



**Tribunal Arbitral du Sport  
Court of Arbitration for Sport**

**CAS 2006/A/1130 WADA v/Darko Stanic & Swiss Olympic**

**ARBITRAL AWARD**

delivered by the

**COURT OF ARBITRATION FOR SPORT**

sitting in the following composition:

**President:** Mr Quentin Byrne-Sutton, Attorney-at-law in Geneva, Switzerland

**Arbitrators:** Mr Stephan Netze, Attorney-at-law in Zurich, Switzerland  
Ms Corinne Schmidhauser, Attorney-at-law in Bern, Switzerland

between

**World Anti-Doping Agency (WADA), 800 Place Victoria, CA-Montreal, Quebec, H4Z 1B7**  
Represented by Mr François Kaiser, Attorney-at-law in Lausanne, Switzerland

As Appellant

and

**Darko Stanic, Schlossgasse 4, CH-8003 Zurich**  
Represented by Mr Adrian F. Howald, Attorney-at-law in Zurich, Switzerland

&

**Swiss Olympic Association, Laubeggstrasse 70, CH-3000 Bern 22**  
Represented by Mr Bernhard Welten, Attorney-at-law in Bern, Switzerland

As Respondents

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**I. THE PARTIES AND THE ORIGIN OF THE DISPUTE****A. The Parties****a) *The Appellant***

1. The Appellant, the World Anti-Doping Agency ("WADA") is an independent non-governmental organization created to promote, coordinate, and monitor the fight against doping in sport in all its forms.

**b) *The Respondents***

2. The first Respondent, Darko Stanic, is a professional handball player, who plays for a Swiss club named Grasshoppers Handball AG ("Grasshoppers"), which is a member of the Swiss Handball Association.
3. The second Respondent, the Swiss Olympic Association ("Swiss Olympic"), is the head of the organization grouping Swiss sports federations in Olympic and non-Olympic disciplines.

**B. The Origin of the Dispute**

4. On 28 April 2006, after a game between St. Otmar St. Gallen and Grasshoppers, Darko Stanic was tested positive for Benzoyllecgonine and Methylecgonine, which are metabolites of cocaine; cocaine being specified within WADA's list of substances prohibited In-Competition. The analysis of the B sample, which was made on Darko Stanic's request, confirmed the results of the analysis of the A sample.
5. Upon receiving the results, Darko Stanic immediately indicated his surprise to the president of his club, Grasshoppers, and assured him he had not voluntarily taken cocaine in any form.
6. The disciplinary Chamber of Swiss Olympic opened a procedure against Darko Stanic, who was convened to a hearing.
7. During his hearing, Darko Stanic stated that he had come to the conclusion that the cocaine must have entered his system as a consequence of him unknowingly smoking a cigarette containing cocaine, in the following circumstances:
  - Four days before the positive test, in the early morning of 24 April 2006, he and one of his friends Vladan Marsenic had gone to a discotheque in Zurich.



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- In general, he smokes approximately one packet of cigarettes a day and at some point during their stay in the discotheque he ran out of cigarettes and asked his friend for one.
  - Because his friend had none, he asked a group of compatriots from ex Yugoslavia with whom they had been talking whether someone could give him a cigarette.
  - The cigarette he was offered did not raise any suspicions in his mind because although he did recognize that it was probably a self-made cigarette it was the same shape and size as an industrially-produced cigarette. In other words, the cigarette did not have the funnel shape typical of a so-called "joint" containing marijuana, hashish or other drugs rolled into cigarettes.
  - He accepted the cigarette and while smoking it felt somewhat strange. He also quite quickly began feeling nausea and some unusual stomach pains aches and therefore decided to leave the discotheque with his friend. Upon arriving home he could not sleep.
8. On 6 July 2006, the disciplinary Chamber of Swiss Olympic issued its decision, whereby Darko Stanic was suspended for a period of six months.
9. In reaching its decision, the disciplinary Chamber of Swiss Olympic considered that Darko Stanic had committed "*no significant fault or negligence*" as defined by article 17.4.2 of its doping Statute and that given the overall circumstances, including Darko Stanic's personal situation, the minimum sanction of one year's suspension should be reduced to six months.
10. On 13 July 2006, Swiss Olympic's decision was copied to WADA.
11. WADA decided to appeal Swiss Olympic's decision because it considered Swiss Olympic to have misapplied its doping Statute by relying on article 17.4.2 and fixing a six-month suspension rather than a two-year suspension based on articles 12.1 and 17.1 of the Statute.

**II. SUMMARY OF THE ARBITRATION PROCEEDINGS**

12. On 27 July 2006, WADA filed a Statement of Appeal with the Court of Arbitration for Sport (hereinafter "CAS") against Swiss Olympic's decision of 6 July 2006. It nominated Mr. Stephan Netze as arbitrator.

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13. On 11 August 2006, WADA filed its Appeal brief, including the following prayers for relief:

*"I. Déclarer l'appel de l'AMA recevable.*

*II. Modifier la décision rendue le 6 juillet 2006 par la Chambre disciplinaire pour les cas de dopage de Swiss Olympic et prononcer à l'encontre de M. Darko Stanic une sanction conforme aux dispositions de l'article 17 du Statut concernant le dopage de Swiss Olympic, soit une sanction de 2 ans de suspension, subsidiairement une sanction inférieure à 2 ans de suspension, mais d'une durée minimale d'une année.*

*III. Allouer à l'AMA une participation à ses frais de procédure "*

14. Thereafter, by means of an exchange of correspondence with CAS, the parties agreed that the language of the arbitration would be English. Consequently, the following submissions were filed in English.
15. On 24 August 2006, Darko Stanic indicated his agreement with Swiss Olympic to nominate Ms Corinne Schmidhauser as arbitrator.
16. On 5 September 2006, Swiss Olympic filed its Answer, including the following prayer for relief:

*"The appeal filed on 11 August 2006 by the World Anti-Doping Agency (WADA) has to be dismissed and the decision of the Disciplinary chamber of Swiss Olympic Association of 6 July 2006 has to be confirmed"*

17. On 26 September 2006, CAS confirmed the constitution of the Panel comprised of Mr Quentin Byrne-Sutton (Chairman), Mr Stephan Netze and Ms Corinne Schmidhauser.
18. On 2 October 2006, the Respondent filed his Answer, including the following prayers for relief:

*"1. The appeal filed on 11 August 2006 by Appellant has to be dismissed and, furthermore, the Respondent has to be found not guilty and the ban according to the decision of the disciplinary chamber of Swiss Olympic Association of 6 July 2006 has to be lifted with immediate effect;*

*2. First secondary motion: the appeal filed on 11 August 2006 by Appellant has to be dismissed and the decision of the disciplinary chamber of Swiss Olympic Association of 6 July 2006 has to be confirmed (ban of 6 months);*

*3. Second secondary motion: a ban imposed on the Respondent should in any event not exceed a duration of one (1) year;*

*4. All costs to be reimbursed by the Appellant"*



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19. The hearing took place in front of the Panel on 12 December 2006 in Lausanne, Switzerland, with the General Counsel to the CAS (Mr Matthieu Reeb) and an interpreter (Ms Helen Hauser) in attendance. The following participants were present:
- a) *Appellant*  
Mr François Kaiser, Attorney-at-Law
  - b) *First Respondent (Darko Stanic)*  
Mr Darko Stanic, player  
Mr Adrian F. Howald, Attorney-at-Law  
Mr Arnold Schuler, Chairman of Grasshopper Handball AG  
Mr Vladan Marsenic, witness
  - c) *Second Respondent (Swiss Olympic)*  
Mr Bernhard Welten, Attorney-at-Law
20. The hearing began by Darko Stanic making a statement and replying to questions, continued with the witnesses being examined and ended with closing statements by the parties' counsel and Darko Stanic.
21. During his closing statement, counsel for the Appellant specified that having heard Mr Stanic and his witnesses, Appellant deemed that Mr Stanic's version of how the cocaine had entered his system was not credible and that he must therefore be sanctioned by a two-year suspension for not having proven how the prohibited substance entered his system. Swiss Olympic's counsel also underlined the athlete's burden of proof and argued that, contrary to what the disciplinary Chamber had decided, it was not possible in any event to reduce the sanction to six months. Mr Stanic's counsel refuted the idea that Mr Stanic had been negligent and insisted that although it was unusual to smoke cocaine powder it was not at all unusual for cocaine to be smoked in the form of "crack"; it thus being perfectly credible that Mr Stanic had unknowingly ingested some form of cocaine by smoking the cigarette in the discotheque.

### III. THE PARTIES' CONTENTIONS

#### A. Appellant

22. WADA submits in substance that:

- Darko Stanic has not clearly established how the cocaine entered his system.
- The test for admitting "*no fault or negligence*" is very demanding, notably according to the case law of CAS, and Darko Stanic has clearly not met it; this being confirmed by the finding of Swiss Olympic's disciplinary Chamber that it is negligent for an athlete to accept a hand-rolled cigarette from a stranger in a discotheque.



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- Given athletes' duty of diligence imposed by Swiss Olympic's doping Statute and the World Anti-Doping Code, as well as the strict application of such duty in CAS case law, Darko Stanic cannot be deemed to have acted without significant fault or negligence in the circumstances he is invoking. It is noteworthy that in a case concerning the ingestion of cocaine by an athlete in quite similar circumstances the "*Independent Anti-Doping Tribunal*" of the *International Tennis Federation* determined, in a decision dated 4 April 2005, that the player could not benefit from a reduced disciplinary sanction under the "*no significant fault or negligence*" rule.
- In applying the rules on reduced sanctions only exceptional circumstances affecting the athlete's degree of fault can be taken into account and not circumstances concerning the athlete's personal situation; this being confirmed by CAS case law.
- The doctrine of proportionality cannot be applied to reduce a disciplinary sanction below the lower limit of one year provided in Swiss Olympic's doping Statute since proportionality is already built into the rules by them stipulating a possible reduction from two years to one year. The Swiss federal court, CAS case law and leading authorities concur in considering that the system of disciplinary sanctions contained in the World Anti-Doping Code and the regulations of sports associations/federations, whereby periods of suspension can vary between two years and a minimum sanction of one year, according to the athlete's degree of fault, does not in itself violate the requirements of proportionality. Consequently, Swiss Olympic's disciplinary Chamber misapplied Swiss Olympic's doping Statute in deciding to apply a period of suspension (six months) which is below the minimum reduced sanction of one year fixed by article 17.4.2 for the type of doping offence the disciplinary Chamber found to have been committed.

**B. First Respondent (Darko Stanic)**

23. Darko Stanic submits that he committed: "... *no fault or negligence*" and must therefore "... *be found not guilty and the ban according to the decision of the disciplinary chamber of Swiss Olympic Association of 6 July 2006 has to be lifted with immediate effect*".
24. In invoking no fault or negligence, Darko Stanic notably submits the following (the quotations being extracts from his Answer):
  - "*The cigarette, which [he] was offered by one the compatriots, looked very much like a normal cigarette. The cigarette had the same shape like a usual cigarette, like the one's in a cigarette box which can be bought at every kiosk*".
  - "*The cigarette that was offered to [him] was self-made, but did not have the funnel shaped form of the usual joints (e.g. to smoking marijuana or other stuff) nor was the cigarette somehow suspicious from the form*".
  - "... *it is absolutely unusual to ask for a cigarette and to receive a cigarette which contains cocaine or crack (which is made from cocaine). Cocaine is expensive and no body offers a cigarette with cocaine to another person for free as in the present case. Furthermore, it is unusual to smoke cocaine. Usually cocaine is sniffed through the nose and not smoked*."



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- Thus “...the cigarette offered to [him] was in no way suspicious” and he “...has acted as anyone else would have done in a similar situation. Therefore, he has acted with the necessary caution ...”.
- Nevertheless, since cocaine is often smoked in cigarettes in the form of “crack”, it is perfectly credible that he unknowingly ingested cocaine by smoking a cigarette offered to him in the discotheque.

**C. Second Respondent (Swiss Olympic)**

25. Swiss Olympic submits that:

- “The disciplinary chamber was following D. Stanic's version that he received a cigarette in a discotheque, most probably being partially composed by cocaine. If this version of the story is true, the athlete certainly did act negligent in accepting a cigarette from a third party in a disco. However the case should then be judged under Art. 17.4.2 (no significant fault or negligence)”.
- Mr Stanic has the burden of proving the circumstances he is invoking.

**IV. DISCUSSION OF THE CLAIMS****A. Jurisdiction**

- 26. The jurisdiction of the CAS, which is not disputed, derives from articles 20.2.1 and 20.2.2 of Swiss Olympic's doping Statute and art. R47 of the Code of Sports-related Arbitration (the “Code”).
- 27. Furthermore, it is not disputed that the appeal was timely.
- 28. The scope of the Panel's jurisdiction is defined in art. R57 of the Code, which provides that: “The Panel shall have full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance”.

**B. Applicable Law**

29. Art. R58 of the Code provides that:

*“The Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.”*

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30. The Parties having both relied on the provisions of Swiss Olympic's doping Statute, these are deemed applicable. Moreover, because the foregoing doping Statute provides in its preamble that it was adopted to implement the obligations imposed by the World Anti-Doping Code, the latter may be accounted for in interpreting the scope and meaning of the Swiss Olympic's doping Statute. Any issues that need determining that are not regulated by the foregoing rules shall be decided on the basis of Swiss law, as the law most closely connected with the dispute, since both Respondents are domiciled in Switzerland and the ingestion of the Prohibited Substance took place in Switzerland.
31. The following provisions, among others, of Swiss Olympic's doping Statute are relevant in deciding the case:

***"1 Définition***

Est considérée comme dopage, au sens du présent Statut, la concrétisation d'un ou plusieurs acte(s) délictueux tel(s) qu'énumérés(s) ci-après sous chi. 12.

***3 Liste des substances et des méthodes interdites***

*3.1 La CLD publie périodiquement une Liste des substances et des méthodes interdites. Elle correspond à la liste adoptée par l'AMA, mais peut contenir des explications et des informations complémentaires.*

*3.2 La Liste des substances et des méthodes interdites revêt un caractère contraignant pour toutes les fédérations membres.*

***12 Actes délictueux vis-à-vis des dispositions antidopage***

*Les faits suivants sont considérés comme des violations des dispositions antidopage:*

*12.1 La présence d'une substance interdite, ou de ses métabolites ou de ses marqueurs, dans les échantillons prélevés sur le sportif.*

*12.1.1 Il incombe à chaque sportif de s'assurer qu'aucune substance interdite ne pénètre dans son organisme. Les sportifs sont responsables de toute substance interdite, de ses métabolites ou marqueurs, dont la présence est décelée dans leurs échantillons. Par conséquent il n'est pas nécessaire, pour établir une violation des dispositions antidopage en vertu du chi. 12.1, de faire la preuve de l'intention, de la faute, de la négligence ou de l'usage conscient de la part du sportif.*

*12.1.2 La présence démontrée d'une substance interdite, de ses métabolites ou marqueurs dans l'échantillon fourni par un sportif constitue une violation des dispositions antidopage, à l'exception des substances pour lesquelles un taux limite est expressément indiqué.*

*12.1.3 A titre d'exception à la règle générale spécifiée sous chi.12.1, la Liste des substances interdites peut prévoir des critères d'appréciation spécifiques susceptibles de démontrer la présence de substances interdites pouvant également être produites (de façon endogène) par le corps lui-même.*



### ***17 Suspension infligée à des sportifs individuels***

#### ***17.1 Condamnation à une suspension en raison d'usage de substances interdites et de méthodes interdites***

*Sauf pour les substances (spécifiques) mentionnées sous chi. 17.2, la durée de la suspension prononcée pour une violation du chi. 12.1 (présence d'une substance interdite, ou de ses métabolites ou de ses marqueurs), du chi. 12.2 (usage ou tentative d'usage d'une substance interdite ou d'une méthode interdite) et du chi. 12.6 (possession de substances interdites ou de méthodes interdites) :*

- *pour une première violation : deux ans*
- *pour une deuxième violation : à vie.*

*Le sportif ou la personne autre doit toutefois obtenir dans tous les cas, avant qu'une période de suspension ne lui soit infligée, la possibilité d'argumenter dans le but d'obtenir une annulation ou un allègement de la sanction, conformément au chi. 17.4.*

#### ***17.4.1 Absence de faute ou de négligence***

*Si le sportif parvient à démontrer, dans un cas particulier de violation des dispositions antidopage selon le chi. 12.1 (présence d'une substance interdite, ou de ses métabolites ou de ses marqueurs, dans les échantillons prélevés sur le sportif), ou impliquant l'usage d'une substance interdite ou d'une méthode interdite selon le chi. 12.2, qu'il n'y a pas de faute ni de négligence à l'origine de la violation, la durée de suspension normalement applicable est annulée. Lorsqu'une substance interdite, ou ses métabolites ou ses marqueurs sont décelés dans les échantillons prélevés sur le sportif en violation du chi. 12.1 (présence d'une substance interdite), le sportif doit être en mesure de démontrer, avant d'obtenir l'annulation de la suspension, comment la substance interdite est parvenue dans son organisme. En cas d'application de cette disposition et de l'annulation de la durée de suspension normalement applicable, la violation des dispositions antidopage ne doit pas être considérée comme violation déterminant une suspension pour violation répétée comme spécifiée sous chi. 17.1, 17.2 et 17.5.*

#### ***17.4.2 Absence de faute ou de négligence significatives***

*Cette disposition ne s'applique qu'aux violations inhérentes au chi. 12.1 (présence d'une substance interdite, ou de ses métabolites ou de ses marqueurs, dans les échantillons prélevés sur le sportif) ou impliquant l'usage d'une substance interdite ou d'une méthode interdite selon le chi. 12.2, le refus ou le fait de se soustraire à un prélèvement d'échantillons selon le chi. 12.3, ou l'administration d'une substance interdite ou d'une méthode interdite selon le chi. 12.8. Dans ces circonstances, si le sportif parvient à démontrer, dans un cas individuel lié à l'un ou à l'autre de ces types de violations, qu'aucune faute significative ne peut lui être imputée, la durée de la suspension peut être réduite; toutefois, la durée réduite de la suspension ne peut être inférieure à la moitié de la durée minimale normalement applicable. Si la durée de suspension normalement applicable est la suspension à vie, la suspension*



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*liée à cette disposition ne peut être réduite à moins de 8 ans. Si la présence d'une substance interdite, ou des métabolites ou de ses marqueurs est décelée dans les échantillons prélevés sur le sportif en violation du chi. 12.1 (présence d'une substance interdite), le sportif doit également être en mesure de démontrer, avant d'obtenir une réduction de la durée de sa suspension, comment la substance interdite est parvenue dans son organisme.*

Definitions**Absence de faute ou de négligence**

*Démonstration apportée par le sportif qu'il ignorait, ne se doutait pas ou n'aurait pas pu, même avec la plus grande vigilance, raisonnablement savoir ou présumer qu'il avait fait usage ou s'était vu administrer une substance interdite ou une méthode interdite.*

**Absence de faute ou de négligence significative**

*Démonstration apportée par le sportif: qu'en regard de l'ensemble des circonstances et compte tenu des critères inhérents à l'absence de faute ou de négligence, sa faute ou sa négligence n'était pas significative par rapport à l'infraction commise."*

32. Under WADA's "Prohibited List 2006", which is applicable in accordance with article 3 of Swiss Olympic's doping Statute, cocaine is classified as a stimulant under section 6 of the list defining "Substances and Methods Prohibited In-Competition".

**C. The Doping Offence**

33. Since the existence of a doping offence as defined by Swiss Olympic's doping Statute is not contested, the only question to examine is whether Darko Stanic was correctly sanctioned for such offence by the disciplinary Chamber of Swiss Olympic, under the applicable rules.

**D. The Disciplinary Sanction****i. Possible Elimination or Reduction of the Sanction**

34. Under articles 12.1 and 17.1 of Swiss Olympic's doping Statute, the disciplinary sanction for a first doping offence of the type involved is a two-year suspension of the athlete, which is the sanction that the Appellant argues should apply in this case to Darko Stanic.
35. However, Swiss Olympic's disciplinary Chamber reduced the sanction based on a finding of "no significant fault or negligence" and Darko Stanic contends that he is entitled to have the sanction entirely eliminated on the basis of "no fault or negligence".



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36. Accordingly, the Panel will now examine the conditions that apply to the elimination or reduction of a disciplinary sanction under Swiss Olympic's doping Statute.
- ii. The Athlete's Burden of Establishing How the Prohibited Substance Entered his System
37. Swiss Olympic's doping Statute provides that in attempting to establish "no fault or negligence" or "no significant fault or negligence", an athlete must in all events meet the precondition of establishing how the prohibited substance entered her/his system.
38. Under article 17.4.1 of the doping Statute ("no fault or negligence") this precondition is formulated as follows: "... the Athlete must be able to establish, before obtaining the elimination of the ineligibility period, how the prohibited substance entered his or her system" (free translation of "... le sportif doit être en mesure de démontrer, avant d'obtenir l'annulation de la suspension, comment la substance interdite est parvenue dans son organisme"), which constitutes the implementation of article 10.5.1 of the World Anti-Doping Code. Under article 17.4.2 of the doping Statute ("no significant fault or negligence") this precondition is repeated as follows in nearly identical wording: "... the Athlete must also be able to establish, before obtaining a reduction of the ineligibility period, how the prohibited substance entered his or her system" (free translation of "... le sportif doit également être en mesure de démontrer, avant d'obtenir une réduction de la durée de la suspension, comment la substance interdite est parvenue dans son organisme"), which constitutes the implementation of article 10.5.2 of the World Anti-Doping Code.
39. Obviously this precondition is important and necessary otherwise an athlete's degree of diligence or absence of fault would be examined in relation to circumstances that are speculative and that could be partly or entirely made up. To allow any such speculation as to the circumstances in which an athlete ingested a prohibited substance would undermine the strict liability rules underlying Swiss Olympic's doping Statute and the World Anti-Doping Code, thereby defeating their purpose.
40. In relation to another set of rules containing a similar precondition, namely the anti-doping rules of the International Tennis Federation ("ITF"), the Appellant submitted a decision of 4 April 2005 of the ITF Independent Anti-Doping Tribunal, in which the ITF counsel's apt arguments explaining the rationale for the precondition were reported as follows:

*"Mr Taylor, for the ITF, submitted that the player could not succeed in invoking either of the defences under Article M.5 because he could not show how the prohibited substance entered his system. He contented that this requirement meant not only that the player must show the route of administration – in this case probably oral ingestion – but that he must be able to prove the factual circumstances in which administration occurred.*

*Drawing upon reasoning in K v. ITF, CAS 99/A/223..., he submitted that it was quite insufficient merely to suggest innocent explanations coupled with a denial of deliberate doping. Similarly, here the player could not surmount the initial hurdle merely by denying deliberate ingestion and reasoning by a process of elimination that spiking was the only rational alternative. He pointed out that the purpose of*



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*what he termed the "threshold requirement" of showing how the substance entered the player's system was to enable the Tribunal to determine the issue of fault on the basis of fact and not mere speculation".*

41. The fact that proof by the athlete of how the prohibited substance entered her/his system is a necessary pre-condition in establishing lack of fault or no significant liability was recently reaffirmed in clear terms by a CAS panel in a decision dated 10 January 2006 within a case that involved three appeals (CAS 2005/A/922&923&926; see also CAS 99/A/223, in: Digest of CAS Awards, Vol. II. 1998-2000, pp. 345 and 355).
  42. Applying this precondition in the present case means that in order for Darko Stanic to argue that he was not at fault or at least was not significantly negligent when unknowingly accepting a cigarette containing cocaine, he must first establish, under the applicable standard of proof, that he was in the discotheque in question four days prior to the positive test, that he was given and smoked a cigarette containing some form of cocaine and that the metabolite of cocaine found in his system on the date of the test can have originated from smoking cocaine in such fashion four days earlier.
  43. Consequently, the Panel will now examine what is the applicable standard of proof and then turn to the evidence offered by Darko Stanic regarding how the cocaine entered his system.
- iii. The Applicable Standard of Proof
44. Under Swiss law, the standard of proof normally applied to a civil claim is whether the alleged facts have been established beyond reasonable doubt, thereby leading to the judges' conviction that the claim is well founded.
  45. That said where sports anti-doping rules are concerned and the strict liability rule results in athletes bearing the burden of proof, CAS panels have tended to apply a less strict standard of proof that is referred as the balance of probabilities (see e.g. CAS 99/A/223, in: Digest of CAS Awards, Vol. II. 1998-2000, pp. 345 and 355); the balance of probabilities meaning in effect that a relevant fact must be established as being more probable than not.
  46. The balance of probabilities standard has been usefully codified under 3.1 of the World Anti-Doping Code, by providing that *"Where the Code places the burden of proof upon the Athlete or other Person alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be a balance of probability"*.
  47. The panel considers that the balance of probabilities is the most adequate standard of proof to apply where an athlete is seeking to establish how a substance entered his system because the principle of strict liability under which a positive test creates a presumption of fault requires is already demanding on athletes.



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48. Consequently, the Panel shall now examine whether on the balance of probabilities Darko Stanic has established how the cocaine entered his system.

iv. Evaluation of the Proof Submitted by Darko Stanic

49. It does not seem improbable that Darko Stanic spent some time in the discotheque in question as he and his friend, Vladan Marsenic, confirmed. However, that is not a particularly relevant factor in itself.

50. What is more relevant is what happened in the discotheque and in particular whether it appears probable, based on the evidence submitted by Darko Stanic, that while in the discotheque he received from a stranger a cigarette containing cocaine powder or cocaine in the form of crack and smoked it unknowingly.

51. On the basis of the circumstances described and evidence presented by Darko Stanic, and bearing in mind public knowledge relating to cocaine and crack, the Panel finds for the following reasons combined that it is improbable that Darko Stanic unknowingly smoked a cigarette containing cocaine or crack given to him in the discotheque by a stranger:

- There is no direct evidence that the cigarette contained cocaine or crack and even Darko Stanic himself only speculates that it might be the cause of the positive test, after having considered other scenarios such as the possibility of having consumed a spiked drink.
- There is no obvious reason that anyone in the discotheque would have attempted to offer Darko Stanic a spiked cigarette and the fact that he alleges having asked for the cigarette when his own cigarettes ran out tends to contradict the hypothesis of any form of sabotage or intention by a third party to drug Darko Stanic, since a person with such intentions would have either left the spiked cigarette on the table/bar or spontaneously offered it to Darko Stanic without being asked.
- Moreover, although not impossible, the chances are not very high that anyone would offer a cigarette containing cocaine or crack to a stranger by mistake. Such an occurrence is therefore also improbable.
- In the case of cocaine, the foregoing is obvious given, on the one hand, the very high cost of cocaine and, on the other, the fact that cocaine is rarely ingested through smoking, as underlined by the Respondent himself in the following terms: *"Cocaine is expensive and no body offers a cigarette with cocaine to another person for free as in the present case. Furthermore, it is unusual to smoke cocaine. Usually cocaine is sniffed through the nose and not smoked"*.
- In the case of crack and despite it often being smoked and it being considerably cheaper than cocaine, the probability remains low that someone would make the mistake of giving away a cigarette containing crack.



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- It would seem likely that if the Darko Stanic had smoked a cigarette containing crack he would have had quite a vivid memory of the moment, whereas in the doping-control sheet signed by him four days later, at the time of the doping control, he did not note anything under "Remarks" and when he was informed of the positive test he did not immediately recall the cigarette incident later mentioned. In fact, the President of Grasshoppers, Mr. Adrian F. Howald, testified that he recalled Darko Stanic first talking to him about the possibility of having consumed a spiked drink.
  - The Panel found the testimony by Darko Stanic's friend, Vladan Marsenic, unclear and therefore unconvincing.
52. In addition, the Respondent filed no scientific evidence regarding how long the metabolites found in his system would most likely have remained detectable; thereby not establishing the degree of likelihood that the smoking of a cigarette four days earlier could be the cause of the positive test.
53. For the above reasons, the Panel considers that on the balance of probabilities the Respondent has clearly not provided evidence making it more probable than not that cocaine or crack entered his system as a result of him smoking a cigarette that he asked a stranger for in a discotheque.
54. As a result, Darko Stanic has not met the conditions of either article 17.4.1 or 17.4.2 of Swiss Olympic's doping Statute required to prove lack of fault or no significant negligence, and Swiss Olympic erred in applying article 17.4.2. Instead, articles 12.1 and 17.1 must apply with the consequence that Darko Stanic must be suspended for a period of two years.
55. That said, the Panel would like to stress that this finding does not imply or mean that Darko Stanic has been untruthful or that he intentionally doped himself. It simply means that he did not meet the burden of proving how the cocaine entered his system, as required by the applicable rules based on the principle of strict liability.
- v. Commencement of the Ineligibility Period
56. In the present case, the Panel considers that the most appropriate and fairest date for the suspension to commence is from the date Darko Stanic in effect played no further official games for Grasshoppers within the Swiss handball league after the date of the positive test but before the decision of Swiss Olympic's disciplinary Chamber. Consequently, it is decided that the two-year suspension shall start on 22 May 2007.
- V. COSTS**
57. In accordance with art. R65.1 of the Code, this proceeding is free except for the Court Office fee of CHF 500 (five hundred Swiss Francs) already paid by the Appellant and to be retained by the CAS.



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58. Considering the Appellant has succeeded in its appeal but taking into account Darko Stanic's particularly difficult financial situation and the fact that it is the Swiss Olympic disciplinary Chamber's misapplication of the rules that partly triggered the appeal, the Panel has decided that each Respondent shall pay the Appellant a contribution to its costs limited to an amount which will cover the Office fee paid by the latter. Consequently each Respondent shall contribute to the Appellant's costs in an amount of CHF 250.
59. Considering the Appellant has succeeded in its appeal, both Respondents shall bear their own legal costs.

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**ON THESE GROUNDS**

The Court of Arbitration for Sport hereby rules :

1. The decision of the Disciplinary Chamber of Swiss Olympic dated 6 July 2006 is set aside.
2. Darko Stanic shall be declared ineligible for competition for two years commencing on 22 May 2006.
3. The award is pronounced without costs, except for the Court Office fee of CHF 500 (five hundred Swiss Francs) already paid by the Appellant and to be retained by the CAS.
4. Darko Stanic is ordered to pay WADA an amount of CHF 250 (two hundred and fifty Swiss Francs) as a contribution towards its costs.
5. Swiss Olympic is ordered to pay WADA an amount of CHF 250 (two hundred and fifty Swiss Francs) as a contribution towards its costs.

Lausanne, 4 January 2007

**THE COURT OF ARBITRATION FOR SPORT**

  
Quentin Byrne-Sutton

President of the Panel