Are Basketball

On 16 June 2005 the Player's urine was tested by the Turkish Doping Control Center. The test was organized by the Turkish Basketball Federation (hereinafter referred to as "TBF") and showed negative. On the occasion of a second doping control, which was carried out as an in-competition test on 16 September 2005 during the European Championship (hereinafter referred to as the "Doping Control"), the Player was found to be positive. The analysis of the A and the B samples revealed the presence of a Finasteride metabolite. Finasteride is an alpha reductase inhibitor and was included on the List of Prohibited Substances by the World Anti-Doping Agency (hereinafter referred to as "WADA" or "the Second Appellant") as a masking agent with effect as of 1 January 2005. The substance may result in important changes to the endogenous steroid profile parameters thus causing problems when interpreting the analysis results of steroid profiles. By letter dated 22 September 2005 the Player was suspended by the Respondent from all competitions. An additional test was carried out on the B sample upon the request of the Player and with the consent of the Respondent. The analysis revealed no indication of doping with anabolic agents.

After the Player had been heard by the FIBA Commission responsible for this action, the latter decided by date of 5 December 2005 that the Player had committed an anti-doping rule violation. The Commission imposed on the Player a period of ineligibility of 12 months of which six months are suspended. The period of the non-suspended sanction starts on 22 September 2005 and ends on 21 March 2006. Furthermore, the Commission decided that the suspended sanction shall start immediately thereafter and shall end on 21 September 2006. In its reasons the responsible Commission of the Respondent states, inter alia:

"...

3) The Commission is of the view that the Player is not "without fault or negligence" and that therefore sanctions cannot be eliminated pursuant to Art. 6.8.2.4.1 of the Regulations.

4) However, the Commission holds that there is no "significant fault or negligence" and that therefore the reduced sanction pursuant to Art 6.8.2.4.2 must be applied. The Commission is of the opinion that the Player's negligence in connection with the positive test is very light and that the lowest possible sanction must be applied in his case, part of which must be suspended. It reaches this conclusion on the basis of the following considerations:

4.1 The Commission is persuaded that the Player did not attempt to hide the use of (other) prohibited substances.



Fédération Internationale
de Basketball

FIBA

International Basketball
Federation

We Are Basketball

4.2 Finasteride has been included in the WADA list as a prohibited substance on 1 January 2005 and may have escaped the attention of the doctor who prescribed Propecia to the Player.

4.3 The Player was drug tested in June 2005, at a point in time when he had been taking Propecia, ie Finasteride, on a regular basis for a considerable time. Nevertheless, no positive finding for Finasteride was reported in connection with the June test. The reason for this can only be identified through further inquiries with the WADA-accredited laboratory in Turkey. But the fact remains that the Player could reasonably assume that his taking of Propecia would not lead to a positive doping test. This will most likely have caused him to fail to indicate Propecia as a medication on the Doping Control Form.

4.4 The Player was very forthcoming and came across as an honest and serious professional who fell victim of the prescribing doctor's failure to point out that Propecia contains a prohibited substance, but at the same time to the Player's failure to consult with his team doctor in connection with his taking of that medication.

4.5 Unlike the inadvertent use of steroids through ingestion of contaminated food supplements, the application of Propecia is not in any way related to the (legal or illegal) attempt to improve physical performance. It is quite reasonable, therefore, for a layman not to associate Propecia with doping.

...

The Commission feels unable to follow the Player's reasoning that his negligence is so insignificant that Swiss law and in particular the principle of proportionality mandates a sanction which is below the one year provided for in the Regulations.

6) However, the considerations in 4) above led the Commission to apply Section 6.8.3.1 of the Regulations which provides for suspended sanctions. The Commission is of the view that the Player's negligence is so insignificant that a non-suspended ineligibility of 12 months would violate the principle of proportionality which a federation must apply. ..."

The Player received this decision of the Respondent by fax of 5 December 2005 and filed an appeal against it with the FIBA World Appeals Commission by letter of 7 December 2005. The Second Appellant received the Respondent's decision on 5 December 2005 and also filed an appeal against it by letter of 7 December 2005.

- 2.a) The First Appellant does not dispute the presence of an adverse analytical finding and an anti-doping rule violation. However, he is of the opinion that the decision by the Respondent's responsible Commission is erroneous with regard to the measure of the sanction, i.e. the length of the suspension. In this regard the First Appellant is invoking the principle of proportionality. The application of said principle cannot -



Fédération Internationale
de Basketball

FIBA

International Basketball
Federation

We Are Basketball

according to the First Appellant - be excluded by the regulations of an association. Consequently, the principle also applied even if it had not been adequately integrated into specific sets of rules and regulations. In the light of these legal requirements the particular circumstances of the specific case ought - according to the First Appellant - to have been weighed differently. In this connection, the First Appellant pleads, inter alia, that the medication Propecia was prescribed for him by a doctor, it was usual to treat hair loss with this medication, there was no connection between the taking of the medication and the practising of the sport, the prohibited substance did not have the effect of enhancing performance, the suitability as a masking agent was only any good up to a point and that, on the basis of the other tests, it was in any event proven that the Player at no time had the intention of masking the detection of another prohibited substance. In the opinion of the First Appellant the above circumstances were so unusual that it would be incompatible with the principle of proportionality if one were to stick to the "rigid" limit of one year in Art. 6.8.2.4.2 of the Internal Regulations. Rather in the present case the rightful period of ineligibility would be less than 6 months.

- 2 b) The Second Appellant is of the opinion that the decision by the FIBA Commission is unsound with regard to the measure of the sanction, i.e. the length of the ban, because it is not in conformity with the prevailing rules (Internal Regulations). As a general rule Article 6.8.2.1 of the Internal Regulations orders a two-year ban for a first-time anti-doping rule violation. According to the Second Appellant, a departure from this principle is only possible where the Regulations expressly so provide. By contrast, there was no latitude for applying an "unwritten" principle of proportionality. Otherwise the fundamental purpose of the World Anti-Doping Code (WADC) would be circumvented, the implementation of which was intended to serve the Respondent's Internal Regulations. According to precedent cases of the CAS this fundamental purpose was *"to make the fight against doping more effective by harmonising the legal framework and to provide uniform sanctions to be applied to all sports"*. Furthermore, the principle of proportionality was adequately and reasonably realised in the WADC as well as in conformity with the human rights and principles of Swiss law.

In the opinion of the Second Appellant none of the exceptions laid down in the Internal Regulations applied in the present case. There was, according to the Second Appellant, no scope for a reduced sanction under Art. 6.8.2.4.1 of the Internal Regulations; for said provision required *"no fault or negligence"* on the part of the Player. However, the latter was obviously not the case because the Player had not taken all conceivable precautions to prevent the taking of the prohibited substance Finasteride. Reducing the period of ineligibility under Art. 6.8.2.4.2 of the Internal Regulations was - according to the Second Appellant - also not a possible consideration. Although the first requirement of the provision, whereby a player has to show how the prohibited substance entered his body, was met, the Player had - according to the Second Appellant - not demonstrated that



Fédération Internationale
de Basketball

FIBA

International Basketball
Federation

We Are Basketball

there was no significant fault or negligence on his part with regard to the taking of the prohibited substance. The requirements to be met for the standard of *"no significant fault or negligence"* were strict. They were, moreover, also confirmed by the case law of the Court of Arbitration for Sport (hereinafter referred to as "CAS"). However, according to the Second Appellant the Player had not satisfied these strict requirements. The prohibited substance was stated on the medication and was therefore easily apparent to the Player. The Player could therefore - with very little effort on his own part - have made enquiries and thereby recognised that the taking of the medication gives rise to an anti-doping rule violation. It was also reasonable to expect the Player to take this initiative; for - as pointed out by the Second Appellant - the Player was an experienced professional athlete. The fact that a doctor prescribed the medication for the Player could also not exculpate him. Instead - according to the Second Appellant - the Player should have made further enquiries. Furthermore, the Second Appellant points out that there was no scope for the application of Art. 6.8.3.1 of the Internal Regulations (last sentence), which provided for the possibility of a suspended sanction. The provision contradicted the main principles of the WADC which the Respondent had undertaken to observe.

- 3 a) The First Appellant moves, *"that the appeal against the decision by the FIBA Commission ... is granted"* and that the decision is *"modified as follows: The Player is ineligible for a period of 4 months. The sanction shall start on 22 September 2005 and end on 21 January 2006"*. In the alternative, the First Appellant moves that the period of ineligibility be limited to 6 months (not 12 months, of which 6 months are suspended).
- 3 b) The Second Appellant moves *"to uphold the appeal lodged by WADA [and] to dismiss the appeal lodged by Ermal Kurtoglu [and] to pronounce a non-suspended 2-year suspension against Ermal Kurtoglu"*. Furthermore, the Second Appellant requests *"to grant WADA a portion of its costs"*.
4. The Respondent moves that both of the appeals by the First and Second Appellant be dismissed. The Respondent supports this with the argument that in the present case the Commission rightfully applied Art. 6.8.2.4.2 of the Internal Regulations. The focus of the provision was on the requirement of *"no significant fault or negligence"*. In the Respondent's opinion, the facts submitted by the First Appellant meet this requirement. The First Appellant took the medication Propecia for cosmetic reasons and not in order to enhance his performance. Furthermore, - according to the Respondent - the medication was prescribed to the Player by a doctor. Insofar as the doctor was at fault, said fault could not be attributed to the Player. The Respondent further argues that the substance was not included in WADA's List of Prohibited Substances until January 2005. Although this was no excuse for the anti-doping violation, it was an indication that the Player did not



Fédération Internationale
de Basketball

FIBA

International Basketball
Federation

We Are Basketball

have the intention of enhancing his performance. Finally, the Respondent argues that the Player could reasonably assume that the cure for his cosmetic problem would not result in a positive doping test; for the doping test carried out in June 2005 did not reveal a positive finding. The Respondent does not consider the CAS's case law on the interpretation of the terms "*no significant fault or negligence*" cited by the Second Appellant to be relevant in the present case; for the case law relates to instances where the athlete took a risk in an attempt to improve physical performance or, at least, to eliminate irritations which may impact the physical performance. Finally, the Respondent argues that the Internal Regulations have to be interpreted in the light of the principle of proportionality. This also applied to the provision in Art. 6.8.3.1 of the Internal Regulations, which expressly provides for the possibility of suspended sanctions. This provision could not simply be ignored.

5. By order of the President of the Appeals Commission, Mr. Antonio Mizzi, of 14 December 2005 Prof. Dr. Ulrich Haas (hereinafter referred to as "the Chairman") was appointed to the panel as a sole arbitrator for the present case. Upon application by the Respondent of 19 December 2005, the Chairman summoned TBF to the proceedings in accordance with Article 12.6 of the Internal Regulations. For all other aspects reference is made to the content of the "Order of Procedure" of 29 December 2005 issued by the Chairman and signed by the parties and by the joined parties. In all other respects reference is made to the parties' written pleadings and to the minutes of the oral hearing of 25 January 2006 in Geneva. The First Appellant was present at the oral hearing and was represented by the lawyer, Mr Cesare Jermini. The Second Appellant was represented by the lawyer, Mr Francois Kaiser. The Respondent was represented at the oral hearing by the lawyer, Dr. Dirk-Reiner Martens. TBF, represented by Mr. Emir Turam and the club Efes Pilsen Spor Kulübü, represented by Mr. Cetin Ceki, were also present.

II.

1. The appeals by the First and the Second Appellant against the Respondent's decision of 5 December 2005 are admissible. In particular, the Second Appellant also has a right to appeal (in this regard see AC 2005-1 *WADA v/ FIBA*).
2. The appeals by the First and the Second Appellant are, however, unfounded.

It is not disputed by the parties that the First Appellant committed an anti-doping violation within the meaning of Art. 6.2.1.1 of the Internal Regulations, that the substance found in him is on WADA's List of Prohibited Substances and that said substance is not a specified substance within the meaning of Art. 6.8.2.2 of the Internal Regulations. This means that the legal consequence, i.e. the period of



Fédération internationale
de Basketball

FIBA

International Basketball
Federation

We Are Basketball

ineligibility - basically - takes effect under Art. 6.8.2.1 of the Internal Regulations, unless one of the exceptions under Art. 6.8.2.4 of the Internal Regulations applies.

- a) In the present case eliminating the period of ineligibility under Art. 6.8.2.4.1 of the Internal Regulations is not a possible consideration. The provision requires "*no fault or negligence*". However, this is missing because in the present case the First Appellant - even according to his own submissions - *did not exercise the utmost caution to prevent the prohibited substance from entering into his body.*
- b) It is therefore questionable whether the ground for reducing the sanction under Art. 6.8.2.4.2 of the Internal Regulations applies. The provision requires two conditions to be met. Firstly that the Player establishes how the prohibited substance entered into his body. In the Panel's opinion the First Appellant has proven this. The First Appellant has shown to the Panel's satisfaction that, at the time in question, he took the medication Propecia. An argument in support of this is that the medication Propecia contains the prohibited substance detected in the First Appellant's urine, Finasteride. Another argument in support is the prescription issued by the doctor treating the Player, Dr Emirali Haminoglu. Finally, the First Appellant also - credibly and plausibly - demonstrated a motive to the Panel and described the circumstances surrounding the taking of the medication in detail and without any objection being raised. The Panel is therefore satisfied that the First Appellant's positive finding was attributable to his having taken the medication Propecia and that the medication was not taken in order to mask other prohibited substances. This is also supported by the results of the additionally ordered analysis of the Player's urine sample.
- aa) It is disputed between the parties whether the second condition under Art. 6.8.2.4.2 of the Internal Regulations has been met. Here the provision requires "*no significant fault or negligence*". The provision has exactly the same wording as Art. 10.5.2 of the WADC, so as far as this is concerned, the definition in the Appendix to the WADC can be applied. This defines the term as follows: "*The athlete's establishing that his or her fault or negligence, when viewed in the totality of the circumstances and taking into account the criteria for 'no significant fault or negligence', was not significant in relationship to the anti-doping rule violation.*" From this it follows that the term "*no significant fault or negligence*" must be interpreted in the light of two parameters, namely firstly in the context of the other provisions and secondly taking into account the specific circumstances of the individual case.
- bb) In the Panel's opinion it follows from the systematics of the rule that the requirements to be met by the qualifying element "*no significant fault or*



Fédération Internationale
de Basketball

FIBA

International Basketball
Federation

We Are Basketball

negligence" must not be set excessively high (see also CAS 2005/A/847 *Knauss v/ FIS* [20.7.2005] marg. no. 7.3.5; CAS 2004/A/624 *IAAF v/ ÖLV & Lichtenegger* [7.7.2004] marg. no. 81 *et seq.*). Once the scope of application of Art. 6.8.2.4.2 of the Internal Regulations has been opened, the period of ineligibility can range between one and two years. In deciding how this wide range is to be applied in a particular case, one must closely examine and evaluate the athlete's level of fault or negligence. The element of fault or negligence is therefore ultimately "doubly relevant". Firstly it is relevant in deciding whether Art 6.8.2.4.2 of the Internal Regulations applies at all and, secondly, whether, in the specific case, the term of the appropriate sanction should be set somewhere between one and two years. However, the higher the threshold is set for applying the rule, the less opportunity remains for differentiating meaningfully and fairly within the (rather wide) range of the sanction. But the low end of the threshold for the element "*no significant fault*" must also not be set too low; for otherwise the period of ineligibility of two years laid down in Art 6.8.2.1 of the Internal Regulations would form the exception rather than the general rule (see also CAS 2003/A/484 *Vencill v/ USADA* [18.11.2003] marg. no. 47). In the light of these requirements the provision in Art. 6.8.2.4.2 of the Internal Regulations will basically have to be interpreted such that its scope of application has been opened when the Player has not failed to take the clear and obvious precautions, which any human being would take under the specific circumstances of the case (see CAS 2005/A/847 *Knauss v/ FIS* [20.7.2005] marg. no. 7.3.6). The time when the act was committed is, of course, the relevant point in time for this assessment.

- cc) What obvious precautions a reasonable human being would have taken in the First Appellant's position cannot be determined abstractly. Rather, this depends - as already indicated by the definition in the Appendix to the WADC - on the specific circumstances of the individual case. The requirements to be met by the conduct expected of every reasonable human being in the specific situation will be set at a higher level the more obvious the risk of an anti-doping rule violation connected with the conduct is. According to the consistent case law of the CAS, for example, the standard of care to be observed by the athlete in connection with the taking of nutritional supplements is comparatively strict. According to this, the athlete must at least read through the package label and the accompanying product description and instructions and must then enquire to what extent the product contains prohibited substances. The reason for these comparatively strict requirements is that the (national and international) sports federations, as well as WADA, have issued express and repeated warnings which clearly emphasize the risk of contamination and/or mislabelling in nutritional supplements (CAS 2005/A/847 *Knauss v/ FIS* [20.7.2005] marg. no. 7.3.2 *et seq.*). The risks associated with taking nutritional supplements are now



Fédération Internationale
de Basketball

FIBA

International Basketball
Federation

We Are Basketball

known to every professional athlete. Therefore, whoever - contrary to these warnings - obviously takes a known and, moreover, not insignificant risk must then also take very particular precautions in order to benefit from the reduced sanction under Art. 6.8.2.4.2 of the Internal Regulations.

The present facts are not comparable with cases of contaminated and/or mislabelled nutritional supplements. Here - unlike in the case of contaminated or mislabelled nutritional supplements - there is no direct connection between the taking of the medication and the practising of the sport. However, as the distance between a specific set of facts and the practice of the sport increases, so the intensity of the sports-related obligations, which can reasonably be expected of the athlete, decreases. In the present case the medication Propecia was taken not in order to restore the First Appellant's sporting ability, let alone to improve it. Rather the facts to be decided here concerned the Player's "private sphere", for the intent and purpose of taking the medication lay in a cosmetic problem (which may also have resulted in a psychological problem), namely to alleviate the First Appellant's hair loss. Of course, an athlete can in certain cases be subject to an increased duty of care, even in his private sphere. This particularly applies in relation to circumstances, which are well known to extend beyond the conduct of one's private life into the area of practising sport. An example of this is, for instance, the taking of so-called "social drugs" which can give rise to the violation of an anti-doping rule. Here, however, unlike in the present case, the risks are obvious to anyone and are, moreover, known to everyone. This is not least because the national and international sports federations have repeatedly and constantly pointed this out and continue to do so. However, athletes do not have a similar awareness of the risk involved in the present scenario. The (national and international) sports federations have - so far, at any rate - not warned against the risks associated with medication for treating hair loss. Also, at the time that this act was committed, such risks had not come to the public's attention by being reported in the media. To summarise therefore, the specific facts of the present case do, in the Panel's opinion, meet the standard of "*no significant fault or negligence*".

- dd) Once the sphere of application of Art. 6.8.2.4.2 of the Internal Regulations has been opened, the question then arises of what sanction is reasonable for the present offence. In this regard the provision provides for a range of sanctions ranging from one to two years. In a case decided by the CAS recently, where the athlete had also taken the medication Propecia to treat hair loss, the arbitration court - on the basis of provisions which were the same as the Internal Regulations - imposed a period of ineligibility of one year, so kept to the lower end of the range of sanctions (CAS 2005/A/921 *Fina v/ Kreuzmann & German Swimming Federation* [18.1.2006] marg no.



Fédération Internationale
de Basketball

FIBA

International Basketball
Federation

We Are Basketball

36). The case decided by the CAS involves some facts that are common to the present case and some facts that are different. Facts that are common to both cases are that the athlete was prescribed the medication Propecia by a doctor and that it was taken by the athlete for no reason other than to treat hair loss. It is also common to both cases that the packaging of the medication expressly stated that the active ingredient was Finasteride. Furthermore, in both cases the prescribing doctor was aware that the patient was a top athlete. In contrast to the facts in question in the present case, the swimmer, Mr. Kreuzmann, in the case decided by the CAS had started treatment with the medication in 2004 already, i.e. at a time when the substance Finasteride was not yet on the List of Prohibited Substances. In the CAS's opinion the athlete's conduct was reproachable because he, knowing *"that the medication would be taken for a longer period of time and that the WADA/FINA Prohibited List is updated on an annual basis"*, failed *"to re-check the List or have it re-checked by his physician, pharmacist or club doctor"* (CAS 2005/A/921 *Fina v/ Kreuzmann & German Swimming Federation* [18.1.2006] marg no. 36).

In the light of this decision by the CAS the Panel does not see itself prevented from likewise reducing the period of ineligibility to the minimum permitted under Art 6.8.2.4.2 of the Internal Regulations. It may be that the breach of duty by the swimmer, Mr. Kreuzmann, weighs less heavily than that of the First Appellant in the present case. However, the CAS decision (CAS 2005/A/921 *Fina v/ Kreuzmann & German Swimming Federation* [18.1.2006] marg no. 36) expressly states: *"The Panel ... wishes to point out that, if the substance in question had been listed as a Specified Substance under Art FINA DC 10.3, it may have reduced the period even further. The Panel is bound by the sanctioning parameters set forth in Art FINA DC 10.2 in conjunction with Art FINA DC 10.5.2."* The CAS is thereby saying that the measure of the sanction in the Kreuzmann case (one-year) is not the result of what is reasonable considering the athlete's fault, rather it is the consequence of the - comparatively - rigid lower limit of the range of sanctions. The necessary consequence of this - inflexible - limit on the range of sanctions is, however, a certain standardisation (and therefore also unequal treatment) of cases. In the Panel's opinion - and in view of the specific circumstances of the present case - the limits of such standardisation are not exceeded if merely the minimum suspension of one year is imposed on the First Appellant, also in the present case.

- ee) The First Appellant is claiming in the present case that, on the grounds of the principle of proportionality, which cannot be restricted or excluded by the rules of an association, the period of ineligibility should be reduced to less than 6 months in the present case. It must be agreed with the First Appellant that the WADC and the Internal Regulations that follow it



Fédération Internationale
de Basketball

FIBA

International Basketball
Federation

We Are Basketball

considerably restrict the principle of proportionality (see CAS 2005/A/847 *Knauss v/ FIS* [20.7.2005] marg. no. 7.5.2; CAS 2004/A/690 *Hipperdinger v/ ATP* [24.3.2005] marg no 86 et seq.; CAS 2005/A/830 *Squizzato v/ FINA* [15.7.2005] marg no 10.26). However, not every curtailment of this principle by the Respondent's rules is incompatible with the human rights and the general legal principles of Swiss Law (CAS 2005/A/847 *Knauss v/ FIS* [20.7.2005] marg. no. 7.5.4). Rather the principle of proportionality for the athlete's benefit must be weighed against the legitimate interests of the sports federations. This particularly includes the legitimate aim of effectively fighting against doping and the objective of the sports federations to harmonise doping penalties (CAS *Hondo et al v/ Swiss Olympic Association et al* [10.1.2006] marg no 141 seq).

As regards the question of how the opposing principles are to be reasonably harmonised in the rules and regulations, the Respondent has a certain amount of latitude for deciding without interference by the courts. In the present case the Panel is satisfied that the Respondent has not exceeded this latitude, for the Respondent's rules and regulations do not only acknowledge the grounds for reducing a sanction provided by the WADC, but rather Art. 6.8.3.1 of the Internal Regulations stipulates that the period of ineligibility can be suspended (either in whole or in part). The Respondent has thereby given the principle of proportionality a (particularly) generous - and contrary to the First Appellant's opinion in any event adequate - importance in its rules and regulations.

Contrary to the opinion of the Second Appellant, Art. 6.8.3.1 of the Internal Regulations also applies in the present case. In this regard the Panel - despite considerable criticism by the Second Appellant - is sticking to its past case law (see AC 2005-5 *N'Sima and WADA v/ FIBA*). Although there is no provision comparable to Art. 6.8.3.1 of the Internal Regulations in the WADC, it is also correct that the Respondent has undertaken to WADA to comply with and implement the WADC. However, the application of Art. 6.8.3.1 of the Internal Regulations - formally properly put into force - in relation to the First Appellant is not affected by this; for the WADC does not apply directly, rather in relation to the athletes affiliated to the Respondent it only applies to the extent that the Respondent has actually integrated the provisions of the WADC into its rules and regulations (see also the Introduction to the WADC, p. 6 et seq.).

- ff) Finally, the only matter which remains to be examined is whether the Respondent exercised the possibility under Art. 6.8.3.1 of the Internal Regulations of suspending the sanction to an extent that was lawful. In view of the specific circumstances of the present case this is to be answered in the affirmative, in particular in view of the degree of guilt, the fact that it is a



Fédération Internationale
de Basketball

FIBA

International Basketball
Federation

We Are Basketball

so-called first violation in the present case, the fact that taking the medication did not enhance performance, in view of the First Appellant's cooperation during the proceedings and in view of the First Appellant's ability to understand the wrongfulness of his act. Due to the First Appellant's personality and his ability to recognise the wrongfulness of his act the Panel is satisfied that a partial suspension of the one year period of ineligibility in the amount of 6 months does not conflict with the purpose pursued by the penalty, namely to deter the athlete himself - and also third parties - from (further) anti-doping rule violations.

3. In summary, the Respondent's decision is lawful and consequently the appeals by the First and Second Appellants are to be dismissed.

III.

Pursuant to Art. 12.11.5 of the Internal Regulations the Panel has – inter alia - to determine whether and to what extent the appealing parties are to be reimbursed for the costs advanced by them according to Art. 12.11.2. When making its decision the Panel must take into account the outcome of the proceedings and the conduct and the financial resources of the appealing parties. Since both Appellants lost their appeals, the costs of the First and the Second Appellants in the present case are not to be reimbursed pursuant to Art. 12.11.5.

16 February 2006

Prof. Dr. Ulrich Haas

Prof. Dr. Ulrich Haas



Fédération Internationale
de Basketball

FIBA

International Basketball
Federation

We Are Basketball

Notice of Right to Further Appeal
(Art. 12.9 of the FIBA Internal Regulations)

A further appeal against the decision by the Appeals Commission can only be lodged with the Court of Arbitration for Sport in Lausanne, Switzerland, within thirty (30) days following receipt of the reasons for the award. The Court of Arbitration for Sport shall act as an arbitration tribunal and there shall be no right to appeal to any other jurisdictional body.